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SUBMISSION OF ACTRA TO THE HOUSE OF COMMONS STANDING COMMITTEE ON CANADIAN HERITAGE REVIEW OF CANADA'S BROADCASTING SYSTEM

SECTION 1 - BACKGROUND

For almost 60 years, the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) and its predecessor organizations have represented the interests of professional Canadian artists working in the English-language recorded media. ACTRA members live in every region of the country and we work for all of Canada's broadcasters, producers of commercials, independent television and film producers, developers of multimedia products and the sound recording industry.

ACTRA's principal function is looking after the collective bargaining needs of the 18,000 members and others whose performances entertain, educate and inform Canadians and global audiences. Through our agreements with producers we establish the terms and conditions of engagement of actors, singers, dancers, hosts, stunt performers and coordinators, puppeteers, variety artists and other performers.

ACTRA members have a vital stake in Canada's cultural future. ACTRA members benefit professionally when work opportunities are strong. But, our 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. This is what motivates ACTRA's participation in the public discussions about the future of the Canadian television, radio, film and other cultural industries.

Over the past sixty years, ACTRA has witnessed and been an active participant in all of the significant developments that have fashioned, changed and challenged Canada's broadcasting system. We were there for the expansion of radio services throughout Canada; for the introduction of television, initially as a conduit for U.S. television networks; for the development of cable television and alternative distribution systems; and for the digital revolution that has already significantly changed the global media business.

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Most importantly, we have been an integral part of the emergence of an industry that produces high quality Canadian programs, as the skills and talent of our performers, directors, writers and technicians have combined with the entrepreneurial spirit of Canadian producers and broadcasters. Encouraged by effective legislation, public support measures and regulatory requirements, these partnerships have flourished in the past fifteen years.

SECTION 2 - PRINCIPLES TO ENSURE FUTURE SUCCESS

As ACTRA looks to the future, we are optimistic. There is a strong foundation on which we can continue to build a vibrant industry, which supplies a range of quality Canadian programming choices that can capture the imagination of viewers and listeners not only in Canada but around the world. Achieving the promise requires continuing public support measures and government regulation.

Over the 60 years of ACTRA's history, technological change has been a constant factor, as new methods of production, distribution and exhibition supersede previous modalities, and entirely new forms of artistic expression emerge. While the pace of change may be quicker and the digital revolution more comprehensive in its overall effects on society, it really does not alter the basic challenge that has motivated policy makers and industry stakeholders for more than a half century:

How do we ensure we have an adequate supply of high quality Canadian programming in all genre, that responds to the Canadian reality?

The rest, it has been said, is merely housekeeping.

The past decade has brought a far greater threat to Canada's production capability than digital technologies. Economic globalization, corporate concentration and the trade agreements represent a significant challenge to Canadian cultural policies. The Country Music Television/New Country Network fight, the magazine industry dispute and threats from the U.S. to challenge Canada's copyright royalty system are stark evidence that Canada's cultural measures are at significant risk. Continuing pressure for sweeping investment measures and efforts to have the audiovisual industry defined as a service and fully covered by the disciplines of trade agreements represent a serious challenge to a range of policies and programs. ACTRA was among the first to raise these concerns during the debate about the Canada/United States Free Trade Agreement, and we continue to advocate measures domestically and internationally that will preserve our sovereignty to support our culture and promote global cultural diversity.

Looking to the future, ACTRA submits there are three overarching principles that can guide the review of broadcasting launched by the Standing Committee on Canadian Heritage to a successful conclusion. If the Committee and Parliament adopt these principles, Canadians can continue to be well served by our broadcasting system into the coming decades.

1. Canada must continue to apply appropriate regulations to the broadcasting system and all forms of program distribution, including computer networks. Canada must maintain and strengthen the public measures and regulations that encourage the production and distribution of a wide range of Canadian films, television programs, radio shows, sound recordings and new media productions.
2. It is necessary to revise the definition of a Canadian program. The current point system encourages the creation of hybrid programs by permitting significant non-Canadian involvement. ACTRA urges that the regulatory systems and public programs be amended gradually to recognize that a Canadian program is one that is created, written, directed, performed and produced entirely by Canadians.
3. Canada must renew its commitment to the Canadian public service broadcasting sector and assist it to become an effective complement to our strong and capable private broadcasters and our healthy and active independent production community.

