

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Submitted electronically: CRTC Intervention Comment Form

Dear Mr. Doucet,

Broadcasting Notice of Consultation – CRTC 2019-91
Call for comments on the Commission’s policy on Canadian programming expenditures

1. This is the submission of ACTRA in response to the call for comments concerning the Commission’s policy on Canadian programming expenditure (CPE) requirements. ACTRA (Alliance of Canadian Cinema, Television and Radio Artists) brings to this process the perspective of over 25,000 professional performers working in the English-language recorded media sector in Canada. For 75 years, ACTRA has represented performers living and working in every corner of the country who are pivotal to bringing Canadian stories to life in film, television, video games, sound recording, radio and digital media.
2. In all of our public policy work, including in matters related to the digital shift, ACTRA’s fundamental objective is to ensure Canadian cultural expressions are available and discoverable, regardless of the technologies used for production or distribution.
3. Over the past 20 years, digital technologies have disrupted the traditional linear broadcasting model. The industry, the Commission and other policymakers have struggled to respond. Throughout this time, ACTRA has argued against the Commission’s decision to exempt “new media” from licensing requirements under the Digital Media Exemption Order (DMEO). The failure to regulate foreign OTT services has contributed to the creation of an unlevel playing field where foreign services have a distinct advantage over both Canadian linear and digital media broadcasters.
4. In responding to the digital shift over the past decade, Canadian broadcasting undertakings have sought greater flexibility in how they are to fulfil their obligations under the *Broadcasting Act* to “contribute in an appropriate manner to the creation and presentation of Canadian programming” and to “make maximum use ... of Canadian creative and other resources in the creation and presentation of programming.”

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5. The most significant flexibility for broadcasters has been the move away from exhibition quotas, including special rules for “priority programs,” to the Canadian Programming Expenditure (CPE) requirements first introduced for large ownership groups almost a decade ago. These large broadcasting groups were also given flexibility to allocate CPE spending across all of their licensed services. The exhibition quotas have subsequently been reduced and standardized, generally at the lowest common denominator level, particularly for specialty television services.
6. At the same time, the Commission also implemented requirements for spending on Programs of National Interest (PNI), which is a subset of CPE. Within this new flexible regulatory framework, ACTRA wholeheartedly supports such requirements, since PNI includes those programs most needed in Canada’s system and of most significance to ACTRA members, particularly drama and scripted comedy. As ACTRA answers the Commission’s questions and considers the response of others in this process, we will look to ensure adaptations to the CPE policy will not only be appropriate, but will also maintain or strengthen the resources broadcasters are required to spend on PNI, the certification process for such programs, and any remaining exhibition requirements related to PNI.

Responses to the Commission Questions

7. Q1. For ACTRA, the fundamental priority must be to recognize Canadian stories as those written, performed and told by Canadian creators. In the film, television and digital media world, this means Canadians are the writers, directors, actors, musicians, cinematographers and other creative talent who help bring the story to the screen. Any use of a non-Canadian should be a derogation from this norm and should only be allowed in exceptional circumstances. In Section 3.1.D of Canada’s *Broadcasting Act*, it states the system should: “(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, **by displaying Canadian talent in entertainment programming** and by offering information and analysis concerning Canada and other countries from a Canadian point of view...” (emphasis added)

To ensure Canadians receive preferential treatment when it comes to work opportunities in Canadian film, television and digital media productions, ACTRA proposes **excluding payments to non-Canadians from the calculation of CPE (and PNI)**. While a six-to-nine-point program may be considered Canadian under the certification system, expenditures made on foreign talent should not count toward CPE or PNI obligations. ACTRA appreciates a transition period may be required before this change can be implemented.

8. Q2. A change to the CPE policy could have an impact on the production and distribution industry, depending on the nature of the change. ACTRA’s proposal to exclude payments to non-Canadians from the calculation of CPE would affect producers and distributors since it would be a disincentive to hiring foreign artists to work on Canadian content, without prohibiting it. ACTRA believes this is in-line with the principles and objectives of the *Broadcasting Act*.
9. Q3. ACTRA would support incentives for innovation on digital media platforms, such as bonus credits. However, we do not believe incentives for agreements or partnerships to export Canadian content are appropriate. The primary goal of the *Act* and cultural policies is to **ensure Canadian**

audiences have access to our stories, on all of our screens. While we encourage producers and broadcasters to find ways to sell Canadian content abroad and to establish foreign partnerships, this is not the policy priority. Broadcasters can and should establish foreign partnerships and export markets, but they should do so without additional government incentives.

10. Q4. While ACTRA is not aware of barriers in the CPE policy that hinder diverse expressions, ACTRA would support appropriate incentives, such as bonus credits, for diverse programming content, including those that reflect the multicultural and diverse nature of Canadian society and the special place of our Indigenous Peoples.
11. Q5. Where Canadian broadcasters are operating online, their online revenues should be included in the calculation of CPE and PNI, as should their direct and indirect spending on the Canadian content they are distributing online.

ACTRA appreciates the determination of the Commission to obtain information from broadcasters about revenues and expenditures associated with their digital media broadcasting activities. The aggregated data released by the Commission on 21 June 2019 are worrisome and ACTRA believes this data clearly demonstrates why the CRTC must regulate digital media broadcasters. Broadcasters should have the same CPE and PNI requirements for digital media broadcasting activities as for their linear broadcasting activities, including the ability of ownership groups to achieve the targets across all services.

