Writers Guild of Canada

July 8, 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 2019-91: *Call for comments on the Commission's policy on Canadian programming expenditures*

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 WGC recommends several principles and priorities that we feel should guide the Commission in updating the CPE policy. The primary principle that should be first and foremost for the Commission as it updates the CPE policy could be summarized as that commonly ascribed to the Hippocratic Oath: "First, Do No Harm". This means that, at a time when crucial public policy supports for Canadian programming such as CPE are under threat from technological change and the attendant disruption of business models, the Commission should take no action(s) that directly or indirectly lower real CPE levels or otherwise decrease the regulatory supports for Canadian content. Given its history, CPE now represents a policy support that is modest given current levels. Any *de facto* reduction of those levels, particularly through the "watering down" of the CPE category itself, threatens Canadian programming, and as such should be resisted by the Commission. Another principle that should guide the updating of the CPE policy by the Commission is platform neutrality. As the Commission itself has noted in its report, *Harnessing Change: The Future of Programming Distribution in Canada*, distribution and consumption is moving from traditional, regulated broadcast platforms to digital, online platforms. It is a near-certainty that this move will continue over the short-to-medium term, with the great likelihood that a very significant portion—likely the majority, and perhaps the entirety—of programming distribution and consumption in Canada will exist on online platforms over the course of the next decade. CPE, if it is to continue to remain relevant as a regulatory tool, must move with it. Finally,

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the WGC would ask the Commission to keep the different needs of different genres of Canadian programming in mind, particularly as it pertains to PNI.

ES.2 In asking how to incent innovation (Q3), we must first ask what is meant by “innovation” and in what context. The Commission’s question implies that innovation should be incented, which in turn implies that such innovation would be desirable and/or result in a desirable outcome. This, in turn, begs the question of what outcome(s) is/are being sought, and/or what type of outcome(s) would be desirable. Who should benefit from such innovation, and what trade-offs might be considered in achieving that benefit, if any? What type of innovation does the Commission hope to incent? Technological innovation, innovation in business models, or creative/artistic innovation? Creative/artistic innovation is best incented by giving creators/artists the opportunity to create, and the Commission can incent this kind of innovation by expanding policies like CPE and PNI, that give screenwriters and showrunners the opportunities to practice their art and their craft in the creation of Canadian programming, to digital media platforms. The WGC also is concerned that some may seek to confuse innovation with deregulation, or otherwise argue that “innovation”, however defined, is somehow being restrained by broadcasting regulation itself. Such arguments sometimes use concepts like “innovation”, “flexibility”, and “deregulation” as if they are closely related, if not interchangeable. The WGC would strongly disagree with such an approach. The WGC is not aware of a particular way in which the CPE policy can incent agreements and partnerships to facilitate the export of Canadian content, since the content market itself incents export and screenwriters also benefit from export success.

ES.3 To the extent that CPE on digital media programming essentially refers to existing CPE that is distributed on digital, online platforms, the WGC believes that the Commission should consider such expenditures as eligible for the purpose of meeting the CPE requirements of licensed television services. The WGC believes that such consideration represents an opportunity for the Commission to “move the regulatory yardsticks” in the direction that the industry is already heading, as noted above: from traditional broadcast platforms to online digital ones. Moreover, the WGC considers that such a move should be mandatory, and so CPE obligations should be imposed on digital media broadcasting undertakings. Such a move would better represent where the sector is headed, not incent a premature shift to unregulated platforms, and support greater clarity on how costs are allocated by broadcasters across multiple platforms. This is particularly important given that recently published Commission data shows that digital media revenues of 19 private commercial broadcasters had year-to-year growth of 40% in 2017, and 25% in 2018, to over $412 million that year. In any event, it is imperative that if expenditures associated with digital media programming can be claimed towards meeting CPE requirements, then the Commission must also take into consideration the revenues of those digital media broadcasting undertakings, and this must be the case whether CPE obligations on those platforms are mandatory or “opt in”.

ES.4 If the Commission decides to consider digital media programming expenditures as eligible CPE, it is absolutely essential that eligibility be limited to expenditures made for Canadian programming certified under the existing Canadian content certification rules. If the Commission expands CPE to allow broadcasters to claim expenditures they are already making, they will do so, counting such expenditures towards their regulatory minimum spending obligations, and simultaneously reducing their spending on existing Canadian programming expenditures, so as to maintain their overall CPE spending at the regulatory minimum. The WGC is concerned that there may be any number of such costs that broadcasters may seek to claim under CPE if permitted by the

Commission. These costs could include: computer programming/coding, interface design, search algorithm design, data/audience analytics, or other technical costs for the development and maintenance of websites and/or streaming platforms themselves; bandwidth costs related to the server, hosting and traffic on their websites and/or platforms, some or all of which could constitute self-dealing with the telecommunications arm(s) of the same company when the company is vertically integrated; software purchase or subscription costs; shares of corporate overhead shared with other, non-content-production activities; and, development and creation of interactive digital media (IDM), such as videogames or other applications. Some of these costs would be analogous to certain broadcasting costs that have never been considered legitimate Canadian programming expenditures. Others of these costs could be seen as more analogous to program production, such as the development and creation of IDM content, but which would significantly increase the scope of CPE, and thereby significantly dilute it, reducing spending on traditional audiovisual Canadian programming. "CPE" stands for Canadian *programming* expenditures, and CPE must remain focused on Canadian *programming*, under its current meaning, if it is to maintain its ability to support that programming and, in the process, the furtherance of the objectives of the Act that such programming represents.

ES.5 The WGC understands "repurposing" in the context of Q7 to essentially refer to digitizing content that was produced and which current exists in analogue form so that it may be distributed and viewed on digital platforms. If this is correct, then the WGC would answer this question in the negative. The WGC sees no reason for expenditures relating to the repurposing of certified Canadian programming originally made for traditional platforms to be considered as CPE. Much older, analogue content has already been digitized, and the costs of digitization are small and getting smaller, so there is no problem in need of a regulatory solution. The WGC believes that allowing "repurposing" costs as CPE runs the risk of unduly diluting CPE as a category, and that this risk is greater than not allowing it would risk keeping popular, high-quality Canadian programming from being accessed by Canadians.

