



November 4, 2019

Filed Electronically

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

Dear Mr. Doucet:

Re: Application 2019-0957-4: Corus Entertainment Amendment to CPE Requirement

1. 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.
2. In this application, Corus Entertainment Inc. (Corus) requests amendments to a condition of licence attached to its English-language group of services. Specifically, Corus requests an increase of its maximum allowable under-expenditure limit from 5% to 10%, conditional on full payment of its total required Canadian Programming Expenditures (CPE) by the end of the current licence term.¹
3. The WGC **opposes** this request.
4. The Commission has already addressed this issue at the policy level in implementing the group-based policy framework in 2011. It stated:

The Commission agrees that an authorization [to make-up under-expenditures or carry forward over-expenditures] will continue to be a useful tool for groups to manage both CPE and PNI expenditures, particularly in the case of multi-year projects. However, the Commission considers an under- or over-expenditure level of 5% sufficient, especially given that the designated groups will also be granted the flexibility to count CPE on one qualifying service towards another service. In addition, the Commission has clarified the language of the under- or over-expenditure authorizations to indicate that under-expenditures must be made up in the subsequent broadcast year and that over-

¹ Supplementary Brief (Revised 09_30_2019), para. 2.

expenditures beyond 5% will not be credited against CPE requirements in the following broadcast year.²

5. The Commission was clear that 5% was sufficient, particularly given the group-based flexibility to count CPE on one service towards another service in that group. The WGC agrees. The combination of these two forms of flexibility should be sufficient for any broadcaster to effectively manage its CPE obligations. As such, we submit that the Commission has already considered Corus's request at the policy level and rejected it.
6. Corus makes arguments in support of this application that relate to the current circumstances, which Corus appears to suggest are unique or otherwise merit an exception to the general policy. The WGC will address each of these in turn.
7. Corus seeks additional flexibility because, in its words:

...the significant improvement in our broadcasting revenue performance versus budget in F2019 has increased our F2020 CPE requirements dramatically beyond our budgeted expectations. Specifically, Corus' minimum CPE expense in F2020 will be \$23 million greater than originally anticipated in the F2019 budget. That increase takes into account current flexibility to under-expend our CPE requirement by 5 percent.³

8. It may be helpful to put this number in context. According to the Aggregated Annual Returns, Corus spent nearly \$337.5 million on CPE in 2018, reported on an accrual basis. \$23 million therefore represents less than 7% of 2018 spending.⁴ The WGC submits that this is not a large amount in the circumstances, and should not represent a "crisis" or otherwise exceptional amount of money for which Corus requires regulatory relief.
9. Corus further argues that this "dramatic" spike in its CPE requirements will leave it in a more vulnerable financial position for two reasons. Firstly, it would lead to "sub-optimal programming decisions".⁵ Corus argues that it cannot increase budgets for existing programming in a way that

² Broadcasting Decision CRTC 2011-441: *Group-based licence renewals for English-language television groups – Introductory decision*, para. 63.

³ Supplementary Brief (Revised 09_30_2019), para. 20.

⁴ Corus states that due to amortization practices, "a roughly \$67 million increase in Corus' Canadian programming cash investment will be required to achieve a \$23 million CPE increase in F2020." The WGC does not believe this is relevant to the issue at hand. All CPE is measured according to an accrual-based system of accounting, so any increase (or decrease) in CPE obligations is bound to have a different impact on a cash basis. That is the nature of accounting for CPE on an accrual basis—it is "baked in" to the entire system, and comes with pros and cons, like any system. For example, an accrual (amortized) approach also allows Corus to count previous years' cash outlays on Canadian programming towards current CPE obligations, which would not be possible under a cash-based accounting system. We submit that it is preferable to maintain consistency by generally using the same accounting method when comparing numbers, rather than selectively picking and choosing accounting methods depending on the line of argument pursued. As such, we do not feel the \$67 million spending increase, accounted for on a cash basis, is relevant, nor do we believe it is appropriate to compare cash-based numbers to accrual-based numbers.

⁵ Supplementary Brief (Revised 09_30_2019), paras. 26-29.

improves its quality,⁶ and that any new programming would be “rushed and of lower quality”⁷, leading to “an over-supply of single-season shows” and a “glut of programming”,⁸ that are “unlikely [to be] green-lit for subsequent seasons.”⁹

10. The WGC disputes these arguments.

11. For one thing, it is not clear to the WGC why Corus cannot increase budgets for existing programming. As noted above, Corus is contemplating a less-than-7% increase in spending, which would presumably be spread over multiple projects. In the WGC’s experience, production budgets can and do change all the time, sometimes as late as between the initial budget and final costs stages¹⁰—i.e. during production itself. Such budget changes are often made to improve the quality of the programming. It is not clear to us why Corus is claiming that spending increases in this case cannot or will not do the same. On the contrary, in our experience, many production budgets for Canadian programs are tightly budgeted, and therefore could use additional resources if they become available.