The Need For Regulation And Public Support For Production

A basic fact of Canadian life is that we are a nation with a relatively small population that is spread over an enormous geographical area. Two-thirds of us share a language and idiom with the world's largest producer of cultural material. U.S. cultural producers benefit from enormous economies of scale as they produce for a primary market many times larger than our own. Yet Canadians expect and deserve to receive equivalent quality Canadian programs at the same price as the U.S. product.

One stark illustration of this reality is the fact that an independent Canadian producer can expect to receive no more than 20-25 percent of the cost of a production as a license fee from a Canadian broadcaster. The same producer in the U.S. will receive 70-75 percent or more of the cost of production from a U.S. network, as a consequence of the substantially larger market that can be sold to the advertiser.

To bridge this gap, Canadian governments of all political stripes have implemented and maintain a range of policies and programs that encourage Canadian production. These are both structural measures and funding programs and include:

- regulatory requirements of the CRTC like Canadian content quotas, preferential access for Canadian services to the distribution systems and program substitution rules;
- supportive tax measures that encourage private investment;
- direct funding programs; and
- investment measures and ownership restrictions.

Many of these measures have been under increasing attack from both external and internal sources as a consequence of globalization.

ACTRA believes that CRTC regulations, statutory provisions and public support measures remain a key to ensuring a Canadian presence in our broadcasting system in the 21st Century. While they may require adjustment to meet current realities, they are the foundation on which the success of our broadcasting system and production industry will continue to be built. The government and the industry must work together to preserve our cultural sovereignty and our right to develop, implement and amend these policies.

In this connection, recent decisions of the CRTC appear to reflect a disturbing trend toward deregulation. The decision of the Commission in its review of television policies providing broadcasters with greater scope in scheduling programs from underrepresented categories has resulted in a significant drop in the production of Canadian drama series, still the form of programming most needed in the system and the hardest to produce. And the Commission's decision that it would not regulate programming delivered via the Internet is shortsighted given the inevitable development of the network as a viable delivery system for audiovisual programs. ACTRA submits that the CRTC new media decision needs to be reversed, the Internet can and must be regulated through appropriate rules imposed on Internet Service Providers and others.

Measures that provide financial incentives for Canadian production, including direct public investment, will continue to be necessary in the foreseeable future to bridge the gap between the resources available from the Canadian system and the rising costs of production.

On the international level, ACTRA supports the call for the implementation of a global cultural pact, a New International Instrument for Cultural Diversity, to provide a permanent legal foundation for the right of states to support their own cultures. Until that Instrument can be implemented, Canada must be firm in its resolve to not make any commitments in trade negotiations that would further restrict, either directly or indirectly, our right to implement, maintain or modify the policies we need in Canada.

Canadian Content To Be Redefined As A Program Created Entirely By Canadians

Supporting Canadian production is not merely about building an industry. The public policy measures and support programs have been implemented not only so that we can generate employment in a highly desirable industry. We need a production capacity so that we can tell Canadian stories, can communicate with one another across this vast expanse of land, so that we can build a common understanding of what it is to be Canadian, to analyze our place in the world community and to contribute to a new global citizenship. Using the most pervasive communication technologies in history, we want to be able to celebrate Canadian successes and learn from our failures, we need to be able to teach new citizens and future generations about Canadian mores, values, traditions and history, through the full range of programming genre.

But increasingly, this is not the outcome of the public programs and regulations. Even with these support measures, Canadian producers must find additional resources to complete the financing. Frequently, they look to foreign partners or buyers for this investment and too often they cannot

resist the explicit or implicit pressure to modify the nature of their work. Co-productions made under the terms of the bilateral agreements maintained by Canada with roughly 50 other countries often authorize extensive use of “Third Party” country personnel. Worse still, a production that is designed primarily for a market outside Canada, whose creative impetus is not at all Canadian, can qualify for benefits using creative partnerships. ACTRA believes that the cultural rationale of the Canadian programs is being circumvented consistently.

It is critical to state that ACTRA opposes vigorously all proposals that seek to define Canadian-ness by looking at the content of a project. Canadian creators must be free to tell whatever stories they want. What determines the Canadian-ness is whether or not the production is created by Canadians. If it is produced, directed and performed by Canadians; if the cinematographer, editor, costume designer, technicians and narrator are Canadian; if the post production work is undertaken in Canada by Canadian artists, the project will look and feel Canadian, regardless of what the story is about, or where it is set.

ACTRA believes it is time to revise the definition of a Canadian program. A Canadian program should be defined as one that is created entirely by Canadians and regulatory rules and program criteria should be amended gradually to conform to this definition.

