Writers Guild of Canada

March 6, 2019 **Filed Electronically**

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

Dear Mr. Doucet:

Re: Broadcasting Notice of Consultation CRTC 2018-488: *Call for comments on a Production Report to be completed annually by large English- and French-language ownership groups*

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.

The WGC believes that clear, accurate, and timely reporting of key statistical information is a cornerstone of effective regulation, and it allows stakeholders like the WGC, and other members of the public, to properly participate in public proceedings and to comment intelligently on matters before the Commission. As such, we applaud the Commission for launching this proceeding to expand and improve the reporting mechanisms in a Production Report with respect to the large English- and French-language broadcasting ownership groups.

EXECUTIVE SUMMARY

ES.1 The WGC emphatically agrees with the inclusion of showrunners in the Commission's data collection and reporting activities, and applauds the Commission for recognizing this crucial role in the production of Canadian programming.

ES.2 The WGC believes that while the definition of "showrunner" proposed by the Commission is accurate, it is not complete. It is necessary that the definition be clear that a showrunner is also a screenwriter, and that their core roles and competencies include writing. This is clear from the WGC Showrunner Code, read as a whole, which is in turn based on a larger report for the Cultural Human Resources Council (CHRC), entitled "Training Gap Analysis: Showrunners in Canadian Television" (the CHRC Report). As noted in the CHRC Report, "Writing is the starting point for a

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Showrunner and control of the writing process remains an absolute requirement for the Showrunner in pre-production, production and post-production." The WGC strongly believes that the Commission's definition of "showrunner" must be explicit that it is a writing role, held by someone who is, among other things, a writer. Failure to do so would result in an incomplete and inaccurate definition, and would open the definition up to abuse, in particular to claims by others, such as producers or broadcasting/production executives, that *they* are showrunners, despite not being writers, nor engaging in writing, and therefore not actually possessing the core traits and competencies, nor carrying out the actual duties and roles, of a showrunner.

ES.3 As such, the WGC proposes the following, amended definition [additions are underlined]:

> "A showrunner is <u>a writer-producer who is</u> the chief custodian of the creative vision of a television series <u>and</u> whose primary responsibility is to communicate the creative vision of that series <u>through control of both the writing process and the production process</u>—often from the pilot episode through to the finale."

ES.4 In the Notice, the Commission proposed to collect information on key creative roles such as director, showrunner, writer, cinematographer, and editor, as well as to collect information on women occupying those roles. The WGC supports the inclusion of questions in the Production Report to measure the efforts of broadcasters to commission programming made by women occupying these roles.

ES.5 In addition to this information, the Commission should also collect and publish information on whether key creative roles are occupied by *Canadians*. The *Broadcasting Act* expresses the importance of Canadian creative talent and resources to support the expression of our national identity and cultural sovereignty, which is a task that is fundamentally done by Canadian artists. As such, the Commission should measure and promote *Canadians* occupying the roles of producer, director, showrunner, writer, cinematographer, and editor, and that these roles should be part of the proposed Production Report for the designated groups. The collection of this data would not be redundant nor would it be overly onerous for broadcasters. Simple data on the number of CAVCO points earned by productions, for example, does not show *which* roles are going to Canadians, and (lower) points requirements do not affect all roles equally. This matters because screenwriters (and showrunners) are subject to the CAVCO points system, yet in a writer-driven medium like television, screenwriters and showrunners are the ones crafting the narrative, creating the characters, developing the themes, and expressing the points of view of the production—they are the ones providing the "authorial voice" of the show. The presence (or absence) of Canadian screenwriters on an otherwise certified production matters, and it matters differently than the presence (or absence) of a cinematographer or editor. As such, the Commission should both collect this information and publish it, in an aggregated form if necessary, so that stakeholders and the public can better understand how these roles are, or are not, being filled by Canadians. Moreover, the WGC would support expanding the information collected on key creative roles to all positions currently subject to the CAVCO 10-point scale.

ES.6 The WGC supports the inclusion or reporting on programs, and spending on those programs, that are "original, first-run" programs. However, there may be confusion as to how the concept of "original, first-run programs" applies to program expenditures, and how broadcasters' amortization of these expenditures under the accrual method of accounting is defined and applied so that broadcasters' spending can be compared against each other. The WGC has proposed a method of standardization that eliminates the impact of the amortization schedule for the purposes of reporting spending on new production. In our proposal, broadcasters would still amortize production spending as they currently do, under whatever amortization schedule they currently apply. However, rather than only counting the first year's amortization as spending on "original, first-run" production, broadcasters would count all spending on such production, however amortized, and we provide an example of how this could work. However, we recognize that this is a complex issue, so the Commission may also wish to consider convening a working group, consisting of representatives from the Commission and the industry, including representatives from the production community, to work through these issues and to arrive at a mutually beneficial approach. The WGC would be pleased to participate in such a working group.

ES.7 Reporting on script and concept development spending is not part of the Production Report as discussed in the Notice of Consultation to this proceeding. However, the WGC has raised issues about reporting on development spending in the past without resolution. As the Commission is currently looking at program reporting issues in the present proceeding, the WGC would like to request that it also consider script and concept development reporting, either as a component of the Aggregated Annual Returns, as a component of the new Production Report, or both. In our analysis, there are still anomalies in the broadcasters' Aggregated Annual Returns, as published by the Commission, particularly at Lines 10 and 23/25 on page "ii", Direct Operating Expenses, which suggests that broadcasters are either not spending on script and concept development or they are not properly reporting that spending. The WGC continues to believe that spending on the script and concept development of Canadian programming is an essential component of their success and, ultimately, of the success of the Canadian broadcasting system. But neither the WGC nor other members of the public can assess how broadcasters are spending on development in the absence of clear, reliable reporting. As such, we ask the Commission to review these matters and resolve the apparent inconsistencies with respect to this crucial development spending data.

