Writers Guild of Canada

December 1, 2017 **Filed Electronically**

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

Dear Mr. Seidl:

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

The Writers Guild of Canada (WGC) is the national association representing approximately 2,200 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming.

EXECUTIVE SUMMARY

ES.1 The single most significant trend in the production, distribution, and consumption of audiovisual content today is the growth of online, primarily global (typically U.S.-based) Internet-based content services, and the associated impacts, largely negative, on traditional broadcasting services in Canada and, in turn, on the public policy tools associated with them. In our view, this is the primary, driving force of change in the audiovisual content sector, and virtually everything else that matters is some facet of this larger trend.

ES.2 The report, *Canadian Media in a Digital Universe*, produced by Nordicity for the "Digital Media at the Crossroads" conference of January, 2016, and co-sponsored by the WGC, noted the following trends:

- One of the most significant shifts in the film and television industry is that today, video content is being produced at record levels and increasingly through a multitude of online channels.
- In tandem with the increased availability of content, viewing habits are also changing, in particular shifting from appointment television—e.g., over-the-air (OTA), specialty and pay TV—to on-demand and online channels, as well as binge-watching and multi-tasking.

366 Adelaide Street West
Suite 401
Toronto, Ontario M5V 1R9

Tel 416 979-7907
1-800-567-9974
Fax 416 979-9273
info@wgc.ca www.wgc.ca

- Younger demographics demonstrated a higher than average decline in their viewing hours [to traditional television between 2009-2010 and 2013-2014], with the 18-24 group watching 20% less hours of television per week.
- Over-the-top (OTT) subscription rates are in line with the trends discussed above, including changing viewing habits, greater penetration of smart phones and access to higher bandwidth, and usage of social media and the like among younger audiences.
- [A] figure [in the report] juxtaposes the projected penetration of broadcast distribution undertakings (BDUs) and OTT subscriptions, reflecting a slow decline in BDU subscriptions as a result of cord-cutting. At the same time, it shows continued growth in OTT subscriptions in part due to the introduction of Canadian services.
- The impact of advertising revenue on the television industry is partly a result of shifting consumer habits toward on-demand platforms. It is also partly the result of the advertisers' shift toward digital media that is more likely to reach younger populations, a coveted segment of the market for advertisers. [In the report], the historical stagnancy and projected gradual decline in television advertising is shown against the significant growth of Internet advertising. Conventional TV, of course, suffers from any diversion of revenue away from advertising because advertising is the only real source of revenue for the segment.
- Industry revenue trends are likely to increasingly impact regulated support of the production sector by broadcasters over the coming years. Due to the continued incursion of OTT, it is estimated that by 2020, Canadian programming expenditures (CPE) contributions by BDUs and programming services would drop by roughly 5%, from where they stood in 2014. Over the same period, programs of national interest (PNI) contributions are estimated to see a slightly higher decline (7%). The estimates were based on forecasts of the behaviour of BDUs, programming services, and TV viewers in response to the current and changing climate in the industry. However, this same study forecast that the impact would be much more severe if the CRTC's "Let's Talk TV" (LTTV) decisions were to be implemented as intended… It projected that the impact of current digital platform trends will be compounded by regulatory change, with the LTTV decisions resulting in a decline of $399 million in CPE by 2020. This decline, in turn, is projected to reduce independent production by $335 million…approximately 15% below current levels.

ES.3 The Commission's *2017 Communications Monitoring Report* notes similar trends regarding revenues, profitability, BDU subscriptions rates, and audience viewing patterns.

ES.4 At the same time, we are amidst a "global content boom" driven by the largest international content players, including U.S. studios and Netflix, and financed to a very large degree by debt. Meanwhile, in Canada there has been significant consolidation of broadcasters, such that three large private English-language corporate groups—Bell Media, Corus Entertainment, and Rogers Media—collectively control 83.1% of audience viewing in the English market. This provides fewer "doors to knock on" for screenwriters domestically, while pressure grows to produce for an international market that is aimed at non-Canadian audiences and seeks to attach non-Canadian "name" talent, often at the expense of Canadian creators and stories.

ES.5 The general trend—from traditional, fully licensed and regulated TV to online, currently unlicensed and effectively unregulated audiovisual services—will have a profound impact on the creation, production, and distribution of Canadian programming. This is because Canadian programming is highly dependent on cultural policy tools, in particular broadcasting regulation, for its vitality, and indeed its very existence. As consumption moves from the regulated to the unregulated space, these policy tools become far less effective, if not completely ineffective. The result is the potential to decimate the Canadian domestic production sector, and everything that implies for Canadian jobs and culture.

ES.6 The reliance of Canadian programming on cultural policy tools is the result of a number of important and unique historical and structural characteristics of the film and television sector of English-language Canada. English Canada is linguistically, geographically, and culturally proximate to the United States. English Canada has a history of direct exposure and access to American film and television content. The United States is one of the largest media producers in the world, and *the* largest producer of English-language content in the world. The English-language Canadian population—and hence the English-Canadian market—is a fraction of the size of the U.S. market, and market size is a key determinant in recovering the high costs of certain genres like TV drama. Professional content production is expensive and high-risk, and relies upon the “hit model”, which in turn depends upon a critical mass of content to become profitable. Proximity and shared language have also made it easier for Canadian talent to exit the Canadian industry to work in Hollywood.

ES.7 These factors make it very difficult to finance the creation of competitive Canadian programs. Even where 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.

ES.8 Collectively, the above challenges have been responded to over the years by a number of federal government policies, together often referred to as the “policy toolkit”. They include the regulation of broadcasting, public funding for content production, public broadcasting, and ensuring "shelf space" and "discoverability" options for Canadian content. These tools have worked effectively over the years. The volume of domestic production (measured as the total of all budgets) reached $2.87 billion and generated more than $3.58 billion in GDP for the Canadian economy in 2015-2016. The domestic industry also generated 59,500 full-time equivalent (FTE) jobs in 2015-2016, including 36,100 spin-off FTEs in other Canadian industries. One million viewers per episode is the mark of success in Canada, and hit series like *Cardinal*, *Kim’s Convenience, Murdoch Mysteries,* and *Saving Hope* have regularly surpassed that mark—some drawing more than 1.4 million viewers. The Canadian Broadcasting Corporation’s (CBC) huge hit, *The Book of Negroes*, attracted nearly 2 million Canadians for its premiere and continued to draw an average of 1.6 million over its six episodes. These numbers are well within the Numeris weekly Top 30 ratings successes, and are very competitive with top U.S. shows. The export value of Canadian film and TV series has reached an all-time high of more than half a billion dollars, with demand growing steadily over the past decade. This success simply would not have been possible without the supportive policies of the cultural policy toolkit.

ES.9 At the same time, it is important to note that the “digital revolution”—the availability of increasingly more powerful and affordable computing devices and software, combined with the global interconnectivity and access provided by the Internet—does not, by itself, adequately address any of these challenges. In many respects the Internet exacerbates the challenges faced by Canadian audiovisual content creators, because it undermines elements of the policy toolkit and opens up the Canadian marketplace to international competition even further, a phenomenon that always tends to benefit the biggest, most established players. Certainly, the Internet also brings opportunities for Canadians, but the challenges are just as great if not greater.

ES.10 The WGC strongly believes that the Commission—and, ultimately, the federal government—must look at ways to modify or replace existing support structures so that their reliance on traditional production models does not result in an overall decline in the quality and quantity of Canadian programming. In short, as content consumption migrates from traditional broadcast television to Internet-based alternatives, analogs or replacements must be found to offset reduced: 1) spending on Canadian programming by private, English-language broadcasters; and 2) contributions by BDUs to production funds, primarily the CMF. The shift to digital is putting up to $2.1 billion in financing to English-Canadian domestic production at risk, with approximately $411.2 million of that at *serious* risk, much of which is with respect to the culturally valuable genres of drama series, animation, children's programming, and documentary. Further, the Canadian broadcasting system is about to see a drop from almost $80 million in spending from tangible benefits packages this year, to $0 by the end of 2021, with a major decline projected in the next two years. Given all these potential impacts, failure to find new sources of funding and government support will see the Canadian domestic production sector decline by roughly the same amount, with devastating results for jobs and cultural output.

ES.11 Just as crucial to the health and vitality of the domestic film and television sector as a whole is the place that Canadian creators and artists have in that sector. This is true of virtually all works of art, and the fact that film and television production is more collaborative than painting or music composition does not change that fact. Films and television still bear the stamp of their creators—of an authorial voice and of individual artistry. Sometimes more than one person contributes to that voice, but more often there is one voice, and in serial dramatic television, that voice is the showrunner and the team of screenwriters they lead.

ES.12 Other jurisdictions are facing similar challenges to Canada, and are already responding. The British Broadcasting Corporation has highlighted, "a serious, long-term weakening of our television production" as a result of the emergence of global digital players. France has recently had a 2% levy on video-on-demand (VOD)/streaming services, including those based outside the country, approved at the European Commission level. VOD/OTT taxes aimed at funding national film/audiovisual creation have also been implemented in Germany and Brazil. Such measures are currently contemplated for the entire European Union, through the ongoing review and update of the Audiovisual Media Services Directive (AVMSD), including, "The promotion of European works will also apply to on-demand service providers, through a requirement for a minimum 30% quota in their catalogues and the possibility for EU countries to require a financial contribution from media service providers, including those established in another EU country, with exemptions for start-ups and small enterprises." Australia addressed similar issues as part of their Convergence Review in 2012. These responses are sometimes questioned with respect to their international enforceability, but Canadian courts can and have asserted jurisdiction over such undertakings and there are a number of steps that can be taken to enforce such requirements if deemed appropriate.

ES.13 These cultural policy tools above do not engage or threaten net neutrality in Canada. The WGC supports the principle of net neutrality.

ES.14 With respect to the Commission's specific questions, the WGC adds to the above comments as follows.

ES.15 Q1. As described above, the single most significant trend in the production, distribution, and consumption of audiovisual content today is the growth of online, primarily global (typically U.S.-based) Internet-based content services, and the associated impacts, largely negative, on traditional broadcasting services in Canada and, in turn, on the public policy tools associated with them.

ES.16 Q2. As described above, the move of advertising to the online world has resulted in the erosion of revenues for OTA broadcasters, as well as a net migration of money out of Canada to non-Canadian based Internet giants like Google and Facebook. This global concentration of the advertising sector is likely to have long term impacts on Canadian television, and generally negative ones.

ES.17 Q3. One of the impacts on the trend towards the "globalization" of content is increased pressure to create "global content" that appeals to international audiences and, therefore, is financially attractive to international financiers. Unfortunately, for many financiers, what makes projects attractive is international "name" talent—often American "stars", in front of the camera or behind it, including international writing talent. This can create pressure to replace Canadian screenwriters with non-Canadian ones. An unfortunate example of this view was expressed by the Commission under its previous Chair in the *Policy framework for Certified Independent Production Funds* (the CIPF Decision). That said, the current government, with the support of Minister of Canadian Heritage Mélanie Joly, have taken a different tack, and there is new leadership at the Commission. The WGC is optimistic that a similar approach will not be repeated in the near future.

ES.18 Q4. The WGC has no particular expertise on broadband network capacity, and so provides no comment on this question.

ES.19 Q5. It is difficult to predict with accuracy exactly how consumer behaviour will evolve or over what time frame. However, the trends appear to be clear: Consumers are moving from traditional broadcast to Internet-based services for more and more of their content. The WGC also submits that five years may not be the most effective time frame through which to view this phenomenon, since we believe the successor legislation to the *Broadcasting Act*, whatever it might be, should be able to stand and remain relevant for a longer period than that, in a way that effectively deals with the trends toward Internet-based services.

ES.20 Q6. We would reiterate our comments from Q5 above, and add that because perfect foresight is impossible, regulatory solutions should be created that are platform-agnostic and technologically neutral. This will ensure that we don't have to predict the mix of traditional/online, global/domestic, many/few providers Canadians will access programming through, but can ensure a Canadian presence on, and a Canadian programming contribution from, whatever that mix may be.

ES.21 Q7. With respect to content creation, first, there must be a sufficient "critical mass" of production. Second, domestic content creation must be genuinely *domestic*. The actual *creators* of the content itself must be at the core of what it means to create genuinely *Canadian* content. In particular, the authorial voice of a production must be Canadian in order for that to truly reflect the domestic market, and in television that overwhelmingly means the showrunner and their team of screenwriters. Third, there must be a culture of creative risk-taking. Finally, there must be robust development activity.

ES.22 Q8. New business models do not, by themselves, support a vibrant domestic content and distribution market. Neither the Internet nor OTT services automatically "fix" or negate the challenges of making higher-budget, higher-risk content like drama, animation, children's programming, or documentary by and for the English-language Canadian market. In this context, while we vigorously applaud the commitment by Netflix to invest $500 million in "original production in Canada" over the next five years, and the leadership of Minister Joly in facilitating that commitment, it is important not to see this as "the solution" to the challenges we face. We must also not presume that the self-interest of Canadian private broadcasters will necessarily ensure that Canadian content survives and thrives, given their ultimate responsibilities to their shareholders, the lure of hitting short-term earnings targets, and their past behaviour in attempting to lower their existing regulatory obligations to commission Canadian programming.