ES.6 The WGC reiterates it prior statements on amortization. In particular, we have 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 The WGC generally does not support CPE being used to support the promotion of Canadian production. CPE is a programming expense, not a promotion expense. The WGC recognizes that promotion of programming is an important component of its success. However, to the extent that promotion can be done inexpensively, such as via social media, it is not necessary to include it in CPE; and to the extent that it is expensive, such as via large traditional ad campaigns, it will significantly reduce spending on CPE itself.

ES.8 The WGC is not proposing a comprehensive definition of "gross revenues" at this time, however we do recommend that the Commission include, as part of "gross revenues" for the purposes of calculating CPE requirements, any funding or revenues that broadcasters receive from the Independent Local News Fund (ILNF), or any other fund that may be created in the future. Broadcasters that receive these funds use them, in whole or in part, to fund local news programming, which is in turn claimed as CPE. In the past, the Commission excluded funding received by broadcasters from the Local Programming Improvement Fund (LPIF) and the Small Market Local Programming Fund (SMLPF) from gross revenues for the purpose of calculating CPE requirements. This was unfair because the funds from the LPIF and SMLPF were used to produce local programming that ultimately counted towards meeting CPE requirements. If broadcasters can claim CPE using funding from the ILNF or any other fund, then we submit it is only fair that they must count that funding towards gross revenues.

COMMENTS OF THE WGC

1. The WGC welcomes this opportunity to examine the CPE policy, and applauds the Commission for initiating this proceeding.

2. In our comments below, the WGC has generally followed the format and questions posed by the Commission in the Notice of Consultation. The WGC has not answered every question, however, and has focused our responses on areas in which we feel we have greater knowledge and expertise.

<u>Q1. What principles or priorities should guide an updating of the CPE policy by the Commission?</u>

First, Do No Harm

3. In the opinion of the WGC, the primary principle that should be first and foremost for the Commission as it updates the CPE policy could be summarized as that commonly ascribed to the Hippocratic Oath: "First, Do No Harm". This means that, at a time when crucial public policy supports for Canadian programming such as CPE are under threat from technological change and the attendant disruption of business models, the Commission should take no action(s) that directly or indirectly lower real CPE levels or otherwise decrease the regulatory supports for Canadian content.

4. In this context, we would reiterate the comments we have made in previous proceedings before the Commission with respect to the recent history of CPE and programs of national interest (PNI). Much of the current framework for CPE, and in particular the levels at which it was set for broadcasters in the large English-language broadcast groups that dominate the English market,[1] was laid out in Broadcasting Regulatory Policy CRTC 2010-167 (the Group Policy).[2] Preceding the Group Policy was Public Notice CRTC 1999-97, entitled, *Building on success - A policy framework for Canadian television* (the 1999 TV Policy). In a paper prepared for the 15th Biennial National Conference: New Developments in Communications Law and Policy, Professor Douglas Barrett, following interviews with 16 industry veterans, discussed the 1999 TV Policy as follows:

[1] E.g. Bell Media, Corus Entertainment, and Rogers Media together accounted for nearly 85% of tuning share in the English market in 2017. See Communications Monitoring Report, 2018, CRTC, Infographic 9.2.

[2] Broadcasting Regulatory Policy CRTC 2010-167, *A group-based approach to the licensing of private television services*.

> Suffice to say, [the 1999 TV Policy] is one of the most bitterly controversial decisions on record. At a recent industry conference the [then] Chair said simply that the approach set out in the policy "had not worked".
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> The part of the policy that got everyone steamed involved the removal of all previous requirements for expenditures on Canadian programming and their replacement with a regime requiring a minimum of 8 hours per week of "priority programming". Further, a related policy release defined priority programming in a manner that gave wide flexibility and latitude to broadcasters to avoid costly commitments to the carriage of such categories as drama and documentaries by, for example, including entertainment magazine programming in the definition. In addition, the Commission reinforced its definition of prime time as running from 7pm to 11pm, permitting the scheduling of priority programming in the shoulder time period before 8:00pm.[3]

5. The WGC was among those who were "steamed". In our view, one of the key outcomes of the 1999 TV Policy was that broadcasters, in general, focused on less expensive Canadian programming in order to fill hours to meet the exhibition requirements. If the Commission in 1999 had hoped that the requirement to dedicate lucrative peak-viewing time slots to Canadian programming would incent broadcasters to maximize the quality and value of that programming by robustly investing in it, that hope was frustrated. Instead, broadcasters generally spent as little as they thought feasible and directed the results to shoulder periods and weekends. As a result, far less was invested in Canadian programming than what would be considered optimal. The crucial point is that in the lead-up to the Group Policy in 2010, broadcasters were *under*spending, and this was a key component of what "had not worked" about the 1999 TV Policy. And it was this very underinvestment that was to effectively become the benchmark for what followed.

6. In the WGC's view, the Group Policy, and its focus on expenditures, was an improvement over the 1999 TV Policy. The Commission set minimum spending by broadcasters on Canadian programming as a percentage of broadcasters' revenue. Those percentages were set, however, based on the historical underspending in the years prior. As stated in the *Group-based licence renewals for English-language television groups – Introductory decision*, in which the Group Policy was implemented:

> In the Commission's view, the group-based policy clearly contemplates that CPE requirements for conventional television stations be set at a specific level throughout the licence term. <u>This level should be consistent with historical spending by the group</u>…
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> …. Having taken into consideration both the financial information submitted by the groups as well as the various evidence and proposals submitted by the groups and interveners, the Commission continues to be of the view that a group CPE level of 30% would be appropriate for each of the designated groups. <u>This level is consistent with historical expenditures</u>, ensures substantial stable funding for Canadian programming, and places a reasonable limit on foreign programming expenditures.

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[3] Douglas Barrett, Nicholas Mills, "Top Ten Game Changing CRTC Decisions", 15th Biennial National Conference: New Developments in Communications Law and Policy (A National Symposium of The Law Society of Upper Canada and the Media and Communications Law section of The Canadian Bar Association), April 1, 2010, pg. 8-14.