ACTRA is not suggesting that this change be made immediately, nor do we advocate a system that prevents a foreign artist from working in a Canadian production where the circumstances clearly dictate the need. But the use of Canadians in our own productions should be the norm, and the use of artists from elsewhere should be seen as a derogation of the norm, particularly where the Canadian public is supporting a production financially.

Concretely, ACTRA proposes that an industry Task Force be created to refine the proposal, establish a timetable for the change and determine how best to implement this revised definition of a Canadian program.

Renewed Support For Strong Public Service Broadcasting To Complement Strong Private Broadcasters

Canada’s system is a blend of public and private. Canada’s private broadcasters are motivated by the need to make a profit to satisfy their shareholders. Their decisions about program licensing and scheduling are made to maximize advertising and other revenues. This is entirely appropriate and not inconsistent with the needs of the Canadian public. On the other hand, there are a number of public interest broadcasters with a different motivation. They are striving to serve the public by providing a range of programming choices that cater not only to the mass audience, but also to niche and underserved communities. This also is appropriate and required for a healthy democratic discourse.

But the ability of Canada’s public service broadcasters to fulfil their responsibility in this system has been undermined over the past decade by a series of funding cuts imposed by governments and by the reluctance of the CRTC to carve out a clear public space in the Canadian system.

ACTRA believes there must be a renewed commitment to a strong public service broadcasting system in Canada, at the heart of which is a strong and effective Canadian Broadcasting Corporation capable of adapting to new technologies and the changing requirements of Canadians.

In case there is any doubt, ACTRA is not arguing for a state broadcaster that delivers the message of the current government. We are advocating for public service broadcasting, services that operate in the public interest and are free from political constraints. Their work indeed may be controversial and at odds with the government of the day.

Over the years, the CRTC has authorized a number of public interest channels, including the CBC, Newsworld, the provincial educational broadcasters, Vision TV, Aboriginal Peoples Television Network, and CPAC. The programming provided by these services is complementary to that found on the commercial channels and is generally more enlightened and thoughtful. What distinguishes these services is the fact they are not driven by a commercial imperative, even if they sell advertising time, seek sponsorship or members, they are operated on a not-for-profit basis. The priority role of the CBC and its various services is recognized explicitly in the *Broadcasting Act*.

ACTRA believes the special role of the public service channels should be recognized through a Public Service Tier on the airwaves and the cable and satellite systems. All distribution undertakings would be required to provide a priority place for this tier as part of the basic service provided to all subscribers. In this way, the “public space” in Canada’s broadcasting system would be secured.

Further, the CBC must be provided with adequate and long-term funding to allow it to compete in the multi-channel universe. It should be able to offer a range of channels to compete with various specialty services and ideally have sufficient funding to make its television services commercial-free. Until this funding level is achieved, ACTRA supports existing restrictions on advertising on the CBC.

SECTION 3 - RESPONSE TO STANDING COMMITTEE’S TERMS OF REFERENCE QUESTIONS

ACTRA will address these principles and other issues raised by the Standing Committee by responding briefly to the specific questions posed in the Terms of Reference

A. THE PRESENT STATE OF THE CANADIAN BROADCASTING SYSTEM

1. Canadian Content and Cultural Diversity

- *Are present policies or programs sufficient and appropriate to deal with the relationship between cultural policies and trade policies?*

There is no doubt we have made significant strides over the past fifteen years with the current balance of programs. Not long ago there was a negative perception about a Canadian program – it was the one you did not want to watch, because the production values simply were not at the same level as you found elsewhere on the dial. But that has changed as the public programs and measures have been adapted and the industry has matured.

Measures designed to increase exports are not necessarily inconsistent with the cultural objective of the primary programs. Some have helped the producer to complete the financing of many projects and built upon what is already a natural market for our works. With the growing global concern about homogenization of culture, there is a desire in many markets to import English-language programs that are not American and this has fueled much of the export growth. We can and should do more to promote Canadian artists and producers.

However, some weaknesses are also evident, particularly as more of the programs and series being produced are only technically Canadian, in that they meet the minimum requirements of the point system. ACTRA is concerned by the emergence of hybrid production, or worse still by production that is driven creatively by the needs of a foreign market and only achieves status as Canadian through creative partnerships. This negative process is exacerbated by some trade policies, particularly the provisions in Canada's co-production treaties that authorize Third Party country involvement. Under these clauses, nationals of a third country, usually the United States, can be involved in a production that is supposed to be a partnership between a Canadian producer and a producer from the treaty partner.