ES.8 The Production Reports should be filed by designated group, as they are licensed by the Commission—i.e. the Bell Media English Designated Group (per Broadcasting Decision CRTC 2017-149), the Corus English Designated Group (per Broadcasting Decision CRTC 2017-150), and the Rogers Media Designated Group (per Broadcasting Decision CRTC 2017-151), for the English-language groups—rather than by corporate ownership group.

ES.9 The Commission should look at ways to reduce or eliminate discrepancies in spending on programs of national interest (PNI) as reported in the Production Report and in the Aggregated Annual Returns.

ES.10 Given the complexities of these issues, the WGC recommends that the Commission provide information and instruction opportunities for broadcasters on exactly how to correctly and completely fill out the forms for the Production Report.

SUBMISSIONS OF THE WGC

Showrunner

1. In paragraph 5 of the Notice of Consultation to this proceeding (the Notice), the Commission states:

    In addition to the key creative roles identified in Broadcasting Decisions 2017-143 and 2017-148, the Commission is considering the appropriateness of including other roles, including, for example, that of "showrunner."

2. The WGC emphatically **agrees with the inclusion of showrunners** in the Commission's data collection and reporting activities, and applauds the Commission for recognizing this crucial role in the production of Canadian programming. Showrunners are central to the creation of high-quality television content, particularly for dramatic series, and the WGC supports their inclusion in the Production Report proposed by the Commission.

3. Also in paragraph 5 of the Notice, the Commission further states:

    If the Commission were to include the role of showrunner as one of the creative roles tracked in the Production Report, a clear definition would also need to be established. In that regard, the Commission also calls for comments on the appropriateness of the following definition, which is found in the Writers Guild of Canada's Showrunner Code:

    > "A showrunner is the chief custodian of the creative vision of a television series whose primary responsibility is to communicate the creative vision of that series—often from the pilot episode through to the finale."

4. The WGC agrees that the inclusion of the showrunner in the Production Report requires that it have a clear definition. The WGC believes, however, that while the definition proposed by the Commission is accurate, it is not complete. **It is necessary that the definition be clear that a showrunner is also a screenwriter, and that their core roles and competencies include writing.**

5. The Commission has looked to the WGC Showrunner Code[1] for a definition of "showrunner". The WGC agrees that the Showrunner Code is an appropriate source—and perhaps the best source—for such a definition, and thanks the Commission for turning its attention to it. However, the paragraph from the Showrunner Code that the Commission has quoted is not, and was not intended to be, a standalone definition of "showrunner". Rather, it was an opening paragraph of a nine-paragraph description of the showrunner role, which was in turn part of a larger report for the Cultural Human Resources Council (CHRC), entitled "Training Gap Analysis: Showrunners in Canadian Television" (the CHRC Report).[2] As such, the paragraph is, in our view, not a complete definition of "showrunner", because it does not refer to writing, and as such it is worth emphasizing the centrality of writing as it is expressed in the Showrunner Code and the CHRC Report.

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[1] https://www.wgc.ca/sites/default/files/2019-01/WGC%20Showrunner%20Code%20-%20with%20digital%20update_0.pdf

[2] Carver, Deborah, *Training Gap Analysis – Showrunners in Canadian* Television, *For the Cultural Human Resources Council CHRC*, January 30, 2009, https://www.culturalhrc.ca/research/CHRC_Showrunners_TGA-en.pdf.

6. The paragraph noted by the Commission is the first of nine by Steve Lucas, speaking on behalf of the CHRC's Showrunners' Expert Working Group. Each of those paragraphs are important and useful to describe the realities of showrunning, but the fourth paragraph in particular is essential:

> Scripts are the lifeblood of drama and comedy series. Typically Showrunners are successful TV writers who have risen through the ranks, gaining the necessary skills in production. Directors and producers can also become Showrunners, of course – provided they have acquired the necessary professional writing skills, experience and credits.[3]

7. This highlights the central importance of writing, and the requirement that Showrunners also be writers. The Chart of Competencies further emphasizes this. As stated in the Showrunner Code, the Showrunners' Chart of Competencies, "identifies the combined competencies that make up the work of a Showrunner; it was compiled by a group of expert practicing Showrunners from across Canada."[4] It sets out ten professional competencies, labelled "A" through "J", each with more detailed sub-competencies. The competencies include, "B. Write a Bible and Pilot to Secure Production Order", "C. Assemble a Writing Team", "E. Run a Writing Room", and "F. Deliver Production Drafts". The sub-competencies include, "B.2. Create characters and story arcs", "B.5. Write the pilot", "E.2. Break stories", and "E.6. Write original scripts".

8. The importance of writing is further set out in the full CHRC Report, which identified three broad core competency areas for showrunners: 1) Writing; 2) Translating writing into the visual medium of television; and, 3) Organizational management.[5] Having placed writing as the top of this list, the CHRC Report stated:

> Writing is the starting point for a Showrunner and control of the writing process remains an absolute requirement for the Showrunner in pre-production, production and post-production.
>
> *All the competencies other than writing take writing time away. So the key competency is being able to write a lot of pages quickly and well: 10 pages a day, sometimes a one hour script in 2 days. Stamina is essential.* (a producer and writer)
>
> However, this doesn't mean that the Showrunner writes every (or any) script. Delegation is essential in order to juggle writing and story editing responsibilities with other job requirements. While one Showrunner interviewed said that she would choose more time writing and less on set, another Showrunner said that he would choose not to write, delegate the writing to a good writing team, in order to get more time on set.
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> *To become a Showrunner, you first need artistic training. Writing is foremost an artist's trade. So, first you learn how to tell a story, and then you can learn what is a production, a set, and all of the details associated to managing a set.* (a Québécois director)
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> *As for training, I believe the starting point is writing. You can't train producers to become Showrunners if they've never written. You'd have to determine what kind of writer profiles*

