



July 23, 2021

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 2019-90-1: *Call for comments on a new, annual digital media survey – Additional information to be added to the public record***

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,400 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. The WGC is pleased to provide additional comments on this proceeding. As we stated in our initial submission in this consultation, we support the implementation of a new, annual digital media survey to be administered to all licensed Canadian broadcasting undertakings, and applaud the Commission for taking this important step. We also stated that the WGC supports expanding this survey to all digital media broadcasting undertakings (DMBUs) that serve a significant number of Canadians and/or derive significant revenues from the Canadian market, whether they are associated with a licensed broadcasting undertaking or not. Information with respect to services like Netflix, Amazon Prime, CBS All Access, and others, are also crucial to understanding the contemporary broadcasting system in Canada. As such, we again applaud the Commission for now looking to expand its digital survey to such services.

#### Frequency of reporting

3. In the Notice of Consultation of this proceeding (the Notice), the Commission has asked, “whether, in addition to the proposed annual survey, higher level data...should be collected on a quarterly basis...”.<sup>1</sup>

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<sup>1</sup> Para. 6.

4. The WGC would answer this question in the affirmative: Yes, this data should be collected on a quarterly basis. As the Commission itself indicates in the Notice, collecting such information in this way is the current practice in regard to the largest broadcasting distribution undertakings, and more frequent reporting will better capture ongoing changes in a rapidly evolving market. In today's digital environment, key data and analytics are available to these companies themselves not just quarterly, but monthly, weekly, daily, hourly, and even in real time. There should be no barrier, technological or otherwise, to reporting basic, high-level data on a quarterly basis.

### Threshold Issues

5. In the Notice, the Commission has asked:

whether participation in the survey should be required based on a threshold approach that would exempt digital media broadcasting undertakings that provide services in Canada but do not significantly engage in broadcasting activities, and, if so, whether these thresholds should be based on an undertaking's subscriber figures, its revenue figures, or a combination of these figures, whether other metrics should be considered in addition to or instead of revenue or subscriber figures, and what threshold values would be appropriate for this purpose.<sup>2</sup>

6. The WGC acknowledges the validity of thresholds to determine which entities should be subject to regulatory scrutiny. The Commission has historically exempted smaller players from certain regulatory obligations and focused its most robust set of regulatory tools on larger services. This approach embodies a sense of regulatory proportionality between the size of the regulated entity, the impact they have upon the Canadian broadcasting system, their reach and influence to and within Canadian audiences, and their capacity to contribute to the fulfilment of the objectives of the *Broadcasting Act*, among other things. The WGC agrees with the continued application of this kind of proportionality to the online world.
7. The WGC is not in a position to recommend specific thresholds at this time. We believe that setting thresholds is best done in reference to concrete data and other information that this very process is designed to produce. The WGC does not have specific information on which to base such a recommendation—rather, this information is generally held by DMBUs themselves. We look forward to reading the responses of other intervenors in this proceeding, however, and may make further comments in the reply phase.
8. That said, we do think the following principle is important: The threshold(s) for the collection of data from DMBUs should be—indeed, must be—lower than any threshold(s) contemplated and/or applied for the imposition of substantive regulatory obligations with respect to Canadian content or other substantive regulation, such that a larger number of DMBUs are captured for the purposes of data collection than may ultimately be subject to such substantive regulatory obligations.
9. One of the primary issues in the regulation of DMBUs is with respect to the broad variety of players. In the traditional broadcasting ecosystem, electromagnetic spectrum and financial/market realities, combined with a licensing regime to limit the number of broadcasters that could operate within a “walled garden” broadcasting system. The Internet has made possible a much larger number of

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<sup>2</sup> Para. 6.

broadcasting services, of varying sizes, business models, types of content, and impact upon Canada and the Canadian market. And while massive multinational companies like Netflix inarguably, in our view, should be subject to obligations to finance and distribute Canadian programming, little-to-nothing may be served by requiring services that are very small, highly niche, and/or only incidentally serve the Canadian market, to do the same. Regulatory proportionality in this regard is appropriate—there is no need for the Commission to “regulate everything” with respect to audiovisual content on the Internet, nor would the WGC suggest that it should.

10. There is a difference, however, between entities that should contribute significantly to the creation and presentation of Canadian programming, and entities that should submit data on their activities in Canada. In order to set the appropriate threshold for contribution, the Commission will have to understand what is both above and below that threshold. We submit that the Commission should keep these two elements—contribution thresholds and data collection thresholds—firmly in mind, and not inadvertently confuse the two. That does not mean that data collection thresholds shouldn’t exist, or that the Commission should collect data from literally every DMBU on the Internet. However, the Commission should have accurate data from a meaningful subset of the larger players, including those that are small enough to potentially not attract substantive regulatory contribution requirements with respect to Canadian programming.
11. With respect to the metrics by which thresholds should be set, the WGC believes the Commission must be flexible and adaptable in this regard. An advertising-based service may not have subscribers, but may still have a major presence in the Canadian market worthy of regulatory attention. A loss-leading service, such as Amazon Prime, may not generate significant revenues on its own, but may drive business to other services that do, while also competing for viewers with other broadcasting undertakings. There may not be a one-size-fits all model in this regard. The WGC proposes that “audience” or “viewership”, however measured, should also be considered, in addition to metrics such as subscription and revenue.

