



CFTPA

Representing television, film
and interactive production in Canada

ACPFT

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

www.cftpa.ca

August 10, 2010

Via CRTC comments/interventions form

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 2010-470 – Call for comments on a review of the definitions for television program categories and related matters

1. The Canadian Film and Television Production Association (the “CFTPA” or the “Association”), which will soon officially change its name to the Canadian Media Production Association (CMPA), welcomes the opportunity to provide these **comments** with respect to the above-referenced Notice of Consultation.
2. The CFTPA 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. Our almost 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.
3. *Broadcasting Notice of Consultation CRTC 2010-470* (the “Notice of Consultation” or “Notice”) calls for comments on a review of the definitions of television program categories and related matters. The Commission wishes to ensure that the Canadian program category definitions accurately reflect the various types of Canadian programming available.
4. The CFTPA has specific comments on the following aspects covered under the Notice of Consultation: the definition of Long-form documentaries, category 2(b); Canadian award shows; and program length.

The CFTPA's comments

5. Overall, the CFTPA is of the view that consistency, clarity, and predictability should underline the Commission's approach to the review of program definitions. To the extent that changes contribute to an increased level of consistency across the regulatory and financing systems for independent producers and broadcasters, the more beneficial they will be for Canadian broadcasting.
6. Beyond consistency, where clearer definitions can allow producers and broadcasters more certainty that programs will be accepted by the Commission under specific categories, the fewer times subjective interpretations will lead to differences in opinion between Commission staff and the broadcast and production community.

7. In addition, the Commission should avoid any element that adds unnecessary complexity or administrative burden on broadcasters and producers.

Long-form documentary definition: adopt the full CMF definition

8. The CFTPA proposes that the CRTC adopt the Canada Media Fund's ("CMF") full definition of Long-form documentary, including all of the fund's language related to eligible and ineligible programming. We submit that consistency between the CMF and CRTC definitions of Long-form documentaries would streamline the system for broadcasters and independent producers and therefore would be of significant value for the broadcasting system.
9. The CMF definition is one with which both broadcasters and producers are familiar and is, fundamentally, the same as the current CRTC definition. In addition, the CMF definition more clearly defines what is eligible programming and what is ineligible programming, adding a level of clarity to the process. The basic definition of documentary programming would remain as follows:
- A documentary is defined as an original work of non-fiction, primarily designed to inform but that may also educate and entertain, providing an in-depth critical analysis of a specific subject or point of view over the course of at least 30 minutes (less a reasonable time for commercials, if any). These programs shall not be used as commercial vehicles.*
10. Eligible programming includes living histories, docusoaps, and point of view (POV) documentaries. These elements allow for recognition of the evolution in documentary production and in viewing preferences by Canadian audiences. Ineligible programming includes lifestyle, "how-to", reality, and segmented programming. These latter categories are clearly outlined and eliminate a level of uncertainty for producers and broadcasters, while also addressing the Commission's objective, in the Notice of Consultation, to differentiate reality programming from Long-form documentary programming.
11. While the CMF definition may not be perfect and individual producers have had issues over the years with the fund's interpretations of the definition, the CFTPA is of the view that, overall and on balance, it would add clarity, consistency, and predictability to the system if the CRTC were to adopt the full CMF definition of Long-form documentary.
12. The Notice of Consultation proposes a definition of "documentary-style reality programming" as a new category 11(b). The CFTPA believes that the addition of such a category will be confusing, by combining the term "documentary" with "reality" programming. It also includes reference to "docusoaps" and POV documentaries, which are, in fact, legitimate documentary forms that should qualify as programs of national interest.
13. The CFTPA is also concerned that documentary programs the Commission has already certified as category 2(b) may be reclassified as category 11(b) going forward should the Commission proceed with its proposal. This would be unfair and punitive for both broadcasters and producers.
14. Therefore, should the Commission proceed with implementing its proposed category 11(b) we recommend that it grandfather under current program definitions existing programs.
15. However, given all of the above, the CFTPA believes that the best overall approach is to adopt the full CMF definition of Long-form documentary, with eligible and ineligible formats. This should help clarify that reality programming does not qualify as documentary programming. Accordingly, we do not support the proposal in the Notice of Consultation to add the new program sub-category 11(b).