> … Having examined the financial information submitted by the designated groups as well as the proposals and evidence submitted by interveners, the Commission considers that a PNI expenditure level of 5% would be appropriate for the Bell Media group and the Shaw Media group, and that a PNI expenditure level of 9% would be appropriate for the Corus group. In each case, the Commission has taken into consideration the historical PNI expenditures spanning the 2008-2009, 2009-2010 and 2010-2011 broadcast years and rounded these expenditures down to the nearest percentage point.[4]

7. As such, the CPE levels set by the Commission in 2011 were based on historical expenditures. But these historical expenditures were those made during the term of the 1999 TV Policy, during which time broadcasters were underinvesting. This allowed for lower broadcaster spending minimums than what many, included the Commission itself, considered ideal. Compounding this was that these years also coincided with a major drop in television advertising revenue as a consequence of the recession of the late 2000s and early 2010s, which itself followed the worldwide financial crisis of 2007-2008. Basing CPE on historical spending during this period effectively resulted in a "double whammy" which depressed spending levels significantly from where they could and should have been.

8. Nevertheless, the Commission clearly believed that these requirements were a starting point to get to *increased* spending on Canadian programming. The Commission believed that growth in Canadian programming spending going forward would be achieved through rising broadcasting revenues, which would finally rectify the problems wrought by the 1999 TV Policy:

> While this percentage level will remain fixed over the licence term, the dollar value of this CPE requirement will **increase** as conventional television station revenues increase, and will not be limited or offset in any way by increases in specialty and pay services revenues. Similarly, specialty and pay services will continue to have fixed CPE percentage levels, which also represent dollar values that will increase as revenues increase, without a limitation or offset related to conventional television station revenues. In the Commission's view, this method is the most likely to result in a **greater** overall contribution to Canadian programming by each of the groups.[5]

9. Unfortunately, this did not work out as intended. Broadcaster revenues have generally not increased significantly, and in fact have broadly declined.[6] As such, CPE now represents a policy support that is modest at best given current levels. Any *de facto* reduction of those levels, particularly through the "watering down" of the CPE category itself, threatens Canadian programming, and as such should be resisted by the Commission. In other words: *Do no harm*.

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[4] Broadcasting Decision CRTC 2011-441, paras. 21, 29, and 48. Emphasis added.

[5] Broadcasting Decision CRTC 2011-441: *Group-based licence renewals for English-language television groups – Introductory decision*, para. 22. Emphasis added.

[6] E.g. Mota, Mario, Boon Dog Professional Services, *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); Canadian Media Producers Association (CMPA); Directors Guild of Canada (DGC); and Writers Guild of Canada (WGC), August 2016, https://www.wgc.ca/sites/default/files/resource/2018-09/Analysis%20of%20CPE%20and%20PNI%20Proposals_Group%20Licence%20Renewals_Boon%20Dog%20Report_August%2015%202016_FINAL.pdf.

Platform neutrality

10. Another principle that should guide the updating of the CPE policy by the Commission is platform neutrality. As the Commission itself has noted in its report, *Harnessing Change: The Future of Programming Distribution in Canada*,[7] distribution and consumption is moving from traditional, regulated broadcast platforms to digital, online platforms. It is a near-certainty that this move will continue over the short-to-medium term, with the great likelihood that a very significant portion—likely the majority, and perhaps the entirety—of programming distribution and consumption in Canada will exist on online platforms over the course of the next decade. CPE, if it is to continue to remain relevant as a regulatory tool, must move with it.

11. This is not to say that perfect regulatory symmetry must be accomplished in this proceeding. The WGC is aware of the work of the Broadcasting and Telecommunications Legislative Review Panel, and cognizant that the full suite of tools necessary to accomplish a truly platform-neutral approach to broadcasting regulation may require the revision of the *Broadcasting Act* and the *Telecommunications Act*, and related legislation. Certainly, the WGC is not proposing that the Commission seek to achieve regulatory parity at the cost of maintaining CPE spending, in contravention of our primary principle expressed above: "Do No Harm". What we are saying is that, to the extent that the Commission can move the regulatory model—and those players currently working in the traditional broadcasting space—towards a platform-neutral approach to Canadian content spending, distribution, and exhibition, we would support that.

Genre-specific impacts

12. Finally, the WGC would ask the Commission to keep the different needs of different genres of Canadian programming in mind, particularly as it pertains to PNI. It may be tempting to think of Canadian programming as a single "block" of content, subject to the same set of market realities, and therefore responsive to the same regulatory tools. However, existing Commission policies recognize that this is not the case. PNI has been recognized by the Commission insofar as there is "a continuing need for regulatory support for key genres of Canadian programming".[8] Similarly, the group-based licensing approach itself excludes national news and sports services from "designated groups", since those services do not require the same type of regulatory intervention.[9] These distinctions are likely to extend to online platforms, since it is generally the nature of the programming itself that gives rise to them, and not the nature of the platforms necessarily. In other words, Canadian drama programming will remain expensive, risky, and difficult to finance whether it's on a traditional broadcast platform or an online platform; national sports programming will likely remain lucrative whether it's on a BDU-carried sports channel or an OTT sports platform like DAZN.[10] These distinctions should be kept in mind.

[7] https://crtc.gc.ca/eng/publications/s15/
[8] The Group Policy, para. 71.
[9] The Group Policy, paras. 120-121.
[10] https://watch.dazn.com/en-CA/sports/

Q2. What impact would changes to the CPE policy have on the Canadian television programming production and distribution industries?

13. The impact will depend on the nature of the changes made to the policy. See the WGC's comments below for further comment.

Q3. How can the Commission's CPE policy incent innovation in the production of Canadian programming and its distribution in Canada and abroad?

14. In order to answer this question, we must first ask what is meant by "innovation" and in what context. Innovation can prove difficult to define.[11] One dictionary definition is, "A new method, idea, product, etc.".[12] This definition, however, says nothing about the extent to which such new method, idea, product, etc., is successful or desirable. The Commission's question implies that innovation should be incented, which in turn implies that such innovation would be desirable and/or result in a desirable outcome. This, in turn, begs the question of what outcome(s) is/are being sought, and/or what type of outcome(s) would be desirable. Who should benefit from such innovation, and what tradeoffs might be considered in achieving that benefit, if any?

