



July 11, 2023

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 2023-138: the Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content**

The Writers Guild of Canada (WGC) is the national association representing approximately 2,500 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.

Given the nature of our membership, the WGC is primarily concerned in this proceeding with television creation and presentation. As such, when we talk about “Canadian programming” or “Canadian content” in this written submission, we are speaking primarily about *audiovisual* content.

### **EXECUTIVE SUMMARY**

ES.1 The ecosystem for the production and presentation of Canadian programming is in a state of collapse. The *Broadcasting Act* (the Act) is predicated on the simple fact that a healthy and vibrant culture and media sector in Canada is not a natural market outcome. Rather, it is the result of social and political will. The emergence of the Internet generally, and large foreign streaming services specifically, has created new and immense competitive pressure on traditional Canadian broadcasters. The result has been, among other things, a stark decline in private, English-language broadcaster licence fees that contribute to financing Canadian programming, while the cost of producing world-class content remains high. We must make a clear distinction between programming which is the subject of the Act—Canadian programming—and foreign location and service production (FLS), which is not. While FLS has grown amidst the “content boom” of the

past decade, top-line Canadian television production data show stagnation at best. Canadian broadcasters are clearly in decline and are threatening to exit the system. And Canadian screenwriters, whose jobs are at the leading edge of the wedge, are fully in crisis. Based on our own internal data, **over the past five years the aggregate earnings of the WGC's confirmed Canadian citizen members have declined by nearly 22% in inflation-adjusted terms.** This is incredibly significant, and represents a catastrophic decline for our members and the opportunities for screenwriters in this country.

- ES.2 Given this, the Commission must have, as a key objective in this proceeding, growth for the Canadian domestic audiovisual sector. In particular, this must include growth for the role of Canadian screenwriters. The promise of the *Online Streaming Act* was always growth. It was never “make whole” for Canadian creators while traditional broadcasters bowed out. In touting the benefits of the Bill C-11, the Government provided an estimate of around **\$1 billion annually** in contributions by online broadcasters to Canadian content and creators. This was from online undertakings alone, and not a combined level from both online undertakings and traditional Canadian broadcasters. This significant new money in the system was always the promise of the *Online Streaming Act*, and we respectfully submit that the Commission must uphold this goal.
- ES.3 The Group-based licensing policy (GBL) is a cautionary tale and an example to avoid repeating in one key respect. Under GBL, the Commission expressly sought to grow support for Canadian programming from where it had been under the previous broadcasting policy. The mechanism chosen to accomplish this was expenditure requirements tied to broadcasters’ revenues, with the assumption that the Commission could start at historical spending levels for each of the broadcasting groups, pegging requirements at what broadcasters had demonstrated they could already spend. Then, revenue growth over time would increase spending, since spending was a percentage of revenue. Unfortunately, however, revenues did not meaningfully grow over the long term, and in fact shrank, reducing spending obligations. As a result, the Commission may have sought growth, but wound up doing something more akin to entrenching the status quo and then watching that go into decline. This should not be repeated. We are seeking growth from the *Online Streaming Act*, not a long and winding road back to where we started from.
- ES.4 It is impossible to talk about Canadian programming in isolation from who makes it and, in the “writer’s medium” of series television, who writes it. **Art is made by artists; Canadian art is made by Canadian artists.** “Canadian content” is typically creative content—in the broad sense of the word, it is art—so, such a statement should sit at the core of the expressly cultural legislation that is the *Broadcasting Act*, which is fundamentally about supporting Canadian content. A television script is not an outline, a set of suggestions, or “just the dialogue.” It is, fundamentally, the production on paper. A script describes all the meaningful action that will take place on screen. It contains virtually all the lines to be spoken and establishes the characters who speak it. It describes the settings, locations, mood, and themes. It tells the beginning, middle, and end of the story. It describes the sets to be built and the props to be obtained or manufactured. It is the narrative of the production and the roadmap for everybody who works on it subsequently. It is what the producer finances and produces, the dialogue the actors memorize, and what the director directs. The script is ground zero for the artistic vision, from art direction to wardrobe to pace, tone, and style. In dramatic television series, the importance of the scripts—and the writers who write them—is especially pronounced. As stated by television critic Tim Goodman in a 2018

article for The Hollywood Reporter, “**Television is a writer's medium.** Always has been. ...Great dramatic television is serialized; the stories are ongoing, often from season to season, weaving a vast, multiple-hour tale.” It is difficult to overstate this fact. In serialized television, whether on traditional broadcast or streaming services, no other role is as creatively foundational as the **showrunner** and the **screenwriters** in their writing room that they manage. They are the authorial voice of the medium, and the **Canadian authorial voice** of Canadian content. The Canadian broadcasting system must place them at its centre.

- ES.5 Broadly speaking, the **WGC supports the contribution framework** as put forward by the Commission in this proceeding. In general, the Commission’s proposals provide flexibility to broadcasting undertakings to contribute to the objectives of the Act in a variety of ways, while ensuring that they do contribute. In particular, the Commission’s proposed “base requirement” to make a financial contribution to specified funds that support Canadian artists or programming is an effective tool to achieve a number of outcomes. Everything hinges, however, on how this is implemented in a manner that is clearly defined, measurable, and enforceable.
- ES.6 The question of program categories—or **genres** of programming—is central to Canadian broadcasting regulation. The Act exists because market forces alone do not result in the production of sufficient quality and quantity of Canadian programming, particularly in risky and expensive genres like drama. The Commission formally recognizes 15 categories of television program, which are not equal when it comes to their need for regulatory support or their value to the Canadian broadcasting system. In particular, the Commission has recognized, in the category of Programs of national interest (PNI) that, “there is a continuing need for regulatory support for key genres of Canadian programming,” and that, “Drama programs and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values.” The Act itself reflects this concern with particular types of programming, and we ask the Commission to keep this question of genres, including PNI genres, always firmly in mind.
- ES.7 With respect to the “**initial base contribution**” from online undertakings, the WGC proposes that it be no less than 5% of their gross annual revenues, as this is similar to current requirements for broadcasting distribution undertakings (BDUs) and BDU-affiliated video-on-demand (VOD) services, though we would also support higher percentages. That said, we must emphasize that this proposal is simply a part of our overall view that the Commission must realize the Government’s estimate of approximately \$1 billion annually in new money for Canadian programming from online undertakings.
- ES.8 Throughout, we submit that the Commission should **reject regulatory approaches that amount to a race to the bottom**, seeking to push regulation to the **lowest-common-denominator**. Anchored in claims that certain broadcasting undertakings or groups “aren’t in the business” of doing certain types of programming, such an approach would insist that those broadcasters cannot be expected to contribute to that programming, and then those undertakings or groups that do engage in that activity claim that they shouldn’t be required to because others aren’t so required. This would lead to a feedback loop of cascading deregulation until we reach the end of a downward spiral: Regulatory requirements that are so minimal that they fundamentally do not achieve the objectives of the Act. This has already occurred in the past, with respect to PNI in

Broadcasting Decision CRTC 2017-148, the group-based license renewal proceeding, where the commission accepted a lowest-common-denominator PNI expenditure level of 5% for all English groups. This was ultimately sent back to the Commission for reconsideration by the Governor in Council and reversed. However, these kinds of arguments appear popular again in some quarters, with broadcasters seemingly jockeying to commit to only minimalist Canadian programming requirements based on incredibly narrow visions of what they do as broadcasters. We submit that the Commission cannot take this approach, or the result will be further decline in the sector and the failure to meet the objectives of the Act.

- ES.9 Throughout the answers to the Commission’s questions, we note that we often **lack the necessary data or other information** upon which to base a complete answer. We also note the **asymmetry of information available to the parties**. There are broadcasting undertakings participating in this proceeding, both online and traditional, which presumably have access to data that would be relevant to this discussion, including annual revenues and subscriber numbers. The Commission has recognized the issue of information asymmetry in other contexts and addressed it by requiring the party that has the information to be the one who bears the burden to prove their case.
- ES.10 With respect to **production funds**, we are of the view that the Canada Media Fund (CMF) is generally successful in its support of Canadian content, in large part because it requires the television component of eligible projects to be certified by the Canadian Audio-Visual Certification Office (CAVCO) and achieved 10-out-of-10 points as determined by the CMF using the CAVCO scale. The Commission should consider amending the Certified Independent Production Fund (CIPF) criteria to require that CIPFs have a 10-out-of-10-point eligibility requirement for funding. In addition, the WGC does not support a proliferation of new private funds, as that would be inefficient and unnecessary. Subject to our comments on Indigenous, Black, people of Colour, people with disabilities, LGBTQ2S, and other diverse communities, the WGC supports 100% of funding being directed to the CMF. If, however, the Commission decides to permit an expansion of CIPFs, then the Commission should require that at least 80% of an undertaking’s or ownership group’s base contribution be directed the CMF.
- ES.11 With respect to the effectiveness of an “**outcomes-based approach**”, this depends greatly on the nature and specificity of the outcomes and the type of flexibility the Commission provides in the manner of achieving them. In general, an outcomes-based approach would appear to be effective to ensure that the broadcasting system as a whole contributes to the achievement of the Commission’s objectives, provided that those outcomes are indeed clearly defined and measurable. They must also be enforceable. Similarly, flexibility for broadcasting undertakings to decide how to achieve the Commission’s objectives is reasonable provided that this flexibility does not actually undermine that achievement. The type of “outcomes-based approach” applied by the Commission in its most recent licence renewal of CBC/Radio-Canada (CBC) is *not* an appropriate model, however, for the regulation of private entities in the broadcasting system. In addition, the Commission must be mindful of how “flexibility,” when considered in relation only to individual regulated entities, can lead to system-wide issues, if and when all or the majority of such entities use that flexibility in the same or similar ways. Consistent with the conflict provision of section 5(3) of the Act, “flexibility” must always be subordinate to the achievement of the substantive cultural policy objectives in section 3(1).

ES.12 With respect to what **other outcomes or objectives**, other than those set out by the Commission, may be required to ensure that Canada’s broadcasting system can thrive, we would propose the first be edited as follows:

- **the growth of the production of high-quality, original audio and video Canadian programming**;

And the following objective with respect to creators be added:

- **the strong support of a wide range of Canadian creators, in particular those with a high degree of creative control or visibility, and who contribute the Canadian authorial voice to the production of the program**;

ES.13 The Commission will have to consider **residency of key creatives** in the regulatory framework. Traditionally, the CAVCO points system, and the Commission’s own related system, functioned in terms of citizenship status. This may have made sense, given the otherwise geographical distinctions between the Canadian domestic industry and Hollywood. Such distinctions may soon be blurred or even erased. If so, the Commission will have to decide what a “domestic (English) Canadian production industry” means. We submit that it cannot mean a talent pool that has already left—or is further induced to leave—Canada for the United States, because the decisions on “Canadian programs” are largely made in Los Angeles by Americans.

ES.14 The WGC recently published the **2022 Equity, Diversity and Inclusion Report** with data updated up until December 31 of 2021. The report gathers, analyzes and publishes data regarding Indigenous, Black, writers of Colour, writers with disabilities and LGBTQ2S writers. The report covers 88 series (52 live action and 36 animation) that were in production as of 2021, in addition to the 342 series covered in the period from 2017 to 2020. Diverse writers working in television have increased from 22% in 2020 to 35% in 2021. However, work for disabled and indigenous writers remain the lowest at 1.5% and 2%, respectively. Our analysis indicates that work for diverse writers increases when there is a production featuring diverse content. Accordingly, we support requirements to ensure traditional and online undertakings engage diverse talent with different levels of experience across all their programming.

## **GENERAL COMMENTS ON A MODERNIZED REGULATORY FRAMEWORK**

1. This consultation is an embarkation upon the most significant policy process the Commission has undertaken in a generation. It is hard to conceive of anything more impactful for this sector than the emergence of Internet-based broadcasting over the past decade and a half. What the Commission does over the coming months in implementing the new *Broadcasting Act* (the Act), as amended by Bill C-11, the *Online Streaming Act*, will reverberate in Canada for generations to come. It is not hyperbole to say that the next year or so will almost certainly decide the fate of the Canadian cultural sector as it relates to audiovisual content, for good or for ill. Either we will have a meaningful, robust, and vibrant Canadian broadcasting system in which Canadians are well-served by Canadian options and Canadian voices, and Canadian creators, including Canadian screenwriters, will have a future in this country; or, we will have let the giant technology companies clear-cut our market while traditional broadcasters take their riches, collected over the previous decades, and retire from the scene. We obviously hope for the former, and entreat the Commission to take those vital steps that will, in the

words of the Act, serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.<sup>1</sup>

### **Where we are: A sector—and Canadian creators—on the brink**

2. The ecosystem for the production and presentation of Canadian programming is in a state of collapse. This ecosystem has never been especially robust in Canada, having been subject in the past to missed opportunities, unrealized policy objectives, and simply bad timing. We expand further on these points below. The bottom line, however, is that many players in the system, if not the system as a whole, are now facing an existential crisis that requires a strong regulatory response that doesn't just enshrine the *status quo* as it is today, mid-collapse, but actually *rebuilds* and *grows* that system into the future.
3. The *Broadcasting Act* is predicated on the simple fact that a healthy and vibrant culture and media sector in Canada is not a natural market outcome. Rather, it is the result of social and political will. For a century, public policy has recognized the essential role of supporting Canadian media as a core component of our national and cultural sovereignty. From at least the Aird Commission (1929)<sup>2</sup> onwards, public regulation and support for Canadian broadcasting has been considered crucial to Canadian identity and national consciousness. The Act sets out various objectives, including that the Canadian broadcasting system: provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;<sup>3</sup> should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;<sup>4</sup> should encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity;<sup>5</sup> should, through its programming and the employment opportunities arising out of its operations, serve the needs and interests of all Canadians, in all their diversity;<sup>6</sup> and, that each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking.<sup>7</sup>
4. Section 12 of the *Interpretation Act* states that, "Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."<sup>8</sup> Being "remedial" mean that there is a problem in need of solving, without which the legislation would be unnecessary. That problem in Canadian broadcasting has by now been well established. The emergence of the Internet generally, and large foreign streaming services specifically, has created new and immense competitive pressure on traditional Canadian broadcasters. The result has been, among other things, a stark 47% decline in private, English-language broadcaster licence fees that contribute to financing Canadian programming, from \$456 million and 17% of financing in

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<sup>1</sup> *Broadcasting Act*, s. 3(1)(d)(i).

