

CMPA

Canadian Media
Production Association



Screen-based entrepreneurs

Remarks by the
Canadian Media Production Association
(CMPA)

to

House of Commons
Standing Committee on Canadian Heritage

Study on

The Impacts of Private Television
Ownership Changes and the
Move Towards New Viewing Platforms

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CHECK AGAINST DELIVERY



Norm Bolen

Good morning Mr. Chairman and Committee Members. I appreciate the opportunity to appear before you today. I will keep my remarks short so that we have more time for questions and answers.

But first, I offer my congratulations specifically to you, Mr. Chong, on your recent election as Chairman of this important Standing Committee. I look forward to working closely with you and the other Committee Members in the weeks and months ahead.

My name is Norm Bolen, and I am the President and CEO of the Canadian Media Production Association. With me today is Reynolds Mastin, Counsel for the CMPA.

We represent hundreds of independent companies across Canada. They produce and distribute English-language television programs, feature films, and interactive content. With a handful of exceptions, these are all small- and medium-sized businesses.

Our members produce content that is consumed by millions of viewers in Canada and abroad. That content is viewed on small, medium and large screens. Gone are the days when producers developed content for a single platform. Today, producers almost always develop content that will be exploited on multiple screens.



As most of you know, our organization was formerly the Canadian Film and Television Production Association. We rebranded a number of months ago to the Canadian Media Production Association. We did this specifically to better reflect the reality of today's independent production sector. And, in light of the multiplatform universe that is already so prevalent in the lives of Canadians.

Our members have a significant impact on the Canadian economy. They generate most of the \$5 billion in production that occurs in Canada each year. And, this activity sustains some 130,000 high-quality jobs.

While economic performance indicators are important, independent producers are about much more than just the money and the jobs. By the content they produce, independent producers reflect – I would even add celebrate – the broad diversity that exists across our vast country and the proud history that makes us so unique.

The fundamental role of producers has long been recognized and supported by successive governments.

This is why the *Broadcasting Act* recognizes the important role that independent producers play in the Canadian broadcasting system. Section 3 of the *Act* requires that “the programming provided by the

Canadian broadcasting system should... include a significant contribution from the Canadian independent production sector.”

Independent producers are a key engine driving diversity, creativity and innovation.

I would like to think that our sector is well positioned to make a significant contribution to Canada’s burgeoning digital economy. But lately, to be brutally honest with you, I’m beginning to wonder if this is at all true.

For independent producers to be well positioned to contribute meaningfully to Canada’s economic and cultural future, certain things must change.... and, they must change quickly.

We therefore congratulate you for launching your study on the impacts of the changes in private television ownership and the move towards new viewing platforms.

Over the last decade, and certainly in the last few years, the massive consolidation and integration of the television sector has indeed had a significant impact on independent producers.

There is now a severe and unsustainable industry imbalance between independent producers and broadcasters. That imbalance is not only undermining content innovation and programming diversity, it is threatening the very existence of the independent production sector.

We remain hopeful, however, that the Government and all political parties continue to believe in the importance of the contribution made by independent producers.

The key question, as I see it, is really quite simple. Do we continue to believe it beneficial to all Canadians that a viable and healthy independent production sector not only exists but can flourish?

I, and many millions of Canadians, believe the answer to that question is an unequivocal “YES.”

So, I implore you to grasp the opportunity with this study to make concrete recommendations to address the imbalance that currently exists in the television sector between independent producers and broadcasters.

Reynolds?

Reynolds Mastin

So, you may be wondering what the problem is exactly between producers and broadcasters.

Simply put, there are only three large, integrated private broadcast corporate groups now in English Canada. As such, there are effectively few selling opportunities in the television market for our members.

And, more specifically, those three broadcast groups are now using – I would even say abusing – their dominant position in the market to secure unreasonable terms from independent producers. They are demanding more rights, including all digital rights, and often for very little additional fees, if any.

Broadcaster consolidation has virtually eliminated competition in the Canadian programming rights market, resulting in:

- Fewer incentives for broadcasters to experiment with multiplatform content production and distribution;
- Untenable and unsustainable rights deals for independent producers; and

- The virtual elimination of any return on investment for investors and funders, including the Canada Media Fund.

The equation is simple: where broadcasters control all of the rights, they will reap all of the benefits.

This leaves other key partners – independent producers, the Canada Media Fund, federal and provincial funding agencies, and independent production funds – with little or nothing to show for their investment in Canadian programming.