- *Is the method of determining Canadian content still appropriate in relation to new media?*

ACTRA believes that Cancon rules should apply to all audiovisual material that meets the definition of “program” in the *Broadcasting Act*, regardless of the method of production or distribution. This would include new media productions that use sounds and visual images in a manner “intended to inform, enlighten or entertain.” ACTRA believes that appropriate Cancon rules can and should be developed for on-demand services.

However, ACTRA is not satisfied overall with the Cancon point system. As we have already noted, it permits the production of hybrid content, or content that is patently not Canadian. Therefore, ACTRA believes it is time to amend the system as we have recommended above. These new rules should apply to new media and “old” media productions.

- *We frequently hear about the “multi-channel universe.” In this multi-channel universe, consumers have access to more programs – foreign programs, in particular – than ever before. What are the implications for the promotion of distinctively Canadian content?*

While we have seen a tremendous growth in our ability to produce high quality Canadian programs, our ability to promote these programs has not kept pace. Canada must develop a star system, to celebrate the skills and talent of our own artists. We have taken important steps in this direction and it is now the case that some Canadian performers are household names. But, much more is needed on this front.

Of greater concern than the “multi-channel universe” is the shift from passive to active choice within the system. Technology will soon bring us true video-on-demand (VOD) and with it the opportunity for a consumer to choose both the specific program and the specific time of its viewing. In a VOD world, the nature of Canadian content quotas must change, and ACTRA has been urging that the CRTC look at appropriate ways in which to regulate the navigation systems.

With true VOD, you cannot legislate that a certain percentage of content must be Canadian, but you can ensure Canadian control of the navigation system and provide that Canadian choices are among those offered to a consumer. Coupled with support for the development of new media productions and adequate promotion, we are confident consumers will frequently choose the Canadian material.

- *One of the goals of the Broadcasting Act, according to section 3 (d)(i), is to “safeguard, enrich, and strengthen the cultural . . . fabric of Canada.” From your standpoint, what exactly is “the cultural fabric of Canada” and is it possible to draft content requirements that will, in fact, safeguard, enrich and strengthen it?*

ACTRA believes this is fundamentally about who we are as Canadians, our place in the world, our history and heritage. It is about the ability to tell Canadian stories. It is also about the role of the artist in our society, which is both to reflect our reality as Canadians and to challenge us to think about what we can become.

While ACTRA urges changes to the existing content point system, we vigorously oppose all efforts to define Canadian-ness according to the content of a particular program. Artists must be free to tell whatever story they want, the Canadian-ness of a particular tale is determined by who is telling it.

- *What costs are borne by broadcasters because of Canadian content regulations?*

ACTRA submits this question is irrelevant. As we have stated, the objective and challenge is to ensure we have Canadian choices among those available on the airwaves. Canadian broadcasters have obligations to program Canadian content material because they are using the public airwaves for private profit, or otherwise are benefiting from a range of public policies. Not only is it a cost of doing business in a regulated environment, enlightened private broadcasters are beginning to recognize that Canadian content represents their competitive advantage in the “multi-channel universe.” It is the only thing that differentiates them from the foreign services that continue to clog the screens.

- *In light of recent trends, how can Canada maintain and promote a distinctive sense of local, regional, national and cultural identity while still reaping any possible benefits of changes to the broadcasting system?*

This is an odd question, because it presupposes that “benefits of changes to the system” do not include more distinctive Canadian programs, nor a range of programs that meet local, regional, national and cultural needs.

The key to ensuring that economic integration and technology bring wider choice for all Canadians and improve the ability of the system to meet local, regional and national needs, is to maintain strong and effective regulations through a contemporary regulatory agency. It is possible to expand choice while still permitting the larger private broadcasters to consolidate and improve their profit position.

In this connection, we reiterate here our concern about the absence of certain kinds of productions from Canadian television. Over the years, we have supported the efforts of the CRTC to encourage the production and broadcast of programs from the “under-represented categories” and continue to believe that more can and should be done. The broadcasting system should provide more support for Canadian feature films, for example, and quality children’s programming is another specific concern.