15. There is also the question of what *type* of innovation the Commission hopes to incent. Technological innovation, such as the creation of new technology to facilitate the production and/or distribution of Canadian programming? What would examples of such innovation of the past include? The development of high-definition production equipment and broadcasting standards? The creation of non-linear editing tools that replaced tape-to-tape and the physical cutting of film? The technical processes of streaming video? Or does the Commission seek to incent innovation in business models, such as the shift to subscription video-on-demand via the Internet, currently used by over-the-top (OTT) services like Netflix and Crave? Or is the Commission interested in creative/artistic innovation, past examples of which might include early montage techniques of silent-era Soviet filmmakers like Sergei Eisenstein,[13] the long-take style of Japanese filmmaker Yasujirō Ozu,[14] or long-form, serialized narratives and character/thematic explorations of "Golden Age of TV" shows like *The Sopranos*?[15]

16. If the latter, the WGC is of the view that such innovation can only come from creative artists themselves, like Eisenstein, Ozu, or David Chase, and the best way to incent such innovation in Canada is to provide Canadian artists with the resources necessary to experiment and create in their medium. In programming, this means primarily screenwriters and showrunners—like those responsible for innovative shows like *The Sopranos* globally—and it means policies like CPE and PNI that give them the opportunities to practice their art and their craft in the creation of television. This is consistent with the position that the WGC has taken in various Commission proceedings, as well as others on cultural policy: Creators create content, and must be supported in doing so.

17. If other types of innovation are sought—technological innovation, business model innovation, or something else—then additional clarity by the Commission would be of assistance. The WGC does not

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[11] https://en.wikipedia.org/wiki/Innovation#Definition
[12] https://en.oxforddictionaries.com/definition/innovation
[13] https://en.wikipedia.org/wiki/Soviet_montage_theory
[14] https://en.wikipedia.org/wiki/Yasujir%C5%8D_Ozu#Legacy_and_style
[15] https://en.wikipedia.org/wiki/The_Sopranos#Influence_on_television_industry

have expertise on technological innovation, and innovation in business models often appears to follow technology and/or creative innovation.

18. The WGC is concerned, however, that some may seek to confuse innovation with deregulation, or otherwise argue that "innovation", however defined, is somehow being restrained by broadcasting regulation itself. Such arguments sometimes use concepts like "innovation", "flexibility", and "deregulation" as if they are closely related, if not interchangeable. The WGC would strongly disagree with such an approach. For reasons that we have expressed in other proceedings, regulatory tools like CPE and PNI are essential to the support of Canadian programming, both within the traditional broadcasting sector and online. We would point out that if the Commission views the expansion of Canadian-owned-and-controlled OTTs as a form of "innovation" that it would like to incent, there is already one example of such a service, shomi, struggling and ultimately failing, entirely outside of the regulatory sphere. Presumably, if Canadian content regulation was a significant barrier to the expansion of Canadian OTT services, shomi would have succeeded, since it operated entirely free of such regulation. The WGC would expect to disagree with any argument that seeks to negatively link the availability of Canadian OTT options with Canadian content regulation.

19. Finally, the Commission may wish to seek the experience of the Canada Media Fund (CMF) in this respect. In 2010, the CMF launched with its "Experimental Stream" of content funding, which sought to "support Canadian interactive digital media content and application software that is innovative and leading-edge".[16] The CMF chose not to define "innovation" at that time,[17] and has since made changes to the program to actually *reduce* the emphasis on innovation, seemingly due to the difficulty of any sector to create something truly new and ground-breaking every single year.[18] The CMF's experience may help to inform the Commission on the challenges of seeking innovation as a public policy objective.

Are there ways to incent innovation on digital media platforms in particular?

20. Consistent with our comments above, the Commission can expand policies like CPE and PNI, that give screenwriters and showrunners the opportunities to practice their art and their craft in the creation of Canadian programming, to digital media platforms.

How can the Commission's CPE policy incent agreements and partnerships to facilitate the export of Canadian content?

21. The WGC is not aware of a particular way in which the CPE policy can incent agreements and partnerships to facilitate the export of Canadian content. The content market itself incents export, since export represents potential additional sales of programming, with additional revenues to the

[16] CMF Experimental Stream Guidelines, s. 2.1, March, 2010, https://www.cmf-fmc.ca/en-ca/global-assets/general/program-archives/guidelines-business-policies-2010-11.aspx.

[17] CMF Experimental Stream Guidelines, s. 3.2.2.2, March, 2010, https://www.cmf-fmc.ca/en-ca/global-assets/general/program-archives/guidelines-business-policies-2010-11.aspx.

[18] E.g. the CMF Experimental Stream initially consisted of one program, in which projects were evaluated according to an "Evaluation Matrix" which assigned a 40% weighting—the highest-weighted criterion—to "Innovation and advancement. See CMF Experimental Stream Guidelines, s. 2.4, March, 2010. Now, the Experimental Stream has multiple programs, with funding split between them, including the Commercial Projects Program, which does not include "innovation" as an evaluation criterion. See https://www.cmf-fmc.ca/programs-deadlines/programs/commercial-projects-program.

rights holders, which is an incentive to pursue such export sales. WGC members benefit from such sales, either to the extent that they incent more production and/or higher production budgets, or through royalties on such Distributors' Gross Revenue as set out in the collective agreement between producers and our members,[19] or both. As such, the WGC believes there are already a number of market-based incentives in place to pursue export of Canadian content, and we are aware of no regulatory barriers to this in the CPE policy. Again, our challenge is providing sufficient opportunities for Canadian creators to make quality Canadian content. Great Canadian content is its own best case for export.

Q5. Should the Commission consider expenditures made for digital media programming as eligible expenditures for the purpose of meeting the CPE requirements of licensed television services?

22. Subject to our comments below on the meaning of "digital media programming" and the expenditures that would be eligible, yes. To the extent that CPE on digital media programming essentially refers to existing CPE that is distributed on digital, online platforms, the WGC believes that the Commission should consider such expenditures as eligible for the purpose of meeting the CPE requirements of licensed television services. The WGC believes that such consideration represents an opportunity for the Commission to "move the regulatory yardsticks" in the direction that the industry is already heading, as noted above: from traditional broadcast platforms to online digital ones.

    If yes, how might the Commission adapt its current CPE policy to allow for this?

23. See our comments below.

    Also, should the Commission establish a cap on the CPE requirements of licensed television services that can be met using expenditures made for digital media programming? If yes, what should be the percentage of the requirement that can be met using expenditures made for digital media programming?

