

February 15, 2024

Filed Electronically

Marc Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

Re: Final Written Submissions, Broadcasting Notice of Consultation CRTC 2023-138: the Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content

1. 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.

Summary of the WGC's Key Positions

2. Having participated in and followed all stages of this proceeding, the WGC's views as provided in our initial written submissions, reply comments, and appearance at the public hearing remain generally unchanged. Broadly speaking, the WGC continues to support the contribution framework as put forward by the Commission in the Notice of Consultation, including the implementation of an "initial base contribution" to funds. We strenuously disagree with Canadian broadcasters who argue that the reduction of their regulatory requirements, in particular their obligations to contribute to programs of national interest (PNI), should be the Commission's priority. We strenuously disagree with foreign streamers who oppose the proposed initial base contribution on the grounds that other issues, like the definition of Canadian programming, should be considered first, and we strenuously disagree that foreign location service production (FLS) should form any meaningful part of any broadcasting undertaking's contribution to the objectives of the *Broadcasting Act* (the Act).
3. The WGC continues to submit that the Commission should pursue the *growth* of the Canadian domestic audiovisual sector—not merely a reconfiguration of the *status quo*—and that \$1 billion annually in new, incremental support for Canadian content, as cited by the Government in the

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legislative process for the *Online Streaming Act*, continues to be the overall appropriate target for that growth.

Contribution threshold

4. With respect to the key details of this proceeding, the WGC supports an applicability threshold for the purposes of the new contribution framework of \$10 million in annual Canadian gross broadcasting revenues.
5. We are aware that this is the same threshold that the Commission set out in Broadcasting Regulatory Policy CRTC 2023-329 for registration purposes, that some interveners have proposed higher thresholds for contribution purposes, and that the Commission has asked some interveners about a range of contribution thresholds up to \$50 million through its request-for-information (RFI) process. In our case, however, the WGC does not have access to data to effectively assess what the impact of a threshold over \$10 million would be. Given this lack of information, we continue to propose a \$10 million contribution threshold.
6. The WGC continues to support the application of this threshold at the broadcasting ownership group level. We agree with the Commission that “broadcasting groups benefit from important synergies associated with operating both traditional and online undertakings,” and that, “the benefits associated with group ownership cannot be disassociated with the regulatory obligations that come with such ownership.”¹ A group-ownership approach will prevent broadcasting undertakings from seeking to artificially characterize larger operations as a collection of smaller services, brands, or tiers in an attempt to evade regulatory requirements.

Initial base contribution level

7. The WGC continues to support an initial base contribution of 5% of annual Canadian gross broadcasting revenues provided, however, that such a contribution is directed entirely to the Canada Media Fund (CMF) and/or the Certified Independent Production Funds (CIPFs)² that fund programming in the genres that the CMF supports.
8. If the Commission also seeks to support Canadian (local) news production through an initial base contribution, then the WGC would amend its proposal, increasing it to 6%, to allow for this additional funding.
9. At the same time, we would reiterate our comments at the public hearing on the overall levels of support to PNI genres and local news, in light of the desire of Canadian broadcasters to reduce or eliminate their contribution to PNI while claiming local news should be their sole or predominant focus. The nature of this proceeding precludes us from having a complete picture of how the various objectives of the Act will be realized overall. But we would simply re-emphasize here that both local news *and* PNI genres are vitally important components of the Canadian broadcasting system, and we submit that support for one should not be eroded on the grounds of supporting the other.

¹ Broadcasting Regulatory Policy CRTC 2023-329, para. 77.

² Subject to our comments below about the role of Canadian screenwriters and the 6-out-of-10-point eligibility criteria.

Role of Canadian screenwriters

10. As we have stated, art is made by artists, Canadian art is made by Canadian artists, television is a writer's medium, and Canadian screenwriters and showrunners are the Canadian authorial voice of Canadian content. Canadian screenwriters are especially vulnerable under the 6-out-of-10-point funding model currently in place for CIPFs, as it makes them "optional" as U.S.-based content commissioners and domestic producers and/or broadcasters seek to attract international financing by ceding creative control to international "names" based outside of Canada.
11. The WGC continues to stand by its detailed comments already on the public record on why Canadian screenwriters must be an essential element of the Canadian broadcasting system.

