



February 26, 2009

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

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

Dear Mr. Morin,

**Broadcasting Public Notice CRTC 2008-101-2
Call for comments on the proposed regulatory framework
for video-on-demand undertakings**

INTRODUCTION

1. This is the submission of the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) in the matter of Notice of Public Hearing CRTC 2008-101-2 on the proposed regulatory framework for video-on-demand (VOD) undertakings.
2. ACTRA welcomes the opportunity to participate in this process on behalf of our 21,000 members and will bring to it the unique perspective of professional performers working in the English-language recorded media in Canada. ACTRA looks forward to reviewing and responding to the comments of other participants in the second phase of this process.
3. ACTRA members are a vital part of Canada's \$85 billion cultural industries and have a stake in a robust domestic television, film and new media production, distribution and exhibition system. ACTRA members also believe in the creativity of Canadians; in our capability to tell and perform Canadian stories and in the inherent need for Canadians to be able to see and hear ourselves in all media. 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.

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4. In the current process, ACTRA is seeking the following outcomes with respect to English-language services and bilingual services with respect to their English-language content:
 - increase the contribution of video-on-demand (VOD) services to a Canadian production fund independent of the licensee to 10%, with 80% of the total amount being allocated to drama;
 - continue to require each VOD service that programs feature films to acquire rights to all new Canadian feature films that are suitable for distribution, carry a minimum of 10% Canadian feature films, devote at least 25% of the time/space on any barker channel and website to promoting these Canadian feature films; and ensure that its navigation system provides a Canadian alternative on each screen until the consumer has selected the program to view;
 - require each VOD service that offers other programming genres to carry predominantly Canadian content in their inventory, devote at least 50% of the time/space on any barker channels and website promoting these, and ensure that its navigation system provides a Canadian alternative on each screen until the consumer has selected the program to view;
 - prohibit suppliers of subscriber video-on-demand (SVOD) from offering non-Canadian services that are not authorized for carriage in Canada, and require them to obtain program rights from a Canadian supplier and to include in each subscription package at least 50% Canadian content; and
 - prohibit VOD services from including commercial messages in any of their programming.

THE CONTINUING CRISIS IN CANADIAN ENGLISH-LANGUAGE DRAMA

5. For the past eight 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. For many more years, we have worked to increase the number, budget and quality of English-language Canadian feature films.
6. The Commission has on numerous occasions acknowledged the crucial role of dramatic programs. In PN 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." In PN CRTC 2004-32, the Commission added the following observation: "It is the Commission's preliminary view that effective measures to increase the availability of, and viewing of Canadian drama programs are needed at this time and that such measures would further the objectives of the *Broadcasting Act*." The Dunbar Leblanc study commissioned by the CRTC and released in August 2007 confirmed that such measures remain necessary since market forces alone are insufficient to ensure an adequate supply.
7. After reaching a peak of \$1.12 billion in 1999/2000, the volume of production of English-language fiction programs (drama and scripted comedy/television and film)

has declined. According to *Profile 2009*, the total volume of English-language drama production in 2008 was \$0.868 billion, a 6% decline from the previous year and 22.5% lower than the peak year.

8. ACTRA believes the current process provides an opportunity to find more support for Canadian TV and theatrical drama.

TRANSACTIONAL VIDEO-ON-DEMAND

9. When the CRTC first considered licensing video-on-demand services in the mid-1990s there were high expectations. Consumers would be able to choose the specific movie they wished to view, it would be made available to them immediately, and they would be charged a fee comparable to the rate charged at the local video store. In this scenario, VOD would supplant the video store since you would make your choice from a collection that was at least as broad and current, and you would be guaranteed it would be available. This would also be done in the comfort of your own home. While there was some thought that other forms of programs could be released through VOD, movies were the driving force.
10. However, this optimistic vision has faced challenges. Initially, there were technological limitations; both in how many selections could be housed by the service and in how it could be provided at the request of the individual subscriber. These challenges continue for services delivered via satellite. The first step was introduction of “near video-on-demand,” where popular movies would start at regular intervals and the subscriber would join with others at that viewing. Until recently, this wasn’t perfect for the subscriber since it was not truly “on-demand” and additionally you could not pause the movie to make your popcorn or rewind it to make certain you understood the important scene. Consequently, the movie release pattern has continued to put the DVD rental and sale before the VOD release. The development of the Internet with its true on-demand capacity also inhibited the cable/satellite VOD model, since some aficionados can find a (usually) unauthorized version of the movie they want on-line.
11. Thus, it is little surprise that not all of the 15 services licensed by the CRTC have launched and it also no surprise that the available services have moved beyond movies to also offer a range of specialized programming and niche packages. Despite the slow start, the more mature VOD services are now doing this profitably.
12. While it is extremely difficult to decipher figures from the available data, according to the *CRTC 2007 Broadcasting Policy Monitoring Report*, for the 2006 year, the five operational VOD services had collective revenues of \$53.6 million and a PBIT (profit before interest and tax) rate of 10.8%. In 2007, Rogers, the largest service, had revenues of \$40.4 million and a PBIT of 5.61%; Videotron Cable Systems had revenues of \$22.1 million and a PBIT of 64.8%.
13. While the VOD model delivered via cable may be challenged in the long-term by developments in new media, in the short-term, VOD services will continue to develop and prosper. This is the case because the technological capacity has greatly

