



October 19, 2007

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

On-line: <http://support.crtc.gc.ca>

Dear Mr. Morin,

**Broadcasting Notice of Public Hearing CRTC 2007-10:
Review of the regulatory frameworks for broadcasting distribution undertakings and
discretionary programming services**

1. This is the submission of ACTRA (Alliance of Canadian Cinema Television and Radio Artists) in the matter of Public Notice CRTC 2007-10, the Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services.
2. ACTRA is pleased to have this opportunity to participate in this process and will bring to it the particular perspective of English-language performers. We believe it is essential to ensure:
 - i) That Canadian creative resources are predominantly used on the public airwaves; and
 - ii) That there is a reasonable supply of high-quality English-language drama and scripted comedy programs and series in every medium.
3. ACTRA looks forward to reviewing the comments of other participants in this process and to having a further opportunity to comment in Phase II. ACTRA also requests an opportunity to appear at the Public Hearings in February 2008.
4. ACTRA and its predecessor organizations have represented the interests of professional performers working in the English-language media in every region of Canada for more than 60 years. ACTRA bargains collectively on behalf of 21,000 performers. In addition, ACTRA represents the interests of thousands of singers and musicians through the work of the ACTRA Performers' Rights Society Sound Recording Division which collects and distributes royalties from the public performance of musical recordings.
5. ACTRA members have a vital stake in Canada's cultural future. ACTRA members benefit professionally when work opportunities increase. ACTRA members also believe passionately that Canada needs a strong Canadian presence wherever entertainment and information services are created and however these are provided to Canadians. We believe in the

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creativity of Canadians; in our capability to tell and perform our own stories.

6. ACTRA is a founding member and a financial contributor to the Coalition of Canadian Audio-visual Unions (CCAU) which has filed an intervention in this process. ACTRA contributed to this intervention, as well as to all previous CCAU reports on broadcasting policy and the crisis in television drama. ACTRA fully supports the positions put forward by the CCAU and wishes to discuss them at the public hearing. Comments in the present intervention are supplementary to the positions put forward by the CCAU.
7. The central thrust of these supplementary observations is to highlight ACTRA's position that, while there is need for improvement, the current regulatory framework for discretionary programming services appropriately requires these services to devote resources to the production of drama and scripted comedy and to schedule Canadian programs when viewers are watching. These regulations have been largely successful; the regulatory changes brought about by the 1999 Television Policy for over-the-air (OTA) broadcasters have failed.
8. As outlined in the CCAU submission, among other things, ACTRA is seeking in this process to eliminate the licence-fee top-up rule which effectively reduces the CPE requirement. ACTRA is also looking to increase to 6% the contributions which cable companies make to Canadian content program production and to ensure that these contributions are paid on a monthly basis.
9. ACTRA wishes also to state its concern about the overall thrust of the Commission's Public Notice. We object to the reverse onus, whereby supporters of existing regulations are required to prove that such regulations are essential for meeting the provisions of the *Broadcasting Act*. Surely, it is more appropriate for those who propose changes to existing regulations to demonstrate conclusively why such changes are needed and are in conformity with the *Broadcasting Act*.

Continuing Crisis in Canadian English-language Drama

10. For the past seven years, ACTRA and its members have been leaders in the campaign to reverse the precipitous decline in the availability of domestically produced English-language television drama. We have raised this issue publicly, with politicians and with the Commission.
11. The Commission has on numerous occasions acknowledged the crucial role that dramatic programs play in our broadcasting system, and in our lives. In Public Notice CRTC 2003-54 it was expressed in this way: "it is through television drama that most Canadians participate in their national culture and share in the evolution of social values and stories of human passion. Canadian drama should be a cornerstone of the Canadian broadcasting system."
12. After reaching a peak of \$1.11 billion in 1999/2000, the volume of production of English-language fiction programs (drama and scripted comedy) declined to only \$713 million in 2002/03. It has since risen to \$861 million in 2005/06, still more than 20% lower than the peak year in 1998 (Profile 2007).
13. Producing high-quality fiction programs requires more creative, technical and financial resources than any other programming genre. Such production trains, develops and employs Canadian writers, actors, directors, editors, technicians and other key creative individuals. It is also by far the most expensive genre of programming.
14. There are a number of reasons for the decline including the shift to inexpensive reality-based television programs, the CRTC 1999 Television Policy which de-emphasized drama and

scripted comedy, the collapse of the foreign television market for Canadian producers and the uncertainty of government and cable company funding support, particularly through the Canadian Television Fund (CTF).

15. But the core reason for the current state of drama production is the woefully inadequate support provided by Canada's private conventional broadcasters, and this development has been aided and abetted by the CRTC's reluctance to put into place effective regulatory measures that will ensure Canadian English-language drama programming is available to Canadians.
16. A 2004 study, *Through the Looking Glass*, confirms that broadcast licence fees paid by Canada's private broadcasters are substantially lower than those in other countries. The study, commissioned by the Directors' Guild of Canada, the CRTC and several government departments reports that domestic licence fees in the United States cover on average 81% of the costs of a television production, in the United Kingdom they can cover between 70% and 115%, while in Australia, they can cover between 35% and 85%. Licence fees in French Canada cover an average of 38%.
17. In English-Canada the broadcast license fees paid by broadcasters cover only 18.4% of the costs of a television production. Thus, the producer must look to other markets and public sources for close to 82% of the financing. While the annual reports (Profile series) prepared by the CFTPA and others on the state of the production industry appear to indicate that these fees have been slowly increasing in the past few years, they still remain abysmally low by global standards.
18. On 28 March 2007, the CRTC reported on the financial performance of television broadcasters for 2006. The results show that OTA commercial broadcasters decreased their spending on home-grown drama and increased their spending on foreign drama. In total, these broadcasters spent more than \$478 million on foreign drama, an increase of 19.2% from the previous year. In the same year, these broadcasters spent just under \$71 million on Canadian drama: spending on home-grown drama dropped by 13.7% from the previous year. ACTRA submits that it is time for the CRTC to restore balance to the broadcasting system by exercising its regulatory power to put in place effective measures for Canadian drama programming expenditures and scheduling requirements to ensure Canadians have access to it.
19. In the *Review of the Regulatory Framework for Broadcasting Services in Canada*, the study commissioned by the CRTC, authors Laurence Dunbar and Christian Leblanc state: "We do not disagree with the conclusion that market forces alone are unlikely to achieve the policy objectives set forth in the *Broadcasting Act*." They also note that: "The available information also strongly suggests that the existing regulatory incentives and obligations with respect to English-language Canadian drama are not effective." Their recommendation 6.1 is this:

We believe it is imperative to develop more targeted and effective measures to incent the exhibition of Canadian content during peak viewing periods where market forces will not achieve this goal. Consideration should be given to targeting peak programming obligations to a narrow class of programs, such as drama, which are not adequately supported by the marketplace, and imposing targeted exhibition obligations which require television services to broadcast a minimum number of hours of these types of Canadian programs between 7 and 11 pm during each six month period over the course of a licensee's broadcast year to ensure that they will be exhibited during months when Canadians are watching significant amounts of television.

20. ACTRA supports this recommendation and further urges the Commission to require over-the-air commercial broadcasters to allocate 7% of their advertising revenues to Canadian drama and scripted comedy, not including licence fee top-ups.

Because of CPE Requirements, Pay and Specialty Services Spend More on Drama

21. In 2006, the English-language pay and specialty services together spent more than \$158 million on Canadian drama. This was 7.8% of their revenues. In contrast the English-language commercial OTA broadcasters spent only \$40 million on Canadian drama in the same year. This was just 2.3% of their advertising revenues.
22. It is self-evident that the reason for the substantially different commitment to Canadian drama lies in the nature of the regulatory requirements that are imposed on the respective players. As the Commission itself points out: "Analog and Category 1 pay and specialty services have relatively high requirements with respect to exhibition of Canadian content overall and in the evening hours, as well as Canadian programming expenditure (CPE) requirements." Specific requirements vary by genre and are determined on a case-by-case basis. "The existing framework for VOD and PPV sets out relatively low requirements for Canadian programming."
23. ACTRA urges the CRTC to remove the ability of licensees to include the licence-fee top-up payment received from the CTF as part of their CPE requirement, since we consider all CTF resources to be public funds, as we stated in our response to the report of the CTF Task Force.

The contribution made by Broadcast Distribution Undertakings to the CTF is neither "private" nor "voluntary." As the Task Force itself explains, BDUs benefited when the CRTC authorized a time-limited increase in subscriber fees. When this increase was due to end, the Commission ruled that BDUs could retain one-half of the increase permanently, as long as the remaining one-half was used to support Canadian productions. This money is thus PUBLIC money, fees collected from millions of Canadian subscribers. This money cannot be diverted to meet the private interests of BDUs or broadcasters.

In ACTRA's view, it is highly inappropriate for broadcasters to get credit for public money that is provided to programs they licence.

24. While ACTRA and the CCAU are proposing certain improvements, we believe it is critical to note that overall the existing regulations have created an environment in which the discretionary programming licensees are encouraged to allocate resources to Canadian drama.

The Healthy Financial Performance of Cable Companies Should be Reflected in Increased Contribution to Canadian Content Production

25. The requirement for BDUs to contribute 5% of their revenues to Canadian content production was first introduced in 1995. Since that time, BDU revenues have soared, reaching more than \$6 billion in 2006 for cable and more than \$1.7 billion for DTH. PBIT in 2006 was \$1.437 billion, more than double the figure in 1995. ACTRA believes that Section 3(1)(e) of the *Broadcasting Act* requires that this improved financial performance should now translate into a greater contribution to Canadian content production. The CCAU has proposed that cable companies should be required to contribute 6% of revenues to the production of Canadian programs.

26. As ACTRA noted in its response to the report of the CTF Task Force, the Canadian Television Fund (CTF) plays a pivotal role in supporting the creation and broadcasting, in peak viewing hours, of high-quality, distinctively Canadian television programs.
27. Past experience reveals how important the CTF is to our domestic television industry. In 2003, the government announced in the federal budget that it would extend the CTF, but at reduced levels, falling from \$100 million to \$87.5 million in 2003-04 and \$62 million in 2004-05. This exacerbated an already precarious existence for Canadian television drama producers, for Canadian performing artists and for other creators. The industry was thrown into turmoil, with predictions of massive drops in the number of productions. A disaster in the television industry was averted when the government reversed its decision and returned its CTF funding to \$100 million annually for the next two years.
28. Last year, several cable television companies created another crisis for the CTF when they stopped making monthly payments to the CTF. In response, the CRTC created a Task Force, the members of which were able to reach a consensus on only one issue and recommended that "the CRTC ... amend its BDU Regulations to require contributions on a monthly basis". While ACTRA opposes many of the Task Force recommendations, we support this one.
29. ACTRA therefore continues to urge the CRTC to amend its BDU Regulations to require that contributions be made on a monthly basis to the CTF.

Thank You



Stephen Waddell
National Executive Director
ACTRA

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