24. Subject to our comments below, the WGC is not aware of a need for a cap to be placed on CPE requirements in this way.

Q6. If the Commission decides to consider digital media programming expenditures as eligible CPE, should eligibility be limited to certain types of content? For example, should eligibility be limited to expenditures made for Canadian programming certified under the existing Canadian content certification rules?

25. Yes. If the Commission decides to consider digital media programming expenditures as eligible CPE, it is absolutely essential that eligibility be limited to expenditures made for Canadian programming certified under the existing Canadian content certification rules.

26. The WGC would reiterate here our comments above regarding the history of CPE obligations and the principle of "First, Do No Harm". If the Commission expands the scope of expenditures that can count towards eligible CPE, the result, all else being equal, will be the actual or potential reduction of expenditures related to what is currently Canadian programming under the existing policy. Private, English-language broadcasters have historically demonstrated a general unwillingness to spend

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[19] WGC-CMPA-AQPM Independent Production Agreement (IPA 2015-2017), Article C11, https://www.wgc.ca/screenwriters/resources/agreements/ipa2015_2017/article_c11.

meaningfully more on Canadian programming than they are required to by regulation.[20] As such, it is fair to say that those broadcasters treat CPE requirements as a regulatory "cost of doing business", and would otherwise choose to direct those expenditures to other existing costs. It is reasonable to conclude that if the Commission expands CPE to allow broadcasters to claim expenditures they are already making, they will do so, counting such expenditures towards their regulatory minimum spending obligations, and simultaneously reducing their spending on existing Canadian programming expenditures, so as to maintain their overall CPE spending at the regulatory minimum.

27. The WGC is concerned that there may be any number of such costs that broadcasters may seek to claim under CPE if permitted by the Commission. These costs could include: computer programming/coding, interface design, search algorithm design, data/audience analytics, or other technical costs for the development and maintenance of websites and/or streaming platforms themselves; bandwidth costs related to the server, hosting and traffic on their websites and/or platforms, some or all of which could constitute self-dealing with the telecommunications arm(s) of the same company when the company is vertically integrated; software purchase or subscription costs; shares of corporate overhead shared with other, non-content-production activities; and, development and creation of interactive digital media (IDM), such as videogames or other applications.

28. Some of these costs would be analogous to certain broadcasting costs that have never been considered legitimate Canadian programming expenditures. For example, costs related to hosting and maintaining a website or streaming platform could be seen as analogous to maintaining over-the-air broadcast transmitters, or other transmission or distribution infrastructure, that is necessary to facilitate program transmission and distribution, but does not relate to program production itself. Others of these costs could be seen as more analogous to program production, such as the development and creation of IDM content, but which would significantly increase the scope of CPE, and thereby significantly dilute it, reducing spending on traditional audiovisual Canadian programming. If the Commission decided that support for IDM would advance the objectives of the Act, or is otherwise within its mandate, then we submit it should initiate a separate proceeding to determine what kind and level of support for such content is necessary. In the absence of such a proceeding, the Commission should not, intentionally or inadvertently, reduce support to Canadian content, as currently encompassed by the Act and the CPE policy framework, through the expansion of the meaning of CPE or otherwise.

29. The WGC can again suggest that the Commission may wish to seek the experience and expertise of the CMF in examining the scope of potential costs that broadcasters might seek to claim as CPE should digital media programming expenditures be considered as eligible CPE.

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[20] E.g. Mota, Mario, Boon Dog Professional Services, *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); Canadian Media Producers Association (CMPA); Directors Guild of Canada (DGC); and Writers Guild of Canada (WGC), August 2016, https://www.wgc.ca/sites/default/files/resource/2018-09/Analysis%20of%20CPE%20and%20PNI%20Proposals_Group%20Licence%20Renewals_Boon%20Dog%20Report_August%2015%202016_FINAL.pdf.

30. "CPE" stands for Canadian *programming* expenditures, and CPE must remain focused on Canadian *programming*, under its current meaning, if it is to maintain its ability to support that programming and, in the process, the furtherance of the objectives of the Act that such programming represents.

Q7. Should expenditures relating to the repurposing of certified Canadian programming originally made for traditional platforms also be considered?

31. The WGC understands "repurposing" in this context to essentially refer to digitizing content that was produced and which current exists in analogue form so that it may be distributed and viewed on digital platforms. If this is correct, then the WGC would answer this question in the negative. The WGC sees no reason for expenditures relating to the repurposing of certified Canadian programming originally made for traditional platforms to be considered as CPE.

32. In the past, content produced using analogue technologies such as film and videotape had to be "digitized" in order to be made accessible on digital platforms. We are now, however, more than a decade beyond that time. Today, virtually everything in the production process is digital, or is transferred to digital in the normal course of production. Recent content that is "originally made for traditional platforms" is still digital, because traditional platforms are now digital, even over-the-air broadcasting. As for programming that was made well before that, much has already been digitized, either by broadcasters or online platforms themselves,[21] or in partnership with funders like the CMF.[22] In regards to whatever Canadian programming that may remain only in analogue form, if any, it is the WGC's understanding that digitization costs are low and falling further, making any additional incentive from the Commission to repurpose such content unnecessary. The WGC believes that allowing "repurposing" costs as CPE runs the risk of unduly diluting CPE as a category, and that this risk is greater than not allowing it would risk keeping popular, high-quality Canadian programming from being accessed by Canadians. Indeed, it is likely that even the regulatory process of deciding the criteria used to determine eligibility of repurposing costs could consume more time and resources of the Commission and the broadcasting sector than it would benefit the availability of such content. In short, it is our view that "repurposing" content is not a problem in need of a regulatory solution.

33. If the WGC is incorrect in its understanding, and by "repurposing" the Commission means something else, then we would require further clarification in order to answer the question appropriately.

Q8. Should the Commission limit or specify the types of digital media broadcasting undertakings for which expenditures on digital media programming would be considered eligible?

34. In general, the WGC considers it more important that the Commission limit and specify the types of *programming* for which expenditures would be considered eligible than that it do so with respect to digital media broadcasting *undertakings*. We feel that this is consistent with the principle of platform neutrality, as suggested above.

    If yes, what criteria should be used to determine eligibility?

