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

Ontario

Ontario Media Development Corporation

Société de développement de l'industrie des médias de l'Ontario

4 September 2009 ***Via e-mail: ctf@ctf-fct.ca***

Canadian Television Fund
50 Wellington Street East, 4th Floor
Toronto, Ontario
M5E 1C8

Re: Canada Media Fund – Industry Consultation

Ontario Media Development Corporation (OMDC) is pleased to file the attached as part of the Canadian Television Fund's (CTF) consultation on the Canada Media Fund.

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.

We would like to thank CTF for this opportunity and look forward to participating in all phases of the consultation.

Sincerely,

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

Executive Summary

Ontario Media Development Corporation (OMDC), an agency of the Ministry of Culture, provides support to screen-based content producers in the province of Ontario. We offer the following comments on the policy issues surrounding the development of guidelines for the Canada Media Fund (CMF) based on our experiences with our programs and in the spirit of working with the Canadian Television Fund (CTF) and with our stakeholders as partners in the creation and promotion of Canadian content for audiences at home and abroad.

As a general principle we encourage the CMF to develop guidelines that balance the need to maintain existing support for television production with the need to support continued growth in the interactive digital media industry.

This guiding principle should be applied to the issue of **Program Allocations for the Convergent and Experimental Streams** by allocating at least the $14.3 million "Canada New Media Fund (CNMF) legacy" amount to the Experimental Stream. At this time we do not think it is appropriate that a specific percentage of the Convergent Stream should be devoted to non-television platforms.

In order to define **Convergent Content**, the CMF should adopt definitions that are as technologically neutral as possible and that focus on the nature of the content to be developed. "Original, value-added" content should be defined as content that has not been repurposed from another medium and is appropriate to the platform for which it has been created.

OMDC further believes that minimum financial commitments should be made by envelope owners who are supporting convergent products and that distinct licences should be issued for each product developed for a specific platform. Minimum project budgets, suitable to the platform, should also be established for each project. In cases where new platform projects are not receiving funding from a CMF envelope, producers should be asked to demonstrate that the project will be made available to an audience.

Video-on-Demand (VOD) services should be made eligible distribution services and could be included in the envelope system for the CMF, provided they are willing to meet the same criteria as other players in the system.

The CTF's current **Audience Success** measures for television should be maintained and comparable measures should be introduced for non-broadcast platforms. Any **Return on Investment** measures that are adopted should be as broad as possible and take into account the entire life cycle of a production.

OMDC does not believe that the CMF should alter its funding formula so that more of its contributions are made in the form of equity investments.

OMDC also does not believe that a distinct program to support **Marketing and Promotion** should be created out of existing CMF Funds.

When it comes to **Allocations by Genre for Television Content in the Convergent Stream**, OMDC believes that the current allocations are appropriate and that there is currently enough flexibility for envelope holders built into the system.

OMDC supports the inclusion of **Documentary Production** as an eligible genre in the CMF, but defers to our stakeholders and the trade organizations who work in this genre when it comes to providing specific responses to questions raised for consideration by the CTF.

Requirements for **Canadian Elements of CMF Projects** should be the same for all projects, regardless of stream or platform. The focus of these requirements should be that financial and creative control of projects supported should rest in the hands of Canadians and that most of the work on the project should be carried out by Canadians.

Since **Third-Language Production** is becoming a more important piece of the broadcasting system, the CMF may want to consider introducing a pilot program to support production in this area.

Independent producers are an integral part of the Canadian broadcasting system and should be the main focus of CMF support. Therefore, the levels of funding allocated to **Broadcaster-Affiliated and In-House Broadcaster Production** should be as low as possible. In addition, current CTF guidelines that seek to ensure adequate compensation for producers should be maintained.