expanded, particularly with the continuing deployment of digital distribution capacity, consumers are becoming far more accustomed to an on-demand entertainment world, more current release movies are available and niche programs are finding a targeted audience.

14. In this environment, it is appropriate for the Commission to look again at how VOD services should be contributing toward achieving the objectives of the *Broadcasting Act*.
15. The centerpiece of the VOD model continues to be feature films. While there are serious concerns about the recent precipitous decline in the production of television drama, the situation in movies has always been far worse. English-language Canadian movies have struggled to earn more than one percent of box office revenues for many years (in 2008, they accounted for only 0.9% of the box office). Canada has achieved creative success for some of its movies and the talent base is strong, but there are several significant challenges that Canada's feature film industry. First, there are insufficient resources for script development, production and promotion. Second, our movies do not have adequate access to audiences.
16. Since the early days, the movie distribution and exhibition businesses have been fully integrated into the Hollywood system, whether the individual firms have been Canadian-owned or branch plant operations. While there is a range of policy measures to encourage and support production activities, few measures have been developed to encourage demand for Canadian movies. There is also a chronic shortage of resources to compete with the well-financed movies that flow freely into Canada. VOD provides an important opportunity to begin to redress these weaknesses.
17. However, what is also true after years of creativity and public support for the production of Canadian movies is that we now have a rich library of high-quality Canadian feature films, many of which have had limited access to audiences. While the initial Cancon ratio for movie VOD services at 20:1 may have been appropriate in an environment in which relatively few offerings could be made available because of the technological limitations and these tended to be recent releases, this is no longer the case. The list of movies on offer has grown and now includes recent releases, specialized films and classics. The remaining limitation is how you navigate around the available choices.
18. Given all of these factors, ACTRA believes it is appropriate for each VOD service that programs feature films to be required to :
 - continue to acquire rights to all new Canadian feature films that are suitable for such distribution;
 - carry a minimum of 10% Canadian English-language feature films;
 - devote at least 25% of the time/space on any barker channel or website to promoting these Canadian feature films; and
 - ensure that its navigation system provide a Canadian alternative on each screen until the consumer has selected the program to view.

19. ACTRA also supports the proposal put forward by Telefilm Canada to create a promotional tool for current release Canadian movies. Each VOD licensee should be required to give a priority place on the service to trailers for all current-release Canadian feature films playing in theatres.
20. The number of VOD services providing a range of programming choices other than or in addition to films to consumers has increased significantly as cable companies look to compete with Personal Video Recorders, online distribution and DVD packages of entire seasons of TV shows. Consumers are increasingly accustomed to watching what they want to watch when they want to watch it. VOD offerings now include repurposed shows from conventional broadcasters, specialized fare such as children's, sports and factual entertainment, and classic programs. ACTRA notes there is a wide range of high-quality Canadian choices available for services to provide in other genres, including a significant library of television drama. Given the fact that in some of these genres VOD services are competing with specialty television services that have strong commitments to Canadian content, and the requirement of the *Broadcasting Act* that Canadian resources be predominantly used, ACTRA asserts that each VOD service that provides choices other than feature films should be required to:
- carry predominantly Canadian content; and
 - devote at least 50% of the time/space on any barker channel and website to promoting these Canadian programs, and ensure that its navigation system provide a Canadian alternative on each screen until the consumer has selected the program to view.
21. The two largest of the VOD services have now operated for more than five years. They have demonstrated that, when such a service reaches a critical mass, it can be operated quite profitably. This makes sense since these services are owned by cable companies and overhead expenses are modest. There are also few original programming costs and the costs of acquired movies and programs presumably bear some relationship to the number of times they are ordered and the revenues they generate.
22. Thus, ACTRA believes it is appropriate to increase the requirement for VOD services to contribute to Canadian production. ACTRA proposes that all services be required to contribute 10% of their revenues to a Canadian production fund operated independently of the licensee. Furthermore, given that feature films (primarily drama) are the centerpiece of the program offerings, require that 80% of all these contributions be allocated to drama (or 8% of overall revenues). Some of these resources should be allocated to feature films to begin to address the chronic funding shortage.
23. When the current requirement that the licensee must remit 100% of the revenues earned from the exhibition of Canadian feature films to the rights holders is combined with the requirement on the VOD service to contribute 5% of all revenues to program production, there is a strong disincentive to VOD operators promoting and selling Canadian films. Accordingly, ACTRA would favour at a minimum, the

