



February 14, 2008

Filed via fax and CRTC Web site

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

Dear Mr. Morin:

Re: Broadcasting Public Notice CRTC 2008-6 – Call for comments on the public disclosure of aggregate financial data for large ownership groups of over-the-air television and radio broadcasters

1. This is a submission by a coalition of the English-language Canadian independent production community, specifically the Canadian Film and Television Production Association (CFTPA), the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), the Writers Guild of Canada (WGC), the Directors Guild of Canada (DGC), and the Documentary Organisation of Canada / Documentaristes du Canada (DOC), hereinafter collectively referred to as the “independent production community”. We are pleased to provide these **comments** with respect to the above-referenced Public Notice (the “Public Notice”).
2. The CFTPA represents the interests of almost 400 companies engaged in the production and distribution of English-language television programs, feature films, and interactive media products in all regions of Canada. Our member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.
3. 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, which collects and distributes royalties from the public performance of musical recordings.

4. The WGC is the national association representing more than 1,800 screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is committed to building a vibrant industry showcasing Canadian imagination and talent.
5. DGC is a national labour organization that represents key creative and logistical personnel in the film and television industries. Its membership includes over 3,800 individuals drawn from 47 different craft and occupational categories covering all areas of direction, production, editing, and design of film and television programming in Canada.
6. DOC is a bilingual, national, not-for-profit national arts service organization comprised of independent documentary filmmakers, producers, directors, and craftspeople. It was founded in 1983 and now has over 750 members working in both official languages in all provinces and territories of Canada.
7. The independent production community creates high-quality domestic programming in various genres, as well as feature films for theatrical release and content for new digital platforms. We provide Canadian television viewers with a Canadian perspective on our country, our world, and our place in it. Through the content we produce, we help foster Canadian cultural choices and reflect the rich diversity of this country. As such, we play a vital role in the Canadian broadcasting system.
8. While our comments in this submission refer primarily to OTA television given the interests of most of the independent production community partners, the views and positions expressed herein generally apply to radio as well.

The Commission's Proposal

9. On September 7, 2007, the CRTC sent a letter to the large broadcasting ownership groups, namely Quebecor Media Inc., Cogeco Cable Canada Inc., CTVglobemedia Inc. (CTVgm), Canwest MediaWorks Inc. (Canwest), Rogers Cable Inc., Corus Entertainment Inc., and Astral Media Inc., and to the Canadian Association of Broadcasters inviting these parties to provide comments at the Diversity of Voices public hearing that commenced on September 17, 2007 on the potential impact of disclosing the financial information of over-the-air (OTA) television and radio broadcasters in a manner similar to that set out for pay and specialty services in *Circular No. 429*.¹
10. These parties were generally of the view that additional financial disclosure was unwarranted. On the other hand, members of the independent production community, among other groups, argued that the disclosure of financial information of OTA television licensees controlled by the large multi-station ownership groups is essential to the public interest.
11. The Public Notice calls for comments on the CRTC's preliminary view that public disclosure of aggregated financial data of OTA television and radio broadcasting undertakings operated by large ownership groups could serve the public interest. The Commission states that "[s]uch information would be valuable for parties interested in submitting comments in a number of hearings and proceedings".

¹ *Circular No. 429*, CRTC, August 19, 1998.

12. The Commission proposes to disclose publicly the following information from the annual returns of the large broadcast ownership groups on an annual basis:
- financial summaries of OTA television and radio stations;
 - overall contributions to Canadian content development by radio; and
 - Canadian programming expenditure data subdivided by program category for OTA television.
13. This information would be aggregated at the ownership group level. For those groups with interests in both television and radio undertakings, separate group-level aggregates for each of television and radio would be made public. Separate group-level aggregates would also be made public for English and French services. Where aggregated information would reveal the results of an individual undertaking, the aggregate data would be kept confidential.
14. The Commission also seeks comments on whether it should disclose to the public the aggregated financial data of the CBC as between television and radio and between English and French services.