<sup>2</sup> Royal Commission on Radio Broadcasting, 1929.

<sup>3</sup> Section 3(1)(b).

<sup>4</sup> Section 3(1)(d)(i).

<sup>5</sup> Section 3(1)(d)(ii).

<sup>6</sup> Section 3(1)(d)(iii).

<sup>7</sup> Section 3(1)(a.1).

<sup>8</sup> *Interpretation Act*, R.S.C., 1985, c. I-21.

2013-2014,<sup>9</sup> to \$240 million and 10% in 2021-2022.<sup>10</sup> Meanwhile, the cost of producing world-class content remains high, with average per-hour budgets for English-language fiction increasing by 8% since 2012-2013.<sup>11</sup>

5. Numerous consultations over the past seven years alone have repeatedly demonstrated the need to act. The Creative Canada Policy Framework (2017),<sup>12</sup> the Commission's own report, "Harnessing Change: The Future of Programming Distribution in Canada" (2018),<sup>13</sup> and the final report of the Broadcasting and Telecommunications Legislative Review Panel, "Canada's communications future: Time to act" (2020),<sup>14</sup> have all recognized both the impacts of the digital shift, and are in large part what led to the enactment of the new *Broadcasting Act*. This demonstrates the consensus on this issue, but also the time we've already spent on this path. Netflix entered Canada in 2010. It is 2023 now, thirteen years later, with the complete regulatory process under the new Act still to be completed.
6. Meanwhile, we can no longer kid ourselves that things are fine or that the impact of online undertakings on the broadcasting system is somehow complimentary, positive, or even neutral.
7. To begin, we must make a clear distinction between programming which is the subject of the Act—*Canadian* programming—and foreign location and service production (FLS), which is not.<sup>15</sup> This is important for two reasons. First, foreign online undertakings have made particular efforts over the past several years to argue that their FLS activity should count towards the objectives of the *Broadcasting Act* and/or sought to blur the distinction between the two.<sup>16</sup> Second, FLS production has exploded in Canada over the past decade, having increased by 285% between 2012-2013 and 2021-2022, from \$1.7 billion to \$6.7 billion.<sup>17</sup> This has been used by some to claim that "film and television production in Canada," as a metric that combines both Canadian production and FLS production, is the relevant statistic, showing consistent growth over the past ten years.<sup>18</sup> In this framing, the sector is healthy and there's little-to-no need for regulatory intervention.

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<sup>9</sup> *Profile 2018*, Exhibit 4-19.

<sup>10</sup> *Profile 2022*, Exhibit 3-17. Note that this was a truly dismal \$126 million and 7% in 2020-2021, which rebounded slightly in 2021-2022, though as *Profile* states, such a rebound was likely "catch-up" spending from production shut-downs during the COVID-19 pandemic, which calls into serious question the sustainability of such a rebound.

<sup>11</sup> *Profile 2022*, Exhibit 3-9.

<sup>12</sup> <https://www.canada.ca/en/canadian-heritage/campaigns/creative-canada/framework.html>

<sup>13</sup> <https://crtc.gc.ca/eng/publications/s15/>

<sup>14</sup> <https://www.ic.gc.ca/eic/site/110.nsf/eng/00012.html>

<sup>15</sup> As stated in *Profile 2022*, "The foreign location and service (FLS) production segment is primarily comprised of films and television programs filmed in Canada mainly by foreign producers with the involvement of Canadian-based service producers. This includes the visual effects (VFX) work done by Canadian VFX studios for foreign films and television programs. For the vast majority of FLS projects, the copyright is held by non-Canadian producers." See pg. 63.

<sup>16</sup> E.g. See the submission of the Motion Picture Association-Canada to the Parliamentary Standing Committee on Canadian Heritage on the study of Bill C-11, the *Online Streaming Act*: <https://www.ourcommons.ca/Content/Committee/441/CHPC/Brief/BR11833468/br-external/MotionPictureAssociationCanada-e.pdf>

<sup>17</sup> *Profile 2022*, Ex. 6-1.

<sup>18</sup> *Profile 2022*, Ex. 1-1.

8. The reality for Canadian content production—and in particular for Canadian screenwriters—is dramatically different.

*A sector in crisis*

9. First, to reiterate, FLS production is irrelevant to this discussion. Whatever economic benefits it provides to Canada, FLS production is not Canadian programming production. It is not what the *Broadcasting Act* seeks to support, and it never has been. FLS production is simply something that predominantly American media companies do to reduce their own production expenses by shooting in lower-cost jurisdictions where they can take advantage of less expensive services, local tax credits, and favourable exchange rates on the U.S. dollar. These productions are creatively driven from Hollywood and can be shot anywhere—Canada just happens to be convenient. The Act does not state that FLS production is a broadcasting policy objective, there is no cultural or economic problem regarding FLS that the Commission needs to solve, and the Commission has never implemented policies to support FLS creation and presentation. FLS is as relevant to the *Broadcasting Act* as the branch factory of General Motors in Oshawa, Ontario building the Chevrolet Silverado—the jobs may be welcome, but it is not a domestic company making a domestic product designed and created by Canadians and reflecting domestic Canadian audiences.
10. Second, top-line Canadian television production data show stagnation at best, particularly when considered in light of the global content boom of the past decade—the very thing that has caused FLS to explode—and inflation, most notably in the programming categories represented by programs of national interest (PNI). Compared to 285% growth in FLS, English-language fiction production grew 49% over the same period, from 2012-2013 to 2021-2022.<sup>19</sup> But even this is misleading. *Profile* numbers do not take inflation into consideration, which is increasingly a factor across the Canadian economy. Production costs have gone up, and so have audience expectations, having been exposed to mega-budget series television like *Game of Thrones* or *The Crown*, the latter of which reportedly cost \$14.4 million USD per episode.<sup>20</sup> And most notably, 2021-2022 was a “catch-up” year following production shutdowns due to the COVID-19 pandemic, in which broadcasters spent quickly what they had been holding off on previously. The authors of *Profile 2022* state this directly, saying that the “rebound” may be “transitory”.<sup>21</sup> 2021-2022 followed a 2-year decline in overall Canadian production, strongly suggesting that the year was a blip that we do not expect to repeat.
11. Third, Canadian broadcasters are clearly in decline and are threatening to exit the system. The Commission is even more aware of this situation than we are, so we won’t take up space painting the complete picture of the regulated space that the Commission does not need. Briefly, however, spending on PNI by the three large English-language groups—Bell Media Inc. (Bell), Corus Entertainment Inc. (Corus), and Rogers Media Inc. (Rogers)—has declined by nearly 17% between 2018 and 2022, from \$219.8 million to \$183.1 million.<sup>22</sup> Most recently, Bell, Corus, and Rogers have each applied to the Commission to significantly reduce their regulatory obligations,<sup>23</sup> while reportedly

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<sup>19</sup> *Profile 2022*, Ex. 3-8.

<sup>20</sup> <https://screenrant.com/why-netflix-crown-expensive-to-film/>

<sup>21</sup> *Profile 2022*, pg. 22.

<sup>22</sup> CRTC Aggregate Annual Returns for the large English-language broadcast groups.

<sup>23</sup> Corus Application No. 2022-0946-0, Rogers Application No. 2023-0373-3, and Bell Media Inc. Application No. 2023-0379-1. Also see <https://cartt.ca/corus-ceo-urges-crtc-to-move-swiftly-on-regulatory-relief/>



slashing jobs across their media properties.<sup>24</sup> These are but a few examples of a trajectory that is crystal clear. Not only is the regulated system in decline, but Canadian broadcasters are thrashing about, seeking to remove themselves from much of it entirely.

12. Fourth, Canadian screenwriters, whose jobs are at the leading edge of the wedge, are fully in crisis. Based on our own internal data, over the past five years the aggregate earnings of our confirmed Canadian citizen members have declined by nearly 22% in inflation-adjusted terms. This is incredibly significant, and represents a catastrophic decline for our members and the opportunities for screenwriters in this country.
13. The WGC is providing this information here for the first time publicly.
14. This staggering decline for Canadian English-language screenwriters demonstrates several things. For one, it demonstrates that FLS production, in addition to not contributing to the objectives of the *Broadcasting Act*, does not benefit a number of key creators in the Canadian audiovisual production sector. Some people may be able to work across both sectors, so that even if they do not provide cultural opportunities, FLS can provide jobs for some producers, creative roles, and production crews. This is not the case for screenwriters. FLS production is written and creatively driven predominantly out of Los Angeles. Not only are the stories those that are perceived to be of interest to American and/or global audiences, but Canadians aren't writing them, or if there are Canadians writing them, it's because they've left Canada and are working under U.S. jurisdiction, telling those American/global stories, paying American taxes, and effectively working within the American industry. They are predominantly not here, in Canada, writing for Canadian audiences and working under the WGC.
15. For another thing, our data demonstrates how different writing is to the larger production process. Writing happens early in the process, so changes in production trends show up in WGC data sooner than they do in something like *Profile* or the Commission's own data, which is generally more than a year old when it is published. Screenwriters are also subject to different financial pressures, including those that have motivated the Writers Guild of America (WGA) to go on strike earlier this year. These include smaller writing rooms and squeezed writing budgets that hurt the creative process and impoverish the professional development of a screenwriting talent pool that can grow into tomorrow's showrunners. Some of these are problems for our collective bargaining process, but they nevertheless demonstrate how the inflationary pressures on production budgets may translate into big bottom-line numbers in *Profile* or Commission reports, but they can and do leave screenwriters poorer and less able to contribute to the objectives of the *Broadcasting Act*.
16. We will speak further below on why the situation for screenwriters matters, given the unique place we hold in the creative process, particularly in series television.

### **Where we need to go: Growth, not an entrenched *status quo***

17. Given that we are not doing well, that we have declined from where we were even a few years ago, and that we are likely to decline further before the Commission's policies are in place, those policies must include the objective of *growth* for the Canadian domestic audiovisual sector. In particular, they

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<sup>24</sup> E.g. <https://playbackonline.ca/2023/06/29/corus-entertainment-has-reduced-workforce-by-8-says-ceo/>;  
<https://www.cbc.ca/news/business/bce-layoffs-radio-1.6876075>.

must include growth for the role of Canadian screenwriters. We cannot fall into the trap of seeking to just shift chess pieces around the chessboard so that we wind up with the same size and health of the sector that we have today, being supported by the *status quo*-level of regulation simply applied to a different set of players. We should not entrench the declines of today. In particular, we should not go the direction many Canadian broadcasters suggest by dropping their obligations down while bringing online undertakings' obligations up, only to wind up at the same anemic levels as a sector, while broadcasters run off to their shareholders with their "regulatory relief" in hand.

18. The promise of the *Online Streaming Act* was always growth. It was never "make whole" for Canadian creators while traditional broadcasters bowed out. When the predecessor bill to the *Online Streaming Act*, Bill C-10, was before Parliament, the Government touted an estimate of \$830 million annually in contributions by online broadcasters to Canadian content and creators.<sup>25</sup> This was *from online undertakings alone*, and not a combined level from both online undertakings and traditional Canadian broadcasters.<sup>26</sup> For C-11, speaking a year later, Minister Pablo Rodriguez had revised the estimate *upwards*, to around \$1 billion.<sup>27</sup>
19. This was the promise of the *Online Streaming Act*, and we respectfully submit that the Commission must uphold this goal. While the Government's estimate may have been just that, and the exact amount of incremental value added to the Canadian broadcasting system may vary somewhat, \$1 billion in new, incremental spending from online undertakings to Canadian programming was the clear aspiration behind Bill C-11 and what drove its support by the Canadian creative community and passage by Parliament.

