



**Oral Remarks by
Canadian Media Production Association (CMPA)
Broadcasting Notice of Consultation CRTC 2010-952
Group Licence Renewals**

April 7, 2011

Check against delivery

Norm Bolen

Good morning Mr. Chair, Vice-Chairs, Commissioners, and CRTC staff. My name is Norm Bolen and I'm the President and CEO of the Canadian Media Production Association (CMPA). I'm pleased to have with me here today from the CMPA:

- To my left, John Barrack, Chief Operating Officer and Chief Legal Officer; and
- To my right, Jay Thomson, Vice-President Broadcasting Policy and Regulatory Affairs.

Mr. Chairman, we'd like to start by thanking the Commission for the role you have played in helping us to get a Terms of Agreement with the major private broadcasters. We truly believe that this will usher in a new era of collaboration and cooperation.

The Terms of Trade Agreement addresses the *terms* of our trade with broadcasters. But it's Canadian content – the trade itself – that makes those terms meaningful.

The Commission's new Group Licensing Policy will generate that Canadian content. The CMPA fully supports the Policy. It will ensure more, and better, and more diverse Canadian programming gets made and gets broadcast.

We see the new Group Licensing Policy as having four pillars. They are:

- a minimum 30% Group CPE;
- a minimum PNI spending higher than 5%;
- Canadian content exhibition requirements; and
- obligations supporting independently-produced programming.

Over the last three days, you have reinforced that the Policy establishes a *minimum* 30% CPE for each broadcaster group. Thirty percent is therefore the floor.

The Policy also establishes that the Group PNI CPE should be at least 5%. Five percent is only the starting point for the discussion because it represents historical spending on drama alone. Once you factor in historical spending on the other PNI categories - documentaries and awards shows - the 5% figure has to become something higher.

We are not in a position to tell you how much higher it should be. You have the relevant financial data and the information from the in-camera sessions, and we don't. But we did hear that at least one of the broadcaster groups is already spending more than 9% on PNI.

The third pillar of the new Policy is Canadian content exhibition. While we support the Policy's new focus on program creation, exhibition requirements are still important. They ensure that what gets made gets shown. And they also ensure that it gets shown at times when most Canadians still watch TV.

Mr. Chairman, there are at least 12 specialty services seeking reduced Canadian programming exhibition obligations.¹ In most cases, however, there is no rationale or justification for these proposed reductions, beyond a broad request for parity.

These requests for parity ignore the Group Licensing Policy. The Policy confirmed that specialty services would retain their own, tailored exhibition obligations.

Taken together, the proposed exhibition reductions would mean a decrease of 170 hours per week of Canadian programming. That's at least 9,000 fewer hours of Canadian programming per year! That means 9,000 more hours of foreign programming in the system. In our view, that cannot be the objective of the Group Licensing Policy.

Jay Thomson

The fourth pillar of the new Policy is support for independently-produced programming. This support ensures a diversity of programming in all genres, both PNI and non-PNI.

All of the broadcasters accept the obligation established in the Policy to allocate at least 75% of their PNI spending to independently-produced programs.

¹ Bell Media: BNN; Fashion TV; MTV; MTV2; MuchMusic; Comedy. Shaw: Slice. Corus: CMT; OWN; W; Treehouse; YTV.

The Policy also states, however, that specialty services that currently have individual requirements relating to independent production will retain those requirements. Therefore, retention of those individual requirements is not contrary to the Policy: it *is* the Policy.

The CMPA appreciates that the 75% PNI spending requirement will contribute substantially to promoting creativity and a diversity of voices in the PNI genres. That is very important.

There should also be diversity in non-PNI genres, like factual entertainment programming. The current individual requirements relating to independent production help to promote that diversity too, by ensuring that the production of non-PNI shows will not all move in-house.

In this hearing, the Commission has raised a non-PNI spending obligation as another possible means to achieve the same objective. We'd be happy to discuss that alternative approach.

Norm Bolen

Mr. Chairman, we support the new Group Licensing Policy and urge you to implement it as is. At the same time, we also must acknowledge that the Policy could lead to unintended consequences. The CMPA is fully committed to embarking on this new journey. None of us, however, can see where it will ultimately take us.

For example, we are very concerned about how the Policy will impact traditional support within the system for Canadian feature films. That is why we argued in our written submission that Pay TV services should be excluded from the Policy. Otherwise, the unintended consequence is that, with spending flexibility, Pay TV spending on Canadian feature films will go elsewhere.