The Disclosure of More Detailed Financial and Statistical Data of OTA Television Broadcasters is Essential to the Public Interest

15. The independent production community strongly supports the Commission's intention to disclose publicly aggregated financial data of OTA television and radio broadcasting undertakings operated by large ownership groups. We applaud the Commission for taking this position. The independent production community firmly believes that annual disclosure of aggregated financial data of both private and public (the CBC) broadcast ownership groups down to and including profit before interest and taxes (PBIT) is essential to serving the public interest.
16. The independent production community believes the same is true of large broadcasting distribution undertakings (BDUs) as we stated in our initial submissions filed in the proceeding reviewing the regulatory frameworks for BDUs and discretionary services.²
17. In the Public Notice, the Commission notes that "large ownership groups have a privileged position in the Canadian broadcasting system". We completely agree, and believe this privileged position should be accompanied by additional responsibilities and contributions to the broadcasting system. This includes the public release of more detailed financial and statistical information so that industry stakeholders and the public can properly assess whether large broadcasters' contributions to the system are commensurate with the size and scope that they have been granted. In turn, interested parties will be in a stronger position to assist the Commission to analyze the applications it is considering.
18. The independent production community submits that the positions put forward by large broadcasting groups at last year's Diversity of Voices public hearing in favour of not disclosing more detailed financial and statistical information were unconvincing and self-serving. We believe that the public interest arguments for releasing such information far outweigh the broadcasters' arguments.

² *Broadcasting Notice of Public Hearing CRTC 2007-10, Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services.*

19. The independent production community rejects the broadcasters' argument that releasing more detailed financial and statistical information will negatively affect their competitive position. The Commission has made public the financial information relating to the revenues and expenditures of Canadian specialty and pay services on an annual basis for many years. In fact, in licence renewal applications, broadcasters are generally required to provide detailed financial data, including recent year actuals and projections, at the licensee level. This has not limited in any way the competitive position of these television services, which continue to grow and prosper as a whole.
20. Moreover, the CRTC has released more detailed financial and statistical information of OTA television broadcasters in the past and this did not have a negative impact on these broadcasters. As part of the licence renewal hearings for the CTV, Global, and TVA station groups in 2001, the Commission publicly disclosed historic financial information that is usually kept confidential in relation to OTA television broadcasters. The financial information made available included the revenue and expenditures of each of the three broadcast groups for the years 1997 through to 2000. With respect to expenditures, the documents set out breakdowns of dollars spent on the various categories of programs, such as news and drama, by each of these station groups. The Commission's rationale for releasing such information included the following:
- ...[A]lthough conditions of licence regarding Canadian programming expenditures are not generally imposed under the Commission's new television policy, such data will provide an indication as to how the Commission's new policy is working over the next licence term. Public access to the data will also allow for a more informed public discussion on the wide range of issues facing the industry.³
- The Commission also notes that, since only aggregate data for large multi-station ownership groups would be released, any potential competitive harm would be minimized.⁴
21. In the independent production community's view, this rationale holds true today. We strongly believe that there is considerable evidence that the Commission's not-so new television policy is *not* working, certainly in the area of Canadian drama. Only by allowing public access to appropriate data, however, can stakeholders such as members of the independent production community make informed comment on what the specific problems are and contribute to an informed public discussion about what needs to be done to fix them. This public interest in disclosure must exceed any unproven or notional competitive harm that could theoretically come from such disclosure.
22. More specifically, in an English-language private OTA television market dominated by two large corporate groups (CTVgm and Canwest) and one deep-pocketed mid-sized player (Rogers), we submit that each group already knows a lot about its main competitors. Since they routinely compete for rights to broadcast popular foreign television shows and movies, for advertising dollars, for on-air talent, and for independently produced Canadian programs, they have a sophisticated understanding of each other's financial position. Given that disclosure would treat all corporate groups equally, it is also unclear how one group would be disadvantaged over another. Further, since the Commission has access to detailed information on a confidential basis, only industry stakeholders and public interest participants in CRTC processes do not have access to this data.

³ *Public Notice CRTC 2001-27*, February 19, 2001, at paragraph 9.

