

175 Bloor Street East
South Tower, Suite 501,
Toronto, Ontario M4W 3R8
Telephone (416) 314-6858
Fax (416) 314-6876

175 rue Bloor est
Édifice sud, bureau 501,
Toronto, Ontario M4W 3R8
Téléphone (416) 314-6858
Télécopieur (416) 314-6876



14 September 2009

Filed Via CRTC Broadcasting Intervention/Comments Form

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

**Re: Broadcasting Notice of Public Hearing CRTC 2009-411
Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television**

Ontario Media Development Corporation (OMDC) is pleased to file the attached in response to the Commission's above-mentioned proceeding.

OMDC is an agency of the Ontario Ministry of Culture that facilitates economic development opportunities for Ontario's cultural media industries. As the central catalyst for Ontario's cultural media cluster, OMDC promotes, enhances and leverages investment, jobs and original content creation through a variety of initiatives.

OMDC is not requesting to appear at the Commission's public hearing commencing on November 16, 2009.

We now proceed to the substance of our submission and comments on the issues raised by the Commission in the Public Notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Thorne-Stone", written in a cursive style.

Karen Thorne-Stone
President and Chief Executive Officer
Ontario Media Development Corporation

Introduction

1. Ontario Media Development Corporation (OMDC) is pleased to file the following in response to Broadcasting Notice of Consultation CRTC 2009-411 (the “Notice”) on a group-based approach to the licensing of television services and on certain issues relating to conventional television.
2. OMDC is an agency of the Ontario Ministry of Culture with a mandate to build the capacity and competitiveness of Ontario’s cultural media industries. Through tax credits, programs and services for the film and television, book and magazine publishing, music and interactive digital media industries, OMDC maximizes opportunities for growth and innovation in Ontario and abroad.
3. The government of Ontario’s media tax credits, administered by OMDC, are an important source of financing for all kinds of content creation. In fiscal 2008-09, OMDC issued over 1,400 tax certificates valued at more than \$207 million to support content creation in Ontario’s cultural media industries.
4. Also in 2008-09, OMDC invested directly in screen-based domestic content through the OMDC Film Fund and the Screen-Based Content Initiative. Eighty-nine projects received production or development support through these programs.
5. Ontario is a centre of excellence for Canadian film and television production. In 2006, Ontario film, television and video production companies accounted for 46% of Canada’s overall film and video production operating revenues.¹ In the same year Ontario production companies earned \$1.5 billion in operating revenue with a profit margin of 2.8% – higher than the national average of 2.2%.² Decisions in this proceeding will have a direct bearing on this economic activity in general and on the strength of Ontario’s independent production sector in particular.
6. Given our role as supporters of the creation of screen-based content, OMDC is pleased to have this opportunity to comment on the matters before the Commission. Our goal in participating in this process is to promote a regulatory environment that is responsive to the business realities and needs of Ontario’s cultural media industries.
7. As a provincial Agency, OMDC is aware that the Agency and the producers we support are only one part of the overall broadcasting system in Canada, and that the Commission’s responsibilities cover a much larger group of interested parties. OMDC offers the following comments in the spirit of working in co-operation with the Commission and with our stakeholders to promote Canadian content. In this submission we have limited our responses to those issues which most directly relate to this goal. We have consulted with stakeholders in the screen-based production sectors in preparing this submission.

Specific Modalities and Conditions for Group-Based Licensing

8. OMDC supports in principle the Commission’s goals in this proceeding of providing a regulatory framework that is flexible and more technology-neutral. We also strongly agree with the Commission’s assertion in the Public Notice that “this flexibility should result in greater support for

¹ Statistics Canada, *The Daily: Film Television and Video Production, 2006*, October 16, 2008.

² Statistics Canada, “CANSIM Results: Film, television and video production, summary statistics, 2006,” Table 361-0016.

Canadian programming, including original programming, particularly in categories that continue to be under-represented in the Canadian broadcasting system, such as drama and documentaries.”³

9. A broad-based approach to regulation that takes into account all of a broadcaster’s programming services, revenues and audience when determining programming commitments and obligations is, on the surface, a sensible approach. However, we are also aware that such an approach could have the unintended effect of eroding those elements of the current system that are currently effective in supporting the funding and exhibition of original Canadian content by independent producers. We therefore encourage the Commission to be mindful of this possibility and to only implement those measures which will have at best a positive impact, and at least a neutral overall impact, on original Canadian drama, documentary and children’s programming.
10. Given that our comments in this proceeding are focused on the creation and promotion of these types of high quality Canadian programs, OMDC does not intend to comment specifically on the model put forward in the Public Notice. OMDC, does, however, have general comments in the following three areas:
 - Group-based Canadian programming expenditure requirements.
 - Group-based exhibition obligations.
 - Appropriate level of independent production.

