



September 27, 2011

**Filed Electronically**

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

Dear Mr. Morin:

**Re: Broadcasting Notice of Consultation CRTC 2011-525: Development of a regulatory framework for the French-language television market, licence renewals for Astral Media Inc., Quebecor Media Inc. and Serdy Media Inc., and review of certain conditions of licence for V Interactions Inc.  
Astral Media Inc.: Application 2011-0483-5  
The Family Channel Inc: Application 2011-0526-3 (Family Channel)  
Astral Broadcasting Group Inc.: Application 2011-0510-7 (Mpix)  
Astral Broadcasting Group Inc.: Application 2011-0511-4 (The Movie Network)**

1. The Canadian Media Production Association (“CMPA”)<sup>1</sup> welcomes the opportunity to comment regarding the above-referenced applications by Astral Media Inc. (“Astral”) respecting renewal of the licences for its English-language pay television services, Family Channel, Mpix and The Movie Network (collectively, “the Astral English-language services”).
2. The CMPA acknowledges and appreciates Astral’s use of and support for independently-produced Canadian programming during its last licence terms. In particular, we wish to acknowledge that Astral is a signatory to the Terms of Trade Agreement that the CMPA signed with the major English-language broadcasters last April. We also welcome Astral’s confirmation that it will maintain its existing commitments and obligations regarding independent productions and that it will continue to rely almost exclusively on independently-produced programming to fill its schedules during its next licence terms.<sup>2</sup>

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<sup>1</sup> The CMPA represents the interests of screen-based media companies engaged in the production and distribution of English-language television programs, feature films, and new media content in all regions of Canada. The CMPA’s 400 member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.

<sup>2</sup> Application, s. E8.

3. Accordingly, the CMPA **supports** the above-referenced applications, provided:
  - a. Astral is not permitted to allocate to any of its French-language services any portion of the Canadian program expenditure (CPE) obligations established for its English-language services; and
  - b. Astral's English-language services are made subject to the same Conditions of Licence ("COLs") and expectations as the Commission recently imposed on the pay television services owned by Corus Entertainment Inc. ("Corus"), namely Movie Central and Encore Avenue, including the COL requiring the licensee to adhere to the Terms of Trade Agreement with the CMPA.
4. The CMPA also wishes to reiterate our concerns regarding the on-going support by Astral and other Canadian broadcasters for Canadian feature films.
5. Each of these matters is addressed below.
6. Given the importance of this proceeding to our members, the CMPA requests the opportunity to appear at the public hearing scheduled to commence on 5 December 2011 in Montreal, to elaborate on the views expressed in this intervention.

#### **No allocation of CPE for Astral's English-language services to its French-language services**

7. Astral seeks flexibility to allocate its CPE within its entire group of services, meaning it could allocate CPE for any of its English-language services to any of its French-language services (and vice versa).
8. While the CMPA is not opposed to permitting Astral to allocate its French-language CPE obligations amongst its French-language services, and its English-language CPE obligations amongst its English-language services, *we oppose permitting Astral to allocate any portion of its English-language CPE to any of its French-language services as we are convinced such spending flexibility would ultimately serve to undermine the quality of Canadian programming on Astral's English-language services.*<sup>3</sup>
9. It is widely acknowledged as a fundamental reality within the Canadian broadcasting system that French-language Canadian programming performs substantially better in the French-language market than English-language Canadian programming performs in the English-language market. In this respect, as the Commission noted when it issued its Group Licensing Policy ("GLP"), "the French-language television market continues to

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<sup>3</sup> As the CMPA represents producers of English-language programming, our focus is on the consequences of allowing the allocation of English-language CPE to French-language services, rather than the opposite; however, we accept the logic that, if one is not permitted, neither should the other.

demand and support large quantities of original Canadian programming in all genres made in the French-language.”<sup>4</sup> As a result, as the Commission also acknowledged, “French-language conventional television broadcasters, although not currently subject to any expenditure requirement, already allocate a large proportion of their expenditures to the creation and acquisition of Canadian programming.”<sup>5</sup>