Responses to select statements at the public hearing and in the responses to RFIs

Information designated as confidential

12. In its RFI dated December 21, 2023,³ at Question 20, the Commission requested certain interveners provide information pertaining to their audiovisual undertakings' annual Canadian gross revenues, total expenses in Canada, and expenses related to licensing and funding of Canadian content. The Commission offered this to be provided confidentially, and the interveners generally requested, and appear to have received, such confidential treatment.
13. The WGC is disappointed in the degree of confidentiality afforded this information in what is supposed to be an open and transparent regulatory process. While the Commission certainly has the ability to treat certain information as confidential, it can also disclose such information where that is in the public interest.⁴ Intervenors are always in the position to make a claim of confidentiality, but it is ultimately up to the Commission to decide whether to accept or reject such a claim.
14. It is particularly disappointing that intervenors have claimed confidentiality, and the Commission has apparently granted it, for the same kind of information that is publicly available with respect to traditional Canadian broadcasters. For example, Question 20(c) requests information on expenses related to the audiovisual undertaking(s) in Canada for the licensing of pre-existing and original Canadian content as it is currently defined by CAVCO, the CRTC, and under the various co-production treaties licensed solely by the entity and which have been made in partnership with a Canadian broadcaster.
15. Responses to RFIs generally claim confidentiality for this information, yet the information requested is closely analogous, if not virtually identical, to Canadian programming expenditures (CPE) for traditional Canadian broadcasters. CPE numbers are made publicly available by the Commission on its website, under "Financial Summaries for Broadcasting Sector".⁵ This is how we know, for example,

³ <https://crtc.gc.ca/eng/archive/2023/lb231221a.htm>

⁴ *Broadcasting Act*, s. 25.3(5).

⁵ <https://crtc.gc.ca/eng/industr/fin.htm>

that the CTV Sci-Fi Channel spent \$4,309,289 in Total Canadian Programming in 2022.⁶ Thanks to the Aggregate annual returns pursuant to Broadcasting Regulatory Policy CRTC 2009-560,⁷ we also know the revenues of each of the Designated Groups, how that is split between conventional and discretionary services, CPE, PNI, and spending on foreign programming. All of this is considered public information, yet foreign streaming services are treating analogous if not identical information as secret and confidential. Why?

16. Interveners' arguments in favour of this confidentiality are questionable. They appear to boil down to linking the information requested to that provided in respect of the Annual Digital Media Survey (ADMS)⁸ and then treating that as conclusive with respect to this information, notwithstanding the different contexts. This is what Netflix does in its response to RFIs, citing the ADMS decision.⁹ Yet in the very same decision, in the paragraph immediately following the one cited by Netflix with approval, it states:

The Commission retains the discretion to re-evaluate its reporting and data publication practices, such as the level of aggregation that it applies to the data it publishes, and may adapt those practices while weighing the public interest and the confidentiality concerns of undertakings.¹⁰

17. The ADMS, as well as the decision on the publication of aggregate data collected under it,¹¹ were decided and implemented under the previous *Broadcasting Act*, before the passage of Bill C-11, the *Online Streaming Act*, made it crystal clear that the Commission was tasked with regulating online undertakings. In Broadcasting Regulatory Policy CRTC 2023-331, the Commission stated:

In this regard, the Commission notes that the level of confidentiality granted under the Digital Media Survey, while still applicable to information collected in that survey until or unless Broadcasting Regulatory Policy 2022-47 is amended, will not necessarily be extended to other information that is filed in response to a request from the Commission.¹²

18. Debating exactly what the Commission meant by "information collected *in that survey*" in comparison to information requested *in this very different proceeding* may be, for all practical purposes, moot, as confidentiality appears to have been granted to this stage, and we do not expect another stage in this process.

⁶https://applications.crtc.gc.ca/OpenData/CASP/Financial%20Broadcasting%20Summaries/Books%202022/2022%20Broadcasting%20Statistical%20and%20Financial%20Summaries%20-%20Individual%20Discretionary%20and%20On-Demand%20Services/English/2022%20Individual%20Discretionary%20and%20On-Demand%20Statistical%20and%20Financial%20Summaries.pdf?_ga=2.246532108.920091769.1707170021-345721094.1674592014

⁷ <https://crtc.gc.ca/eng/industr/ann.htm>

⁸ Broadcasting Regulatory Policy CRTC 2022-47.

⁹ Page 2.