ES.23 Q9. For the reasons discussed above, a number of existing public policy/regulatory tools facilitate the Canadian content market, and should continue in the future. Canada needs a *Broadcasting Act* that, like its current iteration, promotes cultural policy objectives and is technologically neutral, so as to encompass OTT services. Canada *cannot* discard its cultural policy toolkit—it must continue to use it in a way that makes sense in the Internet age. In our view, that means, primarily, ensuring that the *Broadcasting Act*, and its cultural, social, and employment mandates, applies to broadcasters or broadcaster-like services that serve the Canadian market, whether or not they are based on Canadian soil, and whether or not they transmit over radio waves, dedicated BDU services, or on the Internet.

Introduction

1. The WGC is pleased to provide comments on the Governor in Council's request for a report on future programming distribution models, as set out in Broadcasting Notice of Consultation CRTC 2017-359 (the Notice). Given the nature of our organization and membership, our comments relate primarily to video/audiovisual programming in the English-language market, and primarily in the genres of drama, animation, children's and youth programming, and documentary. This generally corresponds with the Commission's programming category, "programs of national interest" (PNI), which the Commission has called—and the WGC agrees—"expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values".[1]

2. In the Notice, the Commission says, "To the greatest extent possible, parties should base their responses on empirical evidence, such as domestic and international studies, reports or other research."[2] The WGC does not generally produce original industry research, and the deadline for comments in the first phase, as provided in the Notice, did not allow for sufficient time to commission original research from a third party. As such, we provide references to already-existing research and empirical evidence that we hope will inform the Commission's examination of the issues identified in Order in Council P.C. 2017-1195 (the OIC). We are aware of other, ongoing research that may be available by the second phase of this proceeding, and trust we will have the opportunity to submit it at that time.

[1] *Broadcasting Regulatory Policy CRTC 2010-167*. CRTC, 22 March 2010, para. 71 https://www.crtc.gc.ca/eng/archive/2010/2010-167.htm

[2] *Broadcasting Notice of Consultation CRTC 2017-359*. CRTC, 12 Oct 2017, para. 6 http://crtc.gc.ca/eng/archive/2017/2017-359.htm

3. Aspects of these submissions reiterate and build upon the WGC's submission to Canadian Content in a Digital World Consultations, dated November 25, 2016, and available on the WGC's website.[3]

4. The Commission has posed nine questions in the Notice, but in the WGC's view these questions essentially boil down to two fundamental ones: a) What are the key trends in the production, distribution, and consumption of audiovisual content; and, b) How can we maintain and grow a domestic market capable of supporting the continued creation, production and distribution of Canadian programming in that context? The WGC sees the first fundamental question reflected in Q1 – Q6, and the second fundamental question reflected in Q7 – Q9. As such, while we will attempt to answer a number of the Commission's nine specific questions, in general our comments reflect what we believe are the two fundamental ones.

KEY TRENDS IN THE DISTRIBUTION AND CONSUMPTION OF AUDIOVISUAL CONTENT

5. The single most significant trend in the production, distribution, and consumption of audiovisual content today is the growth of online, primarily global (typically U.S.-based) Internet-based content services, and the associated impacts, largely negative, on traditional broadcasting services in Canada and, in turn, on the public policy tools associated with them. In our view, this is the primary, driving force of change in the audiovisual content sector, and virtually everything else that matters is some facet of this larger trend.

6. By "traditional broadcasting services" we generally mean the "broadcasting undertakings", as defined in the *Broadcasting Act* (the Act),[4] which are currently licensed by the Commission and are subject to meaningful, substantive regulatory requirements under the Act. These include "programming undertakings"—e.g. over-the-air (OTA) broadcasters like CTV, Global, and the Canadian Broadcasting Corporation (CBC), and discretionary "cable channels" like Space, YTV, and Sportsnet—as well as "broadcasting distribution undertakings" (BDUs) like cable television, Direct to Home (DTH) satellite, and Internet Protocol TV (IPTV).

7. By "online content services" we generally mean audiovisual content services that typically make their content available on the Internet, and are currently free of broadcast licensing obligations pursuant to the *Exemption order for digital media broadcasting undertakings*.[5] These include services like Netflix, Hulu, and YouTube. The WGC's primary interest, however, is in online content services that produce professional content, generally costing a significant amount of money to produce, and often monetized on a subscription model or, in some cases, prominent advertising. Netflix is the primary prominent example of such a service, which we generally refer to as "over the top" or "OTT" services.

8. The growth of online content services, and OTT services in particular, over the past several years has been very significant:

> The viewing of online videos continues to grow. In 2016, the consumption of audio and video content amounted to 71% of evening online traffic on fixed broadband networks in North America according to Sandvine. This proportion has doubled in the past five years.

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[3] Writers Guild of Canada (WGC). *WGC submission to Canadian Content in a Digital World Consultations,* 25 Nov 2016 http://www.wgc.ca/files/WGC%20Submission%20Canadian%20Content%20in%20a%20Digital%20World.pdf
[4] *Broadcasting Act (S.C. 1991, c. 11)* http://laws-lois.justice.gc.ca/eng/acts/B-9.01/
[5] *Broadcasting Order CRTC 2012-409*. CRTC, 26 July 2012 https://crtc.gc.ca/eng/archive/2012/2012-409.htm

> It is no surprise to learn that Netflix, YouTube and Amazon Video score highest in the list of applications that monopolize this traffic. The same goes with respect to the global mobile network: video took up 60% of data traffic in 2016, and that percentage should reach 78% by 2021 according to Cisco. Here at home, close to 80% of Canadians watch online videos (close to 100% in the 18-to-34 age bracket).[6]

9. This has been accompanied by slowed growth, stagnation, and decline in the traditional broadcasting sector. And while not all of the growth in online content services has come directly at the expense of traditional broadcasting, at least some of it undoubtedly has. Moreover, the long-term trend seems clear, and it is very likely that traditional broadcasting will be largely or completely replaced by online services in Canada in the medium-to-long term. As such, at the macro level, it's likely that online services are growing, displacing, and ultimately replacing traditional broadcasting services. The question is simply how quickly this will occur and to what extent.

10. One of several reports to examine aspects of this trend is *Canadian Media in a Digital Universe*, produced by Nordicity for the "Digital Media at the Crossroads" conference of January, 2016, and co-sponsored by the WGC.[7] As stated by the report:

> Nordicity was commissioned by the Digital Media at the Crossroads (DM@X) Conference to gather publicly available audience, usage and financial data on changing revenue trends in the creative industries, based on advertising and consumer spending. The scope of this project includes broadcasting, and television and feature film production; music; book, magazine and newspaper publishing; and, games.
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> Nordicity's objective is to identify the challenges and opportunities to these Canadian creative industries presented by changing market structures and industry dynamics. Of particular concern is the increasing outflow of revenue and profits to foreign companies. Indeed, this outflow was an important trigger for the study. It is, generally speaking, accompanied by decline in reinvestment in the Canadian creative industries and, in turn, has a potentially deleterious effect on the production, promotion and dissemination of Canadian creative content.[8]

11. The section of the report related directly to film and television is at pages 18-29, and includes the following observations:

    - One of the most significant shifts in the film and television industry is that today, video content is being produced at record levels and increasingly through a multitude of online channels.[9]
    - In tandem with the increased availability of content, viewing habits are also changing, in particular shifting from appointment television—e.g., over-the-air (OTA), specialty

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[6] Canada Media Fund (CMF). *Trends Report: 2017 Mid-Year Update*, July 2017, p. 9 https://trends.cmf-fmc.ca/media/uploads/reports/Trends_Report_2017_Mid_Year_Update.pdf

[7] Nordicity. *Canadian Media in a Digital Universe.* Digital Media at the Crossroads conference, Jan 2016 http://www.digitalmediaatthecrossroads.ca/pdfs/CanadianMediaDigitalUniverse.pdf

[8] Ibid., pg. 4.

[9] Ibid., pg. 18.

and pay TV—to on-demand and online channels, as well as binge-watching and multi-tasking.[10]

- Younger demographics demonstrated a higher than average decline in their viewing hours [to traditional television between 2009-2010 and 2013-2014], with the 18-24 group watching 20% less hours of television per week.[11]
- OTT subscription rates are in line with the trends discussed above, including changing viewing habits, greater penetration of smart phones and access to higher bandwidth, and usage of social media and the like among younger audiences.[12]
- [A] figure [in the report] juxtaposes the projected penetration of BDU and OTT subscriptions, reflecting a slow decline in BDU subscriptions as a result of cord-cutting. At the same time, it shows continued growth in OTT subscriptions in part due to the introduction of Canadian services.[13]
- The impact of advertising revenue on the television industry is partly a result of shifting consumer habits toward on-demand platforms. It is also partly the result of the advertisers' shift toward digital media that is more likely to reach younger populations, a coveted segment of the market for advertisers. [In the report], the historical stagnancy and projected gradual decline in television advertising is shown against the significant growth of Internet advertising. Conventional TV, of course, suffers from any diversion of revenue away from advertising because advertising is the only real source of revenue for the segment.[14]
- Industry revenue trends are likely to increasingly impact regulated support of the production sector by broadcasters over the coming years. Due to the continued incursion of OTT, it is estimated that by 2020, [Canadian programming expenditures (CPE)] contributions by BDUs and programming services would drop by roughly 5%, from where they stood in 2014. Over the same period, PNI contributions are estimated to see a slightly higher decline (7%). The estimates were based on forecasts of the behaviour of BDUs, programming services, and TV viewers in response to the current and changing climate in the industry. However, this same study forecast that the impact would be much more severe if the CRTC's "Let's Talk TV" (LTTV) decisions were to be implemented as intended… It projected that the impact of current digital platform trends will be compounded by regulatory change, with the LTTV decisions resulting in a decline of $399 million in CPE by 2020. This decline, in turn, is projected to reduce independent production by $335 million…approximately 15% below current levels.[15]

12. An updated version of this report is scheduled to be presented at the January 27, 2018 DM@X Conference, and the WGC intends to submit it in "Phase 2" of this proceeding if possible. Otherwise, we encourage the Commission to seek out the 2018 report on the DM@X website[16] on or after January 27, 2018.

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[10] Ibid., pg. 18.
[11] Ibid., pg. 19.
[12] Ibid., pg. 20.
[13] Ibid., pg. 22.
[14] Ibid., pg. 25.
[15] Ibid., pg. 26-27.
[16] Digital Media at the Crossroads: an Annual Conference on the Future of Content in Digital Media http://www.digitalmediaatthecrossroads.ca/

13. In the meantime, a number of other sources provide additional and/or more up-to-date information, generally supporting the trends outlined above. The Commission itself collects and publishes a variety of data and information that is relevant to this discussion. For example, the 2017 Communications Monitoring Report (CMR)[17] was released in early November, and the news release accompanying it stated, in part:

> Canadians are increasingly turning to platforms and devices connected to the Internet for their video and audio content, according to the CRTC's *2017 Communications Monitoring Report*.
>
> Canadians aged 18-34 years old are leading the trend with 23% watching TV exclusively online. Nationally, 13% of Anglophones watch TV exclusively online compared to only 4% of Francophones. Overall, Canadians aged 18 years or older watched 3.1 hours of Internet TV per week in 2016, compared to 2.7 hours in 2015.
>
> Although Canadians are spending less time with traditional television and radio services, these platforms continue to play an important role in their lives. Canadians watched on average 26.6 hours per week of traditional television in 2016, compared to 27.2 hours in 2015. Canadians aged 65 and over watched the most television at 42.8 hours per week.[18]

14. The CMR provides information on the Profit Before Interest and Taxes (PBIT) margin for various categories of television services, which demonstrates the clear decline of advertising-dependent conventional television, with limited or flat growth for discretionary services.[19] This can be contrasted with the revenue growth of Internet-based video services, most of which are based outside of Canada, and which have double-digit CAGR in the 2012-2016 period.[20]

15. The CMR also demonstrates the decline of BDU services, and the Commission noted in its press release that, "Cable, IPTV and satellite TV services had 11.1 million subscribers in 2016, a 1.1% decline from 2015."[21] On August 14, 2017, Boon Dog Professional Services Inc. reported the same trend, albeit at a slower rate than in recent years:

> Canada's publicly traded television service providers combined lost 22% fewer TV subscribers in the first half of 2017 compared to the same period in 2016, bucking the trend of accelerating TV cord-cutting in recent years, according to new research from Ottawa-based research and consulting firm Boon Dog Professional Services Inc.

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[17] Canadian Radio-television and Telecommunications Commission (CRTC). *Communications Monitoring* Report 2017, 8 Nov 2017 https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2017/index.htm

[18] Canadian Radio-television and Telecommunications Commission (CRTC). *Digital platforms continue to grow in popularity*, 8 Nov 2017 https://www.canada.ca/en/radio-television-telecommunications/news/2017/11/digital_platformscontinuetogrowinpopularity.html

[19] Canadian Radio-television and Telecommunications Commission (CRTC). *Communications Monitoring* Report 2017, 8 Nov 2017, Fig. 4.2.12 https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2017/index.

[20] Ibid., Table 4.2.5

[21] Canadian Radio-television and Telecommunications Commission (CRTC). *Digital platforms continue to grow in popularity*, 8 Nov 2017 https://www.canada.ca/en/radio-television-telecommunications/news/2017/11/digital_platformscontinuetogrowinpopularity.html

The big TV service providers combined lost 101,000 TV subscribers in their respective fiscal 2017 first and second quarters, down from 129,000 lost in the same quarters in 2016.