[3] WGC Showrunner Code, pg. 10.
[4] WGC Showrunner Code, pgs. 12-16.
[5] CHRC Report, pg. 27.

are conducive to showrunning, potentially drawing from the American model to integrate or adapt it to our reality. (a Québécois writer)[6]

9. The CHRC Report also notes, in discussing recruitment of showrunning talent:

> As defined for the purposes of this analysis, a Showrunner is a writer. Therefore writers and story editors with significant experience in the story department are the most significant source of Showrunner talent. Directors and producers, with writing credentials, are also candidates. Many of those interviewed emphasized that the bar needs to be set very high for Showrunner candidates.[7]

10. The CHRC Report also defines showrunner as a "writer/producer",[8] which is also accurate, given the production-related duties of a showrunner, and the fact that they typically receive "Producer" or "Executive Producer" credits on a production.[9]

11. We would emphasize that the CHRC is an arm's length body to the federal human resources department, and the CHRC Report was provided by an independent consulting firm and based on interviews with over 40 writers, producers, directors, showrunners, broadcasters, and industry leaders from across Canada and in both official language markets.[10] As such, it does not merely reflect the views of the WGC or of screenwriters, but of a broad and representative cross-section of the Canadian broadcasting and television production sector.

12. For the above reasons, the WGC strongly believes that the Commission's definition of "showrunner" must be explicit that it is a writing role, held by someone who is, among other things, a writer. *Both* of these elements—i.e. the nature of the showrunner as a writer (among other things), *and* their control of the writing process (among other things) as the essential way in which they exercise their custodianship of the creative vision of the series—must be recognized. Failure to do so, in our view, would result in an incomplete and inaccurate definition, and would open the definition up to abuse, in particular to claims by others, such as producers or broadcasting/production executives, that *they* are showrunners, despite not being writers, nor engaging in writing, and therefore not actually possessing the core traits and competencies, nor carrying out the actual duties and roles, of a true showrunner. To this end, and given our comments above, the WGC would propose the following, amended definition of "showrunner" [additions are underlined]:

> **"A showrunner is <u>a writer-producer who is</u> the chief custodian of the creative vision of a television series <u>and</u> whose primary responsibility is to communicate the creative vision of that series <u>through control of both the writing process and the production process</u>—often from the pilot episode through to the finale."**

13. The WGC submits that this definition, using language taken directly from the CHRC Report, and clarifying as it does the role and adding the essential writing element, is a more accurate and complete definition of "showrunner". A showrunner is both a writer and a producer, and they ultimately control

[6] CHRC Report, pg. 28.
[7] CHRC Report, pg. 44.
[8] CHRC Report, pg. 8.
[9] CHRC Report, pg. 16.
[10] CHRC Report, Appendices B1 and B2.

both the writing process and the creative elements of the production process. We recommend that the Commission adopt the above-noted defintion.

The WGC's presumptions about the Production Report

14. The Notice sets out four draft templates in Appendices 1 to 4. The WGC presumes that these represent four separate documents/templates that must be completed annually by large English- and French-language ownership groups with their annual returns filings. For Appendix 4 in particular, the template is broken down into five separate tables, with the headings, "Program information", "Producer information", "Budget information", "Production information", and "Women occupying the role of:". The WGC presumes that these five tables conceptually constitute one single table which, if set side-by-side, would be comprised of 29 columns, left to right, but that the Commission has broken into five tables for formatting and ease-of-viewing purposes.

15. The WGC also presumes that Production Reports will be filed and published by designated group, as opposed to by larger corporate ownership group. While the Commission has published PNI Reports on its website since 2012, these reports have not necessarily been by designated group, as evidenced by the fact that Bell Media and Astral Media reporting was combined into one PNI Report, even though they were separately licensed designated groups. The WGC believes that the Production Report will be most relevant and useful to stakeholders to the extent that it reflects the regulatory framework under which the groups are licensed. This appears to be the Commission's intention given the wording in context of the Notice of Consultation in this proceeding. If we are mistaken, however, then we submit that the Production Reports should be filed by each designated group—i.e. the Bell Media English Designated Group (per Broadcasting Decision CRTC 2017-149), the Corus English Designated Group (per Broadcasting Decision CRTC 2017-150), and the Rogers Media Designated Group (per Broadcasting Decision CRTC 2017-151), for the English-language groups.

The WGC supports inclusion of information on key creative roles held by women

16. The WGC supports the inclusion of questions in the Production Report to measure the efforts of broadcasters to commission programming made by women occupying the roles of producer, director, showrunner, writer, cinematographer, and editor.

The Production Report should include whether key creative roles are held by Canadians

17. In the Notice, the Commission proposed to collect information on key creative roles such as director, showrunner, writer, cinematographer, and editor, as well as to collect information on women occupying those roles. In addition to this information, **the Commission should also collect and publish information on whether key creative roles are occupied by Canadians**.[11]

18. The Broadcasting Policy for Canada, as set out in the *Broadcasting Act*, clearly states a set of cultural policy objectives that have Canadian creative talent at their heart, either explicitly or implicitly. Section 3(1)(f) states, "each broadcasting undertaking shall make maximum use, and in no case less

[11] Consistent with the eligibility requirements for the Canadian Film or Video Production Tax Credit (CPTC), as well as the Commission's own certification rules, the term "Canadian" should be defined as a person who is, at all relevant times, a Canadian citizen as defined in the *Citizenship Act*, or a permanent resident as defined in the *Immigration and Refugee Protection Act*.

than predominant use, of Canadian creative and other resources in the creation and presentation of programming".[12] Section 3(1)(b) states, "the Canadian broadcasting system… provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty". Section 3(1)(d)(ii) states that the Canadian broadcasting system should:

> (ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,

19. These statements underline the importance of *Canadian* creative talent and resources to support the expression of our national identity and cultural sovereignty, a task that is fundamentally done by Canadian artists. As such, we submit that the Commission should measure and promote *Canadians* occupying the roles of producer, director, showrunner, writer, cinematographer, and editor, and that these should be part of the proposed Production Report for the designated groups.