Group-based Canadian Programming Expenditure (CPE) Requirements

11. OMDC has noted in the past both the success of expenditure requirements in supporting the creation of Canadian content on specialty programming services and the need to re-institute such requirements on Over-the-Air (OTA) services.⁴ OMDC shares with our stakeholders the firm belief that the 1999 TV Policy removal of spending requirements in conventional television was detrimental to overall production spending and was particularly harmful to dramatic production.
12. The current analog and digital Category 1 specialty and pay television services already have CPE requirements and these requirements have been largely successful in supporting the creation of Canadian content. In 2007-08, Canadian specialty and pay services spent \$1.1 billion on Canadian programming, of which \$362.4 million went to independent productions.⁵ OMDC does not support any approach that would lead to a decrease in the overall level of spending on Canadian content by these services, and would like to see these levels increase over time.
13. OMDC does support the imposition of CPE requirements, set as a percentage of revenues, for both conventional and Category 2 specialty services. Should the Commission determine that a group-based CPE is appropriate, it should be set at a level that ensures that corporate groups are spending at least as much as, and ideally more than, they are now on Canadian programming.

³ Broadcasting notice of Consultation CRTC 2009-411, *Policy proceeding on a group-based approach to the licensing of television services and on certain issues relating to conventional television*, para. 10.

⁴ See, for example, OMDC Submission, Broadcasting Notice of Public Hearing CRTC 2007-10, October 2007.

⁵ CRTC news release, *CRTC releases financial results for Canadian specialty, pay and pay-per-view television and video-on-demand services*, March 26, 2009.

14. In addition, it is OMDC's position that broadcasters should no longer be allowed to include Canadian Television Fund (CTF) (or the new Canada Media Fund) licence fee top-up amounts as credit towards their CPE. Allowing broadcasters to use public and Broadcasting Distribution Undertaking (BDU) funds to satisfy their programming obligations raises questions of fairness and transparency and detracts from the purpose of the CTF, which is to direct additional money to the creation of programming.
15. Given the changing nature of the broadcasting environment, OMDC feels that broadcasters should be allowed to include expenditures on new media content (but not on infrastructure or software) towards the fulfilment of their CPE obligations. We would expect that revenues earned from broadcasting and/or distributing content on new media platforms would be included in the broadcasters' corporate group revenues for purposes of establishing the CPE.
16. OMDC is aware that broadcasters have been known to acquire programming for one of their licensed programming services but to allocate the cost of that programming to another service within their corporate group that has a higher CPE requirement. While it is OMDC's belief that instituting a group-based CPE will remove the incentive for broadcasters to engage in such practices, the Commission may want to consider additional requirements, such as a cap on the amount of spending that can be transferred between services, in order to ensure that the principle of supporting a variety of quality Canadian content, aired on the greatest number of and most appropriate services, is upheld.
17. CPE requirements should also be supported by related and appropriate exhibition requirements, as outlined below. While all types of Canadian content are important, the specific goal of these requirements should be to ensure that dramatic, documentary and children's programming are supported by all Canadian broadcasters and presented to Canadian audiences.

Group-based Exhibition Requirements

18. The currently licensed specialty services have exhibition requirements that were determined at the time they were licensed and that were designed to meet specific business and market needs. The analog and Category 1 digital services were awarded their licences through a competitive process and the exhibition requirements were set as part of that process. Moving to a system of group-based exhibition requirements, even one that stipulates per service minima, could have a negative impact on either the business models for those services or the overall levels of Canadian content on specialty services. We urge the Commission to consider these possibilities should group-based exhibition requirements be introduced.
19. Therefore, while OMDC is not opposed to the principle of group-based exhibition requirements, it is important that these requirements are established in such a way as to ensure that current levels of Canadian content do not decrease.
20. OMDC also supports the concept of a group-wide overall percentage for Canadian content with specific percentages for each service within the group. We suggest that, rather than establishing a standard minimum that would apply to all services in a corporate group, the percentages for each service should be established individually and according to the requirements of that service. As a general rule, corporate groups should be required to exhibit an overall majority of Canadian programming.
21. It is OMDC's belief that programming in the categories of drama, documentary and children's deserves special attention from the Commission. The current definitions of priority programming and the requirement that eight hours per week of this programming be aired on OTA services have not

been successful in ensuring that original high-quality Canadian programming in these categories is made available to Canadian audiences. OMDC suggests that focused measures are needed to ensure that dramatic, documentary and children's programming are given the support that they deserve.