"The significant turnaround in TV subscriber performance at Shaw Cable as a result of the launch of its BlueSky TV service based on Comcast's X1 TV platform is almost entirely behind the improved cord-cutting numbers for the first half of 2017," says Boon Dog Partner Mario Mota. "Should Shaw continue its momentum and other cable companies benefit from similar planned TV service improvements, TV cord-cutting could slow in 2017 for the first time in years."

Mota notes, however, that TV subscriber losses are just part of the picture that is the traditional TV subscription market in Canada. With about 200,000 housing starts in Canada the traditional TV service providers are losing pace with household growth in the country and therefore TV subscription penetration is declining at a greater level than simply the cord-cutting numbers suggest.[22]

16. This last paragraph is important, since it points to a larger, longer-term decline than the data for the first half of 2017, if viewed in isolation, indicate. This is further supported by Table 4.3.6 of the 2017 CMR, which shows a drop in the percentage of households subscribing to BDUs, from 82.8% in 2012, to 76.2% in 2016.[23]

17. Many of the above-noted trends are occurring within Canada, but another important global trend must be noted as well, because it affects Canada even if it is not playing out within our borders. That trend is the so-called global content boom, and it has been described, from an American perspective, as follows:

"Booming" is the only way to describe the global marketplace for television.

Deregulation and the growth of competition from pay TV and upstart OTT providers have ignited the demand for content in markets that not long ago were limited to one or two major TV outlets, usually state-controlled.

Revenue from pay TV outlets grew at a compound annual growth rate of 7.3% in the five years to 2014, reaching $223.5 billion in 2015, according to media research firm IHS Markit. Europe and North America saw pay TV growth rates of 4% during that period. But in territories where viewing options are just starting to blossom, such as Latin America, the Middle East, and Africa, growth rates hit double digits. That pace will cool off as the markets become saturated — and with the inevitable swings of local economies — but

[22] Mota, Mario. *Canadian Digital TV Market* Monitor, Boon Dog Professional Services, 14 Aug 2017 http://www.boondog.ca/News_files/Boon%20Dog%20News%20Release_TV%20Subcriber%20Decline%20Slows%20in%201st%20half%20of%202017_August%2014-2017.pdf

[23] Canadian Radio-television and Telecommunications Commission (CRTC). *Communications Monitoring Report 2017*, 8 Nov 2017, Table 4.3.6 https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2017/index

it’s no wonder the largest media conglomerates are looking around the world for future growth drivers.[24]

18. This is written from the perspective of the large, American and multinational media conglomerates—i.e. not from a Canadian domestic perspective—but its general point is important. The past several years have seen significant growth in the production of TV content, like serialized drama, and this growth has been largely driven by the global expansion of OTT services like Netflix.

19. Several characteristics of this trend are important. For one, it is being driven by the largest international content players, including U.S. studios and Netflix. It is not being driven to any significant degree by the expansion of Canadian players, domestically or internationally. As such, Canada is among the “recipients” of the trend rather than the driver of it, and those drivers are generally located outside of Canada.

20. For another, the expansion of at least one major player, Netflix, is being financed to a very large degree by debt. In July, 2017, the Los Angeles Times estimated that “Netflix has accumulated a hefty $20.54 billion[25] in long-term debt and obligations in its effort to produce more original content.”[26] In October, 2017, it was reported that Netflix would raise $1.6 billion more in debt financing to “fuel content-buying binge.”[27] This raises questions about the sustainability of this approach, and what Netflix’s medium-to-long-term plans are. Clearly, Netflix cannot continue to lose an estimated $2.5 billion per year[28] forever. So, what is its plan? Only Netflix knows for sure, but it seems logical that the company can only reach profitability through significant growth of its subscriber base, significantly raising its subscription rates, or some combination of the two. To the extent that Netflix relies on growth of its already market-leading subscriber base, such a strategy implies the potential to become a dominant OTT player globally, and potentially *the* dominant OTT player. If such a position were to reach the level of a monopoly—or one of the key players in an oligopoly—the impacts of that can be predicted, from potential loss of consumer choice, higher prices, and little or no room for voices or content from other sources or platforms.

21. A variety of sources have predicted the continued growth of online and OTT services, very likely coming at the expense of traditional broadcasting models. For example, a research report by BMO Capital Markets telecom/media/cable financial analyst Tim Casey reportedly predicts the Canadian media landscape to continue to trend towards OTT and direct-to-consumer (D2C):

> [The report] notes that Canada’s traditional television broadcasters, (whose business models rely on “reselling” content from Hollywood), are at a greater risk than television distributors (BDUs) who offer broadband service, which he describes as “a natural business hedge against changing viewing habits”.

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[24] Littleton, Cynthia. “Global TV Boom Fueled by Cross-Market Content.” *Variety*, 14 Dec 2016 http://variety.com/2016/tv/news/global-tv-boom-cross-market-1201941192/

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

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

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

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

> "Television distribution is a lower-margin business compared with broadband given roughly half the revenue is shared with the program supplier", he writes. "Any shift of dollars from the traditional television bucket to the internet bucket represents a margin lift for the BDU. The revenue shift out of lower-margin video services to higher-margin broadband services will not be one for one, but we think the impact will be manageable."
>
> Cord-cutting/shaving concerns will accelerate as viewing habits and preferences continue to shift toward OTT streaming services. But Casey added that Canadian broadcasters still have time to refine their business plans, as Hollywood's shift to stream content in a D2C model on a global scale will take some time.[29]

22. Two things should be emphasized from this passage. The first is that while the analyst argues that Canadian businesses have time to manage this shift, the shift is nevertheless coming, and will be here sooner or later. The second is a consideration of exactly what is contemplated being "managed". From the perspective of large, consolidated communications companies like BCE Inc. and Rogers Communications Inc., it may be acceptable to maintain overall profitability by shifting consumers from BDU packages to broadband Internet services. But from the perspective of Canadian broadcasting itself, the issue is quite different, and potentially involves the decline and/or ultimate disappearance of Canadian broadcasting, as the larger business model shifts from a broadcasting-centric "reseller" role to a telecommunications-centric "connectivity" role. This contemplates the "managed decline"—or even the "managed extinction"—of Canadian broadcasting itself, at least for private, English-language broadcasters.

23. Along similar lines, a report by Ericsson predicts that half of TV viewing will be mobile by 2020, mostly on smartphones.[30]

24. All of these changes, spurred mostly by technological changes, have occurred amidst an industry-wide shift towards a greater consolidation of broadcasters. As the Commission is aware, a number of broadcasting mergers and acquisitions, arguably kicked off in 1994 with the acquisition of Maclean Hunter Ltd. by Rogers Communications Inc., have played out over the past two decades. These include the acquisition of CTV by Bell, the acquisition of Global TV by Shaw and subsequently Corus Entertainment, and CityTV's acquisition by Rogers Communications. The result is that three large private English-language corporate groups—Bell Media, Corus Entertainment, and Rogers Media—collectively control 83.1% of audience viewing in the English market,[31] and their contribution to PNI counted for close to 80% of the total PNI expenditures reported for all of the English-language services during that period.[32] This means that English-language Canadian screenwriters pitching many kinds of medium-to-big-budget projects only have four "doors to knock on"—i.e. the three large private broadcast groups and the CBC. The list gets even smaller when you consider that some groups tend to specialize in certain types of content. For example, Bell Media is typically interested in drama or

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[29] "Canadian media landscape set to evolve in OTT, D2C world: report." *Cartt*, 22 Aug 2017 https://cartt.ca/article/canadian-media-landscape-set-evolve-ott-d2c-world-report

[30] Ericsson. *TV and Media 2017: a Consumer-Driven Future of Media*. Oct 2017 https://www.ericsson.com/en/networked-society/trends-and-insights/consumerlab/consumer-insights/reports/tv-and-media-2017

[31] Canadian Radio-television and Telecommunications Commission (CRTC). *Communications Monitoring Report 2017*, 8 Nov 2017, Table 4.2.18 https://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2017/index.

[32] *Broadcasting Notice of Consultation CRTC 2016*-225, CRTC. 15 June 2016, para 19 http://www.crtc.gc.ca/eng/archive/2016/2016-225.htm

comedy production, but doesn't do much children's and youth programming. As will be discussed below, this is crucial when you consider that hit television shows are high-risk, and cannot be easily predicted. *Stranger Things* was reportedly rejected by other networks 15 to 20 times before getting a green light from Netflix.[33] Canadian screenwriters would actually appreciate the opportunity to get 15 to 20 rejections, because it would mean they had 15 to 20 doors to knock on—and a chance that the person behind the 21st door could say yes. That reality does not exist here.

HOW CAN WE MAINTAIN AND GROW A DOMESTIC MARKET CAPABLE OF SUPPORTING THE CONTINUED CREATION, PRODUCTION AND DISTRIBUTION OF CANADIAN PROGRAMMING?

25. This general trend as described above—from traditional, fully licensed and regulated TV to online, currently unlicensed and effectively unregulated audiovisual services—will have a profound impact on the creation, production, and distribution of Canadian programming. This is because Canadian programming is highly dependent on cultural policy tools, in particular broadcasting regulation, for its vitality, and indeed its very existence. As consumption moves from the regulated to the unregulated space, these policy tools become far less effective, if not completely ineffective. The result is the potential to decimate the Canadian domestic production sector, and everything that implies for Canadian jobs and culture. To understand why, it may be helpful to look at the special characteristics that mark the Canadian, English-language television sector, why it needs public support, and how that support currently operates.

Historical and Structural Characteristics of English-language Canadian Audiovisual Production

26. There are a number of important historical and structural characteristics of the film and television sector of English-language Canada, all of which contribute to our unique position in the global media ecosystem. Many of these characteristics combine to result in the following statement on television drama programming by Peter S. Grant, lawyer, author, and former law professor at the University of Toronto:

> In [smaller English-language countries outside the United States], the production of high-cost local drama has always required government intervention to occur. The reason is simple. In the absence of government subsidy or regulatory requirements, broadcasters would always tend to acquire U.S. drama programs instead of local drama, since although U.S. drama series have production costs far in excess of the costs of local drama, broadcast rights to these programs can be acquired at a fraction of the cost of making local programming. Accordingly, while local drama can be extremely popular with viewers, it is usually more economic for broadcasters to import drama from other English-speaking countries, particularly the United States.[34]

27. This is true in English-language Canada in particular, and perhaps more so than in any other jurisdiction in the world. Numerous factors contribute to and/or exacerbate this fact.

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[33] Grow, Kory. "'Stranger Things': How Two Brothers Created Summer's Biggest TV Hit." *Rolling Stone*, 3 Aug 2016 http://www.rollingstone.com/tv/features/stranger-things-creators-on-making-summers-biggest-tv-hit-w431735

[34] Grant, Peter S., *Stories Under Stress: The Challenge for Indigenous Television Drama in English-Language Broadcast Markets*, International Affiliation of Writers Guilds (IAWG), Dec, 2008, pg. 1 https://www.mccarthy.ca/pubs/IAWG_DRAMA_REPORT_FINAL.pdf

28. English-Canada is linguistically, geographically, and culturally proximate to the United States. English-Canadians not only speak the same language as Americans, but also generally do so without a recognizable accent. Canada shares a geographical border with the United States, and approximately 75% of the Canadian population lives within 160 kilometres of that border.[35] This puts a majority of Canadians within close proximity of a number of major American metropolitan markets—and within their broadcasting contours. English-language Canadians also have cultural similarities to the United States. Crucially, Canadians also have a number of key *differences* as well, and these differences are significant and form part of the very rationale for having a Canadian cultural policy to begin with.[36] Yet it's also true that Canadians have historical, political, and cultural characteristics in common with Americans. This, combined with decades of exposure to American media have contributed to a "comfort level" with American cultural product which may be more pronounced than as between other countries. This is sometimes referred to as a lack of "cultural discount" in the importation of American content.[37]

29. The English-language Canadian population—and hence the English-Canadian market—is a fraction of the size of the U.S. market. The current population of the United States is approaching 325 million people,[38] compared to just over 35 million for Canada.[39] The English-speaking Canadian population is smaller yet, at 23 million to 26 million.[40] It is the size of the *English*-Canadian market that is most relevant to us, because in non-English markets "the language barrier in these other markets typically lessens the attractiveness of inexpensive English-language foreign drama."[41] This means that English- and French-speaking Canada are effectively different markets and should be treated distinctly from each other. This fact is recognized in the *Broadcasting Act*, which states that, "English and French

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[35] Kerr-Wilson, Jay, and Ariel Thomas. "The Canadian Rights Market Under Siege." Presented at the *18th Biennial National Conference New Developments in Communications Law and Policy*, Ottawa, 5 May 2016, pp. 1-5 http://www.fasken.com/files/Publication/0ade5da6-4349-4903-92a7-cad0748047ae/Presentation/PublicationAttachment/97b817d6-31aa-4bb0-bc90-ccf20b54a4c4/93180878_v(6)_The%20Canadian%20Rights%20Market%20Under%20Siege.pdf

[36] McGrath, Denis. "COMMENTARY: When your Moral Compass doesn't point True North" *Cartt,* 13 July 2016 https://cartt.ca/article/commentary-when-your-moral-compass-doesnt-point-true-north

[37] Hoskins, Colin, and Stuart McFadyen. "Introduction." *Canadian Journal of Communication,* vol. 16, no. 2 (1991) http://www.cjc-online.ca/index.php/journal/article/view/599/505 "Another characteristic of the product, its cultural component, acts as a hindrance to trade. The term "cultural discount" has been coined to capture the notion that a particular program (or feature film) rooted in one culture, and thus attractive in that environment, will have diminished appeal elsewhere as viewers find it difficult to identify with the styles, values, beliefs, institutions and behaviour patterns being portrayed. As a consequence, we find that in most countries, Canada being an exception, domestic programs lead the ratings. In addition, the notion explains why it is fictional drama, which minimizes the cultural discount, that is widely traded while there is little trade in informational programming. It also provides a reason for U.S. dominance as it makes possession of much the largest domestic market a crucial advantage (this argument is developed in Hoskins and Mirus, 1989)."