As multi-platform projects are to be a requirement of the CMF, it is OMDC's view that **Eligible Entities for Performance Envelopes** should eventually include all Canadian-owned and -controlled entities who are making CMF-eligible content available to Canadian audiences. We are aware, however, that at the present time it is difficult to pinpoint who those entities might be. The CMF should therefore develop envelope eligibility guidelines that are as inclusive as possible but, for the present and immediate future, should consider a general envelope that could be accessed by a variety of non-television distribution entities. Except for regional production, the current envelope performance factors and their relative weights continue to be relevant.

OMDC believes that **Audience Success** should continue to be measured using the CTF's current system. **Original Programming** should only apply to the first window and should receive a bonus in audience success measures. **First-Run Programming** should refer to all windows on broadcasters whose licence fees are part of the program's original financing structure. **Prime Time** should be defined as 8p.m. to 11p.m., Monday to Sunday.

OMDC does not support **English Regional Production** incentives that put Ontario's content creators at a disadvantage.

We now turn to the substance of our submission.

Introduction

Ontario Media Development Corporation (OMDC) is pleased to submit the following comments as part of the Canadian Television Fund's (CTF) consultation process regarding the Canada Media Fund (CMF). 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.

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. OMDC also invested directly in screen-based domestic content in 2008-09 through the OMDC Film Fund and the Screen-Based Content Initiative. Eighty-nine projects received production or development support through these programs.

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. The CTF has been an equally important part of this system and it is our belief that the CMF will continue this important role. Though individual funding entities are of course independent organizations with unique policy objectives, they are also partners brought together by their support for domestic cultural content and ultimately serve the same stakeholders – content producers and Canadian audiences. Therefore OMDC offers the following comments in the spirit of working in co-operation with the CTF and with our stakeholders to promote the creation of Canadian content. In this submission we have limited our responses to those issues with which we are most familiar based on our experience as program administrators.

OMDC would like to congratulate the CTF in working to very short timelines in the development and implementation of the CMF. In some cases, policy decisions for the Fund will need to be made before other important public proceedings, such as the Canadian Radio-television and Telecommunications Commission's (CRTC) current consolidated licensing proceeding, have been completed. OMDC respectfully suggests that the Department of Canadian Heritage (DCH) consider delaying implementation of some of the new elements of the Fund, such as the inclusion of in-house broadcaster production, until such time as the overall broadcasting environment is a little more clear. DCH may also want to consider a more gradual implementation of some of the other changes to the Fund in order to maintain as stable an operating environment as possible for both broadcasters and the independent production community.

A critical issue in the development of guidelines for the CMF will be achieving a balance between the independent television and interactive digital media sectors and their respective potential and needs. While we acknowledge the difficulty the CMF will face in balancing support for both industries through the new Fund, we strongly encourage a style of support that, as a basic principle, allows the interactive digital media industry to continue to grow while, at the same time, maintains existing support for the television industry and particularly the independent production sector.

Briefing Note #1: Program Allocations – Convergent and Experimental Streams

Allocation Between Convergent and Experimental Streams

OMDC is well aware that balancing competing needs of different sectors is one of the biggest challenges in providing public support, particularly in an environment where technology, business models and audience tastes continue to change rapidly.

We were pleased to see the continuation of the Canada New Media Fund (CNMF) in the last Federal Budget and that the CNMF's $14.3 million annual allocation will continue to be provided to the CMF as the "CNMF legacy" amount on an ongoing basis. OMDC suggests that this amount should be the minimum amount allocated to the Experimental Stream. However, we are also aware that new media industry stakeholders have long been seeking to have the size of the CNMF increased in order to support the continued rapid growth of their industry. We understand and support this request, but we do not feel that an increase in support to one sector should come at the expense of support for another sector. Therefore we will continue to work with industry stakeholders as well as federal and provincial partners toward the development of a national digital strategy that would include a full range of programs to support digital content creation and promotion. Such a strategy could include an increase to the CMF for the Experimental Stream as well as for convergent projects, but could also include other initiatives outside the CMF's mandate, such as incentives for advertising on Canadian-based new media platforms and/or a national digital media tax credit.

