

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 2009-113 –
Licence Renewals for Private
Conventional Television Stations***

May 7, 2009

CHECK AGAINST DELIVERY

NORM BOLEN

Good morning Mr. Chair, Vice-Chairs, Commissioners, and CRTC staff. My name is **Norm Bolen**. I'm delighted to be before the Commission as the new President and CEO of the CFTPA. The Association is here today to bring reasonable and constructive solutions to the table in this proceeding.

I'm pleased to have with me today the heads of four of Canada's leading independent production companies. To my immediate right is **Sandra Cunningham**, President of Strada Films, and Chair of the CFTPA Board of Directors. She is the co-producer of such Canadian feature films as *The Statement*, *Being Julia*, *Where the Truth Lies*, and *Fugitive Pieces*.

To Sandra's right is **Tom Cox**, President of Seven24 Films of Calgary and a member of our Broadcast Relations Committee. Tom is co-executive producer of popular family drama series *Heartland*; TV movies *Mayerthorpe*, *Waking Up Wally*, and *The Sheldon Kennedy Story*; 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*.

To Tom's right is **Mark Bishop**, Partner and Producer of marblemedia, an award-winning multi-platform content creation company. In 2008, marblemedia received the "Company of the Year" award and Mark was named "Producer of the Year" as part of the *Canadian New Media Awards*. marblemedia is the producer of such well-known and

innovative multi-platform projects as *This is Daniel Cook*, *This is Emily Yeung*, and *deafplanet.com*, the world's first television and online series in American Sign Language.

To Mark's right is **Ira Levy**, Founder and Executive Producer of Breakthrough Films & Television, and co-Chair of our Broadcast Relations Committee. Among programs Ira has executive produced are children's programs *Atomic Betty* and *The Adventures of Dudley the Dragon*, the half-hour drama/comedy program *Less than Kind*, and documentary series *Little Miracles* and *King & Country*.

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.

Before we begin our presentation, we'd like to play a short video to give you a snapshot of what independent producers bring to Canadian broadcasting. Please roll the clip.

*** [CLIPS RUNS 1 MINUTE, 49 SECONDS] ***

The CFTPA recognizes the difficult choices the Commission must make in this proceeding. It's a balancing act of competing interests and differing interpretations of the *Broadcasting Act*. We believe that the Commission should be guided by what you, Mr. Chairman, have stated are the two overriding objectives of the Act – Canadian content and access to the system.

Canadian content is the cornerstone of the Canadian broadcasting system. And OTA television remains a crucial vehicle for the production and exhibition of quality Canadian content for Canadians. OTA television continues to attract mass audiences. Rumours of its demise are vastly overstated.

Broadcasters say the business model for over-the-air (OTA) television is broken. We disagree. It may be under strain locally, but it is not broken overall.

We are not blind to the fact that the OTA television sector faces challenges: audience fragmentation, on-demand technologies, and the digital transition.

The most immediate financial challenges broadcasters face are cyclical in nature. Advertising revenues are down because the economy is hurting. How much of their challenges are systemic? And how much are cyclical? The answer is not clear.

A big part of the problem is massive spending on foreign programming. Growth in foreign spending is outstripping growth in revenue by a wide margin. Last year alone, private OTA television broadcasters spent 7.4% more on foreign programming, while revenues decreased by 1.5%.

Some broadcasters say a solution is to do less Canadian priority 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 don't want to create a new status quo; a weakening of the framework the Commission has carefully built over the years – a framework that continues to serve Canadians well. Sandra.

SANDRA CUNNINGHAM

Why are independent producers important to the system?

First, independent producers 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.

Second, we come from all regions of Canada. And we ensure that Canadian programming reflects all of Canada.

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.

The current independent production rules are key. And they're modest. They're a mere 6 hours in prime time per week. That's 21%. 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."

As well, reducing or eliminating independent production obligations doesn't relieve OTA television challenges. Canwest acknowledged that last week. But it would devastate the production sector; it would erode diversity; it would limit programming choices for Canadians – all the while reducing the number of Canadian jobs. Tom.

TOM COX

Another issue for OTA television broadcasters is Canadian priority programming. Not all broadcasters want to reduce priority programming requirements. But all of them argue that priority programming is a burden. They say the existing approach does not provide them with enough flexibility. To us, that's an extraordinary assertion. It completely ignores the fact that priority programming rules were put in place to give them more flexibility.

Travel documentaries and in-house entertainment magazine programs count as priority programming. In fact, almost every Canadian program category can qualify as priority programming – except for news, information, and sports.

Think about that for a minute. It means that reality shows, magazine shows, documentaries, and drama of *any* quality or cost level can count as priority programming.

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 they have the added flexibility to average over the entire broadcast year. This is hardly a burden.

The CFTPA continues to believe in the need for higher levels of priority programming. We believe in a greater emphasis on drama. Remember, drama is the most popular genre. But, in light of the current challenges faced by broadcasters, we are not asking for more at this time. But we certainly don't think the Commission should reduce priority programming levels.

In return for continuing to acquire and simulcast U.S. programming, it's only reasonable to require minimal obligations to license and broadcast the same types of Canadian programming. Canadians have every right to expect and receive no less.