Canadian broadcasters typically have CPE requirements up to 30 per cent and PNI requirements between 5-10 per cent of the previous year's revenues. The fact broadcasters only spent 10.8 per cent of their total 2018 digital media revenues on all Canadian programming content that same year is deeply troubling. Even looking at what would be the most positive calculation from the perspective of broadcasters – the lowest revenues in 2016 compared to the highest Cancon expenditures in 2017 – ACTRA finds that spending 19.5 per cent of the previous year's revenues on Cancon is lacking. The downward trend is also shocking. While total revenues increased between 2017 and 2018 by 24.9 per cent, broadcaster spending on Cancon declined by 2.9 per cent.

12. Q6. If digital media programming expenditures are to be considered as CPE, they must be made exclusively on programs certified as Canadian under existing policies and take into account ACTRA's recommendation related to expenditures on non-Canadian talent.

If the Commission decides to move in this direction, there must be a review of the certification rules for news and information programming to ensure such programs are meeting the needs of Canadians and the requirements of the *Act*. As borders disappear in the digital world, a Canadian broadcaster may decide to launch a program for a global audience. If Canadians are compiling and delivering news and information, and if it is directly relevant to Canadians or providing a Canadian perspective on world events, this would constitute a Canadian program. But, if it is a compilation of news and information told primarily by foreign journalists, this should not constitute a Canadian program solely because it is produced by a Canadian broadcaster.

13. Q7. ACTRA supports a change that would allow expenditures related to repurposing a certified Canadian program for digital platforms to count as CPE. There is a rich inventory of Canadian

content programming that should continue to be made available to audiences. ACTRA notes it is positive that these expenditures would include the royalty and residual fees paid to the talent who created the programs.

14. Q8. ACTRA does not take a position at this time about whether/how to limit application of new rules to certain types of digital media broadcasting undertakings, nor to define them.
15. Q9. If CPE includes expenditures related to digital media programming, then broadcasters must report their revenues related to those undertakings and these amounts should be used in the calculation of CPE and PNI requirements. Relevant revenues would include advertising, subscription fees and pay-per-use/play charges as well as other revenues the broadcaster might receive related to its digital media broadcasting undertaking.

If the CRTC introduces new rules, ACTRA believes it is essential these apply to all relevant undertakings. **Allowing an opt-in or opt-out approach risks further distorting the playing field** in a manner that will not benefit the broadcasting system and the production industry.

16. Q10. ACTRA believes the changes to the CPE policy should be implemented and take effect as soon as possible because the industry is continuously evolving.
17. Q11. ACTRA has no direct knowledge of what amortization practices are in use today.
18. Q12. ACTRA believes the CRTC should provide guidelines to be used by all broadcasters for the amortization of programming expenditures. This is particularly important in relation to drama and scripted comedy, since these programs typically remain relevant and attractive to audiences for many years.
19. Q13. ACTRA reserves the right to comment when licensees reveal current practices.
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21. Q15. ACTRA reserves the right to comment when licensees reveal current practices and their intentions related to the allocation of CPE between platforms.
22. Q16. ACTRA cannot comment on what the measure relating to CPE under-expenditures has allowed broadcasters to achieve. If the same flexibility is permitted to other services, we reserve the right to comment after the licensees have identified the benefits.
23. Q17. While ACTRA has some concerns related to how the under-expenditure rule is implemented by broadcasters, we accept such a rule is appropriate given the dynamic nature of the business. ACTRA would support a standard five per cent rule and a standard method for implementation.
24. Q18. Given the flexibility provided by the Commission to broadcasters, the penalties for non-compliance should be firm. Even in the digital world, it remains a privilege to hold a broadcasting licence and the CRTC should not hesitate to withdraw it in the case of egregious or willful non-compliance.

25. Q19. As we note in response to Q12, ACTRA believes the CRTC should provide as much guidance as possible about what can and cannot be considered CPE, and should implement standard rules for defining capital costs and how these may be amortized. It is particularly important to have standard rules related to script and concept development expenditures.
26. Q20. ACTRA believes the promotion of drama and scripted comedy programs is essential and this should be encouraged. Eligible expenditures should be program-specific and should not be expanded to include staffing costs, or general promotional/marketing campaigns undertaken by most broadcasters.
27. Q21. ACTRA believes Canadian programs should be accessible to a wide-range of audiences. English-speaking Canadians should have an opportunity to watch some of the excellent movies and television programs produced by our French colleagues. As Canada produces more diverse programming, it should be made available to every Canadian. Thus, ACTRA would support a change that would permit dubbing to be counted as CPE providing the underlying program is a certified Canadian content production and the dubbing is done by Canadian performers and writers.
28. Q22. ACTRA may be able to offer additional comments after broadcasters put forward their proposals of how “gross revenues” should be defined in relation to CPE requirements.
29. Finally, ACTRA reiterates the comments we made in response to Broadcasting Notice of Consultation CRTC 2019-90. In the Internet age, information about how we are now consuming audiovisual content is essential for cultural policymakers. ACTRA notes public policy discussions about digital media have been hampered by a lack of data and concrete information about the services Canadians are listening to and watching. ACTRA fully supports the CRTC’s proposal to collect information about digital media and to require broadcasting undertakings to provide it annually to the Commission. ACTRA urges the Commission to seek such information not only from currently licensed Canadian broadcasting undertakings, but from the foreign services that provide programming to Canadians.
30. ACTRA appreciates the opportunity to share these comments regarding the Commission’s updated policy on Canadian programming expenditures. We look forward to providing further comments in the next phase of this proceeding once we have had an opportunity to review the comments from other industry stakeholders.

Thank you,



Marie Kelly
National Executive Director, ACTRA

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