[38] United States of America. United States Census Bureau. *U.S. and World Population Clock* http://www.census.gov/popclock/

[39] Canada. Statistics Canada. *Population and Dwelling Count Highlight Tables, 2016 Census* http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/hlt-fst/pd-pl/Table.cfm?Lang=Eng&T=101&S=50&O=A

[40] Ibid., *Update of the 2016 Census language data* http://www12.statcan.gc.ca/census-recensement/2016/ref/lang/lang-note-eng.cfm

[41] Grant, Peter S., *Stories Under Stress: The Challenge for Indigenous Television Drama in English-Language Broadcast Markets*, International Affiliation of Writers Guilds (IAWG), Dec 2008, pg. 2 https://www.mccarthy.ca/pubs/IAWG_DRAMA_REPORT_FINAL.pdf

language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements."[42] Even in comparison with smaller "major markets", English Canada is small. The United Kingdom, for example, has a population of 65 million people.[43] The English-Canadian market is around one-third the size of the United Kingdom, and one-twelfth the size of the United States. As Grant has stated:

> These economic realities mean that market size is a key determinant in recovering the high costs of TV drama. And in this respect, the United States has a crucial advantage over all other English-language markets. Because of its size, the U.S. is the only English-language market where high-cost TV drama can be produced profitably without government or regulatory support.[44]

30. The United States is one of the largest media producers in the world, and *the* largest producer of English-language content in the world. The size of the U.S. film sector alone has been estimated to generate approximately $9.33 billion in production volume in 2014.[45] This compares with an English-language Canadian production volume for film and television *combined* of $2.14 billion[46]. In the same year, U.S. television revenues were worth $187.36 billion[47], compared to $7.35 billion for Canadian TV revenues, both English and French combined.[48] That's a difference of more than 25 times, which is itself 2.5 times greater than the difference that could be accounted for by population alone (and Canadian TV revenues would include revenues generated by U.S. programming aired by Canadian broadcasters). These disparities indicate the sheer size of the industry to the south that we are competing with. A large supply of both money and content makes it easier for the U.S. market to constantly provide content options to English-speaking Canadians.

31. Professional content production is expensive. While the advent of cheaper, consumer- and "pro-sumer"-level production technologies, combined with video sharing Internet sites like YouTube, have made very low-budget content production and distribution possible, the costs of producing professional content such as drama series programming is high and increasing. For example, between 2003-2004 and 2014-2015, average budgets for English-language programs funded by the Canada Media Fund (CMF) increased in every programming category except one-off variety and performing

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[42] *Broadcasting Act (S.C 1991, c11),* s. 3(1)(c) http://laws-lois.justice.gc.ca/PDF/B-9.01.pdf
[43] United Kingdom. Office for National Statistics. *Population estimates* https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates
[44] Grant, Peter S., *Stories Under Stress: The Challenge for Indigenous Television Drama in English-Language Broadcast Markets*, International Affiliation of Writers Guilds (IAWG), Dec 2008, pg. 11 https://www.mccarthy.ca/pubs/IAWG_DRAMA_REPORT_FINAL.pdf
[45] "Movie Budgets." *The Numbers,* http://www.the-numbers.com/movie/budgets/all
[46] Canadian Media Producers Association (CMPA) et al, "Exhibit 2-4 Volume of total Canadian film and television production, by language." *Profile 2015: Economic Report on the Screen-based Media Production Industry in Canada,* p. 25 *http://www.cmpa.ca/sites/default/files/documents/industry-information/profile/PROFILE-2015-ENG.pdf*
[47] Ofcom. "Figure 1.2 Communications sector revenues, by country, 2014." *Ofcom International Communications Market Report 2015*, 10 Dec 2015, p. 22 https://www.ofcom.org.uk/__data/assets/pdf_file/0020/31268/icmr_2015.pdf
[48] Canadian Media Producers Association (CMPA) et al. "Total revenue in the broadcasting sector, by subsector." *Profile 2015: Economic Report on the Screen-based Media Production Industry in Canada,* p. 68 http://www.cmpa.ca/sites/default/files/documents/industry-information/profile/PROFILE-2015-ENG.pdf

arts.[49] In the case of one-hour drama series, average budgets increased by 73%, from $1,108,000 per hour in 2003-2004 to $1,922,000 per hour in 2014-2015.[50] International hits like *Game of Thrones* cost around $10 million per episode, and Netflix's *The Get Down* had cost $16 million per episode[51] before it was cancelled, setting audience expectations ever higher.[52] Netflix has reportedly said it's conceivable that it could spend up to $20 million per episode.[53]

32. The high cost of drama increases the risk of producing it. "Cultural products like TV drama operate in a market that has very high risk. Most new TV shows fail."[54] To consumers of content, what's good—or, rather, what *they* like—appears eminently obvious once they see it. Consumers may be tempted to believe, therefore, that the people making the content must have known too, from the beginning, how it would turn out. But the truth is, nobody knows what will be a hit until it's crafted, polished, and completed for the audience. Recall the example of *Stranger Things* noted above. And *Mad Men* was a flop for CTV.[55] Netflix's Ted Sarandos has said, "If you're not failing, maybe you're not trying hard enough."[56] For these reasons, content industries have always relied on a certain quantity—a critical mass—to produce quality. It's called the "hit model", in which the prevalence of hits follows a power law relationship. 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. But for each individual production, the risk of failure is high.

33. The above characteristics have had, and continue to have, a number of impacts on the Canadian domestic film and television industry. As noted above by Peter S. Grant, there is an economic disincentive for English-language Canadian broadcasters to commission higher-cost Canadian television programming, such as drama, *even when that programming is popular with Canadians.* This has not just been observed by Grant. The Commission itself has observed:

> Canada's small domestic market continues to make it difficult to finance the creation of competitive Canadian programs. Whereas U.S. producers can recover the majority of their

[49] Canada Media Fund (CMF). "Appendix A." *CMPA Proposals for CMF Guideline Changes: Eligible Licence Fees, Thresholds and Other Rights*, 2 Nov 2015. Note that while the document as a whole was created by the CMPA, the data table in Appendix "A" was provided by the CMF.
[50] Ibid.
[51] Mediatique. *BBC Content market dynamics in the UK: outcomes and implications Final Report*. BBC, 2 Nov 2017, p. 16
http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/content_market_dynamics.pdf
[52] See also: Smith, Gerry. "TV's 'Golden Age' Won't Last Because You're Not Watching Enough." *Bloomberg*, 28 May 2015 http://www.bloomberg.com/news/articles/2015-05-28/tv-s-golden-age-won-t-last-because-you-re-not-watching-enough : "…'Mad Men' debuted with mostly unknown actors. Now producers are signing up hotshot directors like Martin Scorsese and Woody Allen as well as big-name actors such as William H. Macy and Robin Wright. Expensive locations are increasingly common. As a result, production costs are soaring, with some shows consuming as much as $10 million per episode."
[53] Spangler, Todd. "Netflix Execs Defend Cancellations, Saying 93% of Series Have Been Renewed." *Variety,* 17 July 2017 http://variety.com/2017/digital/news/netflix-cancellations-original-series-renewals-1202497938/
[54] Grant, Peter S., *Stories Under Stress: The Challenge for Indigenous Television Drama in English-Language Broadcast Markets*, International Affiliation of Writers Guilds (IAWG), Dec 2008, pg. 10
https://www.mccarthy.ca/pubs/IAWG_DRAMA_REPORT_FINAL.pdf
[55] Brioux, Bill. "Critics' darling Mad Men was a flop for CTV." *The Toronto Star*, 3 April 2017
https://www.thestar.com/entertainment/television/2015/04/03/critics-darling-mad-men-was-a-flop-for-ctv.html
[56] Spangler, Todd. "Netflix Execs Defend Cancellations, Saying 93% of Series Have Been Renewed." *Variety*, 17 July 2017 http://variety.com/2017/digital/news/netflix-cancellations-original-series-renewals-1202497938/

production costs through domestic licence fees, the licence fees earned in Canada by most Canadian program producers represent only a fraction of their total production costs.

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.[57]

34. It was in this policy decision that the CRTC created the precursor fund to today's CMF, and it remains true today. But of course, the challenges go beyond this issue. Proximity and shared language have also made it easier for Canadian talent to exit the Canadian industry to work in Hollywood. Canadian actors like Ryan Reynolds, Ellen Page, Sandra Oh, Christopher Plummer, and Rachel McAdams 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 Semi Chellas,[58] R. Scott Gemmill,[59] and Hart Hanson.[60] The pull of Hollywood is strengthened by the fact that U.S. studios celebrate the screenwriter, more so than in Canada, as well as by the fact that Canadian broadcasters increasingly require American financing in Canadian shows. These factors 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 film and 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.

35. English-language Canada has a history of direct exposure and access to American film and television content. In feature film, Hollywood studios have long distributed their product directly into Canada, and continue to do so today.[61] Indeed, Canada is considered part of the Hollywood studios' *domestic* market.[62] In television, from the very beginning of broadcasting, Canadians in border regions—as indicated above, a very significant portion of the population—could receive television signals over the air from adjacent American cities. For example, much of the "Golden Horseshoe" region of southern Ontario, which includes the Greater Toronto Area and is the largest population concentration in Canada, is capable of receiving over-the-air television signals from Buffalo, New York. With the introduction of cable television, Canadians not living within range of American transmitters

[57] *Public Notice CRTC 1994-10 The Production Fund,* CRTC*,* 10 Feb 1994 http://www.crtc.gc.ca/eng/archive/1994/PB94-10.HTM
[58] Creator and writer for *The Eleventh Hour*, then writing and producing AMC's *Mad Men.*
[59] Writer and producer for *JAG, ER,* and *NCIS: Los Angeles.*
[60] Writer for *The Beachcombers, North of 60*, and *Traders,* creator and writer of Fox's *Bones*
[61] Nordicity. *Study of the Audiovisual Distribution Sector in Canada*, Canadian Heritage, 31 March 2011. http://publications.gc.ca/collections/collection_2012/pc-ch/CH44-142-2011-eng.pdf
[62] Vlessing, Etan. "Canada Box Office: Revenue Rises to $699M in 2015." *The Hollywood Reporter,* 8 Jan 2016 http://www.hollywoodreporter.com/news/canada-box-office-revenue-rises-853273.

subsequently obtained access to U.S. television via cable, and this access to U.S. programming has been directly linked to the growth and popularity of cable television in Canada.[63] The direct importation of U.S. signals to Canada via cable and, later, satellite television was arguably but one policy option for Canadian broadcasting, and not an uncomplicated one at that, since U.S. border stations generally did not hold the broadcast rights to the programming in question in Canada. The presence of U.S. television services on Canadian cable and satellite offerings remains challenging, and a variety of regulatory options, such as "simultaneous substitution", have been employed to respond to the challenges to the Canadian rights market.[64] Canadian broadcasters also purchase Canadian rights to American programming, providing additional availability to Canadians. As such, the Canadian content marketplace has *never* been a "closed" market. Canadians have long had direct and easy access to American film and television content, almost to the same degree as Americans themselves. Even other small English-language markets, such as Australia or New Zealand, have had geographical barriers between themselves and foreign content. In Canada, while some critics argue that Canada can no longer maintain a "walled garden" approach to media, we would argue that we've never had a wall to begin with.

36. While little discussed, it's also worth noting the extent to which some English-speaking Canadians suffer from "cultural cringe" in respect of much Canadian content. "Cultural cringe" has been described 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.[65]

37. 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 for the primacy of Canadian screenwriters in the domestic Canadian film and television sector, and for the policy tools to support them. WGC members do battle with the phenomenon, and the business attitudes that go with it, all the time. In particular, we see the beliefs, held by some producers and/or broadcasters, perhaps born of the anxiety of risk-taking inherent in the medium, that success can be better assured if only an American or British screenwriter can bring some of their "magic" to bear upon their Canadian production. "If only we could get an American or British screenwriter, *then* we'd really have something!" WGC members report encountering this attitude on a regular basis. Yet when some of

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[63] Standing Committee on Canadian Heritage. *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*, June 2003, p. 49
http://www.parl.gc.ca/content/hoc/Committee/372/HERI/Reports/RP1032284/herirp02/herirp02-e.pdf

[64] Kerr-Wilson, Jay, and Ariel Thomas. *The Canadian Rights Market Under Siege.* Presented at the *18th Biennial National Conference New Developments in Communications Law and Policy*, 5 May 2016
http://www.fasken.com/files/Publication/0ade5da6-4349-4903-92a7-cad0748047ae/Presentation/PublicationAttachment/97b817d6-31aa-4bb0-bc90-ccf20b54a4c4/93180878_v(6)_The%20Canadian%20Rights%20Market%20Under%20Siege.pdf

[65] "Cultural cringe." *Wikipedia,* http://en.wikipedia.org/wiki/Cultural_cringe

those same Canadian writers leave the country and find success in Hollywood, many of those same producers and broadcasters ask why, and muse about somehow luring them back to Canada, when surely, the better approach would have been to keep them here in the first place. That said, we believe that the Canadian industry is increasingly overcoming these obstacles, and 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.