20. The WGC submits that the collection of this data would not be redundant nor would it be overly onerous for broadcasters. To our knowledge, there is no public source of information demonstrating how various key creative roles are filled *on a role-by-role basis*, nor is this information specifically available with respect to the Canadian programming—or programs of national interest—commissioned by the large French- and English-language designated ownership groups. As the WGC has argued in the past, a simple assessment of how many productions are six—or eight, nine, or ten—points out of ten under the CAVCO scale,[13] does not reveal *which* roles are typically filled by non-Canadians as points requirements decline. In our experience, 8- or 6-point productions are more likely to be written and/or starring non-Canadians than they are to have a non-Canadian cinematographer or editor, making the impacts of points requirements fall inconsistently across different roles.[14] This matters because screenwriters (and showrunners) are subject to the CAVCO points system, yet in a writer-driven medium like television, they are the ones crafting the narrative, creating the characters, developing the themes, and expressing the points of view of the program—they are the ones providing the "authorial voice" of the show. The presence (or absence) of Canadian screenwriters on an otherwise certified production matters, and, with respect, it matters differently than the presence (or absence) of a cinematographer or editor. For these reasons, we submit that the Commission should both collect this information and publish it, in an aggregated form if necessary to respect confidentiality concerns, so that stakeholders and the public can better understand how these roles are, or are not, being filled by Canadians.

21. Moreover, the WGC would support expanding the information collected on key creative roles to all positions currently subject to the CAVCO 10-point scale.

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[12] Emphasis added.

[13] Canadian Film or Video Production Tax Credit (CPTC) Program Guidelines, Canadian Audio-Visual Certification Office (CAVCO), April 2, 2012, https://www.canada.ca/content/dam/pch/documents/services/funding/cavco-tax-credits/canadian-film-video-production/cptcGuide-eng.pdf, sections 4.02 and 4.03. The Commission uses the same scale—see "Guide to the CRTC Canadian Program Certification Application Process", https://crtc.gc.ca/canrec/eng/guide1.htm#s9t, section 9, "Key creative positions".

[14] For more, see the WGC submission to Canadian Content in a Digital World Consultations, November 25, 2016, https://www.wgc.ca/sites/default/files/resource/2019-01/WGCSCanCon.pdf, para. 157.

“Original first-run”/ “New commissioned”

22. In the template at Appendix 4 of the Notice, under “Program information”, the Commission proposes to include a column for “Original, First-run Program”. Under “Budget information”, the Commission proposes to include columns for “Total Production Budget”, “Licence Fees”, and “Total Eligible Canadian Programming Expenses”. All this information will presumably be collected for, and attributable to, each program, and will ultimately be reported publicly in an aggregated form. We presume that “Original, First-run Program” will be defined as it is currently in Schedule I to the *Television Broadcasting Regulations, 1987*[15] as “original exhibition of a program that has not been broadcast or distributed by another licensed broadcasting undertaking”. In the current PNI Reports, all information is described in a header as “New commissioned programs (original to the service and excluding benefits expenses)”.

23. The WGC discussed at some length the definition of “original first-run” and/or “new commissioned” in the group-based licensing renewal proceedings (GBL Renewals).[16] Our comments in that proceeding were perhaps best summarized and expressed in our final written submissions to that process.[17] We believe that the same question at issue in that proceeding may also be at issue in this one, namely, how a term that is defined in reference to the *exhibition* of a program can and should relate to *expenditures* regarding that program, and how that, in turn, relates to the amortization of costs over time.

24. Broadcasters traditionally obtain program rights in two ways: a) through the commissioning of new programming, typically unproduced at the time of commissioning and for which the broadcaster’s licence fees or other financing contribute to the overall financing of its production; and, b) through the acquisition of already-produced, typically older programming. The latter are generally referred to as “acquisitions”. The former may be referred to as “new”, “new commissioned”, or “original, first-run” programming.

25. It is important to note, however, that “original, first-run” could refer to *either* the *exhibition* of a program on a first-run basis, *or* the *program itself*, which was so commissioned and exhibited. For example, the first season of CTV’s *Cardinal* was commissioned as a new production by Bell Media Inc. (Bell) and originally exhibited on CTV in January, February, and March 2017, at which time (to our knowledge) it had not been broadcast or distributed by another licensed broadcasting undertaking. These first airings could be called the “original, first-run” of *Cardinal*, and indeed since Schedule I to the *Television Broadcasting Regulations* deals with program logs, which record the exhibition of programs, it seems reasonable to impute that interpretation in that context. However, Bell has clearly obtained, in exchange for its licence fee, broadcast rights to *Cardinal* for a longer period of time, and for airing on its other services, since, to our understanding, Season 1 of the show also has aired on

[15] SOR/87-49. The same definition is used in Schedule I to the *Discretionary Services Regulations*, SOR/2017-159.
[16] Broadcasting Notice of Consultation CRTC 2016-225: *Renewal of television licences held by large English- and French-language ownership groups*.
[17] WGC submission to Broadcasting Notice of Consultation CRTC 2016-225 – Renewal of television licences held by large English- and French-language ownership groups; Application Numbers 2016-0012-2, 2016-0015-6, and 2016-0009-9, Final Submission - Intervention - Gatineau Hearing https://www.wgc.ca/sites/default/files/resource/2018-09/WGC%20Final%20Submission%20%20BNC%202016%20225%20Group%20Licence%20Renewal%20%20Gatineau.pdf, paras. 7-17.