10. The same is true for French-language specialty and pay television services. Indeed, in responding to a Commission request for additional information, Astral itself highlighted the fact that:

“French-language broadcasters are more likely to exceed the minimum CPE requirements in an environment where the data shows that Canadian programs are more popular with Francophone audiences than Anglophone audiences and more essential to the success of French-language programming services.”<sup>6</sup>

11. While Astral’s applications provide very limited access to relevant financial information, the data they have provided regarding the Canadian programming *exhibition* levels achieved on their various French-language Category A specialty services, as summarized in the following chart, certainly demonstrates their (appreciated) practice of exceeding their minimum Canadian programming obligations on the French-language side of their business:

<b>Service</b>	<b>Regulatory Exhibition Obligation (%)</b>	<b>2010 Level Achieved (%)</b>	<b>2009 Level Achieved (%)</b>	<b>2008 Level Achieved (%)</b>
Canal D	45 eve./day	50/51	54/52	51/51
Canal Vie	60 eve./50 day	72/53	71/54	73/55
Historia	45 eve./day	48/50	47/49	47/49
MusiMax	60 eve./day	61/76	66/78	73/77
MusiquePlus	60 wk.	68	78	76
Series +	30 eve./day	34/40	33/35	31/37
Vrak.TV	60 eve./50 day	64/64	59/61	60/64
Ztele	40 eve./50 day	44/53	41/51	42/51

12. Allowing Astral to allocate its English-language CPE to its French-language services would mean that it could then begin to claim the Canadian programming expenditures it typically makes in excess of its obligations for those French-language services against its minimum English-language service CPE obligations. As a result, by merely maintaining the current spending practices of its French-language services, Astral could

<sup>4</sup> Broadcasting Regulatory Policy CRTC 2010-167, par. 112.

<sup>5</sup> Ibid.

<sup>6</sup> Astral letter dated 23 August 2011, par. 10.

reduce substantially its Canadian program spending on its English-language services, which would inevitably undermine the quality of the Canadian programming on Family Channel, The Movie Network and Mpix.

13. In establishing its GLP and the associated spending flexibility for the large English-language broadcaster groups, the Commission stated that its goal was to permit those broadcasters to quickly adapt as needed to the changing broadcasting environment *and* “to ensure continued support for the creation of Canadian programming particularly in categories that continue to be under-represented in the Canadian broadcasting system, such as scripted drama and documentaries.”<sup>7</sup> The greatest need for such continued regulatory and financial support clearly exists with respect to English-language programming. It would be entirely contrary to the Commission’s objectives in the GLP to allow that policy to be applied in such a way as to foster the dilution of support for the type of programming the Commission identified as most in need.
14. As the Commission reaffirmed in its GLP, it has the authority to impose different requirements on English- and French-language television broadcasters on the basis that they operate under different circumstances and may have different requirements. The Commission also correctly concluded that the group-based approach put forward in its GLP addresses issues that are of far greater relevance to the former than to the latter.<sup>8</sup>
15. The fact that Astral owns both French- and English-language services and that they may be managed by the same teams<sup>9</sup> does not lessen in any way the real differences in their respective circumstances and requirements resulting from the characteristics of the language markets in which they operate.
16. Accordingly, for the reasons outlined above, the Commission should reject Astral’s request for permission to allocate much-needed Canadian program spending by its English-language services to its French-language services.
17. Consistent with this approach, the CMPA also submits that Astral’s English-language services should be subject to their own 30% group CPE obligation.

### **Consistency in Licencing Terms**

18. The CMPA agrees with Astral that it is important in this process to ensure that there is consistency in the COLs for similar services, and that this is particularly important in the case of the regional movie-based pay services which are identical, and which in the

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<sup>7</sup> BRP 2010-167, par. 27.

<sup>8</sup> *Ibid.*, par. 111.

