

ORAL REMARKS
THE DOCUMENTARY ORGANIZATION OF CANADA (DOC)

CRTC PUBLIC HEARING
NOVEMBER 5, 2019

ALLARCO ENTERTAINMENT LIMITED PARTNERSHIP
ACROSS CANADA
APPLICATION 2017-0743-1

1. Thank you, Mr./Madam Chair, Commissioners and CRTC staff, for giving me the opportunity to address you today. My name is Matthieu Pierre Dagonas and I am the Executive Director of the Documentary Organization of Canada or DOC. With me at the table is Nick Ketchum who may help me out should I need a regulatory policy expert.
2. DOC is the collective voice of independent documentary filmmakers across Canada, a national non-profit arts service organization representing over 800 directors, producers and craftspeople from all provinces and regions of the country working in the documentary genre. DOC was also the founding body of Hot Docs, North America's largest documentary film festival. 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.
3. DOC recognizes that Allarco, through its licensee Super Channel, is an important platform for the distribution of Canadian documentary programs many of which are produced by DOC members. However, we have serious concerns about the financial stability of this licensee and the impact that its business practices have had upon our members. If the Commission sees fit to renew the broadcasting licence of Super Channel, DOC considers that the licensee must be constrained in a number of ways in order to ensure that it adheres to all CRTC requirements and that, in its relations with independent producers, it respects standard broadcast business practices.

Impact on DOC Producers

4. As we noted in our written intervention of March 13, 2019, DOC members have suffered significant losses as a result of Allarco's precarious financial position. Let me describe this impact in more personal terms:

To start, after Allarco disclaimed its license on the film, *The Divided Brain*, producer Vanessa Dyllyn incurred more than \$94,000 in debt, forcing her to remortgage her home. To this day, Vanessa is still unable to pay herself for the project, which she barely completed by pulling together funds from other sources. When Vanessa filed a formal complaint to the CRTC in 2017, they replied, "while the Commission regulates the Canadian broadcasting system and grants licenses to undertakings such as Allarco, it is not involved in the licensing of programming rights or in contractual disputes with respect to such rights."

What has made Allarco so dangerous to small independent producers, like Vanessa Dyllyn, is that it's been allowed to operate outside the standard terms of trade in the industry, which see production companies paid upon signature of the contract and throughout the production process. Contrary to other broadcasters, like TVO and CBC, Allarco requires producers to interim-finance and deliver the film before any of the license fees are released. That means that producers are forced to assume 100% liability in overseeing the films to completion, and have zero protection if Allarco fails to honour its side of the agreement.

So why then do independent producers take the risk? They do so because they have little-to-no choice. In Vanessa's words, "I work under duress and agree to interim-finance films because broadcast licenses for a documentary are very hard to get, even for top creative teams."

For small independent producers that shine a light on systemic issues – such as climate change and Indigenous rights – they, quite literally, live project-to-project, forced to accept precarious agreements to produce their work – work that is critical to advancing public knowledge in Canadian society.

But beyond that, Allarco did, at one time, provide a unique opportunity for many independent producers. Amy Miller and Byron Martin, for example, worked together with Allarco on the film, *Tomorrow's Power*. For Amy, this was her third project with the company, which provided the only licensing opportunity for her film that didn't meet the Canadian broadcasting language-requirements of English, French or Indigenous languages. Martin and Miller agreed to a contract with Allarco, found interim financing, completed production, sent in their rough cut and then received a letter from Allarco stating that their \$70,000 license had been disclaimed. Martin and Miller were forced to halt their project for a year while they sought alternative funding, and are still recovering from the economic burden. In Amy's words, "Independent producers are in such vulnerable positions. We are at the whim of these unbalanced power relationships, and one hiccup can end the careers of so many.... We have no insurance plan, no medical benefits...the stress is unbelievable."

The two stories I've shared with you today are a small sample size of the impact of Allarco's business practices and financial instability. I cannot stress this enough: when Allarco went bankrupt, they threatened the documentary industry across the country. The existence of more than 70 independent production companies -- like those I shared with you today -- were threatened by Allarco. And while Vanessa Dyllyn, an award-winning producer, weighed whether or not to shut down her company, Allarco continued to operate and bought the licensing rights to a football league in February 2017, even after filing for insolvency twice. This is, quite simply, unacceptable.

Despite producing content crucial to the fragile eco-system of factual discourse in Canada, the documentary industry is highly vulnerable. If Allarco is allowed, once again, to continue to operate, they must be closely regulated to protect both small and large businesses. DOC proposes the following:

5. We understand that the Commission has been generally unwilling to regulate the business relationships between producers and broadcasters. In fact, avoiding such detailed and intrusive regulation was part of the rationale behind the development of the CRTC's Terms of Trade policy first implemented in 2007. That policy encouraged and then required the largest

broadcasters to work with producers and develop mutually satisfactory terms of trade. This largely successful policy was, unfortunately, dropped in 2015. In its absence and in the case of a licensee's flagrant refusal to adhere to standard business practice, as has been demonstrated by Allarco, DOC considers that it is entirely appropriate for the Commission to impose a condition of licence that ensures producers are treated fairly.

6. As noted during the past licence term, DOC producers have been required to sign contracts with no payments until the project has been completed and frequently not until a year or more following completion. DOC submits that a condition of licence setting out a detailed payment schedule such as that set out in DOC's written intervention of March 13, 2019 would be appropriate. However, a more general requirement that Allarco make a payment upon the signing of a contract and payments throughout the production process with the remaining balance being paid in full upon delivery would also be acceptable.

Programming Conditions of Licence

7. The Commission's focus in this proceeding has been on the applicant's non-compliance with a variety of conditions of licence respecting programming and program development. With regard to these important issues, DOC has worked closely with the CMPA and fully supports the proposed conditions set out in their intervention.

Annual Reporting Requirements

8. In its March 13, 2019, intervention DOC underlined the importance of requiring Allarco to file detailed annual reports with respect to their Canadian programming requirements and commitments. The Commission has recently published its revised Production Report to be completed by the large English and French ownership groups. DOC congratulates the Commission on its revised approach to reporting which will address DOC's concerns and enable us to assist the Commission in ensuring that licensees continue to support and broadcast high quality Canadian documentary programming.
9. However, since Allarco is not considered a large ownership group it will not be required to file these reports. Given that Allarco, through Super Channel plays an important role in acquiring Canadian long-form documentary programs, as well as other categories, DOC considers that the licensee should be required through condition of licence to submit, at a minimum, the program information set out in Appendix 6 of the Broadcasting Information Bulletin CRTC 2019-304.

Closing

10. Thank you again for providing DOC with the opportunity intervene in this proceeding. I am happy to try to answer any questions you may have.