The situation for independent producers has gotten progressively worse over time.

Ten years ago, broadcasters were taking 3-year licence deals on programming.

Today, for very little additional compensation, they demand as many as 12 years. This virtually eliminates any possibility for a producer to sell in 2nd or 3rd markets.

Ten years ago, broadcasters negotiated for only one conventional station and maybe for 3 to 5 plays of the program over the 3-year licence term.

Today, with little additional compensation, they demand the rights for the same conventional station plus all their other owned and controlled broadcast platforms (e.g., specialty TV)... Plus, unlimited plays on all their platforms... Plus, Internet rights... Plus, all rights for all media... Plus, merchandizing rights... And, very often, foreign territories too.

Let's consider this last point for a second. A Canadian broadcaster whose sole raison d'être is the Canadian market is using its considerable clout to scoop up the rights for foreign territories. This is going way, way too far.

You may be asking yourselves why producers do not simply refuse these harsh business terms that are so damaging to their businesses.

There is a simple answer to that question. For most independent producers, turning down these terrible terms effectively means putting their businesses on hold, or even closing their doors permanently.

I would highlight that a broadcaster is also the only trigger to access a large majority of the financing available under the Canada Media Fund and one of the key triggers to access the Canadian Film or Video Production Tax Credit.

This puts broadcasters in a very strong bargaining position. Without a broadcast deal, our members have no access to most of the CMF and likely no access to the tax credit.

Without access to these crucial sources of funding, there would be far fewer Canadian content productions in under-represented genres. Thousands of key creative and technical craftspeople from coast to coast would lose their jobs.

Ultimately, Canada's diversity would be significantly lessened, and independent producers would fall considerably short of being able to effectively contribute to Canada's growing digital economy.

This is why we have been pushing so aggressively for the implementation of an equitable and enforceable Terms of Trade framework between independent producers and broadcasters.

This would provide a common-sense solution related to the ownership and exploitation of all rights, including digital rights, thereby maximizing the distribution of content across all platforms. This is a key Government policy objective that can be achieved at no cost to taxpayers and with minimal, if any, direct regulatory intervention.

Norm?

Norm Bolen

Before we wrap up, I would like to make a short comment about the Canada Media Fund.

As you may know, the Department of Canadian Heritage's contribution to the Fund expires at the end of this fiscal year. This program is crucial for under-represented Canadian programming and the independent production sector. It is critical that it be renewed, long term.

As you may also know, we have been actively working with our colleagues in the creative sector in arguing before the courts that Internet Service Providers should be considered broadcast distributors under the *Broadcasting Act*.

Let me briefly explain why it is necessary to push so hard on this front.

Over time, Canadian audiences will increasingly migrate to platforms that are currently not regulated. As this trend accelerates, revenues earned within vertically integrated communications companies will shift from those generated by their traditional cable and satellite services to those derived from their Internet access services. Overall these companies could end up earning just as much – maybe even considerably more – from their customers' shift to broadband.

At the same time, they will end up contributing less and less to the Canada Media Fund, since their contributions are currently solely based on their cable and satellite revenues.

Data already show the CMF's revenue from BDUs flattening out.

This is not a positive trend for Canadian content, the independent production sector, or the thousands of jobs we sustain across Canada.

In closing I offer four specific recommendations that we ask you to incorporate into your study:

- 1) Recognize the imbalance that currently exists between independent producers and television broadcasters in the negotiation of rights, and the detrimental effect this has on diversity and innovation in the system;
- 2) Recommend that the Minister of Canadian Heritage issue a policy direction to the CRTC, pursuant to section 7 of the *Broadcasting Act*, requiring the Commission to ensure that broadcasters have taken all appropriate steps to reach an equitable arrangement with the independent production sector regarding the ownership and exploitation of program rights;

- 3) Support the renewal of the Department of Canadian Heritage's contribution to the Canada Media Fund on an ongoing basis. This will introduce much needed stability in the funding system. It will also allow all stakeholders to plan long-term and continue enhancing the effectiveness of the Fund;
- 4) Endorse the proposal that all distribution platforms, including those that are currently not regulated, be required to make a financial contribution to a Fund to support the creation of Canadian content.

With these key building blocks in place, I am confident that Canadian independent producers will be much better positioned to be able to contribute meaningfully to both our growing digital economy and our cultural future.

That concludes my presentation. I would be happy to answer any questions you may have.

Thank you.

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