Cultural Policy Toolkit

38. Collectively, the above challenges have been responded to over the years by a number of federal government policies, together often referred to as the "policy toolkit". They include the regulation of broadcasting, public funding for content production, public broadcasting, and ensuring "shelf space" and "discoverability" options for Canadian content. These tools have worked effectively over the years. The volume of domestic production (measured as the total of all budgets) reached $2.87 billion[66] and generated more than $3.58 billion[67] in GDP for the Canadian economy in 2015-2016. This is the third highest level of production spending in the past 10 years.[68] The domestic industry also generated 59,500 full-time equivalent (FTE) jobs in 2015-2016, including 36,100 spin-off FTEs in other Canadian industries.[69] One million viewers per episode is the mark of success in Canada, and hit series like *Cardinal*, *Kim's Convenience, Murdoch Mysteries,* and *Saving Hope* have regularly surpassed that mark – some drawing more than 1.4 million viewers. The CBC huge hit, *The Book of Negroes*, attracted nearly 2 million Canadians for its premiere and continued to draw an average of 1.6 million over its six episodes.[70] These numbers are well within the Numeris weekly Top 30 ratings successes, and are very competitive with top U.S. shows. The export value of Canadian film and TV series has reached an all-time high of more than half a billion dollars, with demand growing steadily over the past decade.[71] This success simply would not have been possible without the supportive policies of the federal cultural policy toolkit.

39. At the same time, it is important to note that the "digital revolution"—the availability of increasingly more powerful and affordable computing devices and software, combined with the global interconnectivity and access provided by the Internet—does not, by itself, adequately address any of these challenges. The digital revolution does not alter the size of the English-Canadian market, nor does it mitigate the challenges of our proximity to the United States. The Internet does not make professional content production cheaper, and indeed we have already discussed the incredibly high spending levels of Netflix. The digital revolution does not reduce the risks involved in spending large amounts of money on cultural products whose success is uncertain. The Internet itself doesn't finance content, and while it does provide the possibility of "crowdfunding", such an option appears effective for only a limited number of projects, generally those with an already established fan base and/or

[66] Canadian Media Producers Association (CMPA) et al. *Profile 2016: Economic Report on the Screen-based Media Production Industry in Canada,* p. 5 http://cmpa.ca/sites/default/files/documents/industry-information/profile/Profile%202016%20-%20EN.pdf
[67] Ibid., p. 27.
[68] Ibid., p. 34.
[69] Ibid., p. 25.
[70] "CBC's Primetime Schedule Garners Record-Breaking Numbers." *CBC Media Centre,* 6 Feb 2016 *www.cbc.ca/mediacentre/press-release/cbcs-primetime-schedule-garners-record-breaking-numbers*
[71] Canadian Media Producers Association (CMPA) et al. *Profile 2016: Economic Report on the Screen-based Media Production Industry in Canada*, p. 28 http://cmpa.ca/sites/default/files/documents/industry-information/profile/Profile%202016%20-%20EN.pdf.

with particularly small budgets. Crowdfunding statistics provided by the CMF indicated a 20% success rate for Canadian crowdfunding campaigns, and an average funding amount of just over $20,000 per project.[72] Canada's small market remains as much of an issue for crowdfunding as for traditional financing.[73] Despite Internet-based crowdfunding being available for nearly a decade, it has not shown itself to be a viable option for many Canadian audiovisual projects. Indeed some "traditional" audiovisual crowdfunding campaigns have drawn criticism for using the platform.[74] And while OTTs do finance content, they are not "the Internet" per se, but rather are content distributors operating on the Internet, and they create their own set of challenges for Canadian domestic production which we will discuss in greater detail below.

40. As such, in many respects the Internet exacerbates the challenges faced by Canadian audiovisual content creators, because it undermines elements of the policy toolkit and opens up the Canadian marketplace to international competition even further, a phenomenon that always tends to benefit the biggest, most established players. Certainly, the Internet also brings opportunities for Canadians, but the challenges are just as great if not greater.

41. This bears emphasis, because there is a pervasive view, generally promulgated by people who have no experience making professional content, that the digital revolution and/or the Internet automatically solves the problems facing our sector. The solution, according to this view, is simply to "innovate", to take advantage of the Internet as an "open platform", and to sell Canadian content into a global market that is more accessible now than ever before. Yet it is worth noting that all of the digital tools currently available to content makers have been available for years, and nothing about the current policy toolkit prevents people from eschewing the traditional system to make and distribute their content. Despite this, we have yet to see a Canadian cultural renaissance born of the digital shift itself. Digital cameras and non-linear editing software has been available for over a decade. YouTube was launched in 2005.[75] There are absolutely no legal or regulatory barriers to prevent Canadians from raising money—or spending their own money—to develop, produce, and distribute content using digital technologies. As such, we submit that what we can expect from a "free market", Internet-based content ecosystem in the future is similar, if not identical, to what we see today—for example, a variety of low-cost, generally short-form audiovisual content, sometimes popularly known as "YouTube videos". While we recognize the value of such content—and applaud the success of Canadian YouTube stars such as Lilly Singh and Corey Vidal—we also submit that such content cannot be the sum total of the output of "Canadian media", either from a cultural or an economic policy perspective. There must be more than that, whether it means Canadian journalism, Canadian drama, or Canadian children's programming. "The Internet" will not, by itself, produce such content at an optimal quantity, quality, and/or diversity, and the evidence of that is that it has not done so already.

[72] Canada Media Fund (CMF). *Statistics: Crowdfunding in Canada in 2015*, 20 April 2015 http://crowdfunding.cmf-fmc.ca/facts_and_stats/statistics-crowdfunding-in-canada-in-2015

[73] Canada Media Fund (CMF). *Crowdfunding in a Canadian Context: Exploring the Potential of Crowdfunding in the Creative Content Industries.* Aug 2012, s. 2.2.3 http://www.cmf-fmc.ca/documents/files/about/publications/CMF-Crowdfunding-Study.pdf

[74] Child, Ben. "Zach Braff Kickstarter controversy deepens after financier bolsters budget." *The Guardian,* 16 May 2013 https://www.theguardian.com/film/2013/may/16/zach-braff-kickstarter-controversy-deepens

[75] "YouTube." *Wikipedia*, https://en.wikipedia.org/wiki/YouTube

42. Since the Internet doesn't finance content, the traditional problems facing Canadian content-makers—a small domestic population, proximity to the U.S., etc.—remain just as relevant in a digital world as in an analog one. In this sense, "traditional" platforms continue to matter, not so much because they are "essential" distribution platforms—though, for example, traditional television viewing continues to far exceed online television viewing in Canada, even if current trends imply that won't always be the case[76]—but because they are a vital source of production financing.

43. As discussed above, the Canadian domestic English-language film and television sector simply cannot exist to any meaningful degree without meaningful government support. While a variety of policy options may be explored with respect to export, discoverability, and promotion—many of which the WGC supports—the simple fact is that in order for something to be promoted, discovered, or exported, it must come into existence in the first place. It is our view that despite changes wrought by the digital revolution, Canada is still faced with a problem of producing a sufficient quantity of high-quality drama, comedy, children's and animated film and television, and still requires government regulatory and/or financial support as a result.

44. At the outset, we would argue that the current system is absolutely *not* "broken". While there are undeniable changes on the horizon, and existing structures are beginning to show signs of strain, we must also recognize that today's system has supported a national success story of Canadian content, and one which is only getting better. Things must change as we enter the next 10-20 years and beyond, but that doesn't mean that what we have now doesn't work or needs to be torn down.

45. The WGC strongly believes that the Commission—and, ultimately, the federal government—must look at ways to modify or replace existing support structures so that their reliance on traditional production models does not result in an overall decline in the quality and quantity of Canadian programming. In short, as content consumption migrates from traditional broadcast television to Internet-based alternatives, analogs or replacements must be found to offset reduced: 1) spending on Canadian programming by private, English-language broadcasters; and 2) contributions by BDUs to production funds, primarily the CMF.

46. As noted above, pursuant to the Commission's own regulations, BDUs are required to spend the equivalent of 5% of their annual broadcast-related revenues to the creation and production of Canadian programming[77], and that amounted to $428.2 million to Canadian programming in 2016.[78] But the digital shift has put pressure on these revenues, as some viewers reduce the size and cost of their BDU subscription in favour of (currently) cheaper Internet-based alternatives to save money ("cord shaving"), or cancel their BDU subscription entirely for the same reason ("cord cutting"). This phenomenon is already happening, as we have discussed above. To the extent that cord cutting/cord shaving reduces BDU revenues, largely to migration to Internet service provider (ISP) and wireless services, these contributions are at risk.

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[76] Canadian Radio-television and Telecommunications Commission (CRTC). *Communications Monitoring Report 2017,* Figure 4.2.16 http://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2017/cmr2017.pdf.

[77] *Broadcasting Distribution Regulations (SOR/97-555).* s. 34 and s. 52(1) *http://laws.justice.gc.ca/PDF/SOR-97-555.pdf*

[78] Canadian Radio-television and Telecommunications Commission (CRTC). "Contributions to Canadian programming by type." *Communications Monitoring Report 2017,* Figure 4.3.10 http://crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2017/cmr2017.pdf

47. As also noted above, pursuant to the Commission's group-based policy,[79] large, private English-language broadcasting groups are required, by ownership group, to spend 30% of their gross revenues from broadcasting on Canadian programming (CPE), and 5% of their gross revenues from broadcasting on PNI.[80] This amounted to $1.83 billion in "CPE" in 2015 for the English-language market, including $105.4 million in PNI[81] by large English-language broadcast groups. To the extent that Canadian viewers migrate away from traditional broadcasters and towards "online broadcasting", or "OTT", services, these contributions are also at risk.

48. Given the above, the shift to digital is putting up to $2.1 billion[82] in financing to English-Canadian domestic production at risk, with approximately $411.2 million[83] of that at *serious* risk, much of which with respect to the culturally valuable genres of drama series, animation, children's programming, and documentary. Failure to find new sources of funding and government support will see the Canadian domestic production sector decline by roughly the same amount, with devastating results for jobs and cultural output.

49. This must also be understood in light of the impending end to various tangible benefits packages approved by the Commission over the years. As the Commission is aware, the "Tangible Benefits Policy," applies when broadcasting undertakings change effective ownership and control. Applicants must show that the transaction is in the public interest, generally by proposing financial contributions—i.e. "tangible benefits"—that will yield measurable improvements to the Canadian broadcasting system as a whole.[84] Over the past several decades, major corporate consolidations have resulted in sizeable, multi-year tangible benefits packages in the system, which currently contribute significantly to the level of production of Canadian programming that we enjoy today. Now, however, the industry has reached what is almost certainly the highest level of corporate concentration possible, short of rewriting Canadian competition and diversity of voices policies. As such, a number of tangible benefits packages are set to expire, with no apparent new transactions or other measures to replace them. The following graph demonstrates the decline of these package over the next several years[85]:

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[79] *Broadcasting Decision CRTC 2017-148*, CRTC, 15 May 2017 https://crtc.gc.ca/eng/archive/2017/2017-148.htm

[80] Currently on referral back to the Commission pursuant to Order in Council 2017-1060

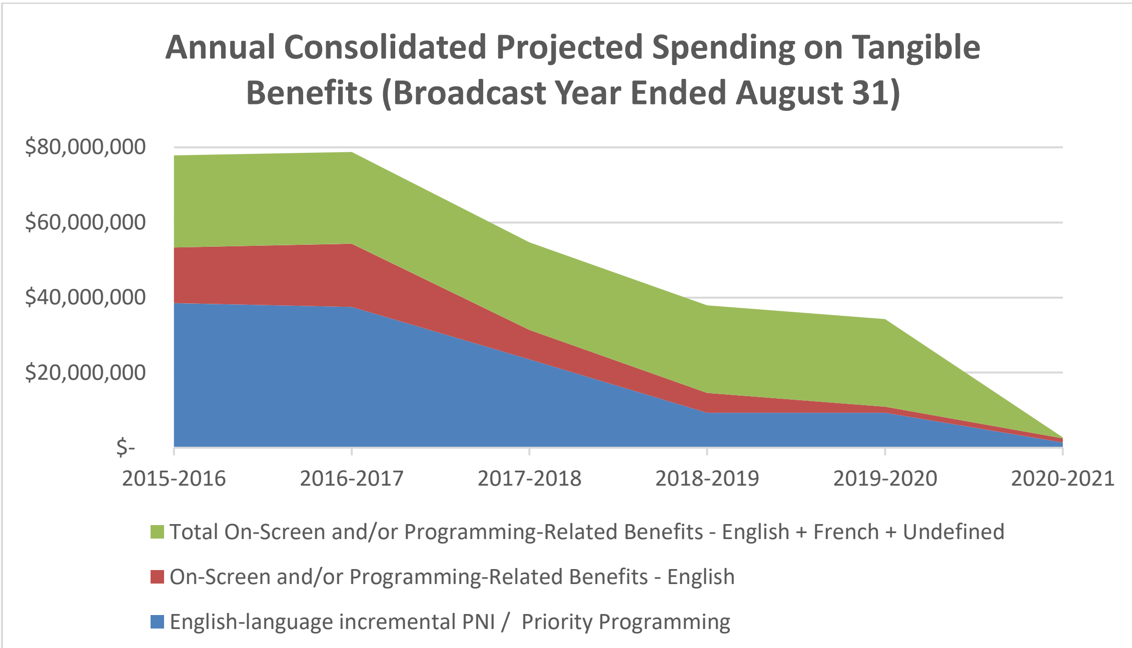
[81] *Broadcasting Notice of Consultation CRTC 2016*-225, CRTC. 15 June 2016, para 19 http://www.crtc.gc.ca/eng/archive/2016/2016-225.htm PNI totals noted here appear to be significantly *smaller* than those stated or implied in the Communications Monitoring Report 2016, Table 4.2.18. We invite the Commission to perform its own analysis to confirm or amend our estimated size of impact. Our own rough calculations suggest that the correct number is approximately $200 million, rather than $105.4. If so, this would adjust this number upwards by roughly $100 million.