ACTRA notes that over the past twenty years, we have also witnessed the virtual disappearance from our screens of serious music and dance programming. Twenty years ago, the Canadian Opera Company, the National Ballet of Canada and the Montreal Symphony could rely on having one or more of their productions remounted for television broadcast each year. This provided revenue to the company and was an important source of income to professional artists. It also gave a much-needed exposure to a broader audience for the works and for the art form itself. But, with the rising challenges of presenting these works, they are rarely seen today. ACTRA would support measures to resurrect this genre of Canadian programming.

2. New Technologies

- *What are the changes in technology that have most significantly changed or are changing Canadian broadcasting?*

The new technologies are changing both the way that productions are made and the manner in which they are made available to audiences. During the past few years, we have witnessed the initial stages in the development of the virtual actor, a computer generated performer. We have also seen a performance significantly altered from its original by means of computer technologies, such as motion capture. This has resulted in activities like the completion of a film after the death of an actor.

While these new production methods represent a challenge to performers and others in the system, ACTRA believes that the new forms of distribution bring the greatest challenges and opportunities.

The opportunities arise because there is need for more material, which gives additional life to existing works and generates additional revenues for those involved in that work. The challenges include monitoring the use of the work, ensuring that payments are made properly for it and protecting the integrity of the work.

In ACTRA’s view, these developments require Canada’s *Copyright Act* to be amended to provide a broad range of rights to audiovisual performers and to improve the rights of others.

The Canadian television system is successful. While improvements are required, Canada is capable of producing a wide variety of programs that attract significant audiences. On the other hand, Canada's feature film industry is far less successful, despite its reliance on the same base of key talent and producers. Less than 3 percent of the screen time in our cinemas is devoted to Canadian movies, yet our filmmakers are world-renowned. The primary reason for the difference is control of the distribution system. Canada does not control its own film distribution business and thus has been restricted to a minimal share of the market for English-language movies.

It is imperative we learn this lesson as we deal with the new distribution technologies, at the forefront of which is the Internet. ACTRA continues to argue it is both necessary and possible to regulate programming on the Internet by means of appropriate rules applied to Internet Service Providers (ISPs) and others. These could include the requirement to contribute financially to the production of Canadian material and to give that material a priority place on their services. Furthermore, the Internet is beginning to deal with copyright and criminal laws and trademark issues and ACTRA believes that governments will further regulate the Net, if only to preserve the tax base in the face of instantaneous financial transactions around the globe. It is entirely appropriate to impose regulations respecting the availability and promotion of Canadian content programs.

In this connection, the lead articles in the August 11th edition of The Economist magazine discuss "the Internet's new borders:"

As the Internet's architecture changes and becomes more complex, and with the addition of services like filtering and geolocation, the idea that the Internet is beyond the reach of local laws and government regulation looks less and less tenable.

Meanwhile, the need for the early development of such regulations became even more critical with the August 17th announcement by five of the major Hollywood studios that they have concluded a deal to create an on-demand Internet movie service.

- *Has the change to new technology been more or less rapid than in other countries?*
- *How can any differences be explained?*

As a consequence of our geographical expanse, for our entire history Canada has been in forefront of communications technology developments. This trend continues. As an affiliate of the International Federation of Actors, an organization representing performer unions around the world, we know from colleagues that Canadian producers, broadcasters and distributors are in the vanguard in the rollout of digital capacity and broadband networks. Canadians have been among the quickest to embrace the Internet, at least one part of which is because there is no metering of local telephony in Canada unlike many other industrialized countries.

- *To what extent have recent developments in new communications technologies:*
 - a) *disrupted the balance among cultural, social and economic concerns in the broadcasting system?*
 - b) *affected the Canadian broadcasting system as a whole?*
 - c) *affected the public/private mix in Canadian broadcasting?*

In ACTRA's view, in looking at the consequences of recent technological changes on the Canadian system, we should examine the decision of the CRTC in its review of new media. In its 1999 *Report on the New Media*, the Commission properly concluded that some of the material distributed on the Internet would fall under the definition of broadcasting. The Commission concluded, however, that it would not regulate the Internet.

It based this decision on a number of factors, including a view that "the new media complement, rather than substitute for traditional broadcasting." However, with the development of streaming technologies utilized by companies such as iCraveTV and JumpTV, and the rapid expansion of Canadian broadcasters on the Internet, the CRTC has created a circumstance in which the regulated broadcasters may soon be competing against an unregulated version of themselves. In such an environment it may be impossible to maintain the regulations on traditional broadcasters including the pay, specialty and digital services.

As a consequence of the concentration of ownership and the entry of bigger players into the system, Canada's private broadcasters are well positioned to deal with the consequences of the arrival of digital television. But, Canada's public service broadcasters have lagged behind and require additional support to catch up.