22. We encourage the Commission to establish minimum hours per week of original programming for dramatic, documentary and children's programming. While these minima could be set on a corporate basis, OMDC would like to see the majority of this programming aired on OTA services. OMDC also suggests that the Commission give consideration to narrowing the evening viewing period for this programming to between the hours of 8 p.m. and 11 p.m.
23. While children's programming is as important as drama and documentary, in recent years it has been relegated mainly to specialty services. We encourage the Commission to explore ways to make sure that this programming remains a priority and is exhibited across all services in a broadcast group.
24. In addition to the categories noted above, OMDC also believes that all broadcasters, especially OTA broadcasters, should have a greater role in supporting Canadian feature films. We were pleased that the Commission denied Rogers' request to release it from its licence requirement to air 100 hours of Canadian feature film per broadcast year on its Toronto and Vancouver Citytv stations.⁶ We urge the Commission to consider similar measures for all broadcasters to support the creation and airing of Canadian feature films.

Appropriate Level of Independent Production

25. Independent producers are a critically important piece of the Canadian broadcasting system, bringing a diversity of voices and stories to Canadian television. Not only that, but the Canadian broadcasting system is designed to make specific use of the independent production community. The *Broadcasting Act* states, in section 3(i), that not only should programming include a significant contribution from the independent production community, but that the programming should "be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes." The diverse nature of the independent production community means that independent producers are ideally suited to deliver this wide variety of programming.
26. The current expectation that OTA stations obtain at least 75% of their priority programming from independent producers has been an appropriate means of ensuring the broadcasting system includes a significant contribution from independent producers. Should the Commission decide to harmonize priority programming expectations and/or requirements across corporate groups, they should ensure that the overall level of independent production is maintained.
27. We suggest that the Commission should set independent production levels as a percentage of both corporate CPE and exhibition requirements. If the percentage rule applies to both exhibition and to expenditures, broadcasters will be encouraged to work with producers to licence original programming for each of their services. The same percentages should also apply for new media content.
28. It is also important that independent producers be entitled to negotiate fair value for each use of their content. Recent consolidation in the broadcasting industry has meant that there are fewer avenues for producers to access in marketing their projects and that broadcasters are expecting to acquire

⁶ Broadcasting Decision CRTC 2009-408, *Rogers Broadcasting Limited – Citytv – Licence renewals*, 6 July 2009.

programming to be used across all of their programming services. According to the Canadian Film and Television Production Association (CFTPA),

The reality is that most conventional TV broadcast groups are now requiring independent producers to license their programs for broadcast on many or all of their services, at little or no incremental cost, effectively eliminating the ability of independent producers to seek second- and third-window licences as a means to finance their productions or to enhance revenues, as was once commonplace. This is having a significant impact on independent producers' ability to develop new program ideas and to properly grow and develop their businesses and to build corporate capacity.⁷

Given their reliance on Canadian broadcasters as a market for their content, it is more important than ever to ensure that Terms of Trade are in place between producers and broadcasters in order to ensure that fair business practices are upheld.

29. OMDC therefore commends the Commission for its recent decision to only consider licence applications for seven-year licence renewals that include finalized Terms of Trade agreements.
30. OMDC urges the Commission to ensure that policies and regulations not disadvantage Ontario's producers in favour of regional incentives. Ontario's producers bring diverse voices and stories to the Canadian broadcasting system. Ontario is a well-established centre of excellence and policies and regulations that privilege those regions outside that centre run the risk of silencing these important voices and eroding the core strengths and critical mass that Ontario represents. Independent producers face business challenges no matter where they are located in the country and policies that create additional challenges for producers in specific communities make it more difficult for them to generate revenue, capitalize on their intellectual property and re-invest in their companies.

Conclusion

31. While OMDC supports the Commission's general aim of introducing greater flexibility for broadcasters in order to support the ongoing viability of the Canadian television industry, we also agree with the Commission's view that this flexibility should result in greater support for the creation and exhibition of Canadian programming. Any measures that are introduced as part of a group-based licensing approach should ensure that current levels of Canadian programming expenditures and exhibition are at the very least maintained, and increased where appropriate.
32. All of which is respectfully submitted.

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⁷ CFTPA Submission, *Broadcasting Notice of Consultation CRTC 2009-113 – Licence Renewals for Private Conventional Television Stations*, March 2009, para. 144.