In fact, we wonder why we're even talking about the possibility of eliminating priority programming requirements. For the first time in years, U.S. broadcasters are licensing independent Canadian dramas. And they're airing, or will air them, in prime time. Canadian broadcasters are actually starting to get reverse simulcasts. The examples include:

- *Flashpoint*, the first Canadian drama series since *Due South* to air in network prime time both here and south of the border. It airs on CTV in Canada and CBS in the U.S.;
- *The Listener* will premiere in June on CTV and NBC;
- *The Bridge* will air on CTV and CBS; and
- *Copper* will be broadcast on Global and ABC.

Also, *The Guard*, *The Border*, and *Being Erica* are broadcast in Canada on Global and the CBC, and on smaller U.S. networks.

Each of these programs were developed and financed by independent producers.

Now is not the time to take a step backwards. Mark.

MARK BISHOP

Some of the broadcasters say Canadian priority programs are simply too costly. They say Canadian programs generally do not make them money.

We take a different view. Yes, Canadians will always want to watch U.S. programming. And yes it's important to keep the revenue and profits from top U.S. shows in Canada. But that doesn't mean Canadian programming can't succeed with Canadian audiences and generate profits. In fact, specialty television has shown us it can.

A study commissioned by the CFTPA along with its union and guild partners, which we released this morning, confirms that generally Canadian programming does not lose money. The study recognizes that broadcasters now pay minimal licence fees but receive unlimited plays on multiple channels and platforms. And that creates a revenue stream for up to 7 years, sometimes longer.

The CFTPA believes that both exhibition and expenditure requirements of some kind are necessary to ensure appropriate levels of support for Canadian priority programming. Market forces alone will not ensure that this key objective of the *Broadcasting Act* is met.

Spending on foreign programming is another key element in the equation. The Commission has proposed one way to address the imbalance between Canadian and foreign spending – a 1:1 spending ratio. It's one option and it's worth modeling.

Another approach is a combination of exhibition and expenditure requirements. We support a move to a corporate-group CPE. A CPE approach is a proven winning formula for Canadian content. It would provide broadcasters with additional flexibility, while bringing discipline to foreign spending. We look forward to filing concrete proposals about corporate-group CPE this summer that could help set the scope for the group-based licence renewals. Ira.

IRA LEVY

OTA television broadcasters are not the only ones facing significant economic challenges. Consolidation over the past number of years has tilted the balance of power. There are fewer doors to knock on and the large corporate broadcast and distribution groups now dictate terms to independent producers.

Broadcasters have told you about the delta between distributors and broadcasters, and the resulting imbalance of power. Well, that delta is even wider between broadcasters and producers.

Let's look at the state of the production industry for a moment. The 2009 industry profile reveals Canadian independent production volume of \$2.3 billion in 2007/2008. The CFTPA's best estimate is that 2008/2009 will end 15% down. If current trends continue, and the rules are allowed to be relaxed, 2009/2010 could see a further 25-30% drop. That would reduce production volume to levels not seen since the mid 1980s. That would be catastrophic for Canadian programming.

The relationship between broadcasters and independent producers should be one of partnership. But we need leverage to have a real partnership. We're asking the Commission to help us get it, just as the broadcasters asked for in negotiating with BDUs.

Equitable Terms of Trade is the tool to restore balance in the broadcaster-producer relationship. Mr. Chairman, as you have stated

several times, Terms of Trade agreements will provide the stability and clarity necessary to exploit content across all platforms.

Independent producers are the copyright owners. And we should be in control of how rights are exploited – either with broadcasters or in other ways. However, increasingly broadcasters are taking rights, without fair compensation.

We participated in 7 Terms of Trade negotiating sessions with the combined groups of CTVglobemedia, Canwest, and Rogers. We tried hard to negotiate specific terms; things you can measure. We wanted more than general principles. Why specific terms? Because if you can't measure it, it doesn't mean anything.

We asked for a “use it or lose it provision” for new media rights. The broadcasters said it was too specific. We asked for a revenue share on digital platforms. The broadcasters said that was too specific. We asked for a time limit on licence terms. Again, they said it was too specific. To us, these are completely reasonable and appropriate provisions. How can we find middle ground when the broadcasters refuse a real negotiation?

We need to break this impasse. We're asking that Commission staff either mediate our negotiations, or the Commission take such other action necessary to move this file along. To be clear, we are not asking the Commission to set rates; we're asking it to help define limits. Our mutual goal should be to have a deal completed long before the corporate group renewal hearing. Norm.

NORM BOLEN

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

All players in the Canadian broadcasting system require certainty and stability. We believe that keeping the current licence terms and conditions – with some flexibility and support for local programming – is reasonable for now.

Currently, there is a chill on development and production. There is significant uncertainty in the Canadian independent production sector. Any reduction in priority programming or independent production would turn the current chill into a deep freeze.

These are difficult times. But our focus has to be on solutions. We are optimistic about the ability of the Canadian broadcasting industry to adapt, to be successful. To achieve that success, Canadian broadcasting needs independent producers – our ideas, our creativity, our risk-taking, and our diversity.

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