⁴ *Ibid*, at paragraph 10.

23. The independent production community disagrees with the specific suggestion made by some broadcasters that the release by the Commission of more detailed information only for exceptional circumstances (i.e., prior to licence renewal hearings) is sufficient. The release of such information every seven years is wholly inadequate for industry stakeholders to assess the performance of large privileged broadcasters in meeting their regulatory obligations. Much harm can be done to the creative and production community during a seven-year period if broadcasters were falling short of their requirements and/or if CRTC policies were not meeting their desired objectives⁵. Ongoing and consistent monitoring by industry stakeholders, as well as by the Commission, is in the public interest.
24. The independent production community believes that public release of the appropriate financial and programming expenditure information that broadcasters are required to file with the Commission on an annual basis would be an essential tool for assessing the ongoing performance of large broadcast groups in delivering on their promises, assessing their contributions to the Canadian broadcasting system, and meeting their regulatory obligations. Transparency and the timely publication of data related to the Canadian broadcasting system are critical for industry stakeholders to participate in a constructive and meaningful way in the CRTC's public hearing and decision-making processes.

The Data Required for Meaningful Public Participation

25. As the CRTC is aware, the broad financial and statistical data for OTA television broadcasters published by the Commission does not distinguish broadcasters by language, ownership, or market size. This makes it very difficult, if not impossible, for interested parties to properly assess the performance of various broadcast groups.
26. The independent production community was disappointed to see that the CRTC's *Broadcasting Policy Monitoring Report 2007* combined Canadian programming expenditures of English- and French-language private OTA television broadcasters. The two language markets are substantially different and the data was more appropriately segmented by language in previous reports.⁶ Combining the data makes it impossible for interested parties to assess English-language private OTA television broadcasters' spending on Canadian programming *vis à vis* foreign programming.
27. Similarly, the CRTC's *Broadcasting Policy Monitoring Report 2006* did not provide information related to viewing share by ownership group contained in the previous year's report (Section III.A.5). We use these examples to make the point that the Commission should, in the release of industry financial information and statistical data, always favour transparency and serving the public interest. Moreover, changing reported data from one year to another makes it very difficult, if not impossible, for industry stakeholders to analyze the data and identify trends. Consistent reporting from year to year is therefore necessary.
28. In the independent production community's view, the CRTC should always report data in a more segmented way so that industry stakeholders and the public can properly analyze the information. For example, financial and statistical information should be reported by language, by broadcasting group, and by licence class (i.e., specialty vs. pay; VOD and PPV separate from pay, etc.). Data for multi-lingual broadcasters should be reported separately.

⁵ Subsection 9(1)(c) of the *Broadcasting Act* also allows the Commission to amend licences after only 5 years, on its own motion.

⁶ See Table 3.11 in the 2007 report. In comparison, see Table 3.6 in the 2006 report.