#### Data on programming categories

12. Our primary comment with respect to the form and content of the annual digital media survey remains that “Canadian programming expenses” should be further broken down to separately record spending on Programs of national interest (PNI), at the very least, and preferably by each programming category as set out in the Appendix to Broadcasting Regulatory Policy CRTC 2010-808.
13. As we have stated previously, existing Commission policies recognize that different types of Canadian programming are and should be treated differently. PNI has been recognized specifically as there is “a continuing need for regulatory support for key genres of Canadian programming”.<sup>3</sup> Similarly, the Commission’s group-based licensing approach itself excludes national news and sports services from English-language “designated groups”, since those services do not require the same type of regulatory intervention.<sup>4</sup> These concerns 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 platform, necessarily. Canadian drama programming will remain expensive, risky, and difficult to finance whether it’s on a

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<sup>3</sup> Broadcasting Regulatory Policy CRTC 2010-167: *A group-based approach to the licensing of private television services*, para. 71.

<sup>4</sup> Broadcasting Regulatory Policy CRTC 2010-167: *A group-based approach to the licensing of private television services*, paras. 120-121.

traditional broadcast platform or an online platform; national sports programming will likely remain lucrative whether it's on a BDU-carried sports channel or a sports platform like DAZN.<sup>5</sup> These distinctions should be reflected in the annual digital media survey, preferably by requiring expenses for Canadian programming to be broken out by programming category.

14. Despite our comments previously, the revised digital survey in the Notice still proposes to aggregate all Canadian programming expenses together in one data point. With respect, such an approach will seriously challenge the usefulness of this data. It is a simple fact that expenditures on major sports programming, for example, will not be comparable to spending on Canadian drama, which will not be relevant with respect to spending on Canadian news (local, national, or international), which will mean nothing with respect to Canadian children's programming. The difference between different types of programming is a cornerstone concept of Canadian broadcast regulation, and we submit it must continue to be in the online world.
15. The WGC is surprised and disappointed that this level of granularity has not been proposed by the Commission in the current template. Regulation by programming category is a cornerstone of the Canadian broadcasting system. If it does not have good data on this subject, the Commission will not be able to effectively regulate in this area. We submit that "Canadian programming expenses" must be broken down by each programming category as set out in the Appendix to Broadcasting Regulatory Policy CRTC 2010-808, as is already required by licensed Canadian broadcasters.

#### Confidentiality and onus of demonstrating objection

16. The information provided in the digital survey must be made public, so that Canadians can see and comment upon it, and contribute to an informed discussion about the regulation of these companies.
17. Moreover, as we have stated before in this proceeding, online programming services that object to the provision of the information suggested by the Commission, and/or the making of that information public, bear the onus of providing evidence (rather than opinion or mere statement of belief) to support any claims that they do not collect such information, such information is unavailable, that such information is too costly to obtain, and/or that the information is commercially sensitive and cannot be publicly disclosed. The WGC agrees with the Commission when it says that certain basic financial information relating to the digital media activities of licensees of broadcasting undertakings is essential for understanding the full scope of those activities, and for developing effective regulatory policy.<sup>6</sup> Such essential information should not be denied the Commission or the public.

#### Explanatory notes

18. In the Appendix to Broadcasting Notice of Consultation CRTC 2019-90—the original Notice of Consultation in this proceeding—the "Proposed Digital Media Survey Form" included explanatory notes in certain sections. For example, under "Non content-related expenses: Technical expenses", the Commission included examples, namely, "expenses relating to overall operational costs of digital media properties, bandwidth costs, supplies specific to digital media, technical consultant services". And for "Sales and promotion expenses" under that same, "Non content-related expenses" category, the Commission also included examples, namely, "expenses relating to advertising and sales teams,

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<sup>5</sup> <https://watch.dazn.com/en-CA/sports/>

<sup>6</sup> Broadcasting Notice of Consultation CRTC 2019-90, para. 5.

as well as commissions/payments to other sites, such as search engines and links, for driving traffic to the site”. But in the current Notice—Appendix to Broadcasting Notice of Consultation CRTC 2019-90-1—the Commission has removed these “explanatory notes” from the proposed form.

19. The WGC recommends that the Commission retain these explanatory notes. We submit that it is crucially important that complete and correct data be entered into the applicable forms and fields of the digital survey, and in our experience, questions of interpretation by broadcasters can arise when it comes to correctly filling in such forms. For example, the WGC has longstanding questions and concerns with how broadcasters currently file information with respect to script and concept development as reported in the Aggregated Annual Returns, which we believe is due to broadcasters misunderstanding and incorrectly filling out the applicable form.<sup>7</sup>
20. The WGC believes the Commission should provide as much detailed guidance to broadcasting undertakings as possible to ensure that forms are filled in correctly, and thereby fully and effectively deliver on their intended objectives, which are to inform the Commission and the public on the activities laid out therein. In general, we support providing more information to guide the completion of these forms, not less.

### Conclusion

21. The WGC is pleased to provide comments in this proceeding, and we thank the Commission for the opportunity to do so. Good data is fundamental to the Commission’s understanding and potential regulation of online broadcasting services, which is in turn critical to the survival of Canadian content. We encourage the Commission to take appropriate action to measure DMBU activities, and to do so boldly, in the interests of the Canadian public and in pursuit of the cultural policy objectives of the *Broadcasting Act*.

Yours very truly,



Maureen Parker  
Executive Director

c.c.: Council, WGC

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<sup>7</sup> The WGC has raised this issue in at least three prior proceedings, namely, Broadcasting Notice of Consultation CRTC 2016-225 (the Group-based Licence Renewals); Broadcasting Notice of Consultation CRTC 2018-488 (the Production Report); and, Broadcasting Notice of Consultation CRTC 2019-379 (CBC Licence Renewal). In particular, see paragraphs 38-50 in the WGC’s written submission to Production Report proceeding: [https://www.wgc.ca/sites/default/files/resource/2019-03/Intervention.Mar\\_6.pdf](https://www.wgc.ca/sites/default/files/resource/2019-03/Intervention.Mar_6.pdf). The issue remains unresolved to this day.

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