

Oral Remarks By

**CANADIAN FILM AND TELEVISION
PRODUCTION ASSOCIATION**



CFTPA

*Representing television, film
and interactive production in Canada*

ACPFT

*Porte-parole de l'industrie de la production
cinématographique, télévisuelle et interactive au Canada*

***Broadcasting Notice of Consultation CRTC 2009-411 –
Group-Based Licensing Policy Proceeding***

November 19, 2009

CHECK AGAINST DELIVERY

Seating Plan

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| Mario Mota Vice- President, Broadcasting Policy & Regulatory Affairs, CFTPA | John Barrack National Executive Vice- President & Counsel, CFTPA | Norm Bolen President & CEO, CFTPA | Linda Schuyler CEO, Epitome Pictures | Tom Cox President, Seven24 Films |
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NORM BOLEN

Good morning Mr. Chairman, Vice-Chairs, Commissioners, and CRTC staff. My name is **Norm Bolen**, and I'm the President and CEO of the CFTPA. The Association is here today to bring reasonable and constructive proposals to the table in this proceeding.

I'm pleased to have with me today two of Canada's best screen-based content entrepreneurs.

To my immediate right is **Linda Schuyler**, CEO of Toronto-based Epitome Pictures. Linda co-created and executive produces the multi-award winning original Degrassi series, including *The Kids of Degrassi Street*, *Degrassi Junior High*, and *Degrassi High*. The current iteration of Degrassi, the multi-platform *Degrassi: The Next Generation*, is in its ninth season on CTV in Canada and TeenNick in the U.S. Next year, Degrassi will celebrate 30 years as a fixture on Canadian television. Linda's other notable production credits include dramatic series *Liberty Street*, *Riverdale*, and *Instant Star*. Linda was awarded the Order of Canada in 1994 for her work on Degrassi. She is also a former Chair of the CFTPA Board of Directors.

To Linda's right is **Tom Cox**, President of Seven24 Films of Calgary. Tom is co-executive producer of the popular family drama series *Heartland*; TV movies *Mayerthorpe*, *Waking Up Wally*, and *After the Harvest*; and the Canada-U.K. co-production mini-series *Burn Up*. Also, Seven24 Films sister company, Alberta Film Entertainment, has co-ventured on many American movies, including *Brokeback Mountain* and

The Assassination of Jesse James. Tom serves as Vice-Chair of the CFTPA Board and is a member of our Broadcast Relations Committee.

CFTPA staff with us today are, to my left, **John Barrack**, National Executive Vice-President and Counsel, and to John's left, **Mario Mota**, Vice-President, Broadcasting Policy & Regulatory Affairs.

Mr. Chairman, at the outset of this hearing, you set out four broad issues to be covered. Today, we're here to address the first two issues where we believe we can add the most value. These relate to establishing an appropriate framework for group-based licensing and ensuring greater support for Canadian programming.

Commissioners, decisions made in this process will have far-reaching consequences for the entire system. Not just for over-the-air television broadcasters. Canadian broadcasting is a complex system of interconnected parts that includes viewers. It's not just about broadcasters, BDUs, or even independent producers.

Conventional television broadcasters say their business model is broken. They want the ability to negotiate compensation from BDUs for the carriage of their signals. The BDUs flatly reject this idea. The very divisive and bitter public battle between over-the-air broadcasters and BDUs must end. This fight is not doing anyone any good.

All industry stakeholders, including the CFTPA, have issues and interests that are at stake in this proceeding. But it is in our collective interest to work together. We all must find reasonable, balanced

solutions to the challenges facing conventional television. Solutions that benefit the Canadian broadcasting system as a whole.

We believe that all elements of the broadcasting system must be financially healthy and strong. We are not blind to the fact that over-the-air television faces challenges – audience fragmentation, on-demand technologies, and the digital transition. But we believe that conventional TV still has lots of life in it. It remains a powerful platform to reach and attract mass audiences. In fact, the new PPM ratings measurement system is showing higher audiences than previously thought.

Giving conventional broadcasters the ability to negotiate fair value for their signals is one way to improve the financial health of over-the-air television.