35. See Q9 below.

[21] E.g. *The Kids in the Hall* (1989-1995) is currently available on CBC Gem (https://gem.cbc.ca/season/kids-in-the-hall/season-1/fb8e4d85-bf7e-4a5f-bc1d-bd4b1467fea2).

[22] E.g. YouTube channel Encore + (https://www.youtube.com/channel/UCH9jfFz0VzO-sqfh_TLVT7A).

How should the Commission implement such a limit? For example, should it establish a new category of eligible digital media broadcasting undertakings?

36. See Q9 below.

Q9. In calculating the CPE requirements imposed on licensed television services, should the Commission also take into consideration the revenues of those digital media broadcasting undertakings that claim expenditures associated with digital media programming towards meeting their CPE requirements?

37. Yes. The WGC considers it imperative that if expenditures associated with digital media programming can be claimed towards meeting CPE requirements, then the Commission must also take into consideration the revenues of those digital media broadcasting undertakings.

38. CPE obligations are generally calculated as a percentage of gross revenues from broadcasting.[23] Under this approach, changes to the base upon which that percentage is calculated affect the ultimate CPE obligation. Allowing broadcasters to claim previously exempt expenses on digital platforms towards CPE, but also allowing them to keep the revenues generated by those platforms as exempt, will lower the dollar value of CPE. It may also inadvertently encourage broadcasters to abandon traditional platforms more quickly, while also providing the CRTC's tacit acknowledgement that a two-tiered system is normal and acceptable.

39. This is particularly important given that recently published Commission data shows that digital media revenues of 19 private commercial broadcasters had year-to-year growth of 40% in 2017, and 25% in 2018, to over $412 million that year.[24] Revenues and expenditures are inextricably linked under the current CPE policy framework, so any expansion of one to digital online platforms must be accompanied by the other, particularly when they are each trending in opposite directions.

If yes, how should the Commission define the revenues of digital media broadcasting undertakings?

40. In many cases, the definition of revenues of digital media broadcasting undertakings should be relatively clear. Many such undertakings generate revenues through advertising on their platforms, either as website banner ads, video pre-roll, pop-ups, or traditional commercial breaks. It seems evident to us that this revenue should be included in the revenues ascribed to digital media broadcasting undertakings for the purposes of the CPE policy. Other undertakings charge a subscription fee to access the content on the platform. It seems evident to us that this revenue should also be included in the revenues ascribed to digital media broadcasting undertakings for the purposes of the CPE policy. Yet other undertakings may charge customers on a transactional basis for each piece of content they download, stream, or otherwise access on the platform. It again seems evident to us this revenue should also be included.

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[23] Broadcasting Decision CRTC 2011-441: *Group-based licence renewals for English-language television groups – Introductory decision*, paras. 13-61.

[24] Broadcasting Commission Letter addressed to the Distribution List, 21 June 2019, Reference: 1011-NOC2019-0091, *Subject: Responses to the request for information issued as part of Call for comments on the Commission's policy on Canadian programming expenditures (Broadcasting Notice of Consultation CRTC 2019-91)*.

41. There may be other forms of revenue not included above which nevertheless relate to, and are generated by, the digital media broadcasting undertaking. If so, the WGC would think that these would be best described by the licensed television services and digital media broadcasting undertakings themselves. As such, we look forward to reading their responses and potentially providing our comments in the reply phase of this proceeding.

Also, comment on the possibility of allowing licensees to opt-in to an approach in which they would be permitted to count expenditures made for digital media programming as eligible CPE only if their revenues from both traditional broadcasting undertakings and the above-noted digital media broadcasting undertakings are included in the calculation of their CPE requirements.

42. The WGC considers this question to sit at the theoretical heart of this proceeding, because it raises the question of whether expenditures made for digital media programming: a) *must* be *excluded* from CPE; b) should be subject to an *opt-in approach*, provided that the benefits of opting in are matched with appropriate obligations; or, c) *must* be *included* in CPE.

43. In speaking as it does throughout the Notice for this proceeding of "eligibility" to count expenditures made for digital media programming, the Commission may be contemplating that this could or should be a choice to be made at the discretion of licensees. At the same time, it does not appear to us that the Commission has explicitly stated its intentions to that effect. As such, the WGC feels it is an open question as to which of the above three options—"a)", "b)", or "c)"—is appropriate.

44. It has been the WGC's longstanding position that regulation to support the production and distribution of Canadian programming must be extended to the online realm[25] and, as such, the WGC believes that "Option C)" is appropriate.

45. Generally speaking, neither broadcast regulation broadly, nor CPE obligations specifically, are or have been treated as optional. The *Broadcasting Act* contains a number of mandatory components, such as that the Canadian broadcasting system shall be effectively owned and controlled by Canadians,[26] each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming,[27] and the Commission shall regulate and supervise all aspects of the Canadian broadcasting system.[28] The Group Policy sets out mandatory CPE and PNI spending obligations as conditions of a licence to broadcast in Canada.[29] Failure to abide by these conditions of licence can result in the revocation of a broadcast licence.[30] In the WGC's view, it would be appropriate for the Commission to determine whether the expansion of CPE requirements to digital media broadcasting undertakings would further the objectives of the Act and, if so, then it should do so on a compulsory basis. The WGC is of the view that CPE requirements for digital media programming would indeed further the objectives of the Act, and so the Commission should proceed accordingly.

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[25] E.g. WGC Submission to 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.*
[26] S. 3(1)(a).
[27] S. 3(1)(e).
[28] S. 5(1).
[29] Broadcasting Decision CRTC 2011-441: *Group-based licence renewals for English-language television groups – Introductory decision.*
[30] S. 9(1)(e).

46. The WGC is concerned than an opt-in approach could have a number of negative impacts. Firstly, it would reinforce the continuation of a two-tiered approach in an increasingly converged broadcast/media ecosystem. While the WGC understands that the Commission and the federal government await the outcome of the Broadcasting and Telecommunications Legislative Review process for a holistic approach to cultural content regulation in the digital era, the present proceeding gives the Commission an opportunity to start moving in that direction.