There is also no doubt the pace of change will continue and we are on the cusp of the next major step, the arrival of the fully integrated home entertainment/information system that will combine together the television, telephone, CD player and many other household appliances. At the heart of this system will be the computer. This will have enormous consequences for the broadcasting system and we must find ways to analyze these effects and prepare to respond so that Canadian choices will continue to have a priority place in the programming offerings.

3. Globalization

- *To what extent has the trend towards increased globalization:*
 - a) *disrupted the balance among cultural, social and economic concerns in the broadcasting system?*
 - b) *affected the Canadian broadcasting system as a whole?*
 - c) *affected the public/private mix in Canadian broadcasting?*

ACTRA believes that globalization has had even more profound effects on Canadian cultural policy than has technology. ACTRA was among the first groups to raise the concerns about the effects of the trade agreements on culture, the concerns about corporate concentration and the rise of integrated media conglomerates, and the global trend toward homogenization of culture.

In the last decade we have witnessed increased pressure on Canadian cultural policies, and successful challenges against a number of them. More importantly, the new trading reality has created a climate of policy self-censorship among government bureaucrats. When confronted with a challenge that requires a public policy response, officials strain to find a solution that "does not contravene our trade commitments." Even when the cultural industries are theoretically exempt, bureaucrats argue for the need to develop policy solutions that "do not require Canada to claim the

cultural exemption.” As a consequence, a whole range of possible options is being eliminated from consideration.

We must continue to defend our sovereignty to implement and amend policies and programs that provide space for our own products in the Canadian marketplace. Our efforts are fundamentally about ensuring there is the widest possible choice available to Canadian viewers and listeners and logically fit in the desire for global cultural diversity.

On the international level, ACTRA supports the call for the implementation of a global cultural pact, a New International Instrument for Cultural Diversity, to provide a permanent legal foundation for the right of states to support their own cultures. Until that Instrument can be implemented, Canada must be firm in its resolve to not make any commitments in trade negotiations that would further restrict, either directly or indirectly, our right to implement, maintain or modify the policies we need in Canada.

4. Ownership

- *Will technological change, especially the growing importance of the borderless Internet, undermine current ownership restrictions in broadcasting?*

Technological change is causing many changes in Canada’s broadcasting system and forcing a reevaluation of existing policies, however, it does not necessarily undermine the current ownership restrictions. After all, firms will still have a physical presence in one place, even if they operate globally, and governments will need to control the movement of capital to preserve their tax base. Consequently, ACTRA believes it is possible to maintain investment measures and develop regulations for ISPs.

According to the lead editorial from the August 11th edition of The Economist:

Figuring out whose laws apply (to the Internet) will not always be easy, and thrashing all of this out will take years. But it will be reassuring for consumers and businesses alike to know that online transactions are governed and protected by laws. The likely outcome is that, like shipping and aviation, the Internet will be subject to a patchwork of overlapping regulations, with local laws that respect local sensibilities, supplemented by higher-level rules governing cross-border transactions and international standards. In that respect, the rules governing the Internet will end up like those governing the physical world.

We note many countries maintain ownership restrictions in shipping, aviation and other sectors of the “physical world.”

- *Will globalization undermine current ownership restrictions in broadcasting?*

Globalization presents a far greater challenge to Canada’s ownership restrictions, since ownership rules may be susceptible to trade agreements. For example, the ill-fated Multilateral Agreement on Investment would have threatened these rules, and current proposals at the World Trade

Organizations seek to move in the same direction as the MAI. The Canadian government has recognized the legitimacy of the concerns and has supported the call for the development of a New International Instrument for Cultural Diversity that would confirm the legal foundation of measures such as ownership restrictions in promoting global cultural diversity.

- *How has growing concentration of media ownership affected broadcasting?*

There has been an acceleration of concentration of media ownership in the past few years. Fewer and fewer companies own larger numbers of broadcast licensees, despite the increasing numbers of broadcast licenses issued by the CRTC. This has certainly had an impact. While there are fewer decision-makers to “green light” a production, they have access to larger financial resources. Larger companies may also be in a better position to make the investments needed to keep the system up-to-date in its use of new technologies.

ACTRA submits there is nothing inherently wrong in having larger players involved in the system, providing there are appropriate regulations in place to counteract the possible negative consequences of this concentration. We continue to support regulations such as the limitation on specialty television licensees from obtaining programs from affiliated production companies and requirements to provide a “benefits package” when licenses change hands.

