



October 24, 2007

Mr. Robert A. Morin  
Secretary General  
CRTC  
Ottawa, ON  
K1A 0N2

Online: <http://support.crtc.gc.ca>

Dear Mr. Morin,

**Re: Broadcasting Public Notice CRTC 2007- 114 (Practice Direction on the Provision of Confidential Access to Confidential Information)**

1. This is the submission of the Alliance of Canadian Cinema Television and Radio Artists (ACTRA) in the matter of Public Notice CRTC 2007-114 regarding the proposed Practice Direction on the provision of confidential access to confidential information.
2. 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. In addition to its 21,000 members, ACTRA represents the interests of thousands of singers and musicians through the work of the ACTRA Performers' Rights Society which collects and distributes royalties from the public performance of musical recordings. ACTRA's principal function is bargaining collectively on behalf of our members and others, whose performances in movies, television programs, sound recordings and digital media entertain, educate and inform Canadians and global audiences.
3. ACTRA members have a vital stake in Canada's cultural future. ACTRA members benefit professionally when work opportunities are more abundant. 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 creativity of Canadians; in our capability to tell and perform our own stories. We also believe that a healthy democracy needs diversity in programming choices and editorial opinions. It is these beliefs that motivate ACTRA's participation in the CRTC public process.
4. In previous processes, ACTRA has pointed out that when the CRTC grants requests of applicants for confidentiality for certain information, this constrains the ability of the public and public interest groups to participate fully in the process and to assist

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the Commission in its consideration of such applications. While the proposed Practice Direction appears to be an effort to mitigate this shortcoming, we believe its impact would be problematic since it would effectively place another barrier for interveners seeking to participate in the Commission's already complex public processes.

5. ACTRA believes that since licensees are using the public airwaves and benefiting from other public policies, all matters relating to an application should be placed on the public record. Particularly as concentration of ownership means there are fewer and fewer players in the broadcasting system, the rationale that release of certain information damages the competitive position of applicants is rendered moot.
6. We have two concerns about the proposed Practice Direction: i) that it will provide a rationale for authorizing even more information to be retained confidentially and ii) that it will add to the cost and complexity of participating in the Commission's public processes, as interveners would need to retain an outside legal counsel or expert "who is not a director or employee of a party or of an intervener."
7. The costs involved in gaining confidential access to the confidential information would be a deterrent to requesting access, and perhaps to even participating in the process at all. ACTRA believes some interveners who might otherwise participate in the Commission's public processes would decide not to participate if they could not justify the fees required to retain outside counsel or an expert to enable them to be on an equal footing with other participants. ACTRA would be concerned about any outcome that reduces the number of public participants in the CRTC processes.
8. If interveners decide to participate without requesting confidential access to confidential information due to cost constraints, those interveners would be operating at a disadvantage compared to others who could afford to retain outside counsel or an expert and thus to have access to all the information.
9. ACTRA is further concerned that this process might make parties more likely to request confidentiality and might make the Commission more inclined to grant such a request, since everyone will know that the confidentiality will not apply to key interveners. This would result in concealing information that would otherwise be made available on the public record. Such a situation would be contrary to the Commission's goal of conducting public processes "in an open and transparent manner."
10. ACTRA believes strongly that the Commission benefits from broad public participation in its processes and that such participation is mandated by the various statutes. ACTRA believes the proposed Practice Direction would reduce the number of voices who choose to participate, compromising the breadth and depth of input into the Commission's processes.
11. ACTRA is an interested and frequent participant in the Commission's public processes. As the Commission is well aware, such participation requires substantial staff time and often a financial commitment to hire outside advice in preparation for some submissions. ACTRA is a not-for-profit, member-driven organization with limited resources. ACTRA believes it is important to participate in the Commission's processes, and will continue to do so. However, even ACTRA may decide in certain

circumstances that it cannot justify hiring an outside counsel or expert in order to gain confidential access to confidential information. ACTRA certainly understands there are other meaningful contributors who already find it too costly to engage fully in the CRTC processes. The proposed Practice Direction will only further dissuade such participants from taking part.

12. While ACTRA opposes the proposed Practice Direction for the reasons outlined above, if the Commission proceeds, ACTRA urges that the procedure be used sparingly and only in cases where the confidential information is truly confidential. ACTRA asks that wherever possible, in the interests of transparency and public participation, that information be made available on the public record for ready access by those interested in contributing to the Commission's public processes.
13. Finally, if the Commission proceeds, ACTRA further recommends that the definition of Expert be amended to remove the words "... who is acting under the control or direction of Counsel ...," since this would provide greater scope for individuals with the necessary specialized knowledge to be involved in the confidential process. This would assist in keeping costs more limited.

Thank you



Stephen Waddell  
National Executive Director  
ACTRA

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