Minimum Percentages of Support in the Convergent Stream

At the present time, OMDC does not believe that there is enough information to determine what minimum percentage of the Convergent Stream in the CMF should be appropriately allocated to non-television platforms. We would like to note that even though under the new structure of the CMF the overall amount of funding available to independent television producers will be reduced, their role in the broadcasting system remains essential and they should not be unduly restricted from having access to funding due to the implementation of arbitrary percentages. In addition, the future demand for entertainment content on non-television platforms is unclear, and we believe that Canadian audiences and the screen-based industries are best served by taking a flexible approach to funding allocations at this time.

While we are not recommending an explicit percentage be allocated to non-television platforms in the Convergent Stream, there are other mechanisms that will ensure that funding goes to such projects. The first is quite obviously the fact that non-television projects are an eligibility requirement for the CMF. The others, some of which are discussed later in this submission, include minimum budget requirements for non-television projects and making envelopes available to entities other than broadcasters.

We encourage the CMF to re-visit the issue of funding allocations on a regular basis in order to ensure the Fund's goals continue to be achieved.

Briefing Note #2: Convergent Content

Original Value-Added Content – Definition and Criteria

In OMDC's experience in delivering support to interactive digital media content in the province of Ontario, we have found that transparent, platform-neutral definitions provide the greatest flexibility for content producers in a technological and business environment that is constantly developing and changing.

As a general principle OMDC recommends that the definition for eligible content be appropriately broad and flexible enough to encompass all projects and platforms. Where specific criteria are required, provisions should always include some flexibility based on the nature of the content (documentary, children's and youth) and the platform used (Web, iTV, mobile, etc.).

The CMF may want to consider some of the definitions used by the Ontario Interactive Digital Media Tax Credit (OIDMTC):

- "Interactive digital media product" is defined by the regulation as a combination of one or more application files and one or more data files, all in a digital format, that are integrated and are intended to be operated together.

- Eligible products are interactive digital media products whose primary purpose is to educate, inform or entertain. The product must achieve this purpose by presenting information in at least two of text, sound and images, and must be intended for use by individuals. The product must be interactive; that is, the user can choose what information is to be presented and the sequence and form in which it is presented.

- Such products may include, but are not limited to: websites, CD-ROMS, DVD-ROMS and kiosks. Operating system software and software such as word processing, spreadsheet and database software may not constitute an eligible product.[1]

While the CMF does not necessarily have an interactivity requirement, the definition of an interactive digital media product is instructive for developing CMF criteria because it is platform-neutral and focuses on the nature of the content to be developed. Content developed for non-television platforms tends to give the user much more control over how the content is viewed than does the traditional linear platform and this should be taken into account when developing definitions.

In order to ensure that CMF-supported content on non-television platforms is robust and capable of attracting audiences, OMDC recommends that "original" should mean unique content that has not been repurposed from another medium such as a television broadcast, and that "value-added" should mean dynamic or interactive content that is appropriate to the digital distribution platform for which the material was created. In order to maintain flexibility for producers, we suggest that a CMF-eligible project for a non-television platform should be either (a) wholly original or (b) substantially value-added.

To qualify under our recommended definitions, for example, a series of short, downloadable mobisodes which are not interactive in nature would have to be comprised of wholly new material rather than repurposed content from the television broadcast. Alternately, a children's website that used large

[1] Ontario Interactive Digital Media Tax Credit Regulation, Section 906 of Ontario Regulation 183 under the Corporations Tax Act (Ontario), Subsections (2) and (3).

amounts of repurposed material from an associated television series would have to incorporate significant amounts of interactive content into the website. Ideally the non-broadcast component would have both original content and value-added features to distinguish the product from the broadcast component.

We believe that this approach to the definition of "original value-added content" will set out the appropriate minimum expectations of what the content on non-television platforms should include while not limiting flexibility for innovation on future platforms or distribution channels.