47. This is of particular concern in light of data recently published by the Commission in this proceeding. In the Notice of Consultation for this proceeding, the Commission issued a request for information to Canadian broadcasters that operate both traditional and digital media broadcasting undertakings, requesting that they submit data on the revenues and expenditures associated with their digital media broadcasting activities, including the online windows associated with licensed services and any other digital media undertakings. As noted above, in a recent letter to the distribution list in this proceeding,[31] the Commission published some of the collected data on an aggregated basis, which showed that the digital media revenues of 19 reporting private commercial broadcasters was over $412 million in 2018, and these revenues had year-to-year growth of 40% in 2017, and 25% in 2018. These are significant numbers, which show that meaningful revenues are being generated in digital media. This can no longer be ignored.

48. Secondly, the extended maintenance of an effectively unregulated digital space may inadvertently encourage licensees to grow their presence there, while simultaneously shrinking it on traditional broadcast. While online growth is expected anyway, a two-tiered approach could hasten this trend, not only reducing services available to those who still rely upon the traditional system, but also reducing spending on Canadian programming and, in turn, setting a new, lower bar for what levels of Canadian programming are appropriate in the future.

49. Finally, the allocation of program expenditures and revenues across regulated and unregulated platforms, already murky, could become more so. Licensees increasingly obtain program rights for a variety of platforms, both for traditional broadcasting undertakings and for digital media broadcasting undertakings. Notwithstanding the data in the Commission's 21 June letter noted above, there appears to be a lack of clarity on how such expenditures—and associated revenues—are allocated across the corporate ownership group, and across platforms, particularly as they relate to CPE. Broadcasters themselves appear to acknowledge this, saying in this proceeding that they "have not tracked digital expenses on a per service/platform basis, nor are many broadcasters likely to have tracked them as between CPE and non-CPE categories".[32] With respect to Broadcasting Notice of Consultation 2019-90, the Canadian Association of Broadcasters, in comments that were supported by other broadcasters, said:

> Expenses for digital are not generally distinctly identifiable or accounted for, as most of the resources employed by broadcasters to generate and deliver content are materially the same across linear and digital platforms. In fact, for most broadcasters, digital media

[31] Broadcasting Commission Letter addressed to the Distribution List, 21 June 2019, Reference: 1011-NOC2019-0091, *Subject: Responses to the request for information issued as part of Call for comments on the Commission's policy on Canadian programming expenditures (Broadcasting Notice of Consultation CRTC 2019-91)*.

[32] Response to request for information from the Broadcasters – 17 April 2019, https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?Key=226934&Type=Notice, para. 4.

activities merely leverage off their pre-existing cost structure. If they did not engage in any digital activities, most broadcasters would still generally employ the same resources to deliver content across linear platforms.[33]

50. Such statements raise questions not only about how expenses are allocated across traditional and non-traditional/digital platforms—e.g. if broadcasters don't identify and account for such expenses, how can they be certain that they are "generally the same" as they would be without digital activities?—but also about digital revenue which, as discussed above, is an essential component of the CPE formula. Indeed, these comments alone raise significant concerns about how *existing* CPE requirements are being dealt with in a multi-platform universe. Treating CPE consistently across all platforms would not only improve clarity, but also better reflect how these undertakings do business today, which is essential to ensuring that CPE is and remains an effective policy for supporting Canadian programming.

51. The WGC is cognizant of the regulatory asymmetries that exist now, and may continue to exist in any scenario short of a complete review of the applicable legislation. We encourage the Commission, however, to prioritize the support of Canadian programming, as arguably the central *raison d'etre* of the *Broadcasting Act*, over any such (temporary) asymmetries.

52. If the Commission does choose an opt-in approach, however, then we would reiterate our comments above. If licensees are allowed to opt-in to an approach in which they would be permitted to count expenditures made for digital media programming as eligible CPE, then this must be done only if their revenues from both traditional broadcasting undertakings and the above-noted digital media broadcasting undertakings are included in the calculation of their CPE requirements.

Q10. How should the Commission implement such changes to its CPE policy, and when should those changes take effect?

53. The WGC is aware of no impediment to implementing such changes as soon as the policy has been determined.

Q11. What are the industry's current practices or methodologies for amortization? Provide examples of different types of amortization schedules used based on a range of circumstances.

54. Amortization of programming expenditures in this context is generally done by broadcasters. As such, current practices or methodologies for amortization are best known and understood by broadcasters, and the WGC therefore believes broadcasters are best positioned to answer this question. As noted below, the WGC has asked questions about broadcaster amortization practices and methodologies in the past, and looks forward to reading broadcasters' responses to this question.

Q12. Should the Commission provide more guidelines on a standard practice or methodology for amortizing programming expenditures?

55. Yes. The WGC believes that amortization of CPE by broadcasters should be clearer and more transparent, so that the WGC, and other stakeholders and members of the public, can better

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[33] Submission of the Canadian Association of Broadcasters to Broadcasting Notice of Consultation CRTC 2019-90: *Call for comments on a new, annual digital media survey*, Appendix 1.

understand and comment upon how amortization affects reporting CPE, and how it is being spent year over year.

If yes, what should be the standard practice or methodology for amortizing programming expenditures?

56. The WGC would like to reiterate the comments we made with respect to Broadcasting Notice of Consultation CRTC 2018-488, on the "Production Report". In that proceeding, the Commission sought comment on a potential report that would include broadcaster spending on "Original, First-run Programs". While the context of the current proceeding may be slightly different—and, perhaps, broader—we believe our comments in the Production Report proceeding remain relevant here. Indeed, on its face, it seems to us that the issue of amortization most affects the distinction between spending on newly commissioned production, and spending on older, "library content".

57. The WGC also discussed at some length the definition of "original first-run" and/or "new commissioned" in the group-based licensing renewal proceedings (GBL Renewals).[34] Our comments in that proceeding were perhaps best summarized and expressed in our final written submission to that process.[35] We believe that the same question at issue in those proceedings 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.

58. 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.

59. 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 has also aired on Bravo in the months and years following January-March, 2017. These airings are presumably *not*

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[34] Broadcasting Notice of Consultation CRTC 2016-225: *Renewal of television licences held by large English- and French-language ownership groups*.

[35] 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.

"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.

60. As such, the WGC presumes that, with respect to CPE, 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".[36]

61. 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>.[37]

62. At the heart of the regulatory framework to achieve this outcome is spending requirements on Canadian programming, or CPE, as well as spending requirements on 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, then the WGC agrees with this approach.

