

Publications: CRTC and Government Filings

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Mr. Jean Guerrette
Director General
Broadcasting Policy
Department of Canadian Heritage
3rd Floor
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Hull, Quebec
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Dear Mr. Guerrette:

I wish to thank the Broadcasting Policy Section of the Department of Canadian Heritage, for undertaking this broad industry consultation on the future directions of the Canadian Television Fund. The

Association is pleased to offer its views. As the Association representing over 300 film and television producers, with representation on the Canadian television Fund Board, we believe we can speak with some authority on the performance of the Fund to date and provide some thoughts on future directions it might take.

Overview

We recognize that this is a critical time for the future of the Fund as the Government reviews the Fund's achievements and begins the process of evaluating the level and nature of its own ongoing contribution to the Fund and possible changes it may wish to consider. The analysis and recommendations provided by the reports on the Fund's activities over the past year by KPMG, David Silcox and Francois Colbert, as well as the Department's ongoing review of Fund activity have all provided a good basis to assess future directions for the Fund and already generated constructive debate. We understand the government will be undertaking a formal renewal of its support for the Fund in 2001. This becomes an obvious time to reflect on basic mandate, objectives and structure of the Fund and a time to listen to views of the public and industry stakeholders in all regions of the country to consider amendments that may be necessary. The CFTPA is pleased to be able to contribute to this process.

Fund's Role

The Association must begin its comments on

possible future directions for the Fund with a strong endorsement of the Fund's record and accomplishments. The Fund has not only made an impressive contribution to simulating the increased production of high quality Canadian television programming, but is also an important testament to a government's innovative policy making. The basic concept of co-ordinating two important streams of television production financing under a single public/private Board of Directors was forward-looking and innovative. While perhaps not the easiest policy option that might have been selected, the initiative was an important one and an acknowledgment by government that industry had a role to play in helping to steer the implementation of public policy and in helping to realize the objectives of the Fund.

The Fund design and its Board structure were an important recognition by government that for Canadian television to thrive in an increasingly challenging global context, primary industry stakeholders needed to be involved with government to help ensure funding mechanisms could help make this happen. As interests in production, distribution, conventional broadcasting, specialty and cable/satellite delivery systems converge, the Fund Board provides an obvious forum for Canadian content financing issues to be addressed within the context of the Fund mandate, and objectives for practical production funding policies to be formulated. In short, the public/private board has become both an embodiment of the industry, and an instrument to ensure that the objectives of government and industry can be met through imaginative funding

strategies.

Fund's Results

The Fund's record has been impressive and speaks for itself. We are attaching a separate document developed by Fund administration briefly summarizing its achievements. Charged by mandate with increasing the volume of high content Canadian programming in all regions, increasing the industry capacity and increasing employment, the Fund has succeeded on all counts. In 1999-2000, the Fund created \$617 million worth of production and over 2000 new hours of programming. The Fund is estimated to have employed about 20,000 Canadians during that period. Fund activity has also been distributed, with some annual fluctuation, in every province of the country and in both official languages, and broadcast by a diverse range of conventional and specialty broadcasters.

The Fund has clearly helped fill a huge demand for Canadian programming in an expanding broadcasting industry and achieved some impressive audience ratings. As we move into an era of expanding numbers of new digital channels, specialty and pay-per-view services, increasing opportunities for "cross platform" and new media applications, this demand will only increase. In our view, the Fund has clearly proven its value to the broadcasting and production environment and become an essential component to ensuring the presence of quality Canadian programming. As the government moves forward with an assessment of its continued

participation the Fund, there can be little debate about the critical value the Fund currently plays - future debate should simply be about how the Fund might be made better.

CFTPA Comments on Future Directions

We have concentrated our own comments on more fundamental areas of importance to our members and we think to the Department as well. Many of these comments refer to issues raised by the analysis and recommendations raised by the KPMG and Silcox Reports, although we have focused our comments on areas that we believe are now fundamental to the Fund's future role which should be addressed by the department. Such issues as criteria change, genre allocations, licence fee thresholds or recoupment policies should be left for the Board and the Department to review, once the Fund has been renewed.