Minimum Licence

OMDC believes that establishing a minimum financial commitment such as a licence fee for the new platform component of the convergent stream will help to ensure that there is enough funding available to the producer to develop a new platform project that is of comparable quality to the one developed for traditional television broadcast. At the same time, we recognize that financing structures on non-television platforms are different from financing structures for television productions and adjustments may need to be made accordingly.

We would suggest that, in the early days of the CMF, if an envelope owner[2] wishes to assign a portion of their envelope to a convergent product, the licence fee (or comparable third-party financial commitment) for that product should be the same percentage of the product budget as the broadcaster licence fee is for the television project budget. For example, if the television component of the production has a total budget of $400,000 with a broadcast licence fee of $100,000, then the new platform component should have a comparable licence fee of at least 25%. Therefore if the new platform component budget is $40,000, then the third-party financial commitment would be at least $10,000. Adjustments to the guidelines will need to be made as business models continue to evolve and industry standards become more established for the non-television platforms.

Separate Licences

Licences for non-television platforms should be kept separate from television broadcast licences. Combined licences would make it difficult to determine what the actual value of the non-television platform component is as distinct from the broadcast component. The CMF requirement that a distinct original product be made available on a second distribution platform necessitates that each component be licensed as a stand-alone product.

Minimum Budgets

It is OMDC's opinion that minimum budgets should be considered for each component of a convergent project. We believe that this will ensure that sufficient resources will be allocated to each platform component and that both components are robust, stand alone products – not simply an add-on that the producer must create in order to fulfil program eligibility requirements. We recommend that the minimum budget be set as a percentage of the platform component with the largest budget, but should also be an amount that is appropriate to the type of product being developed for the second platform. For example, if the first window for a project is a dramatic television series and the second platform is a series of mobisodes, then the minimum budget for the mobisodes should be set at an appropriate percentage of the television budget. If the second platform were a game or an iPhone application, the percentage should be set at a different level. This will ensure a sufficient amount of resources are available to develop original, value-added content on a second platform, and should be easily scalable to the size of individual projects.

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[2] See discussion of eligible entities for envelopes, below.

Market Interest

It has been the experience of OMDC that demonstrated market interest is difficult to guarantee in the emerging digital marketplace, and we therefore recommend that the CMF not require financial commitments from third-parties in order for new platform components of convergent projects to be eligible for CMF funding. Instead producers should be required to provide documentation that demonstrates that the product is being made available to an audience. As stated above, however, if an envelope owner wishes to use CMF funds to licence a project, minimum licence fees would apply.

The OIDMTC provides an example of the type of flexible requirements that can be used to demonstrate market interest. The Credit requires that the applicant supply a distribution marketing plan which includes a description of the target audience/market and (if applicable) of the revenue model. Applicants include letters or agreements that confirm interest and proposed terms from third-party distributors (or equivalent). OMDC's Interactive Digital Media Fund has similar requirements.[3]

Briefing Note #3: Video-on-Demand

OMDC has no objection to allowing Video-on-Demand (VOD) services as eligible distribution platforms for the CMF. We also have no objection to allowing VOD services access to performance envelopes provided that they are subject to the same criteria as everyone else. Should VOD services show an interest in investing in Canadian production, and in particular in meeting the same minimum licence fee thresholds required for linear broadcasters, there is no reason to deny them access to the Fund.

Briefing Note #4: Audience Success & Return On Investment

Audience Success and Return on Investment Measures

It is OMDC's position that the CMF should continue to use the metric of Total Hours Tuned to determine audience success for television broadcasters and add comparable metrics, such as pages viewed on a website or the number of downloads on a mobile device, for non-broadcast platforms. Of course OMDC recognizes the difficulty of establishing metrics in the emerging digital media sector and would expect these metrics to develop over time as platforms evolve and mature.