*A cautionary tale: The Group-based licensing policy*

20. In this light, it is worth looking at how, in the past, the Commission set out to grow support for Canadian programming, but chose a policy and a mechanism that did not result in the intended effect. We're talking about the approach set out in Broadcasting Regulatory Policy CRTC 2010-167, *A group-based approach to the licensing of private television services*, and Broadcasting Decision CRTC 2011-441, *Group-based licence renewals for English-language television groups – Introductory decision* (the Group-based licensing approach, or GBL).

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<sup>25</sup> <https://www.canada.ca/en/canadian-heritage/corporate/transparency/open-government/standing-committee/guilbeault-bill-c10-consequential-amendments-broadcasting-acts/clause-analysis.html>

<sup>26</sup> While such additional spending might not be expected to be incremental *to Canada*, it was certainly contemplated as being incremental *to Canadian content*. Put another way, foreign online streamers might decide to adjust some of their FLS production, changing its structure and parameters so that it met the definition of "Canadian program" and, as such, shift from FLS production to Canadian content production. While such a shift might be "neutral" from the perspective of "production occurring in Canada," it would *not* be neutral from the perspective of Canadian stories and/or creators who make them. A studio manager might not care if it's a FLS production or a Canadian content production shooting in their studio, but a Canadian screenwriter certainly will care, because they will have the opportunity to write the latter but not the former. Similarly, the Canadian audience member will care who gets the opportunity to see their own stories and perspectives on screen, rather than yet another Hollywood production.

<sup>27</sup> <https://globalnews.ca/news/8901527/canadian-programming-will-see-at-least-1-b-a-year-from-online-streaming-bill-minister/>

21. Under GBL, the Commission expressly sought to grow support for Canadian programming from where it had been under the previous broadcasting policy. The mechanism it chose to accomplish this was expenditure requirements tied to broadcasters' revenues, with the assumption that the Commission could *start* at historical spending levels for each of the broadcasting groups, pegging requirements at what broadcasters had demonstrated they could already spend. Then, revenue growth over time would increase spending, since spending was a percentage of revenue. Unfortunately, however, revenues did not meaningfully grow over the long term, and in fact shrank, reducing spending obligations. As a result, the Commission may have sought growth, but wound up doing something more akin to entrenching the *status quo* and then watching that go into decline.
22. Preceding the GBL 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 15<sup>th</sup> Biennial National Conference: New Developments in Communications Law and Policy, Professor Douglas Barrett, following interviews with 16 industry veterans, summarized the 1999 TV Policy as follows:

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".

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, permitted the scheduling of priority programming in the shoulder time period before 8:00pm.<sup>28</sup>

23. 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 GBL in 2010, broadcasters were *underspending*, 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.
24. In the WGC's view, the GBL, and its focus on expenditures, was an improvement over the previous policy framework. The Commission set minimum spending by broadcasters on Canadian programming

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<sup>28</sup> Douglas Barrett, Nicholas Mills, "Top Ten Game Changing CRTC Decisions", 15<sup>th</sup> 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.

as a percentage of broadcasters' revenue. Those percentages were set, however, based on the historical spending in the year prior. As the Commission stated [emphasis added]:

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. This level should be consistent with historical spending by the group...

.... 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. This level is consistent with historical expenditures, ensures substantial stable funding for Canadian programming, and places a reasonable limit on foreign programming expenditures.

... 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.<sup>29</sup>

25. As such, the CPE and PNI 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, including 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 and PNI on historical spending during this period effectively resulted in a "double whammy" which depressed spending levels significantly from where we think they should have been. The WGC, among others, proposed a 10% PNI spending requirement at the time.
26. 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 would be achieved through rising broadcasting revenues, which would finally rectify the problems wrought by the 1999 TV Policy [emphasis added]:

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

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<sup>29</sup> Broadcasting Decision CRTC 2011-441, paras. 21, 29, and 48.

method is the most likely to result in a **greater** overall contribution to Canadian programming by each of the groups.<sup>30</sup>

27. Unfortunately, this did not work out as intended. Broadcaster group revenues began to decline, and spending went down with it. We never had a chance to recover from the 1999 TV Policy.
28. This is partly what we meant earlier about bad luck and missed opportunities. Expenditure requirements as a percentage of revenue are generally good tools, since they track the financial fortunes of the broadcasting undertakings and ensure that their spending is commensurate to their capacity to spend. Yet so much depends upon the initial levels at which they are set, and based on what assumptions. In 2010 and 2011, the Commission chose to set expenditure requirements at already-depressed historical levels, and assumed that growth would follow. In our view, the Commission both set percentages too low and did not consider or appreciate that growth from there was not inevitable.<sup>31</sup>
29. We provide this as a cautionary tale in hopes that the Commission does not repeat the same mistake. There may be voices clamouring for the Commission to set certain expenditure requirements based on today's *status quo* sector. Even if the exact details of the GBL approach are not replicated in 2023, we fear that the principle could nevertheless be, as the Commission looks for familiar milestones to peg regulatory obligations to, and traditional broadcasters press for lower obligations and proposals for "making whole" the Canadian creative sector by entrenching the *status quo*.
30. In our view, the Commission must reject these approaches. We are seeking growth from the *Online Streaming Act*, not a long and winding road back to where we started from.

### **Who we are: The unique position of screenwriters in the Canadian broadcasting system**

31. It is impossible to talk about Canadian programming in isolation from who makes it. Canadian programming is conceived, developed, produced, distributed, promoted, consumed and, ultimately, makes its mark upon the world in a way that is meaningful to Canadians. Every step of this "life cycle" of content is important, yet amongst the trickiest and most expensive is the *making it* part. High-quality Canadian programming, like any high-quality audiovisual programming, generally is capital intensive and risky. Budgets run millions of dollars per hour of finished programming. Given this, it has historically been the *production* of Canadian programming that the market itself has been so hesitant to invest in, given the per-project costs and high-risk nature. As such, the Commission has focused itself primarily on this element, such as through expenditure requirements set out in the *Let's Talk TV "Create"* policy.<sup>32</sup>

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<sup>30</sup> Broadcasting Decision CRTC 2011-441, para. 22.

<sup>31</sup> For example, for Bell Media Inc., total spending on the genres making up the current Programs of national interest (PNI) category went from \$99.1 million in 2007-2008 to \$67.7 million in 2014-2015, and in 2022 sat at \$81.5 million, for an overall decline. Sources: 1) Data filed by then-CTVglobemedia during the first group licensing proceeding in 2010-2011 (File name: DOCS-#1426082-v1-2010-1261-6-CTVgm-\_Group-Tables.XLS); 2) Bell Media/CTVglobemedia Aggregated Annual Returns; 3) 2007-2008 and 2008-2009 pay and specialty TV drama spend data come from the CRTC's Pay and Specialty TV Programming and Production Expenses database made available at that time by the CRTC to the WGC.

<sup>32</sup> Broadcasting Regulatory Policy CRTC 2015-86.

32. Things that are made are made *by* somebody, and when it comes to creative work, the creator behind them is fundamentally important. We recognize that the Commission is expected to discuss the definition(s) of “Canadian program” in Phase 2 of this modernization process, and questions of key creative roles may primarily get attention there. The Commission has also invited interveners to comment on Phase 2 elements now, however, and has acknowledged that the phases are interlinked. Given that our comments above emphasize the particular plight of Canadian screenwriters, and given their central role in furthering the objectives of the Act, we feel it is appropriate to speak generally to screenwriting here.
33. Art is made by artists. Canadian art is made by Canadian artists.
34. The truth of this simple statement should be self-evident. The link between creator and creation is well-recognized, from their fans and arts scholars to the relationship at law between “authors” and “works” under the *Copyright Act*.
35. And since “Canadian content” is typically creative content—in the broad sense of the word, it is art—such a statement should sit at the core of the expressly cultural legislation that is the *Broadcasting Act*, which is fundamentally about supporting Canadian content.
36. Some of the conversations we have about Canadian audiovisual content would seem absurd in other contexts. The *Mona Lisa* was commissioned by a wealthy Florentine silk merchant, but that does not make it any less Leonardo da Vinci’s painting, nor does its current ownership by the Louvre in France transform it from a work of the Italian Renaissance into a French painting. Owners or financiers don’t become artists simply by spending money on art or obtaining title to it, nor do they change its national creative character. William Shakespeare’s *Hamlet* is universally recognized as an English play, notwithstanding that it is about a Danish prince in Denmark. Its setting in what is now called Helsingør does not make *Hamlet* a work of Danish dramatic literature. The 1954 film *20,000 Leagues Under the Sea* starring Kirk Douglas was written and directed by Americans and produced by Disney in the United States. It is an American film—it is not a French film just because it was adapted from the French novel by Jules Verne.
37. It is vital to understand how—especially when we’re talking about genres like drama, comedy, and children’s programming—creative work actually happens. It starts with writing. As legendary director Alfred Hitchcock said, “To make a great film you need three things – the script, the script, and the script.”
38. Despite some popular misconceptions, a film or television script is not an outline, a set of suggestions, or “just the dialogue.” It is, fundamentally, the production on paper. A script describes all the meaningful action that will take place on screen. It contains virtually all the lines to be spoken and establishes the characters who speak it. It describes the settings, locations, mood, and themes. It tells the beginning, middle, and end of the story. It describes the sets to be built and the props to be obtained or manufactured. It is the narrative of the production and the roadmap for everybody who works on it subsequently. It is what the producer finances and produces, the dialogue the actors memorize, and what the director directs. The script is ground zero for the artistic vision, from art direction to wardrobe to pace, tone, and style.

39. In dramatic television series, the importance of the scripts—and the writers who write them—is especially pronounced. As stated by television critic Tim Goodman in a 2018 article for *The Hollywood Reporter*, “Television is a writer's medium. Always has been. ...Great dramatic television is serialized; the stories are ongoing, often from season to season, weaving a vast, multiple-hour tale.” Comparing series television to the novel, Goodman says, “in television, the actual telling of the story is everything—the narrative flow of that story and the character development within that story solidify greatness, if present.”<sup>33</sup> It is difficult to overstate this fact.
40. The current Golden Age of American television was born in the 1980s with the rise of the showrunner. A showrunner is a writer-producer who is the chief custodian of the creative vision of a television series and whose primary responsibility is to communicate the creative vision of that series through control of both the writing process and the production process—often from the pilot episode through to the finale. Showrunners are often the creators of their shows, and are more closely associated with their creative success than anybody else. See *The Sopranos*' David Chase, *Breaking Bad*'s Vince Gilligan, and *I May Destroy You*'s Michaela Coel. In Hollywood, showrunners are part of a star system and attract much publicized, top-dollar deals. Where content is truly king, companies know to invest in great writing.
41. Creative failures can be just as illustrative of this as successes. If you didn't like how the final season of HBO's *Game of Thrones* ended, who did you blame? If you're like most viewers, you were not mad at the actors, directors, producers, crew, or novelist George R. R. Martin. If you felt let down by the show's ending, you probably blamed the showrunners, David Benioff and D. B. Weiss. And you were right to do so, because they were the ones who were responsible for the fundamental creative decisions about how that story resolved.
42. There are now a significant number of talented, experienced Canadian showrunners, and they are the creative forces behind their shows. Ins Choi took his experiences growing up in a Korean-Canadian family and turned them first into a play, and then into a television show, as co-creator of the hit CBC sitcom, *Kim's Convenience*. Jared Keeso and Jacob Tierney bring a uniquely Canadian sensibility to their show *Letterkenny*, streaming on Crave. Joseph Kay is the creator/showrunner of *Transplant*, the highest-rated English Canadian drama in 2022, and a critical success on NBC. Floyd Kane created *Diggstown*, about a Black lawyer navigating law and life in Nova Scotia. Black screenwriters Marsha Greene and Annmarie Morais developed *The Porter*, and put together the first all-Black Canadian writers' room. Indigenous showrunner Ron E. Scott has been responsible for *Blackstone* and *Tribal*, both of which deal with issues affecting Indigenous communities in Canada, such as pipelines, the right to clean water, social services, and missing and murdered Indigenous women. And Dan Levy's *Schitt's Creek* has garnered numerous accolades in Canada and the United States, thanks to his unique creative vision.
43. In film and television production, there are numerous creative and non-creative roles, all of which are important contributors towards putting a project on the screen, and the Canadian system should value all of them appropriately. Yet the fact remains that, in serialized television, whether on traditional broadcast or streaming services, no other role is as creatively foundational as the

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<sup>33</sup> Goodman, Tim, “Critic's Notebook: The Rise of the TV Auteur? No Thanks.” *The Hollywood Reporter*, October 10, 2018, <https://www.hollywoodreporter.com/bastard-machine/critics-notebook-rise-tv-auteur-no-thanks-1150887>.

showrunner and the screenwriters in their writing room that they manage. They are the authorial voice of the medium, and the **Canadian authorial voice** of Canadian content. The Canadian broadcasting system must place them at its centre.