12. For another thing, it is not clear to us why Corus cannot commission new programming. Our members generally have plenty of projects that have been, or are ready to be, pitched to broadcasters and go into production. Our members also report that in recent years, Corus has seemed to be “closed for business” when it comes to pitching new shows, reportedly intending to rely upon its existing catalogue to meet CPE obligations. In our view, there is no shortage of good ideas and projects ready to be made. On the contrary, our members report the opposite problem—with so few doors to knock on in Canada, writers are often forced to pitch shows internationally in the face of an increasingly indifferent domestic broadcasting sector.

13. The WGC particularly takes issue with the notion of a ~7% increase in spending by Corus would result in a “glut” of programming, either domestically or internationally. This is frankly absurd. The significant growth of content services over the past decade or so, both on traditional platforms and online, is a testament to the voracious appetite of the market, both at home and abroad, for audiovisual content. Canadian television services alone spent a total of \$4.1 billion on programming expenditures in 2017,¹¹ of which \$23 million represents just 0.56%. Even carving out English programming from that, the percentage is still vanishingly small. And Corus mentions the export potential of this programming at least twice,¹² so the “glut” it refers to must include the international market, which is worth hundreds of billions of dollars. Suffice it to say, that an additional \$23 million investment by Corus in 2020, representing perhaps a few hundredths of one percent of total spending—if that—does not risk flooding the world with a glut of programming.

⁶ Supplementary Brief (Revised 09_30_2019), para. 27.

⁷ Supplementary Brief (Revised 09_30_2019), para. 28.

⁸ Supplementary Brief (Revised 09_30_2019), para. 28.

⁹ Supplementary Brief (Revised 09_30_2019), para. 29.

¹⁰ A “budget” generally refers to the expected costs of a production, typically broken down by line item. It is a spending plan before or during the production process. “Final costs” are what is actually spent on a production, also typically by line item. It is a statement of what was actually spent after the fact.

¹¹ 2018 Communications Monitoring Report, pg. 233.

¹² Supplementary Brief (Revised 09_30_2019), paras. 28, 29.

14. The second reason Corus cites to support its argument that this increase in CPE spending will leave it in a more vulnerable financial position is that it would “stall its progress on debt repayment”.¹³ Corus says it “has moved aggressively to reduce its debt in the past two years,”¹⁴ and that this “focus on debt reduction is deliberate and strategic”.¹⁵ Corus emphasizes that it is a “pure-play Canadian media and content company”¹⁶ that “has no profitable telecommunications or cable distribution business to finance its investments or absorb its losses”.¹⁷
15. Firstly, to the extent that corporate debt and “pure-play” status are problems for Corus, they are problems of Corus’s own making, and of those who ultimately control Corus. Since the creation of Corus in 1999, the Commission has considered Shaw Communications Inc. and Corus to be effectively controlled by the same person, namely Mr. JR Shaw.¹⁸ In 2016, the Commission approved an application by Shaw Communications Inc., on behalf of Shaw Media Inc. and its licensed subsidiaries, for authority to effect a multi-step corporate reorganization by transferring all of Shaw Communications’ shares in Shaw Media to Corus or one of its subsidiaries.¹⁹ Because the Commission determined that “both entities are controlled by Mr. JR Shaw and that the proposed transaction does not constitute a change in effective control of Shaw Media,” there was no application of the Tangible Benefits Policy,²⁰ which would have otherwise operated to provide additional benefits to the Canadian broadcasting system, primarily in the form of new Canadian programming. It was this transaction that resulted in Corus becoming a “pure-play” entity—to the extent that this can actually be said to be true, given that effective control of Corus and Shaw Communications Inc. remains the same—as well as impacting Corus’s debt, ability to pay back other, existing debt, or both. Naturally, Corus’s debt exists due to the decisions of Mr. JR Shaw, Shaw Communications Inc., Corus, or a combination of the above. The same is true with respect to Corus’s relationship, or lack thereof, to a profitable telecommunications or cable distribution business. In short, Corus/Shaw created these issues, and now they are asking the Commission for regulatory relief from the consequences of them.
16. Secondly, corporate debt repayment is not an objective of the *Broadcasting Act*, and we submit it is not something that the Commission need consider a priority. It is true that the Act recognizes that regulation of private networks and programming undertakings should be consistent with the financial and other resources available to them.²¹ That alone, however, does not elevate a particular broadcaster’s strategy of “aggressive” debt repayment into a priority objective for the Commission, and certainly not when compared to the core objective of the Act, which is Canadian programming.
17. Corus’s request demonstrates just how “close to the line” it operates with respect to CPE. In our experience, Corus and other Canadian private English-language broadcasters have long argued that

¹³ Supplementary Brief (Revised 09_30_2019), paras. 30-35.

¹⁴ Supplementary Brief (Revised 09_30_2019), para. 30.

¹⁵ Supplementary Brief (Revised 09_30_2019), para. 32.

¹⁶ Supplementary Brief (Revised 09_30_2019), para. 32.

¹⁷ Supplementary Brief (Revised 09_30_2019), para. 6.

¹⁸ Broadcasting Decision CRTC 2016-110: *Various television services and stations - Corporate reorganization (transfer of shares)*.

