

**ORAL REMARKS**

**By**

**THE CANADIAN FILM AND TELEVISION PRODUCTION  
ASSOCIATION  
(CFTPA)**

**CONCERNING**

**THE RENEWAL OF CERTAIN  
SPECIALTY TELEVISION SERVICES  
(26 MAY 2003 Public Hearing)**

**30 May 2003**

*(check against delivery)*

Good afternoon, Mr. Chair and Members of the Commission. My name is Elizabeth McDonald and I am the President and CEO of the Canadian Film and Television Production Association. With me this afternoon is Susanne Vaas who is CFTPA's Director, Business and Production Financing.

The CFTPA represents over 400 companies that finance, produce, distribute and market films, television programs and multi-media products in English. Our members are present in every region of Canada, from coast to coast to coast. In an ever-consolidating media world, it is the voices of independent creators who provide diversity to the Canadian broadcasting system. Our members obtain the rights from authors and others with stories to tell, employ writers to prepare screenplays, hire directors, actors and craftspeople to make the stories into programs and conduct all the business dealings to finance the provision of these stories to Canadian and foreign audiences. As such we have a vital interest in the terms and conditions governing the program practices of our major customers – Canada's television, pay and specialty broadcasters.

While several independent producers have written in support of the various applicants appearing before you, it is important that the CFTPA makes submissions in CRTC regulatory proceedings. As you are well aware, producers have a marketplace relationship with the broadcasters who commission and acquire their programming. The Association, with input from our members, addresses the broader policy issues. This is not a contradictory exercise. While the individual production companies speak in

their own self-interest, the broader intervention addresses matters that pertain to the production industry as a whole.

Mr. Chair, this hearing is the Commission's first opportunity to review the progress to date of what has become known as the "Class of 96". The licences of twenty-two specialty services are up for renewal. Our written remarks addressed ten of those applicants, six of which have appeared before you over the past week.

Canadian specialty services have become a major component of the Canadian broadcasting system and invaluable partners to the production sector. In looking back over the past performance of the Class of 96, we are struck by the diversity of the formats and genres they offer and recognize the important role they have come to play for Canadian audiences and, of course, for our membership. 1996 was the first year that expenditures on independent production by specialty services surpassed that of Canada's conventional broadcasters. During the "lifetime" of the services under consideration, this aspect of their contribution to Canadian programming has more than doubled, from \$134 million (in aggregate) in 1998 to \$286 million in 2001 [Source: CFTPA's "Profile 2003", page 14].

It is in looking forward that we have some concerns with certain of the proposals in the renewal applications. In particular we wish to discuss the following areas:

- Canadian programming exhibition and expenditure commitments

- changes to Nature of Service definitions, where it involves the addition of drama programming , and
- the proposed use of independent production, including a comment on the financing of Canadian programming

### **Canadian Programming Exhibition and Expenditure Commitments**

For the most part, the specialty renewal applications under consideration at this hearing have sought to maintain the status quo in terms of Cancon exhibition and expenditures. Notable exceptions are the proposals by Outdoor Life to increase its Canadian content exhibition levels to the actual levels it has achieved over the first licence term -- 50% overall and 35% in the evening viewing period. We consider this to be an appropriate commitment. And Star!TV has proposed to increase its Canadian program exhibition levels, commencing in year 3.

Comedy Network and History both applied to decrease their Canadian content exhibition levels. We were pleased to note that, in questioning, the CRTC indicated it wants commitments to original Canadian programming as part of any effort to improve the quality of the program offering and to reduce the number of repeats.

### **Requests to Add Drama Programming**

This week we have heard several requests for changes to the Nature of Service definitions. As mentioned, CFTPA has reviewed the proposals of those services that have asked to add or increase the amount of drama they are permitted to air.



We consider drama programming to be a key element of Canadian cultural expression. While many programming categories are important vehicles for telling our stories, it is drama that enables a creator to tell a story in a creative and entertaining way. No wonder that drama attracts larger audience numbers than any other category of programming. Is this the reason that many services have requested to add (or increase) the drama component of their program schedule?

**HGTV** and **Outdoor Life** have requested to add a limited amount of drama programming to their schedules (5%) and **Prime** has asked for changes to the copyright limit on Canadian drama programming. We have noticed that your questioning has attempted to ensure that any such changes would be in keeping with the service's core mandate. This is a key consideration for genre protection and to ensure the integrity of the service.