## **General Comments on a modernized regulatory framework and the Commission’s proposals**

### *Support for the Commission’s proposed contribution framework*

44. Broadly speaking, the WGC supports the contribution framework as put forward by the Commission in this proceeding. In general, the Commission’s proposals provide flexibility to broadcasting undertakings to contribute to the objectives of the *Broadcasting Act* in a variety of ways, while ensuring that they do contribute.
45. In particular, the Commission’s proposed “base requirement” to make a financial contribution to specified funds that support Canadian artists or programming is an effective tool to achieve a number of outcomes. For one thing, it supports the programming that is eligible for such funds, establishing an effective conduit from the contributions of broadcasting undertakings to the production of precisely the Canadian programming that is underrepresented and at-risk in the Canadian broadcasting system.
46. For another thing, the base contribution offers the potential to minimize or eliminate difficulties around the categories of programming—genres—that are supported, most notably when a particular broadcasting undertaking may argue that it “is not in the business” of directly investing in such program categories.

### *The central question of program categories (genres)*

47. Here, we must emphasize the centrality of the question of program categories—or genres of programming—in regulation under the *Broadcasting Act*. As we stated above, the Act exists because market forces alone do not result in the production of sufficient quality and quantity of Canadian programming, particularly in risky and expensive genres like drama. This point is vital. It is not just the “Canadianess” of programming that is at issue, it is the *type* or *genre* of programming as well.
48. The Commission formally recognizes 15 categories of television program, with many of those further split into subcategories.<sup>34</sup> These categories are not equal when it comes to their need for regulatory support or their value to the Canadian broadcasting system. For example, Category 14, Informercials, promotional and corporate videos, have never been a priority for support under the Act. Such programming serves a purely commercial purpose, is happily funded by the commercial interests behind it, is not underrepresented in the Canadian system.
49. Category 1, News, is generally seen as more important to the Canadian broadcasting system, but has different variables around their production. National and international news is broadly popular, and is of interest to larger audiences, meaning that its production costs can be recouped against higher advertising revenues. Local news is also valuable and popular, but appeals primarily to local audiences, which means smaller audiences—audiences which are less able to support the advertising revenues

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<sup>34</sup> <https://crtc.gc.ca/canrec/eng/tvcat.htm>



against which its production costs can be recouped. This is why the Commission has particular policies targeting the support of local news, such as the Independent Local News Fund.

50. Similarly, drama and documentary are high-value, high-cost and high-risk genres that the Commission has also targeted with specific policies, most notably support for PNI. In creating the PNI category and associated expenditure requirements, the Commission said that it:

...considers that there is a continuing need for regulatory support for key genres of Canadian programming. The Commission notes that over 40% of all viewing to English-language television in Canada is to drama programs; drama is thus the genre of programming that Canadians choose to watch more than all others. Drama programs and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values.<sup>35</sup>

51. In yet another example, when establishing designated groups under the initial GBL policy, the Commission excluded mainstream sports and national news specialty services, in part because, “the flexibility afforded by this approach would result in designated groups being able to direct significant amounts of spending into news or sports programming, which is already profitable.”<sup>36</sup> “Furthermore,” the Commission said, “mainstream sports and national news specialty services do not require regulatory support as these services currently have among the highest levels of CPE and exhibition of Canadian programming.”<sup>37</sup>

52. Time and again, the Commission has recognized genre-specific factors in setting its policies, and program categories are inextricably linked to the objectives of the *Broadcasting Act*. Section 3(d)(ii) of the Act states that the Canadian broadcasting system should, “encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity...”. Section 3(1)(i)(i) states that programming provided by the Canadian broadcasting system should, “be varied and comprehensive, providing a balance of information, enlightenment and entertainment for people of all ages, interests and tastes”. And section 9.1(1)(d) states that the Commission may make orders respecting, “the proportion of programs to be broadcast that shall be devoted to specific genres, in order to ensure the diversity of programming”. Indeed, a Canadian broadcasting system filled exclusively with Canadian infomercials and sports, for example, would be just as much a failure of the Act as a Canadian broadcasting system filled exclusively with non-Canadian programming.

53. As such, the WGC supports the Commission’s proposal for a “base requirement” in part because we hope it will help address challenges around programming categories. Broadcasting undertakings have argued, and continue to argue, that while they are prepared to contribute to Canadian programming, they don’t want to be “micromanaged” into contributing to specific genres that they don’t do, or don’t

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<sup>35</sup> Broadcasting Regulatory Policy CRTC 2010-167, para. 71.

<sup>36</sup> Broadcasting Regulatory Policy CRTC 2010-167, para. 120. Note that the profitability of a given service or genre may change over time, but the key point remains, namely, that the Commission can and does regularly assess the need and appropriateness of regulation in relation to programming categories/genres.

<sup>37</sup> Broadcasting Regulatory Policy CRTC 2010-167, para. 121.

want to do, or want to get away from doing.<sup>38</sup> They say this as if they are not striking at the heart of Canadian broadcasting regulation, but are somehow just trimming around the edges. But their arguments *do* strike at the heart of Canadian broadcasting regulation, because they seek to turn away from genres that *need* support, to those that *don't* need support and would be commissioned by those broadcasting undertakings anyway.<sup>39</sup>

54. Program categories—or genre—are at the core of achieving the objectives of the Act, because it is through those program categories that are highly valuable and difficult to produce that those objectives are realized. Clearly, PNI genres are amongst those most in need of support, and the WGC strongly believes that these must continue to be a focus of regulation moving forward. We ask the Commission to keep this question of genres, including PNI genres, always firmly in mind, and support regulation, including the proposed “base requirement” that supports this objective.

*The details and the big picture: \$1 billion in new money for Canadian programming*

55. The Commission currently has before it no less of a task than the complete reimagining of the regulation of the Canadian broadcasting system. This is a significant undertaking, and it makes sense that the Commission has broken the job down into several phases. It is indeed difficult or impossible to deal with all the moving pieces of this modernization process at once. At the same time, each piece is or will be inextricably linked with every other piece. Little, if anything, will sit in splendid isolation from everything else.
56. In particular, the Commission is currently asking intervenors to focus on Phase 1 of the current process and, in particular, to speak to the “initial base contribution from online undertakings” as a starting point. There is a logic in this. And yet this “initial base contribution” will only be one piece of the puzzle and, possibly, a relatively small piece of it.
57. For this reason, we must emphasize that our proposal on the (initial) base contribution is simply a part of our overall view that the Commission must realize the Government’s estimate of approximately \$1 billion annually in new money for Canadian programming from online undertakings. That is the ultimate goal. How we get there may indeed engage in a multi-step process and framework that allows various broadcasting undertakings to contribute in various ways, including in ways tailored to them. But the most important thing for the WGC is the end goal, as we discussed above: \$1 billion in new, additional money in the Canadian broadcasting system.
58. To be clear, this \$1 billion objective should be entirely additive to the broadcasting system. The promise of Bill C-11 was not for foreign online undertakings to bring \$1 billion *into* the system while traditional Canadian broadcasters take \$1 billion—or some similarly large number—*out* of it. Traditional private Canadian broadcasters might indeed like for the contributions of foreign online undertakings to simply replace theirs while they step away. But, consistent with our comments above, such an approach would foil the objective of *growing* the Canadian programming sector. It would also

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<sup>38</sup> See Corus Application No. 2022-0946-0, Rogers Application No. 2023-0373-3, and Bell Media Inc. Application No. 2023-0379-1.

<sup>39</sup> Or, they pit one form of programming that needs support, like PNI, against another form that needs support, like local news, yet ask us to trust them that local news won’t be on the chopping block next the moment they’ve gotten rid of PNI.

run afoul of a number of provisions of the *Broadcasting Act*, including those that state that: *each* broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy for Canada;<sup>40</sup> each Canadian broadcasting undertaking shall employ and make maximum use, and in no case less than predominant use, of Canadian creative and other human resources in the creation, production and presentation of programming;<sup>41</sup> and, that any broadcasting undertaking that cannot do so contributes to those Canadian resources in an equitable manner.<sup>42</sup>

#### *Avoiding the lowest-common-denominator approach*

59. Another approach, which we expect to be put forward by some broadcasting undertakings, is a race to the bottom that seeks to push regulation to the lowest-common-denominator. Anchored in claims that certain broadcasting undertakings or groups “aren’t in the business” of doing certain types of programming, they will insist that they cannot be expected to contribute to that programming, at which point those undertakings or groups that *do* engage in that activity claim that they shouldn’t be *required* to because others aren’t so required. This leads to a feedback loop of cascading deregulation until we reach the end of a downward spiral: Regulatory requirements that are so minimal that they fundamentally do not achieve the objectives of the Act.
60. This has already occurred in the past, with respect to PNI in Broadcasting Decision CRTC 2017-148, *Renewal of licences for the television services of large English-language ownership groups – Introductory decision*. Following the GBL policy, the Commission had established PNI expenditure requirements of 16% of revenues for Astral, 5% for Bell and Shaw, 9% for Corus and 5% for Rogers, following their historical spending in PNI genres. In the renewal proceeding, the broadcasting groups argued that PNI should be standardized at a common level.<sup>43</sup> At the same time, Rogers argued that no group should be required to exceed its historical PNI expenditure levels, which for Rogers was 5%.<sup>44</sup> The Commission clearly accepted both arguments, with the only way to reconcile them being a lowest-common-denominator PNI expenditure level of 5% for all English groups, which is what it implemented.<sup>45</sup> This was a massive drop in PNI spending obligations across the broadcasting system.
61. The WGC, among others, filed a petition to the Governor in Council under Subsection 28(1) of the Act, which was granted and the decision sent back to the Commission. Upon reconsideration, the Commission ultimately determined—correctly, in our view—to revert to PNI levels based on historical spending.<sup>46</sup> This, happily, averted the disaster that the 5% lowest-common-denominator approach would have meant for the Canadian domestic production sector.
62. Unfortunately, however, these kinds of arguments appear popular again, with broadcasters seemingly jockeying to commit to only minimalist Canadian programming requirements based on incredibly narrow visions of what they do as broadcasters. We submit that the Commission cannot take this

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<sup>40</sup> Section 3(1)(a.1).

<sup>41</sup> Section 3(1)(f).

<sup>42</sup> Section 5(2)(a.2).

<sup>43</sup> Broadcasting Decision CRTC 2017-148, para. 36.

<sup>44</sup> Broadcasting Decision CRTC 2017-148, para. 37.

<sup>45</sup> Broadcasting Decision CRTC 2017-148, para. 41-42.

<sup>46</sup> Broadcasting Decision CRTC 2018-335.

approach, or the result will be further decline in the sector and the failure to meet the objectives of the Act.

## **ANSWERS TO SPECIFIC QUESTIONS**

63. The WGC is pleased to respond to the Commission's specific questions below. In some cases, the WGC may be unable to answer particular questions given our membership, knowledge, or access to applicable information. In those instances, we may have no response at this time, but may provide additional comments in the reply phase once we have reviewed the comments of others.

### **Step 1 Issues and Questions**

#### **Applicability**

*Q1. The thresholds proposed in Broadcasting Notice of Consultation 2023-139 and Broadcasting Notice of Consultation 2023-140 are being consulted on as part of those proceedings, and any decisions in that regard will be considered by the Commission in the context of this proceeding. Are there other criteria upon which the Commission should base its threshold for the purposes of the new contribution framework? If so, what should the specific threshold be (e.g., what specific revenue or subscriber level should apply)? Indicate whether the criteria or threshold should be different for audio versus video services and online versus traditional undertakings.*

64. The WGC provided comments to Broadcasting Notices of Consultation 2023-139 and -140 on this issue. Subject to our review of the comments of others in this process, the WGC does not have additional comments to make on this issue at this time.

65. To reiterate our previous comments under this proceeding, Broadcasting Notices of Consultation 2023-139 and -140 proposed monetary thresholds for the application of registry requirements and particular conditions of service, respectively, of \$10 million. As we stated in our written comments in both proceedings, the WGC cannot effectively comment on this \$10-million threshold because we lack access to the data upon which it may have been based or, indeed, to any data that would help us understand what this threshold means in reality.

66. Numerous interveners have also commented on the appropriate level(s) of monetary thresholds, often proposing to raise them above \$10 million but, in our assessment, none of those proposing such increases have also provided detailed evidence, data, or analysis for reaching their conclusions, including when those very intervenors may have access to such evidence or data.

67. In light of this, the WGC continues to believe that the Commission should note the asymmetry of information available to the parties here. There are broadcasting undertakings participating in this proceeding, both online and traditional, which presumably have access to data that would be relevant to this discussion, including annual revenues and subscriber numbers, but they are not providing it on the public record of this proceeding. At the same time, they are commenting on an issue that would directly benefit from access to such data. Given this, the WGC believes the Commission should bear in mind the reverse onus provisions of section 9(2) of the *Broadcasting Distribution Regulations*

dealing with undue preference or disadvantage.<sup>47</sup> This section provides that, “the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage.” The Commission has explained the rationale for this provision as being that, “it is the party conferring a preference or a disadvantage that will have the necessary information required for the Commission to determine the facts of the case in order to issue a ruling.”<sup>48</sup> In this instance, the Commission has recognized the issue of information asymmetry and addressed it by requiring the party that has the information to be the one who bears the burden to prove their case.