However, as we have noted before, the primary objective of broadcasting policy is to have an adequate supply of high quality Canadian programs. Despite the promises of those leading the consolidation efforts, we see no evidence of such a positive outcome.

- *How has growing cross-media ownership affected broadcasting?*

ACTRA shares the concerns of others that growing cross-media ownership, which is in its early stages in Canada, will affect the system, most particularly by restricting the diversity of editorial opinions available in certain markets. This is a significant matter and a direct contravention of the objectives of the *Broadcasting Act*. On the other hand, ACTRA believes the CRTC has the necessary powers to address this issue including through strong Conditions of License and other mechanisms, although in our view it failed to deal adequately with this challenge in the recent decision to renew the licenses of CTV and Global.

B. FUTURE DIRECTIONS FOR THE CANADIAN BROADCASTING SYSTEM

1. Canadian Content and Cultural Diversity

- *How effective is the current Canadian content quota system in promoting distinctively Canadian programming in an era of digital channels and Internet-based programming?*
- *How effective is the current points system (based on the nationality of inputs – i.e., writers, producers, actors, directors, etc.) in the production of distinctively Canadian output?*
- *How can Canadian content requirements remain viable in the evolving broadcasting environment?*
- *How can the new media be used to promote Canadian creators both in Canada and beyond our borders?*

As we have noted above, ACTRA believes this is a central issue as we enter the new millennium. In our view, it is necessary and appropriate to move toward a new definition of a Canadian program. While we continue to support a system based on the nationality of the participants, we believe it should be the case that the benefits derived from designation as a Canadian program are limited to programs that are created, written, directed, performed and produced entirely by Canadians.

Canada's production industry and broadcasting system have matured since the Canadian content definitions were initially developed in the early 1970s. Canada's talent base and technical skills level have grown and developed enormously since that time. Our production infrastructure is now second to none in its capabilities. The Canadian industry now produces a range of material using a variety of financing models:

- a) the service industry produces programs designed for a global audience, with financing obtained largely outside Canada;
- b) Canada's producers organize deals with foreign partners to produce programs that can compete in the global marketplace;
- c) Canadian producers create and finance Canadian programs, which tell our stories, or bring a Canadian sensibility to the stories of others, some of which compete internationally; and
- d) every possible intermediate variation.

In this environment and particularly with the increasing international connections of Canadian producers, the benefits and support extended to Canadian programs should be increasingly focused on those most needed for cultural reasons and which are the hardest to finance. These are the fully Canadian programs. ACTRA reiterates here that support should not be limited to Canadian themes and story lines, however, the existing approaches allow material that has little to do with the Canadian reality to enjoy benefits that come with the Canadian content designation.

ACTRA is not suggesting that this change be made immediately, nor do we advocate a system that prevents a foreign artist from working in a Canadian production where the circumstances clearly dictate the need. But the use of Canadians in our own productions should be the norm, and the use of artists from elsewhere should be seen as a derogation of the norm, particularly where the Canadian public is supporting a production financially.

Concretely, ACTRA proposes that an industry Task Force be created to refine the proposal, establish a timetable for the change and determine how best to implement this revised definition of a Canadian program.

2. The Public/Private Sectors

- *Should the current public/private mix in Canadian broadcasting be maintained or modified?*

The existing mix is not appropriate, since the expansion of private broadcasting in Canada has taken place at the same time as the budget of Canada's largest public broadcaster, the CBC, has

been restricted severely. While private broadcasters have benefited from increasing deregulation, new specialty services and digital narrowcasting licenses, the CBC has moved from crisis to crisis.

ACTRA continues to urge that there be increased support for Canada's public service broadcasters. To enable it to compete, the CBC should have resources and flexibility to realize its commitment to fully Canadianize the television service, and to launch new specialty services that can complement some of those launched by the private sector.

The CRTC should also ensure there is a Public Interest Tier that has a priority place on all Canadian distribution undertakings. This Tier would include the CBC services, the provincial educational broadcasters, Vision TV, CPAC and the Aboriginal Peoples' Television Network.

- *What should be the continuing role of the CBC and private broadcasters within such a public/private mix?*

While private broadcasters continue to be motivated by the need to make a profit for their shareholders, the CBC must continue to be motivated by the need to serve the public interest. This is not to be confused with state broadcasting, the CBC is not, and should not become, the communications arm of government.