Bravo in the months and years following January-March, 2017. These airings are presumably *not* "original, first-run" *exhibitions* of *Cardinal*, because they were not "original" airings and the program had aired on another licensed broadcasting undertaking, namely, CTV. But Bell, of which both CTV and Bravo are a part, clearly contributed to the financing of the show, and the production could be described as "Bell Media original programming" in its commonly understood meaning. In that sense, *Cardinal* itself is an "original, first-run" production of Bell, and indeed since the Production Report deals with programs themselves (and not the particular airing of them) and, crucially, the *financing* and budget of the program, it seems reasonable to impute that interpretation in this context. As such, it appears that the Commission uses "original, first-run" in both of these ways: to refer to the *exhibition* of a program for the purposes of program logs, and to refer to the *program itself* (and the financing contributed to it) for the purposes of the Production Report.

26. As such, the WGC presumes that, with respect to the Production Report, the Commission does indeed use "original, first-run" to refer to the *program itself*. This presumption seems to be further supported by the Commission's prior statement that it is, "of the view that original first-run Canadian <u>productions</u> add more value to the system".[18] We also note that the current PNI Reports describe all information under the header as "New commissioned programs", and that the new Production Report template does not use that phrase at all. As such, we presume that the Commission has chosen to eliminate "new commissioned" programming as a concept, and instead refer to all "new" production as "original, first-run".

27. We now turn to the question of the connection between "original, first-run" programming and its financing. The Commission has stated that:

> The Canadian broadcasting system will succeed or fail to the degree that Canadian creative talent, producers, broadcasters and distributors provide a quality Canadian television experience for the viewer. At the heart of this experience is the ability of the system to <u>continually create attractive new Canadian programs</u>.[19]

28. At the heart of the regulatory framework to achieve this outcome is spending requirements on Canadian programming, or "Canadian programming expenditures" (CPE), as well as spending requirements on programs of national interest (PNI), as a subset of CPE. These spending requirements oblige designated groups to spend a minimum amount on Canadian programming, as a percentage of their broadcasting revenues. The Commission also requires those groups to report their spending, so as to ensure compliance with their CPE and PNI requirements. The WGC presumes that the Production Report will be a tool to this end, which is why it includes program budget information, and that the Production Report will be a tool to ensure that broadcasters continually create attractive *new* Canadian programs, which is why it includes whether a program is "original, first-run". If our interpretation is correct, the WGC agrees with this approach.

29. The challenge arises with how broadcasters report their CPE and PNI spending over time, given that they use the accrual method of accounting, which allows them to amortize production costs over many years. As we explained in the GBL Renewals,[20] broadcasters generally pay out a licence fee or

[18] Broadcasting Regulatory Policy CRTC 2015-86, para. 191. Emphasis added.
[19] Broadcasting Regulatory Policy CRTC 2010-167, para. 7. Emphasis added.
[20] WGC submission to Broadcasting Notice of Consultation CRTC 2016-225 – Renewal of television licences held by large English- and French-language ownership groups; Application Numbers 2016-0012-2, 2016-0015-6, and 2016-

other financial contributions over the course of a few months, shortly before, during, and after the production process, so as to effectively finance and cash-flow that production. Broadcasters obtain, in exchange for their licence fees, a broadcast licence with a duration (term) of several years, often in the 5-7 year range. During this term, broadcasters have the right to air the program in question, and generally do so depending on their programming strategy and the ultimate success of the show. For accounting purposes, broadcasters amortize the cost of their financial contribution over the licence term. This practice was explained by Corus Entertainment Inc. (Corus) in the GBL Renewals proceeding as follows:

> The following is Shaw Media Inc.'s accounting policy for program rights and has been extracted from the audited consolidated financial statements as at and for the years ended August 31st 2015, 2014 and 2013:
>
> *Intangibles*
> *Program rights represent licensed rights acquired to broadcast television programs on the Company's conventional and specialty television channels and program advances are in respect of payments for programming prior to the window license start date. For licensed rights, the Company records a liability for program rights and corresponding asset when the license period has commenced and all of the following conditions have been met: (i) the cost of the program is known or reasonably determinable, (ii) the program material has been accepted by the Company in accordance with the license agreement and (iii) the material is available to the Company for telecast. Program rights are expensed on a systematic basis generally over the estimated exhibition period as the programs are aired and are included in the operating, general and administrative expenses.*[21]

30. It is the WGC's understanding that broadcasters generally report CPE and PNI expenditures as per their amortization of costs under their accounting policy, using the accrual method of accounting. In other words, despite having actually expended 100% of their financial contribution to a given television production in the space of a few months during the course of the production process, broadcasters will amortize or "spread out" that spending over the duration of the broadcast licence term, and that this is reflected in annual CPE and PNI expenditures that are reported to the Commission. (Indeed, the WGC presumes that this accrual method of accounting is now the basis for all reporting of programming expenses to and by the Commission, and if it is not we would think it should be, for the purposes of consistency and comparability.)

31. Further complicating the issue is the fact that the method of amortization of programming costs is not consistent between broadcast groups. Corus made the following statement in this respect in its application in the GBL Renewals:

> First, information relating to first-run and new commissioned programming has never been filed with the Commission before and when applicants sought clarifications regarding how to define first-run and new commissioned programming, the Commission stated in a letter dated March 11th, 2016 that:

0009-9, https://www.wgc.ca/sites/default/files/resource/2018-09/WGC%20Submission%20BNC%202016%20225%20Group%20Licence%20Renewal%20FINAL.pdf , paras. 54-69.

[21] Application of Corus Entertainment Inc., "Responses to Request for Additional Information – May 30th, 2016", Appendix A, pg. 20.