68. In this case, the informational asymmetry is also at issue. Several parties that are proposing higher thresholds than the \$10 million proposed by the Commission are also the ones that have the necessary information required for the Commission to determine the facts in order to issue a ruling. While this is not an undue preference/disadvantage case as between two specific parties, the theme of informational asymmetry is at issue, and the WGC submits that in the absence of its own information upon which to base a decision, the Commission should make an adverse inference against broadcasters, streamers, platforms, or any other broadcasting undertaking that asserts a higher threshold, but which does not provide data to support that assertion when it could do so.

*Q2. In regard to Q1, if you are proposing to consider elements other than Canadian broadcasting revenues, please indicate how the Commission should measure those elements.*

69. Subject to our review of the comments of others in this process, the WGC is not proposing to consider elements other than Canadian broadcasting revenues at this time.

*Q3. Are there other factors that the Commission should take into consideration in establishing which broadcasting undertakings do not have a material effect on the implementation of the broadcasting policy set out in subsection 3(1) of the current Broadcasting Act and should therefore be exempted from the requirement to make specific contributions to the Canadian broadcasting system?*

70. Subject to our review of the comments of others in this process, the WGC is not currently proposing additional factors in this respect.

71. We would also reiterate our comments on the question of thresholds, as provided to the Commission in relation to Broadcasting Notices of Consultation 2023-139 and -140.

72. We again note, however, the asymmetry of information available to the parties here, and we hope that any parties that propose other factors will provide the necessary evidence and analysis in support of those factors, so that the WGC and others who lack access to such information can effectively comment on the proposal(s).

*Q4. How should the Commission determine the appropriate level of contributions in cases where only a portion of an online undertaking’s services are covered by the Broadcasting Act?*

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<sup>47</sup> <https://laws.justice.gc.ca/eng/regulations/SOR-97-555/page-3.html#h-1010718>

<sup>48</sup> Broadcasting Regulatory Policy CRTC 2011-601, para. 109.

73. Given the nature of the WGC and its membership, we cannot comment effectively on this question at this time. This is a question which would seem best put to regulated entities themselves, which have the information upon which to base a fulsome response.

74. We again note, however, the asymmetry of information available to the parties here, and we hope that any parties that propose particular methods will provide the necessary evidence and analysis in support of those methods, so that the WGC and others who lack access to such information can effectively comment on the proposal(s).

*Q5. How should the Commission define “social media service”? What, if any, criteria should be used to assess whether an online undertaking is providing a social media service?*

75. Subject to our review of the comments of others in this process, the WGC is not proposing a definition of “social media service” at this time.

#### Contribution level, base contribution, and funds

*Q6. Generally speaking, commercial radio stations with total revenues exceeding \$1,250,000 are required to make basic CCD contributions of \$1,000 plus 0.5% of revenues in excess of \$1,250,000. Large English-language vertically integrated television groups have CPE requirements of approximately 30% of gross revenues from the previous broadcast year, while large French-language vertically integrated television groups have CPE requirements of up to 45% of gross revenues from the previous broadcast year, along with a requirement to produce original French-language programs. Licensed BDUs are generally required to contribute 4.7% of their previous broadcast year’s gross revenues relating to broadcasting activities to Canadian programming, less any allowable contribution to local expression. With this in mind, under the new contribution framework, should the overall contribution commitment of online undertakings be comparable to the existing contribution levels of traditional broadcasting undertakings? If so, which traditional broadcasting undertakings? Please explain.*

76. Yes, under the new contribution framework, the overall contribution commitment of online undertakings should be comparable to the existing contribution levels of traditional broadcasting undertakings. This is consistent with our view, as stated above, and is consistent with the professed objective of the Government in passing the *Online Streaming Act*, which it was estimated would result in close to \$1 billion annually in contributions by online undertakings to Canadian content and creators. This was based on equitable treatment with what traditional broadcasters were already contributing to the system, and is the promise and ultimate objective of Bill C-11—i.e. to generally bring the contributions of online undertakings up to the level of those of traditional broadcasters.

77. The question of precisely which traditional broadcasting undertakings is obviously a complex one. Television and radio broadcasters are different, as is the content financing and support models for audio and audiovisual content. For example, a podcast can be recorded in a room with a simple microphone and home computer, and quality music can be recorded with only a slightly higher investment. But it costs millions of dollars per hour to produce high-quality audiovisual drama. Also, radio stations don’t generally commission original music which is then exclusive to that station or network of stations, whereas television broadcasters do precisely that. This clearly indicates a different approach is necessary as between audio and audiovisual services and content.

78. No two services or ownership groups of services will be identical, but the WGC sees broad similarity between the English-language broadcasting groups which are designated under the GBL approach and the major streaming services. Both are of significant size, attract high numbers of Canadian viewers and/or subscribers from across the country, and offer a variety of programming across multiple genres. In our view, the fact that certain online undertakings may not do news or sports (currently), or the fact that certain traditional broadcasters may not commission as much drama or feature film as certain streamers, is not determinative of this question. If the Commission were to decide that only identical services are comparable services, then it would effectively be unable to regulate like entities at all. Even now, in regulation of traditional broadcasters, we have three English-language groups—Bell, Corus, and Rogers—which have meaningful differences between them, yet are subject to standardized policies such as CPE and PNI, with the former set at the same levels for each.
79. The risk of over-emphasizing differences between services or groups is a lowest-common-denominator or “race to the bottom” approach, as discussed above, in which each broadcasting undertaking and/or group insists that because it doesn’t do something that another undertaking and/or group does, it should not be required to support it, at which point those undertakings or groups that *do* engage in that activity claim that they shouldn’t be *required* to because others aren’t so required. This leads to a feedback loop of cascading deregulation until we reach the end of a downward spiral: Regulatory requirements that are so minimal that they fundamentally do not achieve the objectives of the Act.
80. Without more detailed information, the WGC cannot go beyond this principled statement at this time. We cannot effectively compare traditional broadcasters to online undertakings for which we do not have detailed financial or other data. In this light, however, we again refer to the asymmetry of information and submit that any intervenor who argues for lower obligations must, at the very least, provide the evidence upon which they base their argument.

*Q7. Many of the Commission’s existing contribution requirements are calculated on the basis of annual revenues. On what basis should the initial base contribution level and the overall contribution commitment of online undertakings be calculated? If the Commission were to use annual revenues, please comment on the appropriateness of the following definition...*

81. Subject to our review of the comments of others in this process, the WGC supports an initial base contribution on the basis of annual revenues, and has no comments on the Commission’s proposed definition of annual revenues at this time.

*Q8. What would constitute an appropriate level of initial base contributions for online undertakings? Should this initial base contribution be the same for online undertakings operating audio services versus those operating video services? Please explain and specify the level that should be established for each type of service.*

82. Given the nature of our membership, the WGC will focus its comments on online undertakings operating video services.

83. This is a central question for the WGC and the Canadian creative community as a whole. The quantum of support for Canadian programming is a pivotal question that will ultimately relate to whether the objectives of the *Broadcasting Act* are being achieved or not. And, as noted above, the Commission is asking this question separately from the question of the overall contribution that online undertakings will make. This may be necessary, but it still requires stakeholders to comment on one piece of the puzzle—and, quite possibly, a relatively small piece—in the absence of seeing the entire puzzle. This creates some uncertainty and deprives us of context that might otherwise be relevant.
84. At the same time, the WGC has extremely limited information from which to base a proposal. We have primarily the information collected and published with respect to the Annual Digital Media Survey, which is not nearly as detailed or comprehensive as that provided for traditional broadcasters, and does not permit us to accurately and completely model various scenarios that would take all relevant considerations into account.
85. All of that said, the WGC proposes that the appropriate level of initial base contribution for online undertakings be no less than 5% of their gross annual revenues. The WGC’s proposal is a *minimum* of 5%—we would also support higher percentages.
86. This proposal is based in part on symmetry with other similar contribution regimes for similarly situated players. Broadcasting distribution undertakings (BDUs)<sup>49</sup> and BDU-affiliated video-on-demand (VOD) services<sup>50</sup> currently contribute ~5% to support Canadian programming.
87. Naturally, such a contribution level would be small on its own, and we presume that it would be combined with significantly more robust contribution requirements through the “flexible financial requirement” proposed by the Commission, and/or other tools. Again, we submit that the Commission should be working towards the \$1 billion target discussed above, and a 5% (initial) base contribution is just one step towards that goal.
- Q9. In the current system a variety of funds exist to support the creation and promotion of Canadian content. In what ways are the existing funds successful in their support of Canadian content generally, and in what ways could they be improved? Similarly, do the existing funds sufficiently support the objectives of the current Broadcasting Act, including those relating to OLMCs, diversity, inclusion and accessibility? How can they be improved? For example, should the Commission consider amending the CIPF criteria?*
88. A comprehensive assessment of the entirety of the Canada Media Fund (CMF) and CIPFs is beyond the scope of this proceeding, and the ability of the WGC to provide at this time. That said, in general, we are of the view that the CMF is generally successful in its support of Canadian content, in large part because it requires the television component of eligible projects to be certified by the Canadian Audio-Visual Certification Office (CAVCO) and achieved 10/10 points (or the maximum number of points appropriate to the Television Component), as determined by the CMF using the CAVCO scale.<sup>51</sup>

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<sup>49</sup> E.g. Broadcasting Distribution Regulations, SOR/97-555, s. 34.

<sup>50</sup> Broadcasting Regulatory Policy CRTC 2016-436.

<sup>51</sup> There are some limited exceptions. See section 3.2.TV.1 of the 2023-2024 Performance Envelope Program Guidelines, and other applicable guidelines, and Appendix A: Definitions and Essential Requirements (<https://cmf-fmc.ca/program/performance-envelope-program/>).



This ensures that all key creatives under the CAVCO system are Canadian including, crucially, screenwriters.

89. The same cannot be said of CIPFs, however. Previously needing 8-out-of-10 points to qualify for funding, in 2016 the Commission unfortunately determined that for Canadian content to be more successful, it needed to be less Canadian. “A reduced requirement of at least six points could also facilitate the hiring by production companies of non-Canadian actors or creators, who may increase a project's attractiveness and visibility in international markets,” the Commission said.<sup>52</sup> CIPFs have generally adopted this “flexibility” afforded them.<sup>53</sup>
90. As we argued above, screenwriters hold a unique position in the creative process of the production of audiovisual content, particularly when it comes to television drama and animation. Under CAVCO scale, a Canadian director earns two points, Canadian screenwriters another two points, the top two highest-paid performers get one point each, and then one point each is allocated for a Canadian director of photography, editor, music composer, and so on. Under the 6-point minimum requirement applicable to CIPFs—and also the Commission’s definition of “Canadian program”, as well as the federal Canadian Film or Video Production Tax Credit—at least two points must come from the director or the screenwriter position. The scale works the same for feature film and television.
91. This means that it’s possible for a television series to be written entirely by non-Canadians under this 6-point model and still count as Canadian. Importantly, it also means that *all* Canadian television programs could be written by non-Canadians and still count as Canadian. There is no requirement for system-wide “balance” in which roles are going to Canadians or non-Canadians.
92. In serialized television, the creative driver of the production is the showrunner and the screenwriters working with them. Yet under a 6-point definition of Canadian content, this role could be replaced with non-Canadians system-wide. Theoretically, the 6-out-of-10-point system allows a variety of different combinations of Canadian and non-Canadian key creative talent. In reality, however, certain roles are more vulnerable to being replaced with non-Canadians than others. It is common knowledge in our industry that when financing Canadian productions, amongst the first creative roles that international financiers and content commissioners will look to fill with “international talent” are the screenwriter(s)—that and the lead performer(s). Indeed, this was precisely the 2016 Commission’s stated rationale. Financiers seek to determine creative control, and they seek marquee name recognition of global, usually American, stars.
93. After that, streamers and broadcasters are often quite happy to fill other roles with Canadians, because they simply do not drive the creative vision of the show like the showrunner and the writing room do. And there is nothing to prevent this from becoming a system-wide issue for virtually every show under a 6-point world.
94. Up to now, policy makers may have comforted themselves with the fact that, by some metrics at least, this potential imbalance has not actually become a reality. In 2021-2022, 72% of Canadian television

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<sup>52</sup> Broadcasting Regulatory Policy CRTC 2016-343, para. 57.

<sup>53</sup> E.g. Shaw Rocket Fund, Investment Guidelines, section 2.2 (<https://rocketfund.ca/wp-content/uploads/2022/08/Shaw-Rocket-Fund-Guidelines-FY2023-FINAL-EN.pdf>).

production received 10 out of 10 Canadian content points,<sup>54</sup> English and French combined.<sup>55</sup> Some may feel that this is not a bad outcome overall.