removal of the requirement to make a program production contribution on the revenue generated by the rental of Canadian feature films.

24. ACTRA believes that conventional and specialty television services in Canada will continue to be an attractive market for Canadian advertisers. While revenues for conventional broadcasters are challenged at the moment, they will recover as the economy turns around. The recovery could come as early as next year with the boost that will be provided by the Vancouver Olympics. However, given the current short-term challenges and the relatively secure subscription revenue base of the VOD services, we do not think it is appropriate to permit VOD services to include commercial messages in any of their programming.
25. ACTRA supports the maintenance of the current restriction which prohibits VOD services from distributing programs and films produced by the licensee or a person/firm related to the licensee.

SUBSCRIPTION VIDEO-ON-DEMAND

26. As ACTRA pointed out in previous submissions, at some point a SVOD channel can become suspiciously like a linear broadcast channel. In elaborating new rules, the Commission must ensure that the development of SVOD falls within the normal Cancon rules and is not used as a back-door way to introduce a non-Canadian service that is not authorized for carriage in Canada.
27. ACTRA notes that you can obtain Citytv, CTV and Global via Rogers-on-demand. Meanwhile, the SVOD services offered by Rogers-on-demand include Here! (America's premium gay TV network), Too Much for TV (programs such as *Cheaters* and *Girls Gone Wild* uncensored) and Howard TV (a variety of Howard Stern programs uncut, all the time).
28. ACTRA believes that SVOD operators should be precluded from obtaining programming content directly from non-Canadian programming services. We would favour, as the sole approach, the proposal by the Commission that a Canadian OTA, pay or specialty service may apply for a licence amendment granting them the right to offer program packages from the service's linear programming in SVOD format, providing that:
 - the programming is obtained from that service;
 - the SVOD package meets the Canadian content obligations that apply to the linear service;
 - all SVOD subscriber revenues are included in the annual gross revenues of that service; and
 - no time limits would apply to such packages.
29. ACTRA notes the Commission has signaled its intention to continue to permit SVOD services to obtain programming rights from non-Canadian sources. If the Commission does not reconsider this position, ACTRA urges it to impose packaging

requirements that would tie the availability of the non-Canadian service to a Canadian service on a 1-to-1 basis. In other words, SVOD should not be able to sell a Howard TV package alone, but would have to combine it with a Canadian program/series of equivalent length.

PAY-PER-VIEW

30. Finally, ACTRA would note that if its proposed regulations respecting VOD and SVOD services are implemented by the CRTC, the framework should apply as well to Pay-Per-View undertakings. If this model were adopted, PPV would have to make Canadian movies available on the 10:1 ratio and the broadcasting of live events by a PPV operator would require to be matched on a 1:1 basis between Canadian and non-Canadian events over each three-month period.

CONCLUSION

31. VOD and SVOD services have matured significantly and will continue to expand as capacity to deliver these services grows and consumers increasingly demand niche programming to be enjoyed at their convenience. The Commission must establish a forward-looking framework that ensures maximum choice for consumers while upholding the objectives of the *Broadcasting Act* by supporting and promoting Canadian content, particularly TV drama and theatrical films.
32. ACTRA thanks the Commission for the opportunity to provide comment on this important issue. If the Commission decides to hold a public hearing in this matter, we would welcome an invitation to appear to provide further input and respond to any questions the Commission may have.

Thank you.



Stephen Waddell
National Executive Director
ACTRA

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