<sup>9</sup> Application, s. B1a).

case of the first-run services The Movie Network/HBO Canada and Movie Central/HBO Canada, also share the HBO Canada brand.<sup>10</sup>

19. Accordingly, we submit that Astral's English-language services should be made subject to all the same COLs and expectations as the Commission recently imposed on Corus's pay television services, Movie Central and Encore Avenue, *including the COL requiring the licensee to adhere to the Terms of Trade Agreement with the CMPA.*
20. We also welcome the fact that Astral has also accepted an obligation to report annually regarding its exhibition of programs of national interest (PNI), using the Commission's PNI reporting template.<sup>11</sup>

### **Ensuring On-Going Support for Canadian Feature Films**

21. The CMPA acknowledges and appreciates Astral's historical support for Canadian feature films. However, we are concerned that, based on industry trends, Astral may not continue this support going forward.
22. As the CMPA has previously emphasized<sup>12</sup>, Canada's pay television operators have historically played a unique and critical role in financing and broadcasting Canadian feature films. The importance of this role cannot be overstated. The 2009 study conducted by Peter Grant and Michel Houle for Telefilm Canada found that 92% of the television money that went into the financing of Canadian feature films supported in production by the Canada Feature Film Fund came from pay television. Only 8% came from conventional and specialty channels in English Canada.
23. In all our submissions during the recent renewal process for the large English-language broadcaster groups, the CMPA highlighted the fact that the Canadian feature film industry is facing a funding crisis because broadcasters in general no longer support Canadian feature films as they once did.
24. Appendix A to this submission summarizes research the CMPA has undertaken related to English-language feature films supported in production under the main program of the Canada Feature Film Fund, which is administered by Telefilm Canada. This research clearly demonstrates a significant downward trend in the financial support provided by Canadian television broadcasters over the last eight years.
25. Specifically, direct broadcaster support decreased from a high of \$16.3 million in 2003-04 to just \$3.3 million in 2010-11, representing a 79% drop. In terms of the type of financial support, we note that equity investments decreased by 98%, from a high of

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<sup>10</sup> See Astral's Supplementary Brief at page 9.

<sup>11</sup> Application, s. B5.

<sup>12</sup> See the CMPA's intervention in response to BNOC 2010-952, dated 9 February 2011.

\$12.8 million to just \$300,000 over the same period. A similar trend is observed with regard to the total value of licence fees. Total licence fees in 2003-04 amounted to \$3.6 million, but decreased by 88% to \$420,000 by 2009-10. In 2010-11, total licence fees regained some lost ground, rising to \$3 million.

26. The Pay TV sector's contribution to those English-language feature films decreased by 97% between 2003-04 and 2010-11, dropping from \$9.2 million to just \$300,000. Licence fees provided by Pay TV services also experienced a dramatic decline over the same period, dropping from \$2.1 million in 2003-04 to just \$320,000 in 2010-11.

27. The findings of another recent study jointly commissioned by the CMPA and Canadian Association of Film Distributors and Exporters (CAFDE) further adds to our concerns in this respect. The study by Strategic Inc., entitled *Examination of the Levels of Broadcast for Canadian Theatrical Films*, attached as Appendix B, found that, while the number of theatrical film hours (both Canadian and foreign) broadcast on TV in Canada has increased significantly over the last many years, the Canadian films being broadcast are increasingly older films; moreover, the average number of repeats of those films doubled between 2004-05 and 2009-10.

28. In light of these developments, the CMPA continues to call upon the Commission to initiate a separate policy proceeding to consider how the Canadian broadcasting system will continue to support Canadian feature films. In the meantime, it is critical that the Commission protect the mandated role of Astral's pay television services to support Canadian feature films.

All of which is respectfully submitted.

Sincerely,

[original signed by]

Norm Bolen  
President & CEO

Attach.

cc Astral: [ndorval@astral.com](mailto:ndorval@astral.com)

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