95. The fact is, however, that the influence of the CMF almost certainly created this situation through the incentivizing power of its funding. Currently, traditional Canadian broadcasters make significant use of the CMF to support their Canadian production. The CMF requires productions to achieve the full, 10 out of 10 points in order to be eligible for funding. As such, this has become the *de facto* standard for the genres the CMF funds in the broadcasting system, and it is a near-certainty that the current level of support for Canadian screenwriters comes from this fact. Canadian broadcasters effectively need that money to produce content. They cannot leave CMF money on the table in exchange for not playing by the CMF's rules and still expect to commission high-cost Canadian dramas, kids' programming, and documentaries economically. The influence of the CMF in the current system is setting a *de facto* 10-point standard for the entire industry.
96. This situation will not survive in a world where CIPFs with 6- or 8-point requirements proliferate, and it *certainly* will not survive if the Commission maintains a 6-point definition of "Canadian program" that regulatory requirements are based on. We are jumping ahead to Phase 2 of the modernization process at this point, but it is worth doing so here. Simply put, foreign streaming services can afford to leave money on the table. Foreign online undertakings are many, many times larger than Canadian broadcasters. They have much deeper financial pockets. That means that they can happily walk away from funding if it gives them more control over the production, including the ability to place non-Canadians in creatively vital writing positions.
97. It boils down to the relative power of incentives versus regulatory requirements. Effective incentives must be big enough to actually incentivize the behaviour they seek, so the size of the entities you're trying to incentivize matters. Canadian broadcasters are small enough, in the context of a global market, for the CMF's funding to be an effective incentive. Foreign streamers are too big to have the same effect. This was recognized in the 2020 final report of the Broadcasting and Telecommunications Legislative Review Panel, in its rationale for Recommendation #67:

It is critical to ensure that with the changes in funding sources, there are still a healthy number of so-called 10-out-of-10 Canadian productions, which maximize Canadian creative input.

Current programs funded in part by the CMF through its broadcast envelopes generally require Canadian productions to ensure that all key creative positions are occupied by Canadians. Programs that do not depend on CMF financing can qualify as Canadian content

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<sup>54</sup> *Profile 2022*, Ex. 3-11.

<sup>55</sup> Note that this combination of English and French may skew the impact on English-language production, since French creators are generally "protected" by their language. In other words, if you want a script written in French, you need a French-speaking writer, and in the Canadian industry, this is likely to be a Quebec French-speaking writer. It is certainly less likely that a French-language project can effectively be written by an English-speaking American or British writer. This is very much unlike the English-Canadian market, where the shared language with both the United States and the United Kingdom—and just the general popularity of English around the world—significantly increases the pressure for "international markets", in the Commission's words, to want "international" key creatives in central rolls like writing and showrunning.

if they meet a minimum of 6 points out of 10. The protection for 10-out-of-10 Canadian productions would disappear with the elimination of the CMF broadcast envelopes, to be replaced by Canadian program expenditure requirements that will be applicable to streaming as well as traditional broadcasters.

There is no question that productions in which all key creative positions are occupied by Canadians — which have a Canadian writer, a Canadian director, and Canadian lead actors — are more likely to reflect a Canadian perspective. On that basis, we encourage the federal government and the CRTC to ensure that a significant portion of financing provided through the new public institution and CIPFs goes to productions where all key creative positions are occupied by Canadians. Consistent with this, where media curation undertakings include new Canadian dramas and long-form documentaries in their offerings, the CRTC should set an expectation that all key creative positions be occupied by Canadians on a reasonable percentage of those programs. Maximizing the Canadian creative inputs can enhance the Canadian perspective of such programs without affecting freedom of expression.<sup>56</sup>

98. If large foreign streamers can leave CMF money on the table in exchange for more “flexibility” on key creative roles, they will, and then we will have completely undercut the entire purpose of the *Broadcasting Act*. Much “Canadian content” will not be Canadian-written, and then Canadian screenwriters will have to do what they increasingly already must: Leave Canada for Los Angeles, where their talent is recognized, where the streamers who are operating in Canada want to do the hiring already, and where they will be employed to tell American stories to an American and global audience, whose work will be sold back into Canada as “global content,” all while paying American taxes and benefitting the American economy. The talent drain will continue, and Canadian stories and the Canadian broadcasting system will be poorer for it.
99. Given the above, yes, the Commission should consider amending the CIPF criteria. It should revisit its decision in Broadcasting Regulatory Policy CRTC 2016-343 and require that CIPFs have a 10-out-of-10-point eligibility requirement for funding.

*Q10. The current Broadcasting Act sets out that the Commission “may make regulations respecting expenditures to be made by persons carrying on broadcasting undertakings for the purposes of [...] supporting participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission under this Act.” Should the Commission direct a portion of initial base contributions to the BPF or other funds with similar objectives?*

100. Given the nature of its membership, the WGC has no specific comments to make on this subject.
101. In general, the WGC supports participation by persons, groups of persons or organizations representing the public interest in proceedings before the Commission.

*Q11. Should base contributions flow only to existing funds or could they be directed to newly created independent funds? Should online entities be permitted to create their own independent production funds,*

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<sup>56</sup> <https://ised-isde.canada.ca/site/broadcasting-telecommunications-legislative-review/en/canadas-communications-future-time-act>

*to which their contributions would flow? If yes, what criteria should they be required to meet? For any proposal, please describe the initiative, including the level of funding that would be required to support it.*

102. While we cannot consider every possible proposal that might be put forward, the WGC generally does not support the broad proliferation of newly created CIPFs. The WGC supports the majority, if not the entirety, of base contributions being directed to the CMF.

103. The CMF is a single fund, but it is comprised of many programs. In addition to its primary audiovisual content funding program, the Performance Envelope Program, the CMF also has programs dedicated to regional diversity, linguistic diversity, Indigenous programming, racialized communities, export assistance, development, and various genres, such as point-of-view documentaries.<sup>57</sup> The CMF has demonstrated its ability to create a diversity of approaches to funding, which can be accomplished within a single fund, rather than through creating multiple funds. Centralizing funding at the CMF provides a single point of contact for the Commission and the Government to both obtain information and to provide policy direction if and where appropriate. A proliferation of funds also means an expansion of administrative costs, with each fund taking various expenses from its contribution to the sector, such as office space and equipment and paying administrators. This is not efficient. There is no need for the creation of more CIPFs.

104. Moreover, the WGC is concerned that various private broadcasting undertakings might propose a proliferation of CIPFs that would simply dilute and distract from the attainment of the objectives of the Act. In our experience, CIPFs offer the undertakings that establish them a branding opportunity that may be valuable to the undertakings themselves, but which can blur the distinctions between the CIPFs and their public policy purpose. Broadcasting undertakings can be tempted to view CIPF funding as “their money” that they can direct as they wish. And while CIPFs are independent of the undertakings that may bare their name, within the parameters of that independence there may be pressures that may not be the same as the objectives of the *Broadcasting Act*.

105. If the goal is funding Canadian programming, then the WGC sees no need to create a multitude of new CIPFs when the CMF already does that job.

106. That said, we respect the views of Indigenous, Black, people of Colour, people with disabilities, LGBTQ2S, and other diverse communities in determining what funding structure(s) work best for them. Our comments above are focused on “corporate” CIPFs as may be proposed by private broadcasting undertakings.

*Q12. How can production funds better support Canada’s diversity, inclusion and accessibility, as they relate to representation in programming, creators, or a combination of both? Should contributions or a portion of the contributions be directed towards the funds specifically dedicated to supporting diversity, inclusion and accessibility in the broadcasting system? If yes, which organizations and funds? Should new funds be created? In addition, please comment on the selection process, eligibility criteria, and reporting requirements that would be necessary to support this objective.*

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<sup>57</sup> <https://cmf-fmc.ca/our-programs/>

107. The WGC supports programs designed to fund the creation of content by diverse communities, including the CMF Indigenous Program<sup>58</sup> and the Pilot Program for Racialized Communities.<sup>59</sup>
108. The WGC also supports funding diverse creators through general programs. In this sense, we support reserving at least 25% of the CMF Predevelopment Program’s budget for Projects that meet the definition of a “Diverse Community Project”.<sup>60</sup>
109. In terms of eligibility criteria, the WGC support requirements for a percentage of positions within the Creative Team to be held by members of diverse communities.
110. It is vital that production funds collect and publish aggregated data on productions’ creative teams’ composition. In the case of the CMF, this data is already being collected through Persona-ID.<sup>61</sup> Aggregated data on key creatives is the best way to assess how funding allocated through production funds is impacting creators from underrepresented communities.

*Q14. Are there new funds that should be created? If so, what entities should be required to contribute to such a fund? Who should administer and be responsible for the fund?*

111. See our comments above under Q11. In general, the WGC does not support the proliferation of new CIPFs.

*Q15. Should the Commission require that a certain percentage or proportion of an undertaking’s or ownership group’s base contribution be directed to a particular fund or type of fund?*

112. Yes. Depending on the number and type(s) of new funds created, the unrestricted ability of undertakings or ownership groups to contribute whatever amount they wished to any funds they wished could lead to significant instability in the funding system.
113. For example, the widespread proliferation of new CIPFs combined with the unrestricted ability for undertakings to contribute to them would almost certainly allow them to direct 100% of their contributions to their “own” CIPF, with the consequent impoverishment of the CMF as a result.
114. Such a system could also lead to imbalances in the types of programming that the funds support. As discussed above, we already see broadcasting undertakings seeking to avoid contributing to certain genres or programming categories that they believe are unprofitable for them and/or just not what they want to do. The same pressure would be brought to bear on new or existing CIPFs, as broadcasting undertakings rushed to concentrate funding in areas that they felt would be most lucrative. As a result, funding could go where it is least needed, as those types of programs that are most risky are shunned by risk-averse broadcasters and/or streamers.

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<sup>58</sup> <https://cmf-fmc.ca/program/indigenous-program/>

<sup>59</sup> <https://cmf-fmc.ca/program/pilot-program-for-racialized-communities/>

<sup>60</sup> Predevelopment Funding Guidelines 2023-2024. Schedule A, Additional Program Requirements (<https://cmf-fmc.ca/document/predevelopment-funding/>)

<sup>61</sup> <https://cmf-fmc.ca/persona-id/>

115. For these reasons, subject to our comments on Indigenous, Black, people of Colour, people with disabilities, LGBTQ2S, and other diverse communities, the WGC supports 100% of funding being directed to the CMF.

116. If, however, the Commission decides to permit an expansion of CIPFs, then we submit that, yes, the Commission should require that a percentage or proportion of an undertaking's or ownership group's base contribution be directed to a particular fund or type of fund. Specifically, we would propose that, consistent with the current rules applicable to terrestrial BDUs,<sup>62</sup> an undertaking must contribute to the CMF at least 80% of its total required contribution.

## **Step 2 Issues and Questions**

### General objectives of the proposed contribution framework

*Q16. (Part 1) Would an outcomes-based approach and customized contribution framework ensure that the broadcasting system as a whole (including online undertakings) contributes to the achievement of the Commission's above-noted objectives?*

117. In our view, the answer to this question depends greatly on the nature and specificity of the outcomes and the type of flexibility the Commission provides in the manner of achieving them.

118. We presume that the "general objectives" listed at paragraph 59 of the Notice of Consultation in this proceeding are *not* examples of the "outcomes" that the Commission has in mind. The "production of high-quality, original audio and video Canadian programming," for example, is naturally too general and vague to be a "clearly defined, measurable regulatory objective," in the Commission's words. Such an objective would not be clearly defined or measurable.

119. In the absence of specific examples, then, it is difficult for the WGC to comment in the abstract. In general, however, an outcomes-based approach would appear to be effective to ensure that the broadcasting system as a whole contributes to the achievement of the Commission's objectives, provided that those outcomes are indeed clearly defined and measurable. They must also be enforceable. Similarly, flexibility for broadcasting undertakings to decide how to achieve the Commission's objectives is reasonable provided that this flexibility does not actually undermine that achievement.

120. For example, if the Commission determined that a given undertaking or ownership group had to contribute X% of gross broadcasting revenues in total to the production of Canadian programming in specified genres, it likely would not matter if the undertaking or group did so either: through direct expenditures on programming for its own services, like the CPE model currently in place; or, through contribution of that same amount to the CMF, provided that the applicable genres and definition of "Canadian program" in both cases was substantially the same. In that example, it truly would be just a difference of mechanism. If the substantive result is truly the same, then specifying an outcome but not the way it is achieved may be workable.

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<sup>62</sup> Broadcasting Distribution Regulations, SOR/97-555, s. 34(1)(a).