29. In this regard, the independent production community is pleased that the Commission intends to release publicly separate group-level aggregates for each of television and radio for those broadcast groups that own both television and radio undertakings, and separate group-level aggregates for English and French services.
30. The independent production community is also pleased that the CRTC intends to disclose Canadian programming expenditure data subdivided by program category for OTA television. It is absolutely essential, however, that the Commission publicly report expenditure data by program sub-category as well so that interested parties can accurately assess and comment on large OTA television groups' spending on different kinds of priority programming. In our view, priority programming expenditures by large broadcasters including how much was done in-house vs. by independent producers should be disclosed on an annual basis.
31. Given that the creation and exhibition of Canadian priority programming in prime time has been the CRTC's key focus for nearly a decade, the independent production community is surprised that the Commission does not already publicly report priority programming expenditures by large broadcaster. Not disclosing broadcasters' actual spending on priority programming by program category is inconsistent with the CRTC's stated goal of ensuring transparency and fairness in performing its duties as Canada's broadcast regulator. We also note that while disclosure of priority programming expenditures would require broadcasters to disaggregate priority from non-priority programming expenditures in certain program categories (including Category 11 and some regional priority programming), at least two of the major groups (CTVgm and Rogers) already do this for tangible benefits reporting purposes.
32. As the Commission is aware, the independent production community has, for many years, called for measures to reverse the precipitous decline in the production and exhibition of Canadian drama and other fiction programming, which has occurred since the CRTC's 1999 Television Policy de-emphasized this genre of programming. While we do know that private OTA English-Canadian broadcasters spent almost twelve times more on foreign drama than on Canadian drama in 2006, we do not know how each broadcast group performed in this respect, and yet the *Broadcasting Act* places an obligation on each broadcasting undertaking to "make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming".
33. Given the CRTC's decision to expand the definition of priority programming in its 1999 Television Policy, the independent production community believes that it is in the public interest to provide industry stakeholders with the data needed to assist the Commission in assessing the impact that this decision has had on the various priority program categories. Public disclosure of priority programming expenditures by large broadcaster is absolutely essential to an informed public debate in the upcoming licence renewal process.
34. In this regard, the independent production community submits that it is equally important and in the public interest for the Commission to release foreign programming expenditure data subdivided by program category and sub-category so that interested parties can assess whether large OTA television broadcast groups are making sufficient contributions to the creation of Canadian programming *vis à vis* their acquisitions of foreign programming. This is the only way for interested parties to assess whether OTA television broadcasters' commitment to Canadian programming is commensurate with the privileges they have been granted in the system.

35. In the independent production community's view, a more complete and detailed public disclosure of both Canadian and foreign programming expenditures by large broadcast group and by English and French is essential to facilitating a more informed public debate. This is particularly important in the context of the upcoming licence renewal hearings for the OTA television broadcast groups, including the CBC.
36. Moreover, the independent production community believes that expenditures related to significant tangible benefits packages, including any required baseline spending for incrementality purposes and historical spending on Canadian programming, should be separately identified and disclosed publicly on an annual basis. It is essential, however, that this data be separated by network or group of stations in cases where broadcast groups own two or more distinct OTA television systems (e.g., CTV vs. A Channels, Global vs. E!, and Citytv vs. OMNI). Industry stakeholders need to be able to see what CTV, for example, spent on Canadian programming prior to it acquiring the A Channel group of stations, what the A Channel group spent on Canadian programming prior to it being purchased by CTVgm, what CTV spends on Canadian programming independently of the A Channels post-transaction, and what the A Channels spend on Canadian programming independently of CTV post-transaction. This level of reporting is the only way for the independent production community and the public to assess whether the public benefits proposed in recent television ownership transactions are truly incremental to the Canadian broadcasting system.
37. To enable us to assist the CRTC to assess OTA television broadcasters' performance over the current licence term as part of their upcoming licence renewals, the independent production community suggests that the Commission publicly disclose aggregated financial and statistical data as recommended above of both private and public (the CBC) broadcast ownership groups retroactively to the 2001 broadcast year.⁷

Towards a Review of Private Broadcaster Contributions to Canadian Programming

38. In the public notice announcing its determinations regarding certain aspects of the regulatory framework for OTA television released in May 2007⁸, the Commission clearly indicated that the issue of English-language OTA broadcasters' contribution to Canadian programming would be under review during the licence renewal process for the major OTA broadcast groups.
39. Among other things, the Commission stated that:

Although English-language OTA licensees have maintained Canadian programming expenditures as a percentage of revenues, the continuing reduction in the proportion of total programming expenditures allocated to Canadian programming is cause for concern.⁹

⁷ We note that the CRTC has already disclosed publicly data from 1997 to 2000 pursuant to *Public Notice CRTC 2001-27*.

⁸ *Broadcasting Public Notice CRTC 2007-53*, Determinations regarding certain aspects of the regulatory framework for over-the-air television, May 17, 2007.

⁹ *Ibid*, paragraph 91.