There are also *other* ideas that have been raised that could help fix the problem:

- Better protecting the integrity of broadcasters' signals and their programming rights. This includes mechanisms such as non-simultaneous substitution and program deletion;
- Requiring the carriage of all local signals by DTH providers;
- Moving up the date for the implementation of the new distant signal policy; and
- Taking measures to put the brakes on ever-escalating foreign programming expenditures.

These ideas and others have merit. We'd like to focus on the foreign program spending problem.

Sky-high expenditures on foreign programming are a big part of the problem in the English-language market. The massive spending on foreign programming takes a big bite out of over-the-air television profitability. In 2008, private conventional TV broadcasters spent 7.4% more on foreign programming, while their revenues decreased by 1.5%. Any business that grows spending more than its revenues is walking on a tightrope.

Consultant Peter Miller prepared a report for this proceeding. He concluded that the increase in U.S. programming costs is the single biggest reason for reduced profitability of the English-language over-the-air television business.

So, what's the solution? We believe an essential element is a Canadian programming expenditure (CPE) requirement for English-language conventional TV broadcasters. What is compelling about CPE obligations are their demonstrated success. A CPE approach is a proven winning formula for Canadian content. And it can be profitable. Specialty television has shown us that.

First and foremost, it will put the brakes on spending on foreign programming. It's important for the Commission to understand how this works.

I was a programmer at Alliance Atlantis for more than a decade. Every year, my team and I would build a strategic plan and a program budget. With CPE requirements, we knew we had a fixed cost that we had to spend on Canadian content for each channel. This was non-negotiable.

We then had to take into account our fixed overhead and operating costs. Then, we set a profit level to satisfy our shareholders. What was left is what we could spend on foreign programming. Again, this was non-negotiable, unless we wanted to reduce our profit levels. Needless to say, that would have been bad business.

So, CPE requirements forced us to control our appetite for foreign programming.

They also motivated us to view Canadian programming as a business opportunity, not as a liability. As a benefit, not as a tax. So we scheduled it appropriately. We marketed it effectively. We used all our assets to cross-promote it. We gave it maximum attention. We worked to create a star system around the talent in our Canadian shows. We did this working in partnership with entrepreneurial and innovative independent producers.

And so what happened? We succeeded in making Canadian content a winner. Many of our top shows were Canadian. And the model works for other specialty broadcasters as well. In fact, many Canadian specialty channels' top programs are homegrown. Mandated CPEs help make that happen.

In short, meaningful CPE requirements for over-the-air television will encourage broadcasters to treat Canadian programming as core to their business. With no spending requirements, they lack the motivation to do so.

In fact, when their motivation is to get the highest audiences and the most profits out of U.S. programming, then that programming becomes an addiction. Pretty soon, the addiction starts affecting profitability and damaging their business.

When done properly, CPE obligations can be good public policy and good business. Mario.

MARIO MOTA

What's the best way to apply a CPE requirement for English-language over-the-air broadcasters? Do we keep individual CPE levels for specialty services as they are and introduce a separate CPE for conventional TV? Or do we apply a single CPE requirement on a corporate group-wide basis? Should an overall CPE requirement apply to large corporate groups only? How do we calculate the CPE? And is an overall over-the-air CPE enough, or do we also need CPE requirements for specific programming of national interest?

We've looked at all of these questions in detail in our written submission. You'll remember that when we appeared before you last spring, we supported in principle a group-wide CPE model. At the time, we cautioned that extensive modeling would need to be done to determine

whether this model would be workable in practice. Having now looked at the issue more closely, we have a number of concerns about adopting a single group-wide CPE approach.

First of all, we share the Commission's desire to develop a simple, flexible model for the broadcast corporate groups. In fact, it was one of the reasons why we endorsed a group-based CPE approach in the first place.

The Commission's conceptual model is a useful working document. But it needs to be fine-tuned very carefully. If not, it could lead to significant unintended consequences for Canadian programming in the system.

Based on the modeling we've done, we believe it would be difficult to completely harmonize existing discretionary service CPE requirements at the group level. This would erode the uniqueness of each pay and specialty service. It would seriously undermine the diversity of Canadian programming they provide in the system. Layers of additional safeguards would need to be added to avoid this unintended outcome. We can discuss those specifics if you wish.