¹⁰ Broadcasting Regulatory Policy CRTC 2022-47, para. 146.

¹¹ Broadcasting Decision CRTC 2023-34.

¹² Para. 70. Emphasis added.

19. Regardless, we are disappointed that foreign streamers are arguing that information currently provided by Canadian broadcasters, about activities that they themselves tout as their “contribution to the Canadian broadcasting system” suddenly becomes secret when it comes to providing actual data to the Canadian public. These companies may not be used to public transparency, but we submit that it’s now time that they get used to it. Corporate transparency and accountability for large technology companies was one of the promises of Bill C-11, and we submit that it should be realized by the Commission going forward.

Funding by official language

20. Some interveners have proposed that a minimum threshold of CIPF funding be allocated to original French language content, set at 40% of total funding. For example, the Association québécoise de la production médiatique (AQPM) stated:

...l’AQPM demande qu’un seuil minimal des budgets des FPIC soit alloué au contenu de langue originale française, comme c’est actuellement le cas notamment pour Téléfilm Canada et le FMC. Nous souhaitons que cette proportion soit fixée à 40 pour cent, une proportion que le gouvernement fédéral s’est engagé à appliquer au FMC et à Téléfilm Canada.¹³

21. With the greatest respect for our French-language colleagues, the nurturing and protection of whose cultural vibrancy and distinctiveness is and must remain a priority for the Commission, the WGC cannot agree with this proposal.
22. Firstly, while funding need not match population precisely, 40% would represent nearly double the proportion of Canadians who speak French as their first official language.¹⁴ The current funding allocation for French-language projects at the CMF, at one-third of funding,¹⁵ already over-represents French production in proportion to the population in Canada.¹⁶
23. Secondly, a 40% minimum allocation to French-language production would not leave English-language production with 60% of funding, but with less than that, given funding for programming in languages other than English and French. These “third languages” are an important component of Canadian diversity, and have been recognized as deserving representation in the Canadian broadcasting system. Depending on the size of such allocations, the proportion left to English-language content could approach 50% or less, in a country in which over 75% of the population speaks English as its first official language.¹⁷
24. Thirdly, while French-language television production budgets may be lower than those for English-language productions, they also operate under different market conditions. In particular, they receive the protection afforded by the language itself. English-language content must compete directly

¹³ Transcript, Hearing 21 November 2023, para. 1214.

¹⁴ According to Statistics Canada, French was the first official language spoken by 21.4% of Canadians in 2021. See: <https://www.statcan.gc.ca/en/census/census-engagement/community-supporter/language>

¹⁵ After certain other allocations are taken “off the top”.

¹⁶ <https://cmf-fmc.ca/document/breakdown-of-the-program-budget/>

¹⁷ <https://www.statcan.gc.ca/en/census/census-engagement/community-supporter/language>

against programming from Hollywood, the United Kingdom, and anywhere else producing in English for the enormous global market it represents. English-Canadian viewers are used to seeing multi-million-dollar per-episode television from the likes of Netflix, HBO, and other Hollywood studios. With no language barrier, the content flows effortlessly across the border, and English-Canadian content is expected to compete with this. Indeed, the undeniable success of Quebec-made French-language production in Francophone Canada helps demonstrate this fact. French-Canadian content has been broadly more successful in its own market than English-Canadian content is. While more money is always welcome, and the purpose of this process is to grow the pie for every Canadian, the challenges facing French and English production sectors are different, and French content already thrives in its market.

25. Finally, the pledge by the Liberal government in its 2021 election platform to increase the proportion of French-language production funding to the CMF and Telefilm Canada was a particular election promise that was limited to those two funders. It was not stated as a policy for the entire audiovisual sector. Moreover, the Government of Canada recently announced new funding for Telefilm Canada of \$100 million per year for two years,¹⁸ and this was *not* linked to a 40% French-language requirement.
26. Given all of this, we submit that the Commission should not impose such a requirement on the CIPFs, or otherwise implement such a policy generally.