For the purposes of the CMF, OMDC strongly recommends that ROI should have a broader definition than just money returned to the Fund by content producers as there are significant other benefits over the life of a production that should be included. Examples include critical acclaim, international distribution and sales, the number of jobs created and the entire long-tail of the production (which could include second and third broadcast windows, DVD sales, and re-broadcast on non-traditional distribution channels such as iTunes). Though financial return from early broadcast windows is an easy metric for the CMF to measure, it does not tell the whole story, especially since a project could have modest immediate returns, but then have a long shelf life. It is important to recognize that the business model for television production is changing to encompass a growing number of distribution channels. Television series such as the international hit *The Tudors* rely on worldwide DVD sales as much as they do on revenue from territorial broadcast licences. In this fractured distribution model digital platforms will become increasingly important and ROI should be as broad and inclusive a measure as possible when evaluating an individual production's market success.

[3] For a complete description of OMDC programs and guidelines, please see the OMDC website: www.omdc.on.ca.

Such a broad and inclusive definition of ROI could apply across genres and language markets. However, audience success measures should continue to be tailored to the specific needs of the relevant language market.

Equity Investments

OMDC does not believe that the CMF should alter its funding formula so more of its contributions are made in the form of equity investments. In the first place, this would have a negative impact on the tax credits available to the production as government equity grinds (i.e., reduces the amount of) the federal tax credit. Secondly, the existing level of equity applied to projects is adequate for measuring financial success if this is a measure the CMF chooses to adopt. And finally, the more equity that producers are forced to sign away in their original financing structures, the less they are able to share in the profits earned by a production. Replacing licence fee top-ups with equity contributions would serve to reduce the revenues available for recoupment by independent producers and other financing participants and leave them with less capital at the end of the day to re-invest in their companies. Therefore OMDC believes that the existing funding formulas should be maintained.

Briefing Note #5: Marketing and Promotion

Given the limited pool of funds available, OMDC does not recommend that any funds currently allocated to production be diverted to a distinct program to support marketing and promotion. Broadcasters are currently responsible for promoting their television programs and this activity should remain their responsibility. It is our belief that since audience success should remain a weighting factor in calculating performance envelopes, it will be in the broadcaster's (or other envelope-holder's) best interest to ensure that sufficient attention is paid to marketing and promotion activities.

That being said, where marketing and promotion costs are currently allowed as Eligible Expenditures according to existing CTF and/or CNMF guidelines, they should continue to be allowed and should include both domestic and international costs.

Briefing Note #6: Television Content in the Convergent Stream – Allocations by Genre

The CTF currently allocates funding in the Broadcaster Performance Envelope (BPE) stream by genre as follows:

Drama – 60%
Documentary – 18%
Children's and Youth – 20%
Variety and Performing Arts – 2%

The Minister of Canadian Heritage confirmed that these will continue to be the eligible genres in the CMF and OMDC agrees that these genres should be a priority for public funding.

Various stakeholders have requested increases in the amounts allocated to documentary and children's and youth programming. Since there is a finite pool of funds available, any such increases would necessarily lead to a decrease in the funds allocated to other genres.

The five-year statistics provided by the CTF indicate that, since 2004-05, funding breakdowns in English-language television have been fairly close to the current BPE allocations, with Drama levels being slightly lower than 60% and Children's and Youth levels being slightly higher than 20%. This demonstrates that the current CTF genre allocations are fairly realistic targets and, while they are not perfect, they are a reasonable means of ensuring that funding is allocated to the highest-priority types of programming.

OMDC therefore does not think there should be significant change to the genre allocations. We do encourage the CMF to continue to review their funding allocations on a regular basis in order to ensure the objectives of the Fund continue to be met.

The current CTF guidelines also include mechanisms to allow for flexibility on the part of broadcasters, including a flex amount that can be applied to any genre, the ability to transfer allocations within a corporate group, and the ability to exchange allocations with broadcasters not in their corporate group. We believe that these provisions are reasonable and should be maintained but that no further flexibility is required.

Briefing Note #7: Documentary Production

OMDC does not have specific comments on the issues and questions raised in the briefing note on Documentary Production, as we are happy to defer to the stakeholders and trade organizations who work in this field. We would like to reiterate our support for the continuation of Documentary as an eligible genre in the CMF. There are some instances where guideline flexibility may be needed to support the specific requirements of documentary production and we have attempted to make note of these throughout our submission.