CFTPA's support for such proposals is contingent on the service's willingness to commit to commission programming from Canadian independent producers. For our part, we also want to ensure that the addition of drama programming to a lifestyle service is both integral to the service's mandate and that there is a commitment to Canadian independent production.

### **Commitment to Independent Production**

This has become an increasingly important issue for us. While a benchmark of 75% has been established with regard to independently produced priority

programming by conventional broadcasters, many of those same players have been reluctant to make the same level of commitment with regard to original Canadian programming on their specialty services. It is important to bear in mind that at this hearing you are considering applications by most of the largest broadcast interests operating in English Canada -- CTV, Global, CHUM, Alliance Atlantis, Astral and Corus.

For producers to become successful, they must be able to fully exploit their copyrights and catalogue. Absent such control, they are really only line producers and cannot build the kinds of businesses able to invest in new productions. There is an unfair imbalance in the broadcaster/producer relationship when the broadcaster (as in the case of Alliance Atlantis) is also a producer and distributor of television and film productions or (as in the case of CHUM, CTV, and Global) where the broadcaster owns a number of different outlets and several windows (for example conventional and specialty television services).

The licence fee that a broadcaster brings to a production is a key piece of the financing puzzle – without a licence agreement, the producer cannot access tax credits, public funding support such as CTF and the provincial and private funds. Further, absent a broadcast commitment, the producer often cannot convince distributors to pay advances or find international broadcast partners. This gives the broadcaster enormous power at the negotiating table.

And this is why the Association insists upon fair treatment. We consider that broadcasters in this position should not be entitled to self-produce more than 25% of original Canadian production. Our written intervention contains a table that outlines past commitments with regard to self-production, and the broadcasters' proposals for the new licence term.

While several broadcasters were prepared to commit that 75% of original production (and in some cases, of Canadian program expenditures) would be reserved for unaffiliated independent producers, others were less willing to see restrictions on their ability to self produce. We are prepared to review with you our response to the commitments (or lack thereof) of HGTV, Teletoon, Treehouse, Prime, Outdoor Life, Space and Star!TV.

I would like to take just one moment more to elaborate upon the matter of CTF contributions which has been discussed with some of the applicants.

The Licence Fee Program at CTF was intended as a means of increasing the licence fees for the under-represented categories of programming (now known as "priority" programming) that have always received government support. CTF establishes appropriate licence fee thresholds, by program genre. As noted in two published economic assessments of the role of CTF, which the CFTPA has funded, it is thanks to this public/private funding support that broadcast licence fees contribute as much as they do to independently produced drama, documentary, performance/variety and children's programming.

Let me be clear. The broadcasters do not pocket this money. The CTF contribution is added to the cash payment offered by the broadcaster in exchange for the right to exhibit the program on its service. The licence fee is also the trigger for all other financial support mechanisms. The CTF licence fee "top up" is essential and necessary. It is also important that you recognize that there is a lot of production that is created and exhibited in this country that has no input from the CTF.

A considerable amount of time this week has been devoted to discussing whether it is appropriate for specialty services to be able to count CTF licence fee contributions as part of their Canadian programming expenditures.

While, in principle, CFTPA agrees with the position taken by the Directors' Guild that this effectively permits a broadcaster to reduce its Canadian program expenditures by a commensurate amount, we are not certain that this hearing is the appropriate venue to reverse this practice. For one thing, the application of such a ruling would be unfair to the "class of 96" if other services, licensed at other times, were permitted to continue to do so, until the time of their licence renewals. Nor would it be appropriate for the CRTC to make such a ruling applicable to parties not present at this hearing, by way of a directive Circular.

We concur with the position of André Bureau, that any significant change in the regulatory approach should rightfully occur in a public proceeding with

the opportunity for input from all interested parties, and with sufficient notice to enable participants to address the issue from a reasoned perspective, supported by concrete evidence. An appropriate forum might be a hearing devoted to the subject of Canadian drama or, more broadly speaking, programming in the priority categories.

Mr. Chair, Members of the Commission. Thank you for your attention today and we would be pleased to answer any questions you may have.