Frankly, our concerns about the future of broadcaster support for Canadian feature films go well beyond the Pay TV issue. The Canadian feature film industry is facing a funding crisis because broadcasters in general no longer support Canadian feature films as they once did.

Our feature film industry has had some great success as of late. Think of *Barney's Version* and *Incendies*, for example. Those movies would not have been made without broadcaster support. If current trends continue, however, that support will disappear. And then, so will those feature film success stories.

It is for this reason that we are taking this opportunity to urge the Commission to initiate a separate policy proceeding to consider how our broadcasting system will continue to support Canadian feature films.

John Barrack

Mr. Chairman, Norm began by highlighting the fact we have reached an agreement on Terms of Trade. I would like to speak further to that matter.

First of all, I would like to reiterate our thanks to the Commission for recognizing a long time ago that Terms of Trade would further the objectives of the *Broadcasting Act*, and for setting these hearings as a hard deadline to get a deal done.

I'd also like to acknowledge and thank the private broadcasters for their diligence and good will.

As the Commission is aware, the CMPA has asked that the broadcasters be required to adhere to the Terms of Trade Agreement as a condition of their licences. At the same time, we have proposed that application of this COL be suspended as long as the licensee remains a signatory to, and agrees to be bound by, the Agreement. In this way, we mirror the language the Commission has successfully employed in COLs requiring the broadcasters' adherence to the various codes administered by the CBSC.

We have asked for this COL because we believe it is necessary to ensure stability and clarity regarding the broadcasters' adherence to the Terms of Trade Agreement. This Agreement does a lot to help level the playing field between independent producers and broadcasters during rights negotiations. If a broadcaster were to unilaterally walk away from the Agreement, however, we would have little recourse. Therefore, we need the Commission to ensure, by COL, that that does not happen.

A last point - all the signatories have agreed on a new definition of what constitutes an “independent production” for the purposes of the Agreement. Specifically, we agreed that only programs falling within that new definition will count toward the Commission’s independent production expenditure requirement, as established in the Group Licensing Policy.

In light of that agreement, we ask that the Commission also adopt the agreed-upon definition of independent production and incorporate it into the decisions flowing from this hearing and, where relevant, in all future decisions.

Norm Bolen

Mr. Chairman, we support the fact that this hearing is not about setting the Group Licensing Policy. The Commission did that a year ago. This hearing is about applying the Policy so that it achieves its objective of supporting Canadian programming into the future.

We agree that flexibility to adapt to the changing broadcasting environment is a fundamental aspect of the new Policy. And we think that is good. But the increased flexibility for broadcasters should be a tool to achieve the goal of increased support for Canadian programming. It should be a means to an end. It should not be an end in itself.

The new Group Licensing Policy is not about *less* support for Canadian programming. It is not about *less* support for independent production, and *less* programming diversity. It is about strengthening Canadian programming for the future.

Thank you for the opportunity to be here today. We would be pleased to answer any questions.

APPENDIX

Definition of “Independent Production” in the Terms of Trade Agreement

1. Terms of Reference

...

- c) This Agreement does not apply to programs acquired by [BROADCASTER] for which it does not have industry standard commissioning broadcaster creative and financial approval rights, or to projects produced by broadcaster-affiliated/in-house production and/or service production. A production that satisfies the five indicators enumerated in section 4.10 - “Production Control” of the Canadian Audiovisual Certification Office’s CPTC Guidelines (March 31, 2010) is an independent production to which this Agreement applies. Notwithstanding the foregoing, and for greater certainty, an audiovisual work is a service production where, prior to the Independent Producer’s involvement:
- (i) the idea or concept originates from, and all or substantially all of the development in the project is undertaken by [BROADCASTER] or its affiliate; or
 - (ii) the format rights were exclusively acquired by [BROADCASTER] and were assigned to the Independent Producer.

This Agreement also does not apply to digital production that is unrelated to a television program.

- d) [BROADCASTER] agrees to stipulate before the CRTC at the April 2011 Group Licence Renewal hearings that programs produced by broadcaster-affiliated/in-house production and/or service productions (as defined in 1(c) above) will not count towards the CRTC’s independent production expenditure requirements that it may impose on any of [BROADCASTER]’s programming services.



CMPA Seating Plan

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| Jay Thomson | Norm Bolen | John Barrack |
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