63. 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,[38] broadcasters generally pay out a licence fee or 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

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[36] Broadcasting Regulatory Policy CRTC 2015-86, para. 191. Emphasis added.

[37] The Group Policy, para. 7. Emphasis added.

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

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 program's 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.*[39]

64. 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.)

65. 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:
>
> > "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."

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

> 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.[40]

66. Rogers Media Inc. expressed a similar view.[41] 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.[42]

67. 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,[43] and as such these amortization issues will remain outstanding.

68. 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' 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 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

[40] Application of Corus Entertainment Inc., "Responses to Request for Additional Information – June 10th, 2016", Appendix A, pg. 23.
[41] Rogers Media Inc. – Licence renewal applications – Fourth Response to Deficiency Questions (Application no. 2016-0009-9), pg. 7.
[42] 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.
[43] If not, then the problems would appear to arise regarding reconciliation of Production Report data and that of other reports.

the amortization schedule to “reflect the pattern in which the asset’s future economic benefits are expected to be consumed”[44] 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: $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.

69. 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.

70. 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 and creative communities, 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.

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

Q13. How are revenue and expense allocations currently made between licensed television services and digital media broadcasting undertakings?

71. The WGC understands that this is a question best answered by licensed television services and digital media broadcasting undertakings. As such, we look forward to reading their responses and potentially providing our comments in the reply phase of this proceeding.

Q14. Is there a need, going forward, for guidelines or standard practices relating to such allocations?

72. As we understand this question to follow from the one above, the WGC will await the responses of licensed television services and digital media broadcasting undertakings, and looks forward to commenting upon reading their responses.

Q15. Should the Commission require that the allocation of CPE by platform be proportional to revenues garnered on each platform?

73. The WGC does not consider such a requirement necessary. In the group-based approach, for example, the Commission allows broadcasters the flexibility to allocate CPE across services which are part of that group. The WGC considers that the Commission could take an analogous approach with respect to licensed television services and digital media broadcasting undertakings. Indeed, given the potential for viewership, and associated revenues and expenditures, to eventually migrate from traditional services to digital media broadcasting undertakings, it seems unnecessary or even counterproductive for the Commission to limit CPE on the latter, and would likely be impossible for the Commission to accurately predict just when or how that migration would take place.

Q16. What has the measure relating to CPE under-expenditures allowed broadcasters to achieve as part of the group-based approach? Are there similar or different benefits achieved by permitting the same flexibility to other services not operating under the group-based approach?

74. The WGC understands that this is a question best answered by licensed television services and digital media broadcasting undertakings. As such, we look forward to reading their responses and potentially providing our comments in the reply phase of this proceeding.

Q17. Does the measure relating to CPE under-expenditures continue to be appropriate?

75. The WGC understands that this is a question best answered by licensed television services and digital media broadcasting undertakings. As such, we look forward to reading their responses and potentially providing our comments in the reply phase of this proceeding.

Q19. Should the Commission establish an open list (i.e., a non-exhaustive list) of types of expenditures that are either eligible or ineligible as CPE?

76. Yes. In particular, the WGC believes that the Commission should maintain a list of expenditures that are ineligible as CPE that is consistent with our comments under Q6 above.

    If yes, which types of expenditures should be considered eligible as CPE, and which types of expenditures should be considered ineligible as CPE?

77. See our comments above under Q6. In particular, the following expenditures should be ineligible: computer programming/coding, interface design, search algorithm design, data/audience analytics, or other technical costs for the development and maintenance of websites and/or streaming platforms themselves; bandwidth costs related to the server, hosting and traffic on their websites and/or platforms, some or all of which could constitute self-dealing with the telecommunications arm(s) of the same company, especially when the company is vertically integrated; software purchase or subscription costs; shares of corporate overhead shared with other, non-content-production activities; and, development and creation of interactive digital media (IDM), such as videogames or other applications.

<u>Q20. Should expenditures made towards the promotion of a certified Canadian production be eligible as CPE?</u>

78. The WGC generally does not support CPE being used to support the promotion of Canadian production. CPE is a programming expense, not a promotion expense. The WGC recognizes that promotion of programming is an important component of its success. However, to the extent that promotion can be done inexpensively, such as via social media, it is not necessary to include it in CPE, and to the extent that it is expensive, such as via large traditional ad campaigns, it will significantly reduce spending on CPE itself.

79. Consistent with our comments above, it is the WGC's view that current CPE levels are already sub-optimal. The simple reality is that promotion of programming at the scale of large, international productions, such as in the United States, typically involve massive investment, often comparable to that made in the production itself.[45] Given our comments above on the principle of, "First, Do No Harm," the WGC does not recommend a significant expansion of the eligibility of promotional costs, which would necessarily come at the expense of CPE directed to production. In the WGC's view, the best promotion is the production of great content that people want to see.

<u>Q22. Propose a definition of the term "gross revenues" as it relates to a licensed television service for the purpose of calculating CPE requirements.</u>

80. The WGC is not proposing a comprehensive definition at this time, however we do recommend that the Commission include, as part of "gross revenues" for the purposes of calculating CPE requirements, any funding or revenues that broadcasters receive from the Independent Local News Fund (ILNF), or any other fund that may be created in the future. Broadcasters that receive these funds use them, in whole or in part, to fund local news programming, which is in turn claimed as CPE. In the past, the Commission excluded funding received by broadcasters from the Local Programming Improvement Fund (LPIF) and the Small Market Local Programming Fund (SMLPF) from gross revenues for the purpose of calculating CPE requirements. This was unfair because the funds from the LPIF and SMLPF were used to produce local programming that ultimately counted towards meeting CPE requirements. If broadcasters can claim CPE using funding from the ILNF or any other fund, then we submit it is only fair that they must count that funding towards gross revenues.

[45] E.g. the U.S. marketing budget for just the latest season of *Game of Thrones* was reportedly $20 million USD. See https://www.wired.com/story/game-of-thrones-marketing/.

81. Otherwise, the WGC understands that this may be a question better answered by licensed television services and digital media broadcasting undertakings. As such, we look forward to reading their responses and potentially providing our comments in the reply phase of this proceeding.

CONCLUSION

82. The WGC is pleased to provide comments in this proceeding, and we thank the Commission for the opportunity to do so.

Yours very truly,

Maureen Parker
Executive Director

c.c.: Council, WGC

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