121. If, however, the Commission granted broadcasting undertakings substantive flexibility over *what* they contribute to, in a way that allowed them as undertakings/groups, or the system as a whole, to evade the spirit and intent of the regulation, then that would not be effective in ensuring that the broadcasting system as a whole contributes to the achievement of the Commission’s objectives. For example, if the Commission determined that a given undertaking or ownership group had to contribute X% in total to the production of Canadian programming, but allowed significant flexibility on the genres supported, that would place under-represented genres at clear risk in the broadcasting system. The same goes for flexibility that would allow undertakings not to engage Canadian screenwriters as long as other key creatives or creative factors were met.
122. We would also emphasize that the type of “outcomes-based approach” applied by the Commission in its most recent licence renewal of CBC/Radio-Canada<sup>63</sup> (CBC) is not an appropriate model for the regulation of private entities in the broadcasting system. The Commission has used strikingly similar language in the present Notice of Consultation and in the CBC licence renewal decision.<sup>64</sup> For CBC, the Commission converted a number of binding conditions of licence into expectations, which it proposed to measure rather than strictly enforce. However, in the CBC renewal, the Commission was clear that its decision to grant the CBC more flexibility was based on its role as the national public broadcaster and the fact that it had a track record of meeting or exceeding its prior regulatory obligations.<sup>65</sup> This clearly can apply only to public broadcasters like the CBC, and has no application whatsoever to private entities, in particular to online undertakings with no regulatory track record at all. As the Commission is aware, its recent CBC licence renewal was subject to two strenuous dissenting opinions by Caroline J. Simard, Vice-Chairperson, Broadcasting, and Commissioner Monique Lafontaine. Subsequently, the decision was sent back for reconsideration by the Governor in Council.
123. The WGC also notes that the Commission’s question asks about the broadcasting system *as a whole*. This is important, because flexibility that may seem reasonable for a particular regulated entity can, when applied to all such entities, result in system-wide imbalances. As we noted above, the current flexibility afforded in the 6-point definition of Canadian program using the CAVCO scale could be seen as offering project-by-project flexibility to use screenwriters *or* directors to meet the 6-point requirement. But given the pressures and dynamics in the sector, such an approach could and would

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<sup>63</sup> Broadcasting Decision CRTC 2022-165

<sup>64</sup> In the present Notice, the Commission states, at para. 58, “The Commission’s intent is to design a new contribution framework that is flexible and focuses on clearly defined, measurable regulatory objectives without specifying precisely how those objectives must be achieved.” In the most recent CBC renewal, the Commission states, at para. 23, “In consideration of the relative level of confidence that may be placed in the CBC, these and other factors led the Commission to focus on desired public policy results in a number of cases, without specifying the precise means of achieving them.” [Emphasis added.]

<sup>65</sup> E.g. Para. 22: “With a view to supporting the policy objectives under the Broadcasting Act, the Commission sets different requirements for the CBC in recognition of what the public broadcaster offers to the broadcasting system given its unique role, mandate and capacities.” Para. 23: “During the current licence term, the CBC has met all of its regulatory requirements and has even surpassed a number of them. In consideration of the relative level of confidence that may be placed in the CBC, these and other factors led the Commission to focus on desired public policy results in a number of cases, without specifying the precise means of achieving them.” Para. 24: “In reaching its determinations, the Commission weighed the realities of the CBC’s accountabilities, as well as the behaviours in which the CBC has engaged to support its cultural objectives.”

lead to a system-wide imbalance in the use of Canadian screenwriters. To be clear, the WGC's view is that Canadian screenwriters need to be considered essential for *all* Canadian programming, given their central creative role in the process. But the main point for the moment is that how "flexibility" when considered in relation only to regulated entities can lead to system-wide issues if and when all or the majority of such entities use that flexibility in the same or similar ways.

124. Ultimately, the question is about the type of flexibility and whether it ensures the outcomes that reflect the policy objectives of the *Broadcasting Act*. We submit that, consistent with the conflict provision of section 5(3) of the Act,<sup>66</sup> "flexibility" must always be subordinate to the achievement of the substantive cultural policy objectives in section 3(1). We submit that the Commission must be mindful of not repeating the mistakes of the 1999 TV Policy, nor should it seek to apply the model recently envisioned for the CBC to private undertakings that are very much not the CBC.

*Q16. (Part 2) What other outcomes or objectives, other than those set out in the above list, may be required to ensure that Canada's broadcasting system can thrive now and in the future? Is the above list of objectives complete, accurate, fair and representative of the objectives set out in the current Broadcasting Act?*

125. Consistent with our comments above, the Commission's stated objectives at paragraph 59 of the Notice of Consultation should include the growth of the production of high-quality, original audio and video Canadian programming. The Commission should not be content with the *status quo* at the same time as it is bringing in a number of major online undertakings into the system, and in light of the stagnation and declines discussed above. As such, we submit that the first bullet read as follows:

- **the growth of the production of high-quality, original audio and video Canadian programming;**

126. In addition, the Commission's stated general objectives at paragraph 59 of the Notice of Consultation do not refer to Canadian creators. This is a striking omission. As stated above, art is made by artists, and Canadian art is made by Canadian artists. We cannot speak about supporting Canadian painting without speaking about Canadian painters. We cannot speak about supporting Canadian novels without speaking about Canadian authors. Audiovisual production is more complicated because more people are involved, but television still has creators, just as much as any other medium, and those creators are essential components of the creation process. If there were no screenwriters or other key creatives, there would be no content, full stop.<sup>67</sup>

127. This is reflected in the *Broadcasting Act* in multiple places. The Act states that the Canadian broadcasting system should, "encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic

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<sup>66</sup> (3) **Conflict.** – The Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).

<sup>67</sup> We are naturally aware of the emergence of artificial intelligence (AI) as a growing element of content creation. The Canadian broadcasting system, however, is about serving the needs and interests of people, not machines. See the WGC's letter to Ministers Rodriguez and Champagne for more: <https://www.writersguildofcanada.com/whats-new/news/ai-and-role-canadian-creators>.



creativity,”<sup>68</sup> all of which are done by Canadian creators. The Act states that the Canadian broadcasting system should, “through its programming and the employment opportunities arising out of its operations, serve the needs and interests of all Canadians...”.<sup>69</sup> Each broadcasting undertaking must make maximum use, or the greatest practicable use, as the case may be, of Canadian creative and other human resources.<sup>70</sup>

128. As such, we submit that the Commission’s “general objectives in regard to contributions to Canadian programming and creators” should *actually mention creators*.

129. The Commission can take guidance here from the *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)* issued by the Governor in Council pursuant to subsection 7(1) of the Act, (the Policy Direction) currently under public consultation.<sup>71</sup> While not yet finalized, the draft Policy Direction currently makes several statements about the role of Canadian creators, including the following [emphasis added]:

4. The Commission is directed to impose requirements on broadcasting undertakings that ensure that the Canadian broadcasting system...strongly supports a wide range of Canadian programming and Canadian creators.

...

9. In its regulation of the broadcasting sector, the Commission is directed to ensure that the sector maximizes the use of Canadian creative and other human resources in the creation, production and presentation of programming in the Canadian broadcasting system, taking into account the effects of broadcasting undertakings, including online undertakings, on economic opportunities and remuneration for creators.

...

13. In its determination of what constitutes Canadian programming, the Commission is directed to

...

(b) support Canadians holding a broad range of key creative positions, in particular those with a high degree of creative control or visibility;

130. The Commission should include such language in the express “general objectives” in its policy framework. The WGC proposes the following distillation of this concept, which also includes the concept of “authorial voice” discussed above. We propose the following bullet point be added to the list at paragraph 59 of the Notice of Consultation in this proceeding:

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<sup>68</sup> Section 3(1)(d)(ii).

<sup>69</sup> Section 3(1)(d)(iii).

<sup>70</sup> Section 3(1)(f) and 3(1)(f.1).

<sup>71</sup> <https://canadagazette.gc.ca/rp-pr/p1/2023/2023-06-10/html/reg1-eng.html>

- **the strong support of a wide range of Canadian creators, in particular those with a high degree of creative control or visibility, and who contribute the Canadian authorial voice to the production of the program;**

131. This mention of Canadian creators—and in particular the creators are the heart of the process of Canadian television production—is vital if we are to ensure the full expression of the objectives of the *Broadcasting Act*.

*Q17. Would the proposed new contribution framework achieve desirable policy outcomes for the Canadian audio and video broadcasting system? Why or why not?*

132. The WGC is not sure it understands the intent of this question. In a sense, it seems that the Commission is asking many or all of the questions posed in this Notice of Consultation—and beyond—within the microcosm of a single question.

133. Subject to further clarification of the Commission’s intent throughout this process, therefore, we can simply say for now that everything depends on the manner in which the framework is finalized and implemented. We are of the view that the framework proposed by the Commission is generally appropriate and a step in the right direction, subject to our comments in our submissions.

*Q18. Should the regulatory approaches for traditional broadcasting undertakings and online undertakings (audio and/or video) be separate and different, or should the Commission establish a new approach that considers the broadcasting system as a whole?*

134. The Commission should maintain the longstanding interpretation of the *Broadcasting Act* as being “technologically neutral”. In this approach, it is not the specific technology that matters, but rather the objectives of the Act that the Commission is trying to advance, and the particular relevant circumstances in which it is trying to do so.

135. Generally speaking, there is no inherent reason for the Commission to treat traditional broadcasting undertakings and online undertakings in fundamentally different ways. When it comes to audiovisual programming, both commission content and make it available to Canadians using one or more broadcasting technologies. There may be relevant differences between different services, but the distinction between traditional broadcasting undertakings and online undertakings is not, by itself, determinative of how the Commission should approach regulation.

136. Behind this level of generality, it is difficult to speak in the absence of specific issues and/or circumstances.

*Q19. Would an outcomes-based approach and customized contribution framework, once finalized, ensure regulatory symmetry between traditional broadcasting undertakings and online undertakings?*

137. In general terms, there is no reason that we are aware of to believe that any approach, outcomes-based or not, would not result in regulatory symmetry between traditional broadcasting undertakings and online undertakings, if that was how the Commission designed it.

138. That said, the WGC does not believe that “regulatory symmetry” should be the Commission’s highest priority in this process. Certainly, “equitable” treatment is a concept in the Act. “Symmetrical” treatment is not, and “regulatory symmetry” may not be appropriate where the circumstances themselves are asymmetrical. Generally speaking, “symmetry” should not be a priority for the Commission.

*Q20. Could/should the new contribution framework be applied to broadcasting undertakings or to broadcasting ownership groups? If the framework is applied at the ownership-group level, are there any impediments to it being implemented via orders issued pursuant to subsection 11.1(2) of the current Broadcasting Act?*

139. The WGC reiterates its views as provided in the proceedings under Broadcasting Notices of Consultation 2023-139 and -140, namely, that we support the Commission’s approach to apply the new contribution framework to broadcasting ownership groups. Such an approach would appear to recognize the synergies that exist within ownership groups, including the ability of undertakings within such a group to share costs, cross-promote services and content, and consolidate resources that can be made available to multiple undertakings within that group. Among other things, this approach would make it more likely that “smaller players” that are exempt are *truly* smaller, in that they lack such synergies and access to resources, as opposed to merely having been created by the drawing of arbitrary lines within a broadcasting corporate group.

140. Subject to our review of the comments of others, the WGC currently has no view on impediments to the framework being implemented via orders issued pursuant to subsection 11.1(2) of the current Broadcasting Act.

*Q21. To what extent is the proposed new contribution framework adaptable to the needs and capacities of smaller, independent players?*

141. Subject to our review of the comments of others, the WGC currently has no view on to what extent the proposed new contribution framework is adaptable to the needs and capacities of smaller, independent players.

*Q22. What, if any, special considerations should be given to English- and French-language markets?*

142. As we discussed in greater detail above, the English- and French-language markets have several key differences that make regulation under the *Broadcasting Act* distinct in each market. Generally speaking, the French language can have the effect of “protecting” French-language creators from the threat of being replaced with American or British creators, at the same time that it promotes audience engagement domestically. The English market is much more “exposed” to direct competition from Hollywood, the U.K., and other larger markets that have much higher levels of capitalization and resources.

143. The regulatory regime currently being developed is almost certain to contemplate a higher degree of integration between the Canadian and foreign—primarily American—television production sectors than ever before, at least in the English market. This means that commissioning decision-makers at the streamers could just as well be located in Los Angeles as Toronto, and their view of content

commissioning could be just as focused on the Hollywood talent pool as it is now with regard to American—or FLS—production. The Commission will have to consider this new level of integration the reverberations it could have on our sector.

144. In particular, the Commission will have to consider residency of key creatives, possibly for the first time in the regulatory framework. Traditionally, the CAVCO points system, and the Commission’s own related system, functioned in terms of citizenship status. This may have made sense, given the otherwise geographical distinctions between the Canadian domestic industry and Hollywood. Such distinctions may soon be blurred or even erased. If so, the Commission will have to decide what a “domestic (English) Canadian production industry” means. We submit that it cannot mean a talent pool that has already left—or is further induced to leave—Canada for the United States, because the decisions on “Canadian programs” are largely made in Los Angeles by Americans. In that context, residency should be a factor that the Commission will have to consider.

Specific elements of the proposed contribution framework relating to support for Canadian programs, Indigenous broadcasting, diversity and inclusion, and promotion and discoverability

Support for Canadian programs

*Q23. Some online undertakings offer only or mostly Canadian-created content. Should their contribution requirements be adjusted to reflect this reality? If yes, how? What type of information should the Commission use to determine this?*

145. This may be a relevant factor. However, without further details, the WGC cannot meaningfully comment on this question. We look forward, however, to reviewing the comments of others in this regard.