"It is up to the Groups to inform the public record as to the manner in which they have been reporting their respective PNI expenses and to explain for the record how each has treated the definitions provided."

> This means that each individual media group could report their first-run and new commissioned programming expenses in a different manner as long as they explained how they did it. In fact, this is what occurred. The various media groups did not develop any consensus on how to define these terms and calculate these expenses. As a result, the groups prepared this information according to own their [*sic*] individual practices.
>
> Therefore, without standardization on PNI reporting, the information on the public record is not directly comparable as between the various media groups.[22]

32. Rogers Media Inc. expressed a similar view.[23] Corus later expanded upon this in its response to undertakings, in which it said:

> As a result, many factors can come into play in determining the appropriate amortization method including: the genre of programming; the licence period; how programming is utilized by the broadcaster; and, other factors. Not only will these factors differ amongst broadcasters but also a single broadcaster may apply different amortization methods for different genres of programming. Consequently, there can be no one size fits all amortization rule.[24]

33. The WGC requested in the GBL Renewals that the Commission establish a standardized definition or definitions of "original, first-run" and/or "new commissioned" that applies to all broadcasters, so that data with respect to these concepts can be compared to each other. To our knowledge, however, this was not done. Yet the WGC presumes that the data provided in the Production Reports will also be provided on an accrual basis,[25] and as such these amortization issues will remain outstanding.

34. In the GBL Renewals, the WGC ultimately proposed that the Commission standardize reporting with respect to amortization practices by requiring broadcasters to report spending on new production on an amortized basis, but without regard to the amortization schedule in particular. For example, consider a hypothetical Canadian television production, which we'll call "Program A". Program A receives a licence fee from "Broadcaster X" of $1 million, in exchange for a broadcast licence with a term of 5 years. According to Broadcaster X's amortization schedule, Program A is amortized in equal amounts of $200,000 over that 5-year term. Under what we understand to be Corus's approach to reporting new production spending, only the first year's amortization of $200,000 is counted as spending on "new" production, with the remaining $800,000 (i.e. $200,000 x 4 years) *not* being

[22] Application of Corus Entertainment Inc., "Responses to Request for Additional Information – June 10th, 2016", Appendix A, pg. 23.
[23] Rogers Media Inc. – Licence renewal applications – Fourth Response to Deficiency Questions (Application no. 2016-0009-9), pg. 7.
[24] Corus Entertainment Inc. – Application 2016-0015-6 – Response to undertakings made at oral phase of the hearing by Corus Entertainment Inc. (Corus), December 9th, 2017, para. 95.
[25] If not, then the problems would appear to arise regarding reconciliation of Production Report data and that of other reports.

counted as “new”. In reality, the entire $1 million licence fee would be commonly understood as spending on “new production”, since the entire $1 million was provided as a licence fee to commission and finance a new television program. But by counting only the first year’s amortization, the reported number has been “artificially” lowered. Further, if a different broadcaster—Broadcaster Y—also provides a $1 million licence fee to a different program—Program B—but Broadcaster Y front-loads the amortization schedule to “reflect the pattern in which the asset’s future economic benefits are expected to be consumed”[26] in a different manner than Program A—for instance by assigning 50% of the value of the licence fee to the first year of the licence term—and Broadcaster Y also counts only the first year’s amortization in spending, then Broadcaster Y is reporting $500,000 on new production. As such, in the above examples, Broadcaster X reports $200,000 in spending on new production, and Broadcaster Y reports $500,000 in spending on new production, yet both broadcasters have in fact spent identical amounts to commission a new Canadian program—i.e. $1 million. It seemed far preferable that reporting on new production allow the Commission and the public to recognize the reality of the $1 million investment in new Canadian programming production, rather than see only what has been amortized in the first year of an amortization schedule.

35. Given this outcome, the WGC proposed eliminating the impact of the amortization schedule for the purposes of reporting spending on new production. In our proposal, broadcasters would still amortize production spending as they currently do, under whatever amortization schedule they currently apply. However, rather than only counting the first year’s amortization as spending on “original, first-run” or “new commissioned” production, broadcasters would count all spending on such production, however amortized. In the above example, for Program A, Broadcast X would report $200,000 as spending on new production in the first year of amortization, $200,000 as spending on new production in the second year, and so on, in each year of the licence term, until the full $1 million amount was amortized. Similarly, for Program B, Broadcaster Y would report $500,000 as spending on new production in the first year of amortization, a lesser amount as spending on new production in the second year, and so on, in each year of the licence term, until the full $1 million amount was amortized. In both cases, $1 million would be reported as spending on new production, regardless of the amortization schedules used. (Indeed, other broadcast groups, such as Bell, may already be doing this, since they also amortize production costs but report much higher spending on original, first-run/new commission production than Corus.) Assuming that each broadcaster maintains the same approach over time, the differences in amortization schedules should even out over the medium-to-long term. And while this approach would necessarily result in amortization amounts for later years counting as spending on new production, even when the production itself was aired years before, this is: 1) unavoidable, given the nature of amortization itself; 2) consistent with how CPE and PNI in general are reported in an accrual system; and 3) reflective of what broadcasters are actually spending on new production, since the spending was on a new production when the cash outlay was made.

36. The WGC recognizes that this is a complex issue, and it is possible that despite our attempt at clarification, questions may remain on the part of broadcasters, the Commission, and/or other industry stakeholders. As such, we considered that the Commission may also wish to contemplate convening a working group, consisting of representatives from the Commission and the industry, including representatives from the production community, to work through these issues and to arrive at a mutually beneficial approach. The WGC would be pleased to participate in such a working group.

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[26] Response to undertakings made at oral phase of the hearing by Corus Entertainment Inc., December 9, 2016, para. 94.