Briefing Note #8: Canadian Elements of CMF Projects

Universal Rules for all Platforms and Streams

OMDC believes that all of the products eligible for the CMF should be treated in the same manner with respect to requirements for Canadian elements, regardless of stream or platform. In other words, television productions, interactive digital media products applying through the Convergent Stream and products applying through the Experimental Stream should share the same Canadian content requirements. This will ensure a level playing field for all content producers that apply to the CMF for funding.

OMDC acknowledges that the current requirements have been developed for a television broadcast environment and that they may not translate neatly to other platforms. While we do not have detailed recommendations for how to reconcile these differences, we feel that it is important that certain minimum principles are met.

Characteristics to Consider

In evaluating appropriate criteria for Canadian elements in CMF-eligible products, OMDC believes the CMF should focus on the content creators. In doing so, the CMF can ensure that eligible products are created in Canada and that creative and financial control rest in the hands of Canadians. Furthermore, this ensures that content producers will have sufficient creative freedom and control over subject matter to maximize opportunities for innovation and increase the potential for audience success and ROI.

A number of Canadian funding programs (including the CNMF, the OMDC Interactive Digital Media Fund and the Bell Broadcast and New Media Fund, as well as traditional television funding programs) have established Canadian content requirements that could be applied across multiple platforms. OMDC recommends that the CMF look to the existing guidelines for these programs in establishing its own criteria for Canadian elements. All such programs include copyright ownership requirements and stipulations concerning Canadian creative and financial control and most also include Canadian expenditure requirements.

Based on these common themes, OMDC recommends that the CMF focus on the following three elements in determining Canadian content requirements for eligible products:

1. Underlying rights should be owned and significantly developed by Canadians or Canadian-owned and -controlled companies.

2. Creative and financial control should rest with Canadians or Canadian-owned and -controlled companies.

3. Eligible products should be produced in Canada with a significant percentage of expenditures incurred in Canada.

Adhering to these requirements will ensure that CMF funds will be directed toward productions that make maximum use of Canadian resources. Exceptions to these requirements should be made for international treaty co-productions for television and equivalent international partnerships for other platforms and for documentary productions which require the use of locations outside of Canada.

In all cases, requirements should be technology-neutral in order to avoid inadvertently excluding content or platforms that have yet to be widely implemented or even invented. This will ensure that the requirements are readily adaptable to scientific and technological innovation and change.

Briefing Note #9: Third-Language Production

OMDC supports the principles of diversity that are built into the Canadian *Broadcasting Act* and recognizes the growing importance of third-language production in attracting Canadian audiences. We therefore suggest the CMF consider the introduction of a pilot program, funded through the Special Initiatives stream, to support third-language programming. Funding for this program should be taken out of the total amount of funds available, that is, before the 67/33 English/French language split amounts are determined.

Briefing Note #10: Broadcaster-Affiliated and In-House Broadcaster Production

The Role of Independent Producers in the Broadcasting System

Independent producers are an integral part of the Canadian broadcasting system. They are the ones who leverage creative, technological and financial resources to develop, finance and promote film, television and interactive digital media content, often on a global scale. They also bring a diversity of voices to the system as they come from a wide variety of linguistic, multicultural and regional backgrounds and bring their experiences to their work.

In addition, independent producers benefit Canadian broadcasters by allowing them to acquire quality programming for relatively low costs. Broadcaster licence fees accounted for only 37% of total television production financing in 2007-08.[4] It was the other sources of financing that independent producers brought to the table that allowed those programs to be made.

Independent producers are therefore given a well-deserved special place in the Canadian *Broadcasting Act*. The *Act* requires, in section 3(*i*)(v) that "the programming provided by the Canadian broadcasting system should include a significant contribution from the Canadian independent production sector".

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[4] Canadian Film and Television Production Association (CFTPA), *Profile 2009 - An Economic Report on the Canadian Film and Television Production Industry,* p. 46.