*Q24. Should the Commission recognize other forms of contributions to the Canadian broadcasting system, such as rights payments, predominance/carriage commitments (for example, 9.1(1)(h) or 9.1(1)(i) services), promotion/discoverability, training/internships, or capital expenditures? If yes, how should such contributions be recognized, measured and monitored?*

146. This Commission should take care in recognizing forms of contributions to the Canadian broadcasting system other than investment in Canadian programming.

147. In our experience, broadcasting undertakings have an unfortunate history of attempting to maximize their ability to contribute to *Broadcasting Act* objectives in ways *other* than programming expenditures, including training/internships or other expenditures. As the Commission is aware, it has had to limit such non-programming expenditure proposals—or “social benefits”—in relation to the Tangible Benefits Policy.<sup>72</sup> The Commission has also had to amend or reject tangible benefits proposals that sought to over-contribute to “social benefits” initiatives at the expense of on-screen benefits.<sup>73</sup>

148. The WGC does not know why television broadcasting undertakings have seemed to be so reticent to maximize their on-screen contributions to the objectives of the Act. On-screen programming would

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<sup>72</sup> Broadcasting Regulatory Policy CRTC 2014-459.

<sup>73</sup> E.g. Broadcasting Decision CRTC 2012-574, *Astral broadcasting undertakings – Change of effective control*.

presumably be their primary product and reason for existing as a business. Whatever the reason, however, this is an observed reality, and so the Commission should tread carefully in what it allows broadcasting undertakings to count towards their regulatory obligations outside of their core role of investing in Canadian programming. In particular, we submit that broadcasting undertakings should bear a robust burden of proof to demonstrate, with evidence, that non-programming initiatives contribute in meaningful ways to the objectives of the Act and why they are a meaningful substitute for on-screen initiatives.

149. With respect to training, internships, or other forms of education, it is the WGC's firm view from inside the Canadian domestic production industry that Canadian screenwriters need jobs far more than they need formal training. Indeed, the very best training for a developing screenwriter is *on-the-job training* from actually doing the work. Because there is no school, course, or internship that can replace that kind of on-the-job experience.

150. Professional screenwriters follow a career path from being beginning writers to working in writing rooms with other professional writers to senior writing roles and showrunning roles themselves. They cannot reach the endpoint of being showrunners unless they get the necessary experience of *actually working* on a production, and everything that entails. There are simply no lessons like it. Similarly, there are no lessons like seeing your work on screen. As stated by WGC member and professional screenwriter Elan Mastai (*The F Word, This is Us*), "50% of everything you need to know to be an effective screenwriter you only learn on set watching your words brought to life."<sup>74</sup>

151. As we stated earlier in this submission, over the past five years the aggregate earnings of our confirmed Canadian citizen members have declined by nearly 22% in inflation-adjusted terms. This is also reflective of a loss in work. There is simply less and less production; fewer and fewer job opportunities. Experienced Canadian screenwriters are already struggling to work, or making the decision to leave Canada or quit the business. We need jobs much more than new training programs.

*Q25. How can the Commission incent online undertakings to source Canadian and Indigenous content? How can the Commission facilitate creators' access to supports, and creators' ability to make their content available to domestic and non-Canadian audiences? How can the Commission better encourage partnerships between foreign online undertakings and Canadian and Indigenous creators?*

152. Subject to further consideration and our review of the comments of others, and consistent with our comments above, the WGC believes that the single best way to achieve these objectives is to require broadcasting undertakings operating in Canada to commission Canadian and Indigenous programming.

*Q26. In what other ways can the Commission encourage the support of Canadian and Indigenous audio and video content? What types of projects or endeavours would be the most impactful? What initiatives for the support of Canadian and/or Indigenous content are you currently exploring/considering/undertaking?*

153. Subject to further consideration and our review of the comments of others, and consistent with our comments above, the WGC believes that the single best way to encourage the support of

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<sup>74</sup> <https://twitter.com/elanmastai/status/629704854655664131>

Canadian and Indigenous audio and video content is to require broadcasting undertakings operating in Canada to commission it.

*Q27. How should the Commission support Canadian and Indigenous spoken word programming in a digital context?*

154. Given the nature and expertise of our members, the WGC does not have significant comments to make at this time on this subject.

#### Indigenous broadcasting

*Q28. How can Indigenous creators and storytellers best be supported to ensure Indigenous stories are told and accessible on multiple platforms, including online services?*

155. The WGC recently published the 2022 Equity, Diversity and Inclusion Report with data updated up until December 31 of 2021. The report gathers, analyzes and publishes data regarding Indigenous, Black, writers of Colour, writers with disabilities and LGBTQ2S writers. The report covers 88 series (52 live action and 36 animation) that were in production as of 2021, in addition to the 342 series covered in the period from 2017 to 2020 and focuses on writers belonging to the following groups: Indigenous, Black, People of Colour, LGBTQ2S, and People with Disabilities.<sup>75</sup> The Commission may find the results of this report helpful as it considers this question.

156. According to the WGC report, Indigenous writers were 2% of working writers and held 2.5% of jobs.<sup>76</sup> They held 3.7% of live action but only 0.5% of animation jobs in 2021. In contrast, in 2019, Indigenous writers represented 4.2% of writers' rooms and earned 5.3% of writing credits.<sup>77</sup>

157. Our analysis indicates that work for Indigenous writers increases when there is a production featuring Indigenous content. However, they remain underrepresented in writers' rooms of non-Indigenous content.

*Q29. Should all broadcasting undertakings (both online and traditional) be required to make available or broadcast certain amounts of Indigenous audio or video content on their services, including content in Indigenous languages? Are spending requirements a more appropriate means of supporting the creation, promotion and discoverability of Indigenous content? Should the approaches differ for audio and video content? Are there other incentives or supports that could be used to meet the Commission's objectives?*

158. The WGC supports requirements for broadcasting undertakings to broadcast certain amounts of Indigenous content, including in Indigenous languages.

159. We believe that the creation of Indigenous content is best supported by spending requirements and that Indigenous creators should be front and center of any spending requirements by broadcasting undertakings.

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<sup>75</sup> Writers Guild of Canada 2022 Equity, Diversity and Inclusion Report ([https://www.wgc.ca/sites/default/files/2023-04/2023WGC\\_diversity%20report-Apr1.pdf](https://www.wgc.ca/sites/default/files/2023-04/2023WGC_diversity%20report-Apr1.pdf))

<sup>76</sup> Writers Guild of Canada 2022 Equity, Diversity and Inclusion Report, pg. 9.

<sup>77</sup> Writers Guild of Canada 2022 Equity, Diversity and Inclusion Report, pg. 11.

*Q30. What incentives or other supports could be established to increase the number of Indigenous creators and storytellers who occupy key creative positions in regard to the production of Canadian programming?*

160. According to the WGC 2022 Equity, Diversity and Inclusion Report, no Indigenous writers were engaged as executive producers of a Canadian series under the WGC jurisdiction in 2021.<sup>78</sup> The executive producer credit is often given to showrunners and identifies writers that build the creative vision of a series.

161. During the same year, 5% of story editors were Indigenous.<sup>79</sup> A story editor credit is an entry-level credit given to less experienced writers in a writers' room. This statistic reveals that, although the participation of Indigenous creators is low across the board, they are specially underrepresented when it comes to key creative roles, like that of an executive producer.

#### Diversity and inclusion

*Q32. How are online undertakings currently supporting the production and discoverability of diverse and inclusive audio and video content? What are some of the most successful initiatives? Should they be adapted to specifically promote diverse and inclusive Canadian content? If yes, how could they be adapted?*

162. In recent years, online undertakings have supported the development of diverse screenwriting talent. The WGC has noted the creation of the Pacific Screenwriting Program,<sup>80</sup> the imagineNATIVE Indigenous Screenwriting Intensive,<sup>81</sup> and the TIFF Talent Accelerator.<sup>82</sup>

163. We believe the industry, including online undertakings, must support the professional advancement of diverse talent and the protection of their distinct point of view, and this demands more from online undertakings than just training programs.

164. This includes engaging diverse talent in their own productions and giving them opportunities to create and develop their own original concepts. Beyond producing programming created by diverse talent, there must be a focus on providing up-and-coming diverse talent with production experience. Training programs provide opportunities to network, develop concepts, or interact in writers' rooms settings, but are not a replacement for job opportunities and on-set experience. Only through this type of professional exposure can diverse writers become showrunners leading writers' rooms and creating series from their unique point of view.

*Q33. Should the Commission consider requirements, incentives, or both to best ensure that audio and video content is created by diverse and inclusive groups currently under-represented in the Canadian broadcasting system? Are there different considerations for traditional versus online undertakings? Audio versus video content or services?*

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<sup>78</sup> Writers Guild of Canada 2022 Equity, Diversity and Inclusion Report, pg. 18.

<sup>79</sup> Writers Guild of Canada 2022 Equity, Diversity and Inclusion Report, pg. 18.

<sup>80</sup> <https://pacificscreenwriting.ca/>

<sup>81</sup> <https://imagineative.org/institute/>

<sup>82</sup> <https://dailyhive.com/toronto/netflix-partners-tiff-festival-support>

165. According to the WGC Equity, Diversity and Inclusion report, there was a significant increase of diverse writers working in television from 22% in 2020 to 35% in 2021. The share of TV writing jobs garnered by diverse writers also increased, from 25% in 2020 to 41% in 2021.<sup>83</sup>

166. Despite broad gains, the WGC identified a “glass ceiling” for diverse writers in obtaining senior roles in writers’ rooms, particularly at the co-executive producer and executive producer levels. Diverse writers made up 22% of executive producers.<sup>84</sup> In writers’ rooms, the executive producer credit is usually accorded to a showrunner.

167. The small share of diverse writers obtaining senior staffing roles might explain, in part, why they did not garner a share of script assignments proportional to their work as story editors. In live action, diverse members represented 48% of writers in writers’ rooms and earned 33% of writing credits. This statistic was consistent in animation, where diverse writers made up 30% of working writers but had 25% of writing credits.<sup>85</sup>

168. The WGC report also identified specific groups where there was little to no growth, including disabled writers, who represented 1.5% of working writers with 1.7% of live action and 1% of animation jobs. The share of animation writing credits being accorded to Indigenous writers and writers with disabilities continued to be the lowest of all diverse categories, standing at 0.4% and 0.8% respectively.<sup>86</sup>

169. We support requirements to ensure traditional and online undertakings engage diverse talent with different levels of experience. In the case of undertakings with a traditional and online component (e.g., CBC and CBC Gem), we support requirements to engage diverse creators across all their programming. This will ensure the commitment for inclusion and diversity across content type and not relegated to online lower-budget projects.

*Q34. Would reporting requirements, whether on content or key creative positions, be considered an efficient tool to incentivize increased diversity and inclusion in programming? If yes, how could this apply to audio and video content or services? To news and sports programs?*

170. We support reporting requirements, especially when it comes to showrunners, who are the creative voice behind every series. In line with the “glass ceiling” identified in the WGC EDI report, data collected on story rooms must include story room credits, writing credits and earnings. This data is crucial to understand how traditional and online undertakings engage and support the creative vision of writers from diverse communities.

#### Promotion and Discoverability

*Q36. How can the Commission ensure that online undertakings make Canadian and Indigenous audio and video programming available in Canada and abroad? What types of requirements or incentives*

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<sup>83</sup> Writers Guild of Canada 2022 Equity, Diversity and Inclusion Report, pg. 4.

<sup>84</sup> Writers Guild of Canada 2022 Equity, Diversity and Inclusion Report, pg. 18.

<sup>85</sup> Writers Guild of Canada 2022 Equity, Diversity and Inclusion Report, pg. 11.

<sup>86</sup> Writers Guild of Canada 2022 Equity, Diversity and Inclusion Report, pg. 4.



*would best optimize the distribution of Canadian and Indigenous content, both internationally and domestically*

171. Given the nature and expertise of our members, the WGC does not have significant comments to make at this time on promotion and discoverability. We will review the comments of others in this proceeding, however, and will be please to provide additional comments at a further stage in this process.

*Q37. How can the Commission ensure that Canadian and Indigenous content is discoverable and promoted on online platforms? What incentives can be applied?*

172. Given the nature and expertise of our members, the WGC does not have significant comments to make at this time on promotion and discoverability. We will review the comments of others in this proceeding, however, and will be please to provide additional comments at a further stage in this process.

*Q38. What is the role of content curators and aggregators, and playlists, in assisting with promotion and discoverability?*

173. Given the nature and expertise of our members, the WGC does not have significant comments to make at this time on promotion and discoverability. We will review the comments of others in this proceeding, however, and will be please to provide additional comments at a further stage in this process.

*Q39. Should the Commission consider requirements, incentives, or both to best ensure that audio and video content created by equity-deserving communities is distributed, promoted and discoverable? Are there different considerations for traditional versus online undertakings?*

174. We support promotion and discoverability of content created by equity-deserving communities.

**Appearance at the Public Hearing**

175. **I request to appear at the public hearing.**

Yours very truly,



Neal McDougall  
Assistant Executive Director, WGC

Cc: Victoria Shen, Executive Director, WGC  
Council, WGC

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