37. In any event, it is our understanding that the issues described above with regard to "original, first-run" programming have not yet been resolved. To the extent that they haven't, we expect the same concerns to arise with respect to the Production Report as they did with in the GBL Renewals proceeding. A standardized approach must be determined so that broadcaster data can be understood and compared against that of other broadcasters or broadcast groups.

Script and concept development

38. Reporting on script and concept development spending is not part of the Production Report discussed in this proceeding. However, the WGC raised issues about reporting on development spending in the GBL Renewals, and while the Commission did discuss the issues with broadcasters at that time, the result was, in our view, unsatisfactory. As the Commission is currently looking at program reporting issues in the present proceeding, the WGC would like to request that it also consider script and concept development reporting, either as a component of the Aggregated Annual Returns, as a component of the new Production Report, or both.

39. As we stated at the public hearing in the GBL Renewals in 2016,[27] in the Aggregated Annual Returns[28] on page "ii"—Direct Operating Expenses—Line 10 appeared to show script and concept development spending for programs that were *not* telecast, and Line 23 (subsequently Line 25, and now Line 28) appeared to show program development spending for programs that *were* telecast, so that adding Lines 10 and 23 should have represented the total development spending by the reporting entity. But taken at face value, these numbers appeared quite low to us, and Rogers Media Inc. (Rogers) in particular reported $0 of spending in these categories, leading us to believe that the information was not being properly reported on these forms. In the final phase of the oral hearing, the Chair asked each designated group to undertake to provide this information, in particular as it related to the WGC's definition of script and concept development, namely, writing activity.

40. Having reviewed the broadcasters' responses in the GBL Renewal, however, we were not much closer to understanding their development spending. Both Bell and Corus, for example, appeared to have provided data and analysis with respect to script and concept development spending for programs *not* telecast (Line 10), but have not provided data for development spending for programs that *were* telecast (Line 23). Corus stated:

> In completing our CRTC Annual Returns, the script and concept development costs reported on line 10 of Form 1230, represent the costs that have been expensed in the period because it was determined that the program/project would not likely be pursued for further development. However, this does not reflect all of the development activities of the broadcaster because development costs for programs that are subsequently developed, become part of the program licence asset. The total capitalized costs of the program asset (including development and program licence fee) are then amortized per our accounting policies (see response to question 2 of Exhibit 3 and Corus response to transcript reference line 6518 above for more details on amortization practices). The

[27] Transcript, Hearing November 30, 2016, para. 4831.
[28] http://www.crtc.gc.ca/eng/stats6.htm

> amortized amounts then appear in the Canadian programming telecast expenses in lines 1 through 7 of Form 1230.[29]

41. But it was the WGC's understanding that development spending for programs that were telecast should not be simply "buried" in Lines 1-7—they should be broken out and reported at what was then Line 23. Indeed, the form itself stated that Lines 21-24 (and, presumably, Lines 25-29 as well) represent "Amounts included in total Canadian programs telecast…". It seemed very clear to us that these lines are for additional detail of expenses reported in Lines 1-7. Corus went on to state:

> Therefore, mandating a certain amount, percentage of revenue, or percentage of PNI to be directed strictly to funding script and concept development that would appear on line 10 of Form 1230 would be mandating spending on unsuccessful projects that do not get to telecast. We believe this is not the intent or in the interest of the Commission, broadcast licensees, or the Writer's Guild of Canada.[30]

42. Corus was correct—this was not our intent. Our intent was to obtain complete and correct information on all script and concept development spending, both telecast and not telecast, which we understood should be provided by broadcasters accurately filling out both Lines 10 and 23 on the Aggregated Annual Returns, page ii. Corus claimed confidentiality on the development data that it provided pursuant to its undertaking,[31] which further frustrated our ability to comment.

43. Bell, in its response to undertakings, provided a table which purported to show "the amounts for Canadian script and concept development expenses as reported on the aggregate annual returns for over-the-air and English Specialty and Pay".[32] However, the numbers in this table appeared to correspond to Line 10 only of the Aggregated Annual Returns. As such, we questioned whether Bell had the same misunderstanding that we believe Corus had with respect to Line 23.

44. Rogers, in its response to undertakings, provided data that was difficult to interpret because it did not specify whether it encompassed programs telecast, programs not telecast, or both. Further, Rogers included data on development funding from the Canada Media Fund (CMF), which appeared odd because CMF funding does not count as CPE or PNI spending under the Commission's policies.[33]

45. Ultimately, none of the three broadcast groups submitted revised Aggregated Annual Returns in the GBL Renewal proceeding, with Lines 10 and 23 accurately and completely filled in. In addition, none of the three groups provided additional information on writing costs versus non-writing costs in development, notwithstanding that the WGC highlighted this distinction in our definition of development,[34] and the then-Chair expressly asked each group to provide information consistent with the WGC's definition.[35]

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[29] Response to undertakings made at oral phase of the hearing by Corus Entertainment Inc., December 9, 2016, para. 110.
[30] *Supra,* para. 111.
[31] *Supra,* paras. 113-116, Appendix E.
[32] Response to undertakings made at oral phase of the hearing by Bell Media Inc., December 9, 2016, para. A12.
[33] Broadcasting Regulatory Policy CRTC 2010-167, paras. 59-60.
[34] Transcript, Hearing November 30, 2016, paras.4904, 4906.
[35] Transcript, Hearing December 1, 2016, paras. 6260-6262, 6545-6546, and 6818-6823.

46. All of this occurred during the GBL Renewal proceedings. Today, however, we continue to face the same problems. For example, in the 2017 Aggregated Annual Returns, script and concept development spending for programs that were *not* telecast is set out at Line 25 (not Line 23, as it was in prior years), but the amounts entered by broadcasters are still puzzling.