After much thought, our preferred option is to maintain the existing approach with individual CPE levels for each specialty and pay service, and introduce an overall CPE for private English-language over-the-air television. After all, the specialty model is not broken.

The question then becomes, "To which broadcasters should an overall CPE requirement apply?" We believe it is appropriate to limit this

requirement to the large private English-language over-the-air television groups.

We also looked at the question of how to set the CPE level. We believe the simplest way is to examine the Canadian programming expenditures actually made by conventional broadcasters over an appropriate number of years as a proportion of that broadcasters' total over-the-air television revenues.

Finally, we believe it is not enough to have an overall over-the-air television CPE requirement. Peter Grant explained this point in his speech to the Broadcasting Invitational Summit this past June. To paraphrase, even with an overall conventional TV CPE requirement, over-the-air broadcasters still have the incentive and opportunity to reduce their spending on riskier and more expensive Canadian programming. They will naturally focus their spending on programming categories that do not compete with U.S. programming, such as news and sports. Therefore, safety nets need to be established for priority programming. Tom.

TOM COX

As a solution to their financial challenges, some broadcasters have proposed lower regulatory requirements with respect to Canadian priority programming and independent production. This is absolutely the wrong approach. Reducing priority programming and independent production runs contrary to the policy objectives of the *Broadcasting Act*.

We should not weaken the framework the Commission has carefully built over the years. This framework serves Canadians well. Now is not the time to take a step backwards.

Some broadcasters say the priority programming rules do not provide them with enough flexibility. Some want to broaden the definition even further and extend the peak time period. To us, these are puzzling suggestions. Existing priority programming rules provide conventional TV broadcasters with enormous flexibility.

Almost every Canadian program category currently qualifies as priority programming – except for news, information, and sports. That means that reality shows, magazine shows, documentaries, and drama of *any* quality or cost level can count.

If everything is a priority, then nothing is a priority.

The requirements are modest; only 8 hours on average per week in prime time. That's less than 30% of prime time, or 6% of the broadcast day. And broadcasters have the added flexibility to average over the entire broadcast year.

As well, there are also currently no requirements with respect to original, first-run priority programming vs. repeats in meeting the modest exhibition requirements. Consider this: almost 40% of the required hours of priority programming broadcast by CTV over the past five years on average have been repeats. And this includes the impact of “bonusing up” hours resulting from the use of drama time credits.

Given these facts, existing priority programming requirements are hardly a burden.

In fact, the current definition of priority programming has been detrimental to truly under-represented Canadian content in the system, in particular, drama.

We, therefore, recommend a “tightening up” of the program categories that qualify as priority programming. This will ensure adequate support for the production and exhibition of truly under-represented Canadian content. This would include, at a minimum, no longer allowing entertainment magazine programs to qualify as priority programming.
Linda.

LINDA SCHUYLER

Every program begins with a story. Every story begins with an idea. And it’s a long way from the idea to the program. Trust me.

That idea needs to be nurtured. It needs a creative team. It needs writers and a script. It needs to be financed – through combining private and public funding, tax incentives, partnerships, and maybe co-production opportunities. And, once it becomes a story, it needs to be told – through broadcast partners, multimedia platforms, distribution deals, and, on a good day, international sales. Against the odds, independent producers make all of this happen. Nurturing the idea and making the program happen. That, in essence, is what independent producers do.

Specifically, why are independent producers important to the system? We've answered this question before and it's critical to reiterate as part of this process.

First, we provide a diversity of ideas and voices. Highly consolidated and centralized broadcasters do not. We are a key access point to the creative community – the writers, directors, and actors. We incubate ideas. We create and we innovate.

Let me give you a very recent example. VisionTV put out a call to independent producers for proposals for dramedy series that reflect Canada's cultural diversity. Independent producers submitted a whopping 280 submissions. In an in-house or affiliated-production model, there may have been a half dozen ideas at best.

Second, independent producers come from all regions of Canada. We ensure that Canadian programming reflects all of Canada. If not for independent producers from the regions, stories such as *Corner Gas*, *Mayerthorpe*, or *Da Vinci's Inquest* would not have been told.