OMDC recognizes that responsibility for enforcing the *Broadcasting Act* does not fall to the CTF but rather to the Canadian Radio-television and Telecommunications Commission (CRTC). Current CRTC licence conditions and expectations contain requirements for broadcasters to obtain specific amounts of priority programming from independent producers. OMDC has always supported and will continue to support these requirements.

However, the CRTC is currently reviewing a number of broadcasting issues, including the issue of independent production requirements for broadcasters. The decision made in that proceeding will have an impact throughout the broadcasting system and could have a negative impact on independent production levels.

<u>Broadcaster-Affiliated and In-House Broadcaster Production Levels</u>

Current numbers provided by the CTF indicate the amount of CTF funding that currently goes to broadcaster-affiliated productions represents less than 1% of CTF funding. In addition, the types of programming produced in-house by broadcasters is usually restricted to sports, news, current affairs, etc., and therefore does not fall into the eligible genres for the CTF.

Finally, while broadcaster-affiliated production is eligible for some of the funding programs that are currently in existence, in-house broadcaster production is not. There is therefore currently no significant financial motivation or regulatory ability for broadcasters to abandon independent production in favour of affiliated or in-house production.

As the regulatory and business environments continue to change, however, it will remain important to ensure that independent producers continue to have significant access to the majority of CTF Funds. Therefore, we suggest that in-house and affiliated broadcaster levels be set as low as possible and that the CMF continue to monitor the regulatory and funding environment in order to ensure that independent producers continue to be the main recipients of CMF funding. As part of this monitoring, OMDC suggests that in-house and affiliated broadcaster production spending amounts be made publicly available.

<u>Control Mechanisms / Terms of Trade</u>

OMDC continues to support the position that terms of trade between broadcasters and the independent production community are necessary to ensure that producers have fair and equal access to the broadcasting system. We therefore support the CTF's current guidelines that regulate different aspects of the financing of eligible television productions and encourage the CMF to continue to support independent content producers' ability to protect their copyright ownership and corporate resources. Specifically, OMDC is in favour of maintaining the Licence Fee Threshold, the Producer's Fees & Corporate Overhead (PFCO) policy and the Treatment of Tax Credits policy. These policies should be carried over in an appropriate manner to the non-broadcast platforms and should continue to seek to ensure that all content producers are adequately compensated for their role in creating great domestic content.

Briefing Note #11: Performance Envelopes – Eligible Entities

Envelope Eligibility Criteria

Since multi-platform projects are to be a requirement of the Convergent Stream of the CMF, OMDC believes that performance envelopes should eventually be made available to all distribution entities, regardless of platform that make CMF-eligible content available to Canadian audiences. We therefore support the principle of broadening envelope eligibility requirements to include entities other than television broadcasters, provided that they are Canadian-owned and -controlled and distribute CMF-eligible products to Canadian audiences. As discussed earlier in this submission, eligible entities should also be making financial contributions, in the form of licence fees or other suitable means.

OMDC therefore encourages the CMF to create guidelines for performance envelope eligibility that are as inclusive as possible. These requirements should be written with enough flexibility to allow for a wide variety of distribution business models. It is also important that the requirements leave room for technological development and innovation. Wherever possible, criteria should be applicable to existing distribution models as well as those that have yet to be invented. This will ensure that the guidelines are adaptable as technology and the market continues to evolve.

That being said, OMDC recognizes that it is currently extremely difficult to identify eligible non-broadcaster distribution entities. We also believe that it is important to lay the groundwork now for ensuring that a wider range of entities are eligible for performance envelopes in the future. Therefore, we recommend that the CMF consider creating a general performance envelope that could be accessed by a variety of non-television distribution entities. This would ensure that distribution entities other than broadcasters have access to the Fund immediately. Since no single distribution entity would control this envelope, the CMF would need to manage it, determining which distribution entities could access what dollar amount for the licensing of CMF-eligible content. The general envelope could be phased out once a reasonable number of eligible non-television distribution entities had been identified and awarded their own envelopes.