I. Mandate

We would agree that the central mandate of the Canadian Television Fund should be publicly clarified and reported on consistently, given some of the variance and uncertainty in published mandate that was identified by KPMG. The role and objectives of the Fund, as well as the policy documents outlining these functions should be clear, transparent and readily available to the public. We do not agree, however, with KPMG's suggestion the Fund needs to be given a clear mandate as a cultural fund rather than an industrial fund. We appreciate that the Fund

has moved increasingly into the area of funding high Canadian content production, largely to address demand issues and the realities of financing high Canadian content production. Clearly this must remain a priority of the Fund, given the economic realities of financing high Canadian content production with distinctive Canadian stories. We would simply remind the Department that, in addition to increasing the broadcast presence of high quality Canadian television programming, another primary element of the current mandate is "to enhance the Canadian broadcasting and production sector's capacity to produce television programming in Canada, and abroad".

Though clearly balanced by the Fund's commitment to high Canadian content programming, this additional objective is also an important one by broadening the focus of the Fund from simply the stimulation of production, to identifying the best ways of enhancing production sector capacity and developing the appropriate financial mechanisms to do so. (It is worth noting that this need for different financing instruments was also identified by KPMG as something the Fund needs to be considering.) This objective of the Fund mandate is important to all producers moving to diversify their production activity, as well as producers based outside the primary production centres of Toronto, Vancouver and Montreal looking to develop a viable production capacity. In our view, the balance of industrial and cultural goals is a healthy one, and the distinction between the two somewhat artificial. Often, more industrial kinds of financing mechanisms - such as

loans, production envelopes, lines of credit - may be necessary to achieve the diverse cultural expression that is desired, and any move to eliminate the industrial component of the Fund may result in it being unable to explore these types of mechanisms in future.

We would suggest that trimming the mandate of the Fund to address issues of demand on existing funds might be a self-limiting exercise. It may be more constructive to look more critically at the way current funds are operating or to consider the need for additional funds. We are attaching under separate cover an independent analysis of past Fund activity and evolving industry trends, in order to dramatize to government the need for a possible increase in the government's contribution to the Fund. We would also recommend that the Fund mandate be kept as flexible as possible in order to reflect the differing needs of the television, film and new media sectors. If the Fund design moves towards a single administrative model, as we suggest below, it will be important that the differing needs of each sector are accommodated within the mandate - and the name - of an expanded Fund.

A related concern is the suggestion in KPMG, that the Fund move away from encouraging regional production and job creation, and move towards the depiction of regional stories. In our view, one of the best ways to achieve a diversity of stories is by encouraging production in all regions of the country. This encourages creative relationships to develop between writers and producers in that region - and

between writers and producers from different regions - and helps expand system production capacity. Encouraging regional production also results in economic and employment benefits across the country, and better reflects the fulfillment of all of the objectives of the Fund. To ensure continued cultural and thematic diversity, production in all areas of the country should be encouraged.

II. Fund Structure and Governance

The issues surrounding Fund structure and governance are the most critical at this stage and the ones that must be addressed most urgently in the course of the Department's review. Clearly, a number of accountability and administrative issues that have developed over the years can be directly linked to the complexity and uncertainty over reporting and administrative relationships among the Board, Telefilm Canada, the government and administrative staff. The lines of governance, administration and accountability within the current structure, are a complex amalgamation of agreements between the government, Telefilm and the cable industry. There appears to be little formal structural accountability by the Board to the government or by Telefilm Staff to the CTF Board, and no relation between Telefilm's Board to the Fund's. This confusion translates into complex reporting relationships for Telefilm and Fund staff, which can become a recipe for confusion and delay. In our view, clarifying this situation is essential and failing to do so could prove to be a barrier to fund renewal.

Both KPMG and the Silcox Report make a number of fundamental, if somewhat contradictory, recommendations relating to governance, administration and Board structure. CTF Chair, Richard Stursberg, recently proposed the creation of a single, not-for-profit fund with a public-private Board of Directors, a CEO responsible to the Board, and responsible for all film, television and new media funding. All suggest different versions of single administrative structures, giving a CTF-type Board clearer authority over some combination of television/film and new media funding envelopes. The single fund/single administration concept, however defined, is attractive from a simplicity point-of-view. There is a clear need to bring some coherence to the Fund direction.

Rather than deal all of the different variations that have been proposed, we would simply offer our own view of essential elements for the Fund's future organization.