Third, independent production companies are innovative small- and medium-sized businesses. We are important drivers of the creative economy and jobs. We have the talent, business acumen, and entrepreneurial spirit to lead content creation across platforms.

Fourth, we build great relationships with partners around the globe. We take Canadian programming to international markets and bring foreign

funds to Canadian program financing. We bring Canada to the world and the world back to Canada.

That success abroad requires success at home. Three decades of policy support for independent production fuels that success.

Let me give you a personal example to illustrate this point. It relates to what Norm said earlier about the power of CPEs. When BCE bought CTV, it had to spend a significant amount of money on Canadian programming as part of the benefits package. This allowed great things to happen.

Degrassi was able to go from 13 episodes a season to 22. That helped to build audiences and loyalty. It also made the program more attractive to foreign broadcasters, particularly in the U.S. Each international sale fueled more sales. But Degrassi is just one example.

The BCE-CTV benefits allowed the *Juno Awards* to transform from a Toronto-centric production to a roving event, celebrating Canadian music across the country. And this has become the model for the *Geminis*.

Program spending requirements fueled these successes. But independent production rules are also key. In terms of hours, the 75% of priority programming requirement is modest. It's a mere 6 hours in prime time per week. That's 21% of prime time. Put another way, the 6 hours represents less than 5% of the broadcast day. As the

Commission stated in its Diversity of Voices notice, “this is not an onerous obligation.”

Reducing independent production obligations would not relieve over-the-air television challenges. But it *would* devastate the production sector. It would erode ideas and creativity. It would reduce innovation. It would limit programming choices for Canadians. Ultimately, it would mean fewer voices. John.

JOHN BARRACK

Broadcasters are our customers. That said, broadcaster consolidation over the past number of years has dramatically skewed the economic balance of power in favour of broadcasters at the expense of producers. These large broadcast groups now dictate contract terms to independent producers, which threatens both their independence as well as their viability.

Independent producers are seeking equitable Terms of Trade as a tool to restore balance in the broadcaster-producer relationship. So what are Terms of Trade? They are baseline frameworks or floor agreements that set basic parameters for the negotiation of licence agreements between individual producers and broadcasters.

As you have stated several times Mr. Chairman, Terms of Trade agreements will provide the stability and clarity necessary to allow for the most efficient exploitation of content across the widest variety of platforms.

To us, Terms of Trade will help strengthen the relationship between broadcasters and independent producers. It will define rights. It will set a framework for rights exploitation and revenue sharing. In short, it will unlock innovation and experimentation for the benefit of Canadians and the system overall.

We welcome the CRTC's efforts to move the Terms of Trade file along. Most recently, the Commission indicated that it will only consider licence renewal applications for seven years with finalized Terms of Trade agreements in place.

However, the current economic environment and the instability in the over-the-air television business might well mean that the major broadcast groups will apply for licence renewal terms of less than seven years.

Therefore, we ask the Commission to specify that it will not renew licence applications, regardless of the length of licence term applied for, in the absence of finalized Terms of Trade agreements with the CFTPA. Without this incentive, broadcasters will not be willing to engage in meaningful Terms of Trade negotiations. Norm.

NORM BOLEN

In closing, Mr. Chairman and Commissioners, the CFTPA appreciates that the Commission's job is to strike a reasonable balance for the system. The entire system.

We've given the models and ideas a lot of thought. In the end, we believe it's important to focus on a few key areas.

- The most important thing is implementing a CPE for conventional television. This is vital. It's the best way to get foreign spending under control and shift the focus to Canadian content.
- And mechanisms need to be put in place to make sure that programs of national interest get made. One mechanism is retooling the priority programming definition – because if everything's a priority, nothing's a priority.
- Also, a minimum spend on priority programming should be implemented.
- The last thing I want to emphasize is the critical importance of the existing 75% exhibition rule on independent production. The system needs our ideas, our creativity, our risk taking, and our diversity.

These critical elements will ensure that this hearing results in a positive outcome for the entire system.

Thank you for your attention and we welcome any questions you may have.