



DOCUMENTARY
ORGANIZATION OF CANADA
DOCUMENTARISTES
DU CANADA

401 Richmond St.
Suite / Bureau 205
Toronto, Ontario
M5V 3A8
www.docorg.ca

July 8, 2019

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

Dear Mr. Doucet,

Re: Broadcasting Notice of Consultation CRTC 2019-91 - Call for comments on the Commission's policy on Canadian programming expenditures

A: Introduction

The Documentary Organization of Canada/Association des documentariste du Canada (DOC) is submitting its comments with respect to Broadcasting Notice of Consultation CRTC 2019 – 91.

DOC is the collective voice of independent documentary filmmakers across Canada, a national non-profit arts service organization representing over 750 directors, producers and craftspeople from all provinces and regions of the country working in the documentary genre. DOC advocates on behalf of its members to foster an environment conducive to documentary production and strives to strengthen the sector within the broader film and television production industry. In so doing, DOC seeks to ensure that viewers in Canada and abroad have access to high quality, original programs reflective of current Canadian events, lives and values.

Documentary programs, created by Canadians for Canada and for the world, have been at the heart of our film & video culture for at least 70 years. From the beginnings of the CBC and the NFB to today's multi-platform digital environment, documentaries have revealed and explained Canadians and Canadian sensibilities to the world and the world to Canada.

With support from consumers, governments and the regulator, Canadian documentary producers are continuing this critical role for Canadians – a role that clearly fulfils each part of Section 3 (1) (i) of the Broadcasting Act.

DOC appreciates that the Commission has recognized that the large group television licensees must provide the Commission and the Canadian public with annual, detailed reports setting out how they have contributed to the creation and distribution of original Canadian programming. It is important that these reports be in a consistent format so that both the Commission and interested parties are able to determine how the system as a whole is performing as well as how individual groups are meeting their obligations.

DOC recognizes the importance of the Commission's review of its policy on Canadian programming expenditures (CPE). It considers that imposing appropriate and equitable requirements for CPE on all traditional and digital services operating in Canada will be the single most effective regulatory tool for the CRTC to ensure that the objectives of the Broadcasting Act are met in the context of the digital media environment.

In responding to the questions that the Commission has set out in BNC CRTC 2019-91, DOC will focus on the need for a CPE regulatory regime that is fair for all licensees, clear in its focus on ensuring the continued creation of quality Canadian programs and is enforceable. Such a regime will be helping to ensure that the necessary resources are available to maintain and increase the continued creation of Canadian independently produced programs of national interest (PNI).

B: General Comments

1. DOC considers that, in updating its CPE policy, the Commission should be guided by the following principles and priorities:
 - CPE requirements should apply equitably to all undertakings providing broadcasting services to Canadians whether foreign or Canadian owned.
 - CPE should be directed towards ensuring the creation of new Canadian programming in the PNI categories.
 - **A minimum of 75% of CPE must be directed towards Canadian programs produced by an independent Canadian production company. The Commission's current definition of an "Independent Production Company" is "a Canadian company that is carrying on business in Canada with a Canadian business address, that is owned and controlled by Canadians, whose business is the production of film, videotape or live programs for distribution and in which the licensee and any company related to the licensee owns or controls, directly or indirectly, in aggregate, less than 30% of the equity."**
 - The Commission should develop an effective regulatory and enforcement regime that includes clear definitions, timely and consistent reporting by licensees and effective enforcement tools. **In this regard, DOC reminds the Commission of its commitment in Decision CRTC 2017-148 to "revise the PNI Report and annual return forms that licensees must file in order to identify their spending on original, first-run programming and other content..."**
2. DOC considers that a CPE regime that meets these principles and priorities will permit the Commission to continue its policy of de-emphasizing exhibition requirements in favour of a focus on the creation of Canadian programs that are capable of finding audiences on the various digital platforms that will be available to Canadians **at home and abroad**.