[82] I.e. $1.83 billion in CPE in 2015 for the English-language market, as noted above, plus $305.8 million representing the English-language portion (70%) of BDU contributions in 2015, also as noted above.

[83] I.e. $305.8 million representing the English-language portion (70%) of BDU contributions in 2015, as noted above, plus $105.4 million in English-language PNI, as also noted above. We emphasize again, however that the PNI totals referenced here are sourced from Broadcasting Notice of Consultation CRTC 2016-225, which appear to be significantly *smaller* than those stated or implied in the Communications Monitoring Report 2016, Table 4.2.18. We invite the Commission to perform its own analysis to confirm or amend our estimated size of impact. Our own rough calculations suggest that the correct number is approximately $200 million, rather than $105.4. If so, this would adjust this number upwards by roughly $100 million.

[84] *Broadcasting Regulatory Policy CRTC 2014-459*. 5 Sept 2014 https://www.crtc.gc.ca/eng/archive/2014/2014-459.htm

[85] Mota, Mario, *Canadian Television Benefits Monitor: Tracking Spending on Television Benefits Packages, 2016 Report* (Spending data up to August 31, 2015), Boon Dog Professional Services Inc., Completed in 2017.



50. This projection was made by assuming that remaining benefits packages are spent in equal annual increments between when current data is available and when the final packages are fully spent, in 2021. Since broadcasters have some discretion in how to flow spending over time, these yearly estimates may vary slightly from actuals. The overall trend, however—and the endpoint—are clear. The Canadian broadcasting system is about to see a drop from almost $80 million in spending from tangible benefits packages this year, to $0 by the end of 2021, with a major decline projected in the next two years.

Creators: The Role of Canadian Screenwriters

51. Just as crucial to the health and vitality of the domestic film and television sector as a whole is the place that Canadian creators and artists have in that sector. In fact, this goes to the very definition of "domestic Canadian production", and what it means to say, "that's a *Canadian* TV show." In the WGC's view, it is far from sufficient to claim that a production is Canadian simply because it was shot within our borders, or its copyright is owned by a Canadian producer or production company, or its distribution or broadcast rights are held by a Canadian distribution company or broadcaster. Canadian creative work is fundamentally made by Canadian *creators*. We would not say that a painting is Canadian simply because it was commissioned by a Canadian art collector, or exhibited in a Canadian-owned gallery, if the painter himself or herself was not Canadian; we would not say that a book is Canadian simply because it was published by a Canadian publisher or sold in a Canadian-owned bookstore, if the author was not Canadian. In virtually every creative medium there are a number of important roles to get a work from an idea—or before there was an idea—to a final product in the hands (or on the screens, or onto the digital devices) of consumers. Yet in no creative medium is the artist somehow secondary, or frankly even on par, with those other roles when it comes to defining the identity of the work. We say that the frescoes of the Sistine Chapel ceiling are the work of the artist commonly known as Michelangelo, and the fact that the frescoes were commissioned by Pope

Julius II or paid for by the Catholic Church makes them no less Michelangelo's. Everybody knows that Michelangelo painted *The Birth of Adam*—few people even know who Pope Julius II was. Ludwig van Beethoven's 9th Symphony is fundamentally *Beethoven's* symphony, and not that of the Philharmonic Society of London, which commissioned it. This is true of virtually all works of art, and the fact that film and television production is more collaborative than painting or music composition does not change that fact. Films and television still bear the stamp of their creators—of an authorial voice and of individual artistry. Sometimes more than one person contributes to that voice, but more often there is one voice, and in serial dramatic television, that voice is the showrunner.

52. The key point is that films and television shows have creators who fundamentally *make* the production, and in television drama that person or persons is/are screenwriters. In Canada, however, we have a lengthy tradition of looking elsewhere to define the "Canadianess" of a production. When it comes to the individuals involved, the Canadian federal policy toolkit has generally identified the producer as the locus of "ownership and control" of a production, and therefore as the central position that must, in all cases, be held by a Canadian.[86] Our system has long taken this orientation as a given. If it was ever an appropriate orientation, however, it is becoming less and less appropriate now. In serial drama, showrunners, who are fundamentally both screenwriters and creative producers, and the writing rooms they lead, are where creative control lies. More generally, however, the WGC submits that it is the creative talent that makes content, and it is *Canadian* talent that makes *Canadian* content. We must support our talent in this country, because they are the key to our current and future success, both domestically and on the international market. This includes, for example, retaining the Canada Media Fund (CMF) as a 10-out-of-10 CAVCO point fund.

International Regulatory Trends

53. The above has focused largely on the factors facing Canadian content production, but also emphasizes that other countries face similar challenges to ours. As such it is worth looking at how other jurisdictions have dealt, or are dealing, with the challenges. Clearly, this is not a solely Canadian phenomenon. On November 2, 2017, the Director-General of the British Broadcasting Corporation (BBC), Tony Hall, said this in a speech:

> Now, I have long warned of the danger that, as a country, we might be sleepwalking towards a serious, long-term weakening of our television production.
>
> I've said we need to make sure we truly understand what is happening and think about how the whole of the industry should respond. That's why today we're publishing another report, from Mediatique, that looks in detail at these trends in the content market and what we can expect for the future. And what it tells us is really worrying.
>
> According to their analysis, over the next ten years we can expect a substantial gap to open up between the amount that is spent on UK content now and the amount that will be spent in the future.

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[86] Canada. Canadian Audio-Visual Certification Office. *CPTC Program Guidelines*, 2 April 2012, s. 4.09 and 4.10. http://canada.pch.gc.ca/DAMAssetPub/DAM-PCH2-Arts-FilmVideo/STAGING/texte-text/cptcGuide_1455637343203_eng.pdf and Canada Media Fund. *CMF Performance Envelope Program Guidelines 2016-2017*, s. 3.1. and 3.2.TV.3 http://www.cmf-fmc.ca/documents/files/programs/2016-17/guidelines/2016-17_perf_env_guidelines.pdf

In fact, the report estimates that in real terms, by 2026, this gap will have reached £500 million. A half-a-billion pound shortfall in spend on British content.

That represents over twenty per cent of what is spent today. Or, to put it another way, enough to make around 200 Sherlocks, and still have enough left over for nearly 100 Veras.

Of course, there are those who will say: that's okay, the traditional players might be spending less, but big, new players like Netflix and Amazon will make it up.

Mediatique have taken a look at this too, and they've concluded that it is highly unlikely, to say the least.

Up until now, while the global giants have seen their revenues rise substantially, this hasn't translated into an increased investment in British content.

We know that Netflix were reported to have spent as much as £100 million on The Crown. That's equivalent, by the way, to well over a dozen drama series on the BBC - from Sherlock and Happy Valley to Poldark and Line of Duty.

Now, I think what Amazon and Netflix are offering consumers is good and impressive. And they're offering producers here some fantastic opportunities too. But the reality is that their investment decisions are increasingly likely to focus on a narrow range of very expensive, very high-end content - big bankers that they can rely on to have international appeal and attract large, global audiences.

Even the most generous calculations suggest they are barely likely to make up half of the £500 million gap in British content over the decade ahead. And a more realistic forecast points to them contributing substantially less.

What this adds up to is not just a real risk to the volume and breadth of British content, but also - as the report warns - a potentially damaging impact on UK distinctiveness, risk-taking, and innovation.

We have to face the reality that the British content we value, and our audiences love and rely upon, is under serious threat.[87]

54. If there is concern from the head of the BBC, which receives several times more public funding than the CBC currently receives, in a country that overall does more, both in per-capita terms and in absolute dollars, than English-Canada does,[88] then what is the outlook for Canada?

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[87] "Tony Hall, Director-General of the BBC delivers the Roscoe Lecture at Liverpool John Moores University*". BBC Media Centre*, 2 Nov 2017 http://www.bbc.co.uk/mediacentre/speeches/2017/tony-hall-roscoe#heading-the-future-of-british-content

[88] Writers Guild of Canada (WGC). *WGC submission to Canadian Content in a Digital World Consultations,* 25 Nov 2016, paras. 32-50, Appendices A-C.
http://www.wgc.ca/files/WGC%20Submission%20Canadian%20Content%20in%20a%20Digital%20World.pdf

55. It is for these reasons that other countries are already moving ahead to impose regulatory requirements with respect to national content on digital players, including OTT services like Netflix. Perhaps leading the charge has been France, which has recently had a 2% levy on VOD/streaming services, including those based outside the country, approved at the European Commission level.[89] VOD/OTT taxes aimed at funding national film/audiovisual creation have also been implemented in Germany and Brazil.[90] Indeed, such measures are currently contemplated for the entire European Union, through the ongoing review and update of the Audiovisual Media Services Directive (AVMSD).[91] As stated in a June 27, 2017 briefing by the European Parliamentary Research Service, on May 23, 2017 the European Union Education, Youth, Culture and Sports Council reached a general approach on the basis of including the following:

> The promotion of European works will also apply to on-demand service providers, through a requirement for a minimum 30% quota in their catalogues and the possibility for EU countries to require a financial contribution from media service providers, including those established in another EU country, with exemptions for start-ups and small enterprises.

56. The AVMSD continues to work its way through the EU process.

57. Australia addressed similar issues as part of their Convergence Review in 2012.[92] The Australian Convergence Review Committee stated:

> A key finding of the Review was that the community expects significant enterprises controlling professional media content to have some obligations, no matter how they deliver their services. The Review proposes a policy framework that will regulate these enterprises based on their size and scope, rather than how they deliver their content.
>
> The Review recommends that these significant media enterprises be defined as 'content service enterprises' and be subject to regulation. Organisations would be defined as content service enterprises if they:
>
> > have control over the professional content they deliver
> > have a large number of Australian users of that content
> > have a high level of revenue derived from supplying that professional content to Australians.
>
> The threshold for users and revenue would be set at a high level to exclude small and emerging content providers. This proposed framework is only concerned with professional

[89] Keslassy, Elsa. "Netflix, YouTube to Pay Tax on Turnover in France Under New Law." *Variety* , 21 Sept 2017 http://variety.com/2017/film/global/netflix-youtube-pay-tax-on-turnover-france-new-law-1202565236/
[90] "*Overview of Netflix (film) taxes in Europe and the Americas." Cullen International*, 31 May 2017 http://www.cullen-international.com/events/about-cullen-international/our-news/2017/05/new-benchmark-netflix-film-taxes/
[91] "Audiovisual Media Services Directive." *Europea.eu Digital Single Market* https://ec.europa.eu/digital-single-market/en/policies/audiovisual-media-services
[92] Australia. Department of Broadband, Communications and the Digital Economy. *Convergence Review: Final Report.* March 2012 http://www.abc.net.au/mediawatch/transcripts/1339_convergence.pdf.

content. For example it would include 'television-like' services and newspaper content but exclude social media and other user-generated content. As a guide, modelling conducted for the Review indicates that currently around 15 media operators would be classified as content service enterprises. This modelling suggests that currently only existing broadcasters and the larger newspaper publishers would qualify as content service enterprises.

58. To our knowledge these recommendations have not been implemented by the Australian government, and this was largely the result of lack of political will. The larger point, however, is that serious consideration of these options has been and are being explored elsewhere, and the results have been more sophisticated and nuanced than "whether or not to 'regulate the Internet'."

59. Related to these questions is also that of extra-jurisdictional enforceability. The largest OTT service operating in Canada, Netflix, has no offices or employees in this country,[93] and has argued that it is not subject to Canadian jurisdiction. While we acknowledge the challenges, this also should not be treated as an insurmountable barrier. Peter S. Grant provided a legal opinion on the enforceability of Canadian broadcasting law to foreign entities, and found that it was possible.[94] He said, "Canadian courts can and have asserted jurisdiction over such undertakings and there are a number of steps that can be taken to enforce such requirements if deemed appropriate."

60. In all these instances, other countries are already making changes to their regulatory regimes to include digital, online services like OTTs, in support of their national cultural sectors. The WGC submits that Canada should do the same.