- *Should the CBC form alliances with private broadcasters if size becomes a requirement for survival in broadcasting?*
- *What are the implications for competition policy if the CBC forms alliances with private broadcasters?*

ACTRA believes there should be clear separation between the public and private elements in the system, since there are substantially different motivations at play. While this separation does not preclude coproductions or partnerships on individual projects, there should not be a formal business alliance between the CBC and any private company. The CBC is also an important part of the orderly marketplace necessary to finance Canadian productions and this must continue.

3. Globalization

- *Should foreign broadcasters and media conglomerates play a role in the evolving Canadian broadcasting system? If yes, what role should they play?*

ACTRA would support the imposition of reasonable requirements on foreign broadcasters to contribute to Canadian content production where they obtain resources from the Canadian system, such as through retransmission royalties and other license fees.

- *What are the implications of expanded trade treaties for:*
 - a) Canadian content requirements?*
 - b) subsidies to Canadian creators?*

As we have stated earlier, this is a significant issue. It is clear to us that the U.S. views Cancon requirements as a restriction on the ability of their industry to exploit their productions since quotas reserve shelf space for domestic content. U.S. pressure will continue in a variety of fora.

ACTRA is not as concerned about subsidies to Canadian creators, as these may be more immune to challenge under the trade agreements. However, certain elements of support systems may be at risk, such as the prohibition against Cancon designation for a production that achieves the necessary points where the producer is not Canadian and financial incentives that are directed at foreign production, such as the Foreign Services Production Tax Credit.

4. Ownership

- *Should Canadian firms form alliances with foreign firms if size becomes a requirement for survival in broadcasting?*

ACTRA believes that ownership limitations remain an important part of the overall system, since Canadian producers are more likely to produce Canadian content. Limitations should be maintained for broadcasters, distributors, producers and telephone companies. On the other hand, ACTRA has no objections to new and expanded business relationships between Canadian and foreign companies, providing that the management remains predominantly Canadian and creative control rests with the Canadian partner.

- *What measures are required to maintain a distinctively Canadian broadcasting system?*

ACTRA believes that the three principles we have tabled above are necessary for us to maintain a distinctively Canadian broadcasting system in the 21st Century.

5. Broadcasting Policy

- *Should the convergence of broadcasting and telecommunications lead to a revamped CRTC or to a new and different type of regulator?*

It is interesting that this question is posed at the same time as the new government in Britain has announced it is moving to the Canadian system of having one regulator for telecom and broadcasting. ACTRA believes this combination remains important and can be strengthened by a legislative amendment that would specifically state that broadcasting on the Internet or other computer networks is within the mandate of the regulatory authority.

Of more concern to us is to ensure that the regulatory body exercises the jurisdiction it has under the *Broadcasting Act*. ACTRA has expressed concerns about a number of recent CRTC decisions, including its new media decision, the television policy and the license renewals of CTV and Global. In our view, the Commission may have lost sight of the public interest.

- *Will broadcast licensing become a thing of the past in an era of digital channels and Internet-based programming?*

Perhaps, but only far in the future. The traditional broadcasting system and the new digital services will continue to dominate at least into the next decade. Indeed, perhaps the Internet, like television and radio before it, will not displace existing distribution forms at all, but will simply become the area of most rapid growth.

- *How can the Canadian broadcasting system be adapted to work in an era of increased globalization?*

ACTRA does not necessarily accept the assumption in this question that the existing system cannot work in the era of globalization. However, as recommended above, we believe it is appropriate and necessary to move to a system that would redefine a Canadian program as one that is created entirely by Canadians. This “adaptation” would ensure there is a real alternative for Canadians and audiences in other countries and would contribute to maintaining global cultural diversity.

- *How can existing legislation be amended and updated to take into account changes in broadcasting?*

ACTRA believes the existing legislation may well be sufficient. We submit in any case that the major challenges lie elsewhere in the public policy arena.

- *How can the Canadian broadcasting system be adapted to ensure a balance among cultural, social and economic concerns?*

As we have stated clearly above, where there is conflict, or a need to apply public policy measures or tests, the cultural concerns should be paramount.

- *How does the split supervision of broadcasting activities by the Departments of Canadian Heritage and Industry affect cultural issues covered by the Broadcasting Act and other cultural policies and programs?*

Given our view that the cultural concerns ought to be paramount, ACTRA urges that the primary responsibility for the broadcasting system should rest with Department of Canadian Heritage.