- We would recommend that one organization be responsible for the administration of the CTF, as well as feature film and new media/cross platform product. In an era of increasing convergence in media carriage and delivery systems, and cross-platform production, we see little reason for separating production financing into different funding bodies. This single organization, however, would be responsible for multiple funding streams, tailoring the funding mechanism - whether it be equity, licence fee top-up, or other mechanisms - to the financing needs of the production.
- That organization should have a CTF-type Board of Directors, with representatives drawn from public and private sectors, which would oversee all aspects of Fund activity. Government should be responsible for appointing up to a quarter of the

Board, with the balance being drawn from primary stakeholders; production, broadcasting, distribution and cable industries. Smaller Boards - or Executive Committees - drawing from Board representation and other technical and creative expertise, would oversee the operations of funding operations in Feature Film, Television and New Media. This would ensure a knowledgeable Board presence in those areas, able to define an appropriate administrative structure. This type of structure would accommodate the administration already proposed by CFTPA in the area of future feature film funding.

- The level of Board composition needs to be re-visited to ensure greater producer representation, proportional to other industry stakeholders. As primary Fund clients, producer representation needs to be increased from its current CTF level to ensure a more equitable balance is maintained between producer and non-producer representatives. No one stakeholder should be able to exert undue control. (The current CTF Board is large, but any move to reduce it would need to respect these principles.)
- That organization should have responsibility - and be accountable - for managing all public, as well as private funds.
- The Fund Board would have the responsibility for selecting a CEO/Executive Director, who would be in charge of all staffing and operations, and fully accountable to the Board.
- Board members would have clear responsibilities to the Board, and adhere to clear conflict of interest guidelines.
- The Fund Board would establish Fund policy within the mandate and objectives established by the government. Administration would have the flexibility to determine appropriate funding mechanism for each application: i.e. equity. License fee top-up, line of credit, or loan. Fund criteria would be reviewed and set each year by the Board.
- Fund administration should have a strong regional presence, with staff and offices in the major production regions with decision-making power, to help foster a dynamic and creative relationship with the production community. Administration should also take advantage of existing expertise as much as

possible, while allowing for regular turnover and new perspectives.

In our view, these objectives could be met by one of two options: either by the creation of a new not-for profit company, or by re-structuring an existing public agency like Telefilm Canada. As a Crown Corporation, Telefilm currently is fully accountable to government and maintains significant expertise within a regional structure. By significantly expanding its current Board and Board structure, updating the objectives of the Canadian Film Development Corporation Act (1968), reviewing the current responsibilities of the Executive Director and that position's reporting relationship, the Corporation may be an appropriate vehicle for the Fund to be consolidated around. We are attaching a legal perspective from the law firm of Johnston and Buchan on the flexibility of the CFDC Act as a contribution to the discussion. While some legislative revision may be required, the Act has proven a flexible vehicle in the past.

The Corporation's ability to receive and expend growing contributions from the Cable and satellite industry, however, would also have to be clarified. We would also wish to ensure that the efficiency, transparency and accessibility of the current LFP administration would be made available within such a structure, given the critically important role it currently plays. Providing the elements listed above are respected, however, we would be prepared to

consider either a public or a private-not-for profit option.

The existing funding structure is at least now a familiar one, and we would not wish this legislative review process to disrupt next year's production financing planning. Above all, we need to ensure that the current financing environment remains a stable one, while the issues of governance are resolved. Discussions with other industry stakeholders have underlined support for the directions suggested here, but underlined the time that might be required to undertake this kind of legislative change. In our view, this is no reason not to proceed. It does, however, underscore the need for the government to provide a clear signal of its future direction for Fund structure and governance, as part its Fund renewal exercise. The Department must also work closely with industry stakeholders to design an appropriate interim measure within the existing Fund structure, which embodies the intent of its longer-term policy objective. This measure should provide a clear and stable financing environment for television financing activity in the short term, as well as address the government's need for clarity and accountability in the administration of its contribution.

Thank you for the opportunity to comment. We look forward to meeting with you to discuss our comments in greater detail. We would strongly maintain that the Department views this process

as a beginning to the consultative process, not an end. Industry input should be sought on an ongoing basis as the Department moves forward with its policy options, in order that industry concerns are taken fully into account.

Yours sincerely,

Elizabeth McDonald
President and CEO