Not a Net Neutrality Issue

61. We would also stress that the cultural policy tools contemplated above do *not* engage or threaten net neutrality in Canada. The WGC supports the principle of net neutrality. The government regulation of entities that operate on the Internet, however, is not the same as the improper interference by ISPs of data on the Internet. The WGC has discussed this issue in greater detail elsewhere,[95] but would add that in a recent article in The Guardian, Tim Berners-Lee, the inventor of the world wide web, himself distinguished between the need to maintain net neutrality on the one hand, and the need to ensure that the web itself is of benefit to society. "One of the problems with climate change is getting people to realise it was anthropogenic – created by people. It's the same problem with social networks – they are manmade. If they are not serving humanity, they can and should be changed," he said.[96] We would argue that the same applies to online content services operating in Canada with respect to cultural

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[93] Though it has been announced that this will change. "Under this agreement, Netflix will create Netflix Canada – a permanent film and television production presence here in Canada, the first time that the company has done so outside the United States." Canada. Canadian Heritage. *Launch of Creative Canada - The Honourable Mélanie Joly, Minister of Canadian Heritage*. Ottawa, 28 Sept 2017 https://www.canada.ca/en/canadian-heritage/news/2017/09/creative_canada_-avisionforcanadascreativeindustries.html

[94] Grant, Peter S. *Enforcement of CRTC Jurisdiction over Foreign OTT Services,* 13 May 2011 https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=1586704 .

[95] Writers Guild of Canada (WGC). *WGC submission to Canadian Content in a Digital World Consultations,* 25 Nov 2016, paras. 81-87.
http://www.wgc.ca/files/WGC%20Submission%20Canadian%20Content%20in%20a%20Digital%20World.pdf

[96] Berners-Lee, Tim. "Tim Berners-Lee on the future of the web: 'The system is failing.'" *The Guardian*, 16 Nov 2017 https://www.theguardian.com/technology/2017/nov/15/tim-berners-lee-world-wide-web-net-neutrality

policy, and there is similarly no conflict between ensuring that these corporations serve Canadians with culturally distinct content, and net neutrality.

QUESTIONS OF THE COMMISSION

62. The WGC's views on the current and future trends in audiovisual content production, distribution, and consumption, and the place for Canadian content within that context, have largely been set out in our comments above. However, the Commission has also asked nine specific questions, which the WGC will respond to in turn, though our answers may refer, in whole or in part, to what we've said above.

Future programming distribution model or models

Q1. How is the growth in online audio and video consumption changing the business models of program creators and distributors? What are the new models?

63. As described above, the single most significant trend in the production, distribution, and consumption of audiovisual content today is the growth of online, primarily global (typically U.S.-based) Internet-based content services, and the associated impacts, largely negative, on traditional broadcasting services in Canada and, in turn, on the public policy tools associated with them. In our view, this is the primary, driving force of change in the audiovisual content sector, and virtually everything else that matters is some facet of this larger trend.

Q2. Content is generally monetized through advertising, subscription and/or transaction revenues. How are new business models shaping the evolution of these revenue sources?

64. As described above, the move of advertising to the online world has resulted in the erosion of revenues for over-the-air broadcasters, as well as a net migration of money out of Canada to non-Canadian based Internet giants like Google and Facebook.[97] This global concentration of the advertising sector is likely to have long term impacts on Canadian television, and generally negative ones.

Q3. Many new business models are global. How will the growth of a global content rights market affect business models?

65. One of the impacts on the trend towards "globalization" of content is increased pressure to create "global content" that appeals to international audiences and, therefore, is financially attractive to international financiers. Unfortunately, for many financiers, what makes projects attractive is international "name" talent—often American "stars", which can be in front of the camera or behind it, including international writing talent. This can create pressure to replace Canadian screenwriters with non-Canadian ones.

66. Some have argued explicitly for this, including the Commission under its previous Chair, most notably in the *Policy framework for Certified Independent Production Funds* (the CIPF Decision).[98] The CIPF

[97] Nordicity. *Canadian Media in a Digital Universe.* Digital Media at the Crossroads conference, Jan 2016 http://www.digitalmediaatthecrossroads.ca/pdfs/CanadianMediaDigitalUniverse.pdf
[98] *Broadcasting Regulatory Policy CRTC 2016-343,* 25 Aug 2016 http://www.crtc.gc.ca/eng/archive/2016/2016-343.htm.

decision, among other things, reduced the minimum Canadian certification points requirement to allow more productions to be eligible for funding from Certified Independent Production Funds (CIPFs). The Commission stated its rationale for this decision as follows:

> The current criterion requiring eight out of ten Canadian content certification points to qualify for CIPF funding is restrictive and excludes many productions that could otherwise be of high quality and qualify as Canadian. Moreover, a reduced requirement could help smaller and perhaps more innovative projects to qualify for funding.
>
> A reduced requirement of at least six points could also facilitate the hiring by production companies of non-Canadian actors or creators, who may increase a project's attractiveness and visibility in international markets....[99]

67. The implication was clear: Canadian creative talent is less innovative, less attractive, and less "visible" than non-Canadian talent, and we need to import creativity from outside the country in order to find success, in international markets or otherwise. The Canadian creative community, however, felt differently. A variety of news sources sought comment from Canadian screenwriters:

> ...*Orphan Black* co-creator Graeme Manson says it's a “vote of non-confidence.”
>
> “The underlying message from the CRTC is we need foreign help to tell Canadian stories. That's frankly insulting to all of us,” he told CBC News.
>
> If these changes had been in place when he and co-creator John Fawcett were first pitching *Orphan Black*, Manson said, [Tatiana] Maslany would likely not have been chosen as the lead — a complex role that requires her to play multiple characters.
>
> “The points system would have opened up the show to American casting — far more than we were,” he said.
>
> “The networks would have pushed for a name.”[100]

68. The week before, Tatiana Maslany had won an Emmy Award for her work on *Orphan Black*, the first time a Canadian had won an Emmy for a leading role on a Canadian show.

69. Canadian screenwriter and showrunner Simon Barry expressed similar concerns:

> If new funding rules for the production of Canadian television were in place years ago, Simon Barry fears he wouldn’t have kept his job as executive producer on his made-in-Vancouver TV series *Continuum*, which ran for four seasons before ending last year.
>
> “I would have been replaced immediately,” said Mr. Barry, now working in Vancouver on the series *Van Helsing*. “They would have said, ‘We’re going to spend all this money on a big sci-

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[99] Ibid., paras 56-57.
[100] Wong, Jessica. “Does loosening Cancon rules hobble Canadian TV creators?” *CBCNews,* 22 Sept 2016 http://www.cbc.ca/news/entertainment/cancon-crtc-tv-creators-1.3772919

fi show with a big cast and it's ambitious. We shouldn't trust this to the guy who created it just because he's Canadian.'"[101]

70. Other screenwriters pointed out that the CIPF Decision wouldn't even achieve its own objectives. Canadian showrunner Emily Andras said, "We are still not going to have the money to attract top-shelf talent… you're going to go from an A-list Canadian to a D-level American."[102] This approach will also not attract back those Canadians who have left the country. Hart Hanson, one of Canada's most talented and successful expatriates, tweeted, "I could never, ever come back under these conditions. I'd be ashamed."[103]

71. The reaction amongst the WGC membership, and screenwriters generally, was massive and unified against the CIPF Decision and against the logic that motivated it.[104] The Globe and Mail's Kate Taylor, who we consider one of the best commentators on cultural policy issues working in the media today, summed it up:

> Media producers had told the CRTC that they need to be able to hire more foreigners in key creative roles and the CRTC listened, buying the dubious argument that, in a globalized, digitized, multiplatform world, Canadians need outside help to create work they can sell abroad. The truth is that the producers want to bring more foreign co-producers or broadcast partners on board and know that they have a better chance if they hand over a certain degree of creative control in the form of jobs for directors, writers and actors. But at a certain point you have to wonder, how many planks can you replace with foreign talent and still call it a Canadian ship?[105]

72. All that said, the current government, with the support of Minister of Canadian Heritage Mélanie Joly, have taken a different tack, and there is new leadership at the Commission. The WGC is optimistic that a similar approach will not be repeated in the near future. We raise the CIPF Decision, however, not to "relitigate" a year-old event, but because it provides a striking example of a particular line of thinking derived, in whole or in part, from the trend towards the "globalization of content." Misguided attempts to respond to the challenges of the international content marketplace can affect the needs of the domestic Canadian market and the talent that serves it, and these impacts must be borne in mind.

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[101] Baily, Ian. "New funding rules for Canadian television draw ire." 9 Oct 2016 http://www.theglobeandmail.com/news/british-columbia/new-funding-rules-for-canadian-television-draw-ire/article32312585/

[102] Wong, Jessica. "Does loosening Cancon rules hobble Canadian TV creators?" *CBCNews,* 22 Sept 2016 http://www.cbc.ca/news/entertainment/cancon-crtc-tv-creators-1.3772919

[103] Hanson, Hart (@HartHanson). "@DMcWriterboy @gmbutts @melaniejoly @telfordk @JustinTrudeau I could never, ever come back under these conditions. I'd be ashamed." *Twitter,* 27 Aug 2016. 11:49 am. https://twitter.com/HartHanson/status/769607896996847616

[104] See also: Liszewski, Bridget. "CRTC Survey: Canadian TV Showrunners & Writers on New Cancon Requirements." *The TV Junkies,* 4 Oct 2016 http://www.thetvjunkies.com/crtc-survey-canadian-tv-showrunners-writers-new-cancon-requirements/

[105] Taylor, Kate. "Tatiana Maslany is Exhibit A in the case against CRTC's new content rules." *The Globe and Mail,* 23 Sept 2016 http://www.theglobeandmail.com/arts/television/tatiana-maslany-is-exhibit-a-in-the-case-against-the-crtcs-content-rules/article32021138/

Q4. Given Canadians' ever-increasing demand for data to stream audio and video content on fixed and mobile broadband networks, how will these networks keep pace with future capacity requirements, particularly in rural and remote areas?

73. The WGC has no particular expertise on broadband network capacity, and so provides no comment on this question.

How and through whom Canadians will access programming

Q5. Canadians currently enjoy audio and video content through a combination of traditional broadcast and Internet-based services. How will consumer behaviour evolve in the next five years? What factors will influence this evolution?

74. It is difficult to predict with accuracy exactly how consumer behaviour will evolve or over what time frame. However, as discussed earlier in our submission, the trends appear to be clear: Consumers are moving from traditional broadcast to Internet-based services for more and more of their content.

75. The WGC also submits that five years may not be the most effective time frame through which to view this phenomenon, since we believe the successor legislation to the *Broadcasting Act*, whatever it might be, should be able to stand and remain relevant for a longer period than that. The current *Broadcasting Act* came into force in 1991, and the previous *Broadcasting Act* had been in place since 1968. While the pace of change in the sector has undoubtedly quickened, the previous two *Acts* have stood for an average of 25 years each, and we should be able to expect the next *Broadcasting Act* to stand for a comparable period. In particular, the changes that we've seen over the past 5-10 years are having impacts *now*, and we cannot contemplate another five years of "wait and see" before we have legislation that effectively deals with the trends toward Internet-based services.

Q6. From whom will Canadians access programming in the future? For instance, will Canadians look to traditional or online providers? Global or domestic providers? Content aggregators or multiple distributors?

76. We would reiterate our comments from Q5 above, and add that because perfect foresight is impossible, regulatory solutions should be created that are platform-agnostic and technologically neutral. This will ensure that we don't have to predict the mix of traditional/online, global/domestic, many/few providers Canadians will access programming through, but can ensure a Canadian presence on, and a Canadian programming contribution from, whatever that mix may be.

77. One thing that is a near certainty, however, is that Canadians will likely access at least a very significant part of their programming through global providers. This is already the case, in particular given the penetration of Netflix in the Canadian market. Given the characteristics of the English-language Canadian production ecosystem described above, the Canadian market is very likely to be dominated by foreign, primarily American, content services for the foreseeable future. Cultural policy and broadcasting regulation must be able to respond accordingly.

Ensuring a vibrant domestic market capable of supporting the continued creation, production and distribution of Canadian programming.

Q7. What are the characteristics of a vibrant domestic content creation and distribution market?

78. With respect to content creation, first, there must be a sufficient "critical mass" of production. As described above, hits cannot be accurately predicted or guaranteed, and we must have the opportunities and the freedom to fail. This involves engagement with the "cultural policy toolkit", and smart regulation that requires all players—traditional broadcasters and OTTs—to contribute to Canadian content.

79. Second, domestic content creation must be genuinely *domestic*. As described above, there are multiple entities involved in the financing, production, and distribution of content, any one of which can be Canadian or not. But the talent—the actual *creators* of the content itself—are at the core of what it means to create genuinely *Canadian* content. In particular, the authorial voice of a production must be Canadian in order for that to truly reflect the domestic market, and in television that overwhelmingly means the showrunner and their team of screenwriters. If we have a content ecosystem in which the business end, the broadcasters, and the distributors are Canadian, but we are contracting out of the country for creativity, we will definitely not have a vibrant domestic Canadian programming market.

80. Third, there must be a culture of creative risk-taking. There is a culture of conservatism in the Canadian broadcasting sector when it comes to Canadian content. Our members report that Canadian broadcasters generally, with rare exceptions, prefer tried and tested formulas—police or medical procedurals, for example—rather than take creative risks on new, innovative ideas. This may be partly because of Canada's smaller market, which makes the risks of failure greater. It may also be partly because many broadcasters make most of their money on imported U.S. shows, so at an organizational level they are less invested, financially and in their corporate culture, in domestic production. Another factor may be the desire to obtain financing from international markets, primarily the U.S., and with that a belief that content must be "generic" in order to travel well—something that may colour producers' views as well as broadcasters'. But whatever the cause, WGC members regularly report a tendency in Canada to "play it safe" creatively. When critics ask where Canada's contribution to the "Golden Age of Television" is, we would first argue that we have made contributions, with edgy (but under-promoted and/or quickly cancelled) shows like *Strange Empire,* or *Intelligence*. But in addition, the creative conservatism of many Canadian broadcasters and producers is a big factor. Screenwriters in English-speaking Canada report being given endless "notes" on every aspect of their scripts from a great variety of people, and are expected to accommodate most or all of these notes, even when they are contradictory. The end result in a watered-down vision that often makes it impossible to create truly original, distinctive, and high-quality content.