¹⁹ *Ibid.*

²⁰ Broadcasting Regulatory Policy CRTC 2014 -459: *Simplified approach to tangible benefits and determining the value of the transaction*.

²¹ Section 3(1)(s).

Canadian programming is “in their DNA”, and as such they would make it regardless of regulation. Yet in this case, Corus is operating so close to the regulatory CPE spending minimum, that a good revenue year resulting in a potential less-than-7% increase in spending is a significant enough problem that they must make this application to the Commission, and request it be dealt with on an expedited basis. Perhaps a good revenue year would not be quite as much of a “problem” for Corus if they truly treated CPE requirements as a floor, not a ceiling, as they so often seem to argue it is.

18. In general, the WGC believes the Commission should be concerned about any broadcaster request to defer regulatory obligations, due to the very volatility that Corus itself refers to. Arguments that boil down to, “Don’t worry, we’ll do it, but later,” should be viewed with significant suspicion when we operate in a sector that is undergoing significant structural change and uncertainty, and the next three years, or less, could very conceivably see channel shut-downs or future revenue declines. The Commission already has experience with trying to ensure compliance with conditions of licence *after* a broadcaster finds itself in financial difficulty, with respect to Super Channel.²² What happens if Corus shuts down, in whole or in part? What happens if Corus sells its services, in whole or in part, and then seeks regulatory relief as an element of that sale? We submit that it’s simpler and safer to hold broadcasters to their obligations when they come due, rather than defer them to an increasingly uncertain future.
19. As such, while the WGC opposes Corus’s requests in this application in full, if the Commission does wish to grant Corus additional flexibility, it should be for a deferment to the following broadcasting year only, and *not* to the end of the licence term, as Corus requests. Corus’s primary argument with respect to programming quality is that they do not have enough time this year to properly deal with last year’s revenue increase. Even if this is true, we submit that one year is more than enough time to so deal with it. There is no reason why Corus needs 2-3 years to accommodate a ~7% spending increase, and granting flexibility to the end of the licence term will only increase the possibility that the volatility that Corus itself acknowledges will result in obligations deferred becoming obligations denied. To be clear, however, the WGC’s position is that the currently available 5% flexibility is already sufficient.
20. Finally, the WGC notes that Corus’s comments in this application seem to be at odds with their comments in previous proceedings regarding amortization. In Broadcasting Notice of Consultation CRTC 2016-225: *Renewal of television licences held by large English- and French-language ownership groups*, the issue of “original, first-run” and “new commissioned” programming came up, and available data initially suggested that broadcast groups were engaged in vastly different levels of CPE spending on original, first-run programming, as compared with preexisting, “library” content. Subsequent discussion suggested that this apparent discrepancy may have been related more to how the various groups amortize program spending, and how they count “original, first-run” with respect to their amortization schedules. In response, the WGC, among others, proposed a standardized approach to amortization. Corus was among the broadcasters opposing standardization. Corus 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

²² Application 2017-0743-1: *Broadcasting licence renewal for Super Channel (formerly Allarco Entertainment)*.

amortization methods for different genres of programming. Consequently, there can be no one size fits all amortization rule.²³

21. Yet in this proceeding, Corus states:

Generally Accepted Accounting Principles (“GAAP”) require programmers to amortize the costs of their programming assets over their useful life. A standard GAAP-compliant amortization schedule allocates expenditures on a 50/30/20 percent basis over a three-year period. Since programming start dates are staggered throughout the broadcast year, and amortization begins when the contracted term of a program begins, in such a scenario approximately 35 percent of the asset value would typically be amortized in the first fiscal year.²⁴

22. The WGC struggles to reconcile these two statements. In 2016 and 2017, Corus appeared to argue that amortization schedules are heavily determined by many factors that differ by broadcaster and/or genre, and therefore a standard amortization was not possible. Yet in the present proceeding, Corus seems to be saying that there is a standard GAAP-compliant amortization schedule that is 50/30/20 over three years. The WGC struggles to understand how both these statements can be complete and accurate. Meanwhile, amortization continues to be an ongoing issue, having also arisen in 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*, and Broadcasting Notice of Consultation CRTC 2019-91: *Call for comments on the Commission’s policy on Canadian programming expenditures*.

23. As such, we continue to firmly believe that there is more work that can be done to assist stakeholders and/or the Commission with understanding how broadcasters apply amortization schedules and how amortization intersects with the regulatory framework for broadcasting.

24. We thank you for the opportunity to provide these written comments.

Yours very truly,



Maureen Parker
Executive Director

c.c.: Council, WGC
Matt Thompson, Director, Regulatory Law and Public Policy, Corus Entertainment Inc.
(matt.thompson@corusent.com)

²³ Corus Entertainment Inc. – Application 2016-0015-6 – Response to undertakings made at oral phase of the hearing by Corus Entertainment Inc. (Corus), December 9, 2017, para. 95.

²⁴ Supplementary Brief (Revised 09_30_2019), para. 22.

*** End of Document ***