40. The Commission put broadcasters on notice that it would be examining issues such as exhibition of Canadian programming and ensuring “that an appropriate proportion of their financial resources will be allocated to the production and acquisition of Canadian programming”.¹⁰
41. The independent production community notes that currently available financial data on OTA television broadcasters is unchanged from that revealed in the recent OTA television regulatory framework review, including, for example, that annual expenditures on Canadian drama by English-language OTA television broadcasters decreased from approximately \$62 million, or 4% of ad revenues, in 2001 to approximately \$40 million, or 2.3% of ad revenues, in 2006.¹¹ We note that Canadian drama expenditures were \$73 million, or 5.1% of ad revenues, in 1998, prior to the 1999 Television Policy.
42. The independent production community has called for the imposition of specific regulatory Canadian programming expenditure (CPE) requirements on OTA television groups, particularly towards Canadian drama. We see no evidence of an improving situation for Canadian program spending, and are concerned that the Commission’s patchwork reliance on tangible benefits commitments is neither a sufficient, sustainable nor an equitable approach to supporting priority Canadian programming and independent production. Having an “informed public discussion” on these kinds of concerns requires public access to appropriate historic data. It also requires that the Commission make it clear to broadcasters that it is prepared to consider new regulatory obligations in the next licence term.
43. There appears to be no reason why the Commission should not release 2007 financial data as requested in this submission as early as this spring, and 2008 data in time for licence renewal hearings for OTA television broadcast groups in the spring of 2009. Publishing the financial data requested in this submission well in advance of the upcoming licence renewals is vital for both practical and procedural reasons. First, it is essential that interested parties be given ample time to analyze the data so they can participate meaningfully and productively in the licence renewal process. Second, by publicly framing the issue of Canadian programming contribution with the most current data, the Commission will be in a better position to posit potential regulatory response options for broadcasters to consider in their licence renewal filings.
44. We therefore urge the Commission to publish the financial data as requested in this submission *up to and including 2007* as soon as possible, and, in any event, no later than September 2008. We would further recommend that, following or commensurate with the release of this data, the Commission remind the OTA television broadcast groups of its intention to review their contributions to Canadian programming at licence renewal time and to be prepared to address the potential for specific regulatory obligations in this regard. The Commission should also specifically require the broadcast groups to provide the agreed upon data set for the *2008 broadcast year* in their renewal filings in the fall of 2008, so that there is no unnecessary delay in this information being placed on the public record.

Conclusion

45. The independent production community strongly supports the Commission’s intention to publicly disclose aggregated financial data of OTA television and radio broadcasting undertakings operated by large ownership groups on an annual basis. The independent

¹⁰ Ibid, at paragraph 93.

¹¹ We note that approximately half of the \$40 million came from tangible public benefits associated with television ownership transactions.

production community firmly believes that annual disclosure of aggregated financial data of both private and public (the CBC) broadcast ownership groups is essential to serving the public interest.

46. The independent production community believes that in addition to publicly reporting expenditure data by program category, as suggested in the Public Notice, the Commission should provide separate English and French group-level aggregate information for the following:
- program sub-category expenditures, particularly within Category 7, Category 2, and Category 8;
 - expenditures on priority programming, including separate identification of expenditures required for tangible benefits purposes (i.e., benefits spending, historical spending, and required baseline spending for incrementality purposes);
 - breakouts by sub-category of programming produced in-house and by independent producers; and
 - foreign programming expenditures, subdivided by program category and sub-category.
47. This additional data is essential to the ability of public stakeholders, such as the members of the independent production community, to make informed comment on whether large OTA television broadcast groups are making sufficient contributions to the creation of Canadian programming *vis à vis* the acquisition of foreign programming, and the extent to which the Commission may need to amend its OTA television policy to improve the situation given historic trends.
48. We urge the Commission to publish the financial data of OTA television undertakings by large ownership group requested in this submission well in advance of the upcoming licence renewal process for OTA television broadcast groups and retroactively to the 2001 broadcast year so that interested parties have sufficient time to analyze the data and participate meaningfully and productively in the licence renewal process.
49. The independent production community appreciates the opportunity to comment on the Public Notice.

All of which is respectfully submitted.

Sincerely,

[Original signed by Stephen Waddell]

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ACTRA

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