Canadian award shows: creating a “living list”

16. The Notice of Consultation states that the Commission intends to include Canadian award show programming, such as The Gemini, The Junos, The Giller Prize, The National Aboriginal Achievement Awards, The East Coast Music Awards, and The Aboriginal Peoples Choice Music Awards, in its definition of programs of national interest.
17. The CFTPA supports the proposal to establish a “living list” on the CRTC’s website, identifying those award shows deemed eligible. Such a list will provide clarity and certainty for all stakeholders and allow the CRTC and stakeholders to keep up-to-date on the evolution of the award show category.
18. With regard to the question of criteria, the CFTPA proposes that qualifying awards shows should relate directly to outstanding achievement in Canadian broadcasting, film, video, or new media production. While it may be appropriate to include some awards shows related to general arts and culture that have been broadcast and supported in the past, such as The Giller Prize, the Association believes it is important that the “living list” be streamlined and focused.
19. The Commission also seeks comments on the proposed approach to considering the inclusion of a Canadian award show on the list of award shows qualifying as programs of national interest. The CFTPA submits that the Commission should accept proposals to add to the living list from any party, not just broadcasters, and that such requests be subject to a public process to allow parties to comment on the appropriateness of adding the proposed award shows to the list.

Reference to program length is unnecessary

20. The Notice of Consultation proposes to amend certain definitions, in light of the deregulation of advertising on conventional stations, to ensure that the programming contains a sufficient amount of programming content. The Commission proposes to add the phrase “22 minutes excluding commercials and promotions” to various definitions, requiring a minimum of 22 minutes of content for a program to qualify under the various definitions in question.
21. The CFTPA opposes the inclusion of the proposed reference to program length under various definitions, as outlined in the Notice. There is no evidence that the CFTPA is aware of to suggest that there is an issue that needs to be addressed. Advertising deregulation has been in effect for a sufficient amount of time, without a need arising for new regulation to counter the deregulation.
22. Defining a program length as “22 minutes excluding commercials and promotions” serves no purpose and will add administrative burden on both broadcasters and producers. It would also be inconsistent with the definitions currently used by various production funds, such as the CMF.
23. In addition, the Commission’s proposal would run counter to the creative process, which might see the telling of a story in 21 minutes or 21.5 minutes or even 5 minutes, in the case of a short documentary or other program format. Defining “sufficient” as 22 minutes ignores the negative impact such a rule would have, imposing an undue burden on producers and broadcasters, and imposing unnecessary restrictions on the creative process.
24. The CFTPA submits that the current definition of “30 minutes, less a reasonable amount of time for commercials, if any” remains an effective and more reasonable approach.

Allow parties to file reply comments

25. Given the importance of this proceeding and the long-term effects the determinations that ultimately flow from it will have on the broadcasting system, the CFTPA urges the Commission to amend its public process for this review by introducing a reply comments phase to allow stakeholders to respond to the submissions filed by other parties. This will give the Commission a more complete picture of the issues related to program category definitions on which it can make its determinations.
26. Though the Notice of Consultation seeks comments on specific program categories, the Commission has invited parties to submit comments on other program categories not identified above. As such, some parties may propose substantial and material changes to other program category definitions that would warrant a response from other parties.
27. Moreover, some parties could propose the addition of specific awards shows to the “living list” that the Commission proposes to create that would warrant comments from other parties.
28. Accordingly, in order to ensure a complete record in this proceeding, the Commission should allow for the filing of reply comments.

Conclusion

29. In summary, the CFTPA:
 - proposes adopting the full CMF definition for Long-form documentaries, which sets out in detail eligible and ineligible program formats;
 - submits that addition of the proposed category 11(b) is not necessary with the adoption of the full CMF definition of Long-form documentary, and will add a level of confusion rather than clarity;
 - supports the notion of a “living list” of Canadian award shows that would qualify under programs of national interest, which should relate directly to outstanding achievement in Canadian broadcasting, film, video, or new media production; and
 - opposes the inclusion of the proposed program length reference, as it serves no purpose, adds an undue administrative burden on producers and broadcasters, and is counter to the creative process.
30. The CFTPA appreciates the opportunity to provide these initial comments on the issues raised in the Notice of Consultation. We urge the Commission to amend the procedures for this review by introducing a reply comments phase to allow stakeholders to respond to the submissions filed by other parties.

All of which is respectfully submitted.

Yours truly,

[Original signed by Norm Bolen]

Norm Bolen
President and CEO