47. In its 2017 aggregate annual returns, Bell, for its discretionary channels in its designated group,[36] reported $0 for Line 10, "Script and concept development (programs not telecast)" in every program category except one, Category 2b, Long Form Documentary, for which it reported $97,000. And in Line 25, "Script and concept development (programs telecast)", it reported $0 across the board. In their 2017 aggregate annual returns for conventional television,[37] Bell reported $1,043,000 in Line 10, but again $0 across the board in Line 25. This suggests that either Bell made absolutely no development investments in Canadian programming that it telecast or, more likely, that it is not breaking out those expenses in Line 25 as the returns clearly require.

48. While Bell's reporting anomalies are concerning, the total spending at least approximates what Bell said at the Group Renewals hearing it invests in development annually.[38] Corus, however, in its 2017 aggregate annual returns showed $0 across the board for Line 25 for both conventional[39] and discretionary[40] channels in its designated group, and only $348,000 in Line 10, for its discretionary services. The absence of reported spending in Line 25 raises the same concerns as for Bell. In addition, Corus spending less than one-third on development than Bell did, for a group as large as it is, with the asset mix that it has, is troubling, particularly as our members report little-to-no development activity has occurred with respect to Corus over the past year or two.

49. For its part, Rogers reported $0 in Line 10 across both the conventional[41] and discretionary[42] services, and only $174,000 on Category 7 programming on Line 25 in its 2017 Aggregated Annual Returns.

50. The WGC continues to believe that spending on development of Canadian programming is an essential component of their success and, ultimately, of the success of the Canadian broadcasting system. But neither the WGC nor other members of the public can assess how broadcasters are spending on development in the absence of clear, reliable reporting. As such, we ask the Commission to review these matters and resolve the apparent inconsistencies with respect to this crucial development spending data.

Discrepancies between the Production Report and Aggregated Annual Returns

51. In the recent past, the amounts that designated groups have reported in their PNI Reports have differed from the PNI amounts they reported in their Aggregated Annual Returns, which has led the Commission to require these groups to explain the discrepancies and/or file reconciliation statements. In the WGC's experience, these reconciliation statements can be unclear and sometimes raise new

[36] https://crtc.gc.ca/public/5040/BCE_2017_Discretionary_Aggregate_Bell_Media_designated_group_public.pdf
[37] https://crtc.gc.ca/public/5040/BCE_2017_Conventional_Television_Aggregate_Return_public.pdf
[38] Namely, between $1.2 million and $1.4 million a year. See Transcript, Hearing December 1, 2016, para. 6259.
[39] https://crtc.gc.ca/public/5040/Corus_2017_Television_Aggregate_Return_public.pdf
[40] https://crtc.gc.ca/public/5040/Corus_2017_Discretionary_Aggregate_Designated_Group_Public.pdf
[41] https://crtc.gc.ca/public/5040/Rogers_2017_Television_Aggregated_Return_Designated_group_public.pdf
[42] https://crtc.gc.ca/public/5040/Rogers_2017_Discretionary_Aggregate_Return_Designated%20group_public.pdf

questions.[43] Since the Commission is now creating a new Production Report to replace the PNI Report, the WGC asks the Commission to look at ways to reduce or eliminate discrepancies in PNI spending as reported in the new Production Report and in the Aggregated Annual Returns.[44] This would not only reduce or eliminate discrepancies that can lead to confusion by stakeholder groups, but also reduce or eliminate the need for broadcaster groups to file reconciliation statements to explain discrepancies, resulting in greater regulatory streamlining and efficiency.

Information and instruction for licensees

52. Given the complexities of these issues, the WGC recommends that the Commission provide for information and instruction opportunities for broadcasters on exactly how to correctly and completely fill out the forms for the Production Report. The difficulties described above with respect to script and concept development reporting is but one example of what can happen if and when forms are provided but broadcasters do not understand, or it is not communicated to them, exactly how they are to be filled out. The WGC believes that information and instruction by the Commission may help to mitigate the potential for confusion in the future.

Conclusion

53. The WGC is pleased to provide comments in this proceeding, and thanks the Commission for the opportunity to do so.

[43] For example, in responding to a request by the Commission to explain a discrepancy in PNI reporting between its PNI Report and its Aggregated Annual Returns for the 2015-2016 broadcast year, Rogers Media stated the following: "In the Aggregated Annual Return (AAR) Forms, Rogers captured the overhead costs (e.g. acquisition, scheduling, library, etc.) associated with Canadian programming under the PNI categories (i.e. Categories 2b, 7, 7e) on Line 12 (Other) of the AAR Forms. However, we did not include these overhead costs in the PNI Reports as they do not qualify as PNI spending, which accounts for the apparent discrepancy of $900,843 between the AAR Forms and the PNI Reports. We understood that this methodology was consistent with the direction we had previously received from the Commission regarding this matter… We understand that this methodology has resulted in a reconciliation issue. To address this issue going forward, we suggest including the overhead costs associated with PNI under non-PNI categories. This would enable us to reconcile Line 14 (Total Canadian Programming Expenses) of the AAR Forms with the PNI Reports. We kindly ask that the Commission confirm whether our new proposed approach is preferred and/or acceptable, so we understand how best to report our PNI spend in future broadcast years." In the WGC's view, it would be prudent for the Commission to resolve these kinds of reporting anomalies with the broadcast groups as part of this process to create a new Production Report in an effort to reduce or eliminate discrepancies going forward.

[44] For example, certain programming services are permitted to report Canadian equity on a cash basis on the current PNI Report but such spending must be reported on an accrual basis in the Aggregated Annual Returns. The Commission could consider requiring reporting spending on Canadian equity on an accrual basis in both the new Production Report and the Aggregated Annual Returns to eliminate one source of discrepancy in PNI reporting.

Yours very truly,

Maureen Parker
Executive Director

c.c.: Council, WGC

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