Performance Factors

OMDC believes that the current envelope performance factors (excluding regional production; see our comments below) and their relative weights continue to be appropriate. Should the CMF choose to implement our suggested new envelope for non-broadcast entities, newer players will be able to establish a track record for themselves as a stepping stone to being eligible for their own envelopes. While in general the performance factors remain relevant for the new platforms, as stated earlier the measure for audience success will need to be changed from Total Hours Tuned in order to suit the requirements of the platform (e.g. number of page views, number of downloads, etc.).

Briefing Note #12: Audience Success and the CMF – Emphasis on Original, First-Run, Prime Time Programming

The CTF already has an audience success measurement process in place that was built on the benchmarks of transparency, simplicity and data integrity. This process, relying as it does on a combination of broadcaster self-reporting and a system of checks and quality controls by the CTF, is an effective means of determining audience success for traditional television productions.

In the note provided by CTF on this issue, there were no questions raised about how original, first-run, prime time programming should be defined on platforms other than television. Therefore the comments below refer only to the television platform.

"Original" and "First Run"

While these two terms are closely related, they should not be considered synonymous as suggested in the briefing note.

It is important to support the creation of original programming that is aired at a time when Canadians are watching television. Therefore, "original" should refer only to the initial airing of each new episode of a program on the first broadcaster. Audience success mechanisms should include some type of bonus for airing original programming, as these programs are the riskiest for the broadcasters who have no guarantee that a new program will attract audiences.

As financing structures become more complicated, they often require the participation of more than one broadcaster to get a show off the ground. Broadcasters who co-licence a project, i.e. have contributed a licence fee that is within the project's financial structure, are also taking a risk on a project. Second and subsequent windows also help build success for programs as they offer opportunities to attract audiences who may have missed the original airing. Therefore, "first run" should refer to the first time each new episode of a program airs on a broadcaster who co-licensed a program for airing in the second or subsequent windows as part of the project's initial financing structure and should be included in the audience success measures. It should not, however, include episodes that air on a broadcaster who subsequently acquires the program through a licence fee that is outside the project's financing structure.

Prime Time

It is important that Canadian content is accessible to audiences and airs when they are most likely to be watching television. Prime time should therefore be defined, for the purposes of the CMF, as Monday to Sunday from 8 p.m. through 11 p.m., according to where the broadcast signal originates. Exceptions should be made in the children's and youth categories in order to accommodate the demographic realities of those audiences.

Audience Success Mechanisms

OMDC does not have specific comments on the design of audience success mechanisms, other than the suggestion that a bonus for original programming should be included, as noted above.

Briefing Note #13: English Regional Production

While OMDC recognizes the federal mandate of the CMF, we cannot support policies or funding criteria that put Ontario's content creators at a disadvantage in favour of regional incentives.

Federal programs that support content creation have a responsibility to ensure that diversity is found in the broadcasting system and on new media platforms. Independent content creators bring diverse voices and stories to Canadian screens. This diversity is found in all parts of the country, including urban centres such as Toronto, as well as the other regions of Ontario. Ontario's content creators have long brought diverse voices and stories to the Canadian broadcasting system and are continuing to do so in the new media environment. Ontario is a well-established centre of excellence, and policies that favour those regions outside centres of excellence run the risk of eroding the core strengths and critical mass that Ontario represents.

Content creators face business challenges no matter where they are located in the country, and policies that create additional challenges for content creators in specific communities make it more difficult for them to generate revenue, capitalize on their intellectual property and re-invest in their companies. We therefore do not support the continuation of the CTF's regional production incentives or the expansion of those incentives to the new platforms in the CMF.

Conclusion

OMDC would like to thank the CTF for the opportunity to comment on the policy issues being considered during the development of CMF guidelines. The comments in this submission reflect our experience as program administrators for the screen-based content creation industries. We look forward to continuing to participate in all stages of the consultation process as you move forward in developing the CMF guidelines.