C: Digital Media Broadcasting

3. In response to the Commission's questions regarding digital media broadcasting DOC makes the following comments:
 - Those digital media broadcasting undertakings (DMBUs) **such as Netflix and other Canadian and foreign streaming services that are currently operating under the Exemption Order should be licensed or otherwise regulated. The licensing/regulatory regime for DMBUs should be as simple as possible with the primary focus being to ensure that they contribute equitably to the creation of new Canadian programming.**
 - Where a licensed DMBU is controlled by a Canadian group licensee, the subscription revenue earned by the DMBU should be added to the total group revenues. The group should be entitled to allocate its CPE expenditures amongst all platforms including DMBUs.
 - Where a licensed DMBU is controlled by a foreign company, its subscription revenue must be reported to the CRTC and used as the basis for a CPE contribution equivalent to that of Canadian undertakings. In the event that subscription revenues are not made available to the CRTC, the Commission should impose an appropriate amount by condition of licence.
 - **There is no need to place a cap on the amount of CPE that could be allocated to DMBUs owned or controlled by a Canadian group TV licensee.**
 - **All CPE expenditures by foreign owned or controlled DMBUs must be equivalent to those required of Canadian licensees and should be directed to qualifying Canadian programs of national interest.**
 - Expenditures relating to the re-purposing of existing Canadian programs should not qualify for CPE. The focus should always be on the creation of new programming.
 - It is not necessary for the Commission to limit or specify the types of DMBUs for which CPE expenditures would be eligible. As long as the expenditures are made on Canadian programs of national interest the platform upon which the programs are made available to the public is of lesser importance. DOC considers that new, high quality Canadian programs will find audiences without regulatory intervention.
 - Subscription revenues seem to be the simplest way of defining the revenues of DMBUs. While advertising revenues certainly exist it may be extremely difficult for the Commission to clearly ascertain the accurate amounts applicable to an individual DMBU. Equally, it may be relatively easy for DMBU undertakings to significantly understate the actual advertising revenues.
 - With respect to implementing the changes required to bring DMBUs into the CPE regime, DOC suggests that, while it would be ideal to coordinate regulatory policy with any new policies being

brought forward by the federal government, the CRTC has the authority and ability to act on its own and should not feel compelled to wait for other parties to act.

D: Accounting Practices & Control Measures

4. DOC wishes to make the following comments with respect measures to address non-compliance and the eligibility of various expenditures as Canadian programming expenditures. The Commission is moving to simplify its regulatory regime for broadcasting with a clear emphasis on the importance of all broadcasting undertakings contributing equitably to the continuous creation of new Canadian programs. As these changes take place, the issue of effective enforcement assumes greater importance. Simple and focused regulation without speedy and effective enforcement can result in no regulation at all.
5. DOC suggests that the most effective tool to ensure compliance would be the ability to levy substantial fines. However, DOC recognizes that achieving this requires amendments to the Broadcasting Act and may not be available for years.
6. The Commission can, however, encourage the participation of various interested parties, such as DOC, in alerting the Commission to problems that they are aware of. It would be helpful if the Commission were to establish a formal procedure for reporting potential compliance issues including clear timelines for the licensee to respond and for the Commission to render its decision.
7. The Commission has also asked a number of questions seeking clarification on the types of expenditures that could qualify for CPE. While, as a matter of principle, DOC considers that all CPE should be directed to the creation of new Canadian programming, it also recognizes the value to its members of script and concept development expenditures and certain promotional expenditures. DOC therefore supports the creation of an “open list” of expenditures that are eligible for PE.

E: Summary

DOC considers that this proceeding is a critically important policy review. Combined with what we hope will be a clear and forward-thinking national policy focusing on digital media and Canadian content the CRTC's CPE policy has the ability to ensure the continuous creation of quality Canadian programming regardless of how the digital media environment evolves.

DOC thanks the Commission for the opportunity to participate in this important proceeding.

Sincerely,



Mathieu Pierre Dagonas

Executive Director | Directeur général

Documentary Organization of Canada | Association des documentaristes du Canada