81. Finally, there is robust development activity. Alfred Hitchcock said, "To make a great film you need three things – the script, the script, and the script."[106] It is even more true in dramatic television, where the showrunner and their writing room are the driving creative force on the production. A script contains virtually all of the key elements which make up a finished production: the story, characters, settings, themes, tone, and elements of style. Given the importance of a great script, it is vital to invest sufficient time, energy, and money into ensuring that the script as good as it can be

[106] "Alfred Hitchcock: Quotes." *IMDB* http://m.imdb.com/name/nm0000033/quotes

before it goes into production. The time to do that is in development. Development is the process when the script is written and rewritten to make it the best it can be. Few works of art exist as a first draft, and television is no exception. Producers and broadcasters know it will save them time and money in production. Directors and actors know it will give them better material to work with. Everybody knows it will result in a better final product.

82. Further to this, we note a study published by the CMF last year, entitled "National Fiction on the Small Screen: Study on the Performance of Local and International Drama Series in Nine Small Televisual Markets" (National Fiction Study).[107] While focused on non-English-speaking jurisdictions, primarily in Europe, the rules of creativity are universal, and we believe its recommendations are highly applicable to our market.[108] In particular, the study found this:

> In nearly all the cases studied, the most successful drama series had upstream support by public sector development funding agencies. For the vast majority, this assistance came directly from the public broadcasting corporation that had a stake in the series as buyer.
>
> Besides the public broadcaster's contribution, there were outside contributions in many cases from foundations, institutes, or funding agencies, most of them in the public sector as well. In Norway, all the series we studied had the benefit of combined support from NRK and the Norwegian Film Institute. In Switzerland, a collective of four institutions (RTS, Fondation Cinéforom, Fonds de production télévisuelle, Succès) plays a major funding role.
>
> …
>
> It is also worth recalling that in their commissioning directives, the stakeholders in the Walloon public funding ecosystem required that script proposals should be the product of writers' collectives. In so doing, they claimed that they hope to contribute toward the creation of a new generation of Walloon writers capable of working collectively on a variety of audiovisual projects, including films, television programs, and digital formats. By assuming a substantial share of the funding, the public sector stakeholders have a legitimate right to impose constraints that will prevent these drama series from becoming the exclusive product of a small number of beneficiaries. Hypothesis H5 on public sector funding and H6 on concentration of investment also support this view.
>
> In conclusion, it can be said that investment in the development of drama series by public and parapublic organisations has a positive impact on the domestic and international performance of those series.[109]

83. The key points: development is key to success, development benefits from public funding, and this funding should not be concentrated in the hands of a limited number of stakeholders (i.e. broadcasters, producers, or institutions). This last point was further expanded upon in the study:

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[107] Canada Media Fund (CMF) et al. *National Fiction on the Small Screen: Study on the Performance of Local and International Drama Series in Nine Small Televisual Markets.* 10 Oct 2016 http://trends.cmf-fmc.ca/media/uploads/reports/National_Fiction_on_the_Small_Screen_FINAL_2016-10-13.pdf

[108] Ibid., Several of the jurisdictions studied are also geographically, linguistically, and/or culturally proximate to larger markets against which they must compete. For example, Belgian content must compete with French and Dutch content; Austrian content with German content; and Swiss content with French, German, and Italian content. As such, these jurisdictions are not as culturally or linguistically "protected" as they might at first appear.

[109] Ibid., pg. 22.

> The majority of our contacts actually claimed, on the contrary, that they avoided concentrating their subsidies. As we mentioned in our discussion of H1, this is particularly true of development grants. Preference for writers' collectives represents a decentralized funding strategy that allows many different talents to emerge, who will then be able to contribute to other types of projects.
>
> As we pointed out in our discussion of H5, because drama series in small markets are not an economically viable proposition, it is important to consider the potential economic impact of a "national champions" strategy. By narrowing their aim and subsidizing only a small number of players, public sector institutions in effect privatise public funds in a way that could be seen as unfair.
>
> The Danish counter-example is interesting here. As we mentioned, production of Danish drama series has long been the near-exclusive preserve of DR, the public broadcaster. These series have been produced – from scriptwriting to broadcast – 100% in-house, with contributors engaged as service providers, or else as employees, throughout the production period. This was particularly true of *Borgen*, one of the best-known series.
>
> Apart from the unique case of Danish production, a concentrated funding approach basically tends to favour more conventional approaches and more conservative scripting. When people are banking on a very small number of stakeholders, contributors, and television products, error is not an option, and the safest bet is to recycle the tried-and-true formulas.
>
> As we shall see in H7, the success of drama series in small markets depends very little on production conditions or concentration of public investment on a few stakeholders.
>
> The explanation seems to lie in how broadcasters and funders approach their series portfolios. Investing in a more diverse range of projects offers more chances that at least one will deliver better-than-ordinary performance.[110]

84. Other factors are also important, including marketing and promotion of the final production, access to distribution, and visibility/discoverability. The WGC's expertise is primarily in the development and production phases, but we are critically aware that the ability of programming to find its audience is also crucial.

Q8. Will new business models support a vibrant domestic content and distribution market? If so, which ones and why? If not, what content or distribution services would be missing?

85. New business models do not, by themselves, support a vibrant domestic content and distribution market. As noted above, neither the Internet nor OTT services automatically "fix" or negate the challenges of making higher-budget, higher-risk content like drama, animation, children's programming, or documentary by and for the English-language Canadian market.

86. It is worth noting the recent announcement by Netflix to invest $500 million in "original production in Canada" over the next five years, as part of the "Creative Canada" policy framework of the Minister

[110] Ibid., pg. 25-26.

of Canadian Heritage, Mélanie Joly.[111] While the WGC applauds the Minister for her leadership on this point, and applauds Netflix for making the commitment to invest in Canada, it is important not to see this as "the solution" to the challenges we face. For one thing, the details of this investment are not public, and while we acknowledge and accept the statements of both Netflix and the Minister on the intent behind this arrangement, important questions remain. Programming produced under this agreement may not be subject to the Canadian Audio-Visual Certification Office (CAVCO) 10-point system for assessing its "Canadianess", and we have not seen how Netflix will balance the needs of the domestic, Canadian audience against the needs of its larger, global marketplace. This is also only a five-year commitment which, while supported by the WGC, does not by itself represent a long-term strategy. The WGC has seen other OTT players "dabble" in Canadian production one year, and then leave the market the next. As Netflix grows and its global market share increases its bargaining leverage, it may determine that its interests lay elsewhere. We submit that it is the Canadian government, and/or the regulator that implements the *Broadcasting Act* or its successor legislation, that has the obligation to look out for Canadian interests. This cannot and should not be delegated to a private corporation, non-Canadian or otherwise.

87. We must also not presume that the self-interest of Canadian private broadcasters will necessarily ensure that Canadian content survives and thrives. Some have argued that with the growth of largely foreign OTT services, Canadian private broadcasters, particularly in the English language, will no longer be able to rely upon their position as "protected middlemen" for popular foreign content, and will therefore be forced to fully embrace a new role as champions of Canadian programming. We cannot rely on this assumption. For one thing, there is no evidence that we are aware of that this is actually occurring, notwithstanding that OTT services have now been operating in Canada for several years. On the contrary, despite the entry of Netflix into Canada in 2010, and its growing popularity since then, the large, English-language corporate groups have spent no more in Canadian programming expenditures (CPE) in the three-year period from 2013 to 2015 than they were obligated to spend by regulation.[112] Clearly, increased competition from OTTs is *not* prodding Canadian private broadcasters to spend more on Canadian programming, and indeed both Bell and Corus argued in the recent group licence renewal proceeding for a *reduction* in their Canadian programming obligations.[113] The announcement that CBS All Access would launch in Canada next year,[114] bringing American mainstream television programming directly into Canada and bypassing Canadian broadcasters completely, begins a process that has been an inevitability for years. Yet Canadian private broadcasters have not responded to this reality with increased Canadian programming offerings, and it's highly debatable that they will.

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[111] Canada. Canadian Heritage. *Launch of Creative Canada - The Honourable Mélanie Joly, Minister of Canadian* Heritage, 28 Sept 2017 https://www.canada.ca/en/canadian-heritage/news/2017/09/creative_canada_-avisionforcanadascreativeindustries.html

[112] Mota, Mario. *Analysis of Canadian Programming Expenditure and Programs of National Interest Proposals Filed by the English-Language Broadcast Groups as Part of their Group Licence Renewal Applications*. Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) et al. Aug 2016 http://www.wgc.ca/files/Analysis%20of%20CPE%20and%20PNI%20Proposals_Group%20Licence%20Renewals_Boon%20Dog%20Report_August%2015%202016_FINAL.pdf

[113] *Broadcasting Notice of Consultation CRTC 2016-225*, 15 June 2016. See: *Bell Media Inc. Application 2016-0020-6* and *Corus Entertainment Inc. Application 2016-0022-1* http://www.crtc.gc.ca/eng/archive/2016/2016-225.htm

[114] Evans, Pete. "CBS to launch streaming service internationally, starting in Canada next year." *CBCNews*, 8 Aug 2017 http://www.cbc.ca/news/business/cbs-all-access-streaming-canada-1.4238595

88. For another thing, there is evidence that corporations today are increasingly focused on short term profits, at the expense of longer-term outcomes. Labelled "short termism", it's been noted that:

> Now, a growing group of business leaders is worried that companies are too concerned with short-term profits, focused only on making money for shareholders. As a result, they're not investing in their workers, in research, or in technology—short-term costs that would reduce profits temporarily. And this, the business leaders say, may be creating long-term problems for the nation.
>
> "Too many CEOs play the quarterly game and manage their businesses accordingly," Paul Polman, the CEO of the British-Dutch conglomerate Unilever, told me. "But many of the world's challenges cannot be addressed with a quarterly mindset."
>
> … "America's incentive system for long-term investment is broken," the report argues.
>
> Data bears this out. The average holding time for stocks has fallen from eight years in 1960 to eight months in 2016. Almost 80 percent of chief financial officers at 400 of America's largest public companies say they would sacrifice a firm's economic value to meet the quarter's earnings expectations. And companies are spending more and more on purchasing their own shares to drive stock prices up, rather than investing in equipment or employees.[115]

89. While this article focuses on American publicly traded companies, there is no reason to believe that the issue stops short at the Canadian border, or that Canadian publicly traded companies are less inclined to focus on short-term profits, at the expense of public policy goals or otherwise, than companies elsewhere. In such a context, Canadian private broadcasters seem just as likely to choose a "managed decline"—or "managed extinction"—model to preserve short-term profits as resellers of foreign content, as they are to robustly invest in Canadian programming to secure their relevance for the long term.

Q9. What are the legislative, public policy or regulatory measures currently in place that will facilitate or hinder a vibrant domestic market? What needs to stay in place? What needs to change?

90. For the reasons discussed above, a number of existing public policy/regulatory tools facilitate the Canadian content market, and should continue in the future. Canada needs a *Broadcasting Act* that, like its current iteration, promotes cultural policy objectives and is technologically neutral, so as to encompass OTT services. As noted above, the shift to digital is putting up to $2.1 billion[116] in financing to English-language Canadian domestic production at risk, with approximately $411.2 million[117] of

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[115] Semuels, Alana. "How to Stop Short-Term Thinking at America's Companies." *The Atlantic*, 30 Dec 2016 https://www.theatlantic.com/business/archive/2016/12/short-term-thinking/511874/

[116] I.e. $1.83 billion in CPE in 2015 for the English-language market, as noted above, plus $305.8 million representing the English-language portion (70%) of BDU contributions in 2015, also as noted above.

[117] I.e. $305.8 million representing the English-language portion (70%) of BDU contributions in 2015, as noted above, plus $105.4 million in English-language PNI, as also noted above. We emphasize again, however that the PNI totals referenced here are sourced from Broadcasting Notice of Consultation CRTC 2016-225, which appear to be significantly *smaller* than those stated or implied in the Communications Monitoring Report 2016, Table 4.2.18. We invite the Commission to perform its own analysis to confirm or amend our estimated size of impact. Our own

that at *serious* risk, much of which is with respect to the culturally valuable genres of drama series, animation, children's programming, and documentary. Failure to find new sources of funding and government support will see the Canadian domestic production sector decline by roughly the same amount, with devastating results for jobs and cultural output.

91. Fundamentally, Canada needs to adapt its existing framework to new digital realities, and do so in a technologically neutral manner that allows it to continue to adapt. Canada *cannot* discard its cultural policy toolkit—it must continue to use it in a way that makes sense in the Internet age. In our view, that means, primarily, ensuring that the *Broadcasting Act*, and its cultural, social, and employment mandates, applies to broadcasters or broadcaster-like services that serve the Canadian market, whether or not they are based on Canadian soil, and whether or not they transmit over radio waves, dedicated BDU services, or on the Internet.

CONCLUSION

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

Yours very truly,

Maureen Parker
Executive Director

c.c.: Council, WGC

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rough calculations suggest that the correct number is approximately $200 million, rather than $105.4. If so, this would adjust this number upwards by roughly $100 million.