International comparisons

27. Several foreign streamers raised international examples which they considered to be either models to follow or to avoid. Italy was one example of the latter. On the panel for the Motion Picture Association – Canada (MPA-Canada), David Fares stated:

Italy has a high investment obligation regime. What we have found is the Italian broadcasters have now begun lobbying to seek relief for the international streamers because of the inflationary impact it is having on them as broadcasters when they're having to produce local Italian content...¹⁹

28. What Mr. Fares was describing, in fact, is precisely what the WGC *wants* to happen in Canada, and has submitted that the Commission pursue as well: *Growth* of the production sector. “Inflation” of Italian production is simply another, frankly misleading way of saying that it has grown, in terms of numbers of projects, production budgets, or both. Netflix made it clearer:

Italy also had a high investment obligation and its regulator AGCOM, recently came out with an advisory opinion to the government again looking at the adverse effects in terms of, you know, production, inflation – inflation of production costs in France...²⁰

¹⁸ <https://www.canada.ca/en/canadian-heritage/news/2024/01/supporting-the-audiovisual-sector-through-telefilm-canada.html>

¹⁹ Transcript, Hearing 20 November 2023, para. 782.

²⁰ Transcript, Hearing 30 November 2023, para. 7283. Emphasis added.

29. *We want that here in Canada.* The “adverse effects” that Netflix and the MPA-Canada stated were allegedly on Italian (and French) *broadcasters* who, it would seem, are still deeply committed to commissioning Italian (and French) content for their domestic audiences. This contrasts strongly with English-language Canadian broadcasters who, as we’ve heard throughout the hearing, are angling to abandon Canadian content, particularly PNI, at every opportunity. Canadian broadcasters have not, to our knowledge, echoed these statements by streamers, further demonstrating how different they are from their French and Italian counterparts.
30. In this context, inflation means growth. It means growing production numbers, growing production budgets, and growing opportunities for Canadian creators. Using a loaded word like “inflation” is, we submit, an empty rhetorical device, and the Commission should take precisely the opposite lesson from those examples than the streamers intended.
31. In addition to Italy and “inflation”, streamers also raised the spectre of France and “complexity”. Netflix stated:
- [France has] updated the laws, but they’ve largely kept in place the same system which gets into the third challenge, which is just the nature of the complexity.
- There are a number of sub-requirements and sub-sub-requirements. For example, even the definition of what is French content depends on whether it’s a series, a documentary or a film.²¹
32. The WGC submits that this is the flimsiest of red herrings. Any legal regime, regulatory or otherwise, will have its complexities. The complexity will likely match the complexity of the issues and challenges to be solved. We are not talking about a system that consumers or the “average person” will need to navigate. We are talking about a regulatory framework that will be managed by experts and regulatory lawyers in corporate compliance departments employed by companies worth billions of dollars. They will no doubt sit down the hall from other teams of lawyers navigating tax codes, environmental regulations, lobbying strategies and compliance, and the myriad other things that large companies manage just fine every day.
33. There is nothing about the French system that rises to the level of unmanageable complexity, and no streamer actually cited any real examples of such a thing. Corporate lawyers with teams of other corporate lawyers purporting to throw their hands up at the notion of a regulatory requirement having a “sub-requirement”, or the like, should not be treated as a serious statement, nor an actual obstacle to the achievement of the objectives of the Act.

Diversity and inclusion

34. During the hearing, we heard concerns from some stakeholders about the CMF and/or CIPFs not being able to support programs that don’t meet the points requirements for key creative personnel where they wish to engage creators that are in Canada, and may be on the path to becoming Canadian citizens, but are not yet Permanent Residents.²²

²¹ Transcript, Hearing 30 November 2023, paras. 7278-7279.

²² Transcript, Hearing 24 November 2023, paras. 3933-3936.

35. The WGC supports a more inclusive industry, and is sympathetic to the concerns of creators that have made a home in Canada and are in the process of becoming Permanent Residents and citizens. We believe this proposal is not incongruent with a 10-point requirement and can be addressed within its framework. Canada's creative community reflects the country's diversity and the world's diaspora. There are many talented screenwriters in Canada from equity-seeking communities with the lived experience to tell authentic stories. A system where engaging Canadians is optional will harm creatives from equity-seeking communities (whether they are Canadian citizens or not) and they will find themselves losing work to foreign creatives.
36. We encourage the Commission to engage with organizations that represent these communities to find ways to address the concerns of all creators from equity-seeking communities living in Canada so they may participate in the Canadian broadcasting system.

Conclusion

37. We thank the Commission for the opportunity to have participated in this process.

Yours very truly,



Neal McDougall
Assistant Executive Director, WGC

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

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