

FILED ELECTRONICALLY

September 27th, 2011

Mr. Robert A. Morin
Secretary General,
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Re: 2011-525 Development of a regulatory framework for the French-language television market, licence renewals for Astral Media Inc., Quebecor Media Inc. and Serdy Media Inc., and review of certain conditions of licence for V Interactions Inc.

Dear Mr. Morin,

1. The DOCUMENTARY ORGANIZATION OF CANADA | L'ASSOCIATION DES DOCUMENTARISTES DU CANADA (DOC) would like to thank the Commission for the opportunity to provide these comments regarding the development of a regulatory framework for the French-language television market and the licence renewals of Astral Media Inc., Quebecor Media Inc., and Serdy Media Inc.
2. DOC is the collective voice of independent documentary filmmakers across Canada. DOC is a national non-profit arts service association representing over 800 directors, producers and craftspeople in the documentary community, from all provinces and regions of the country. DOC advocates on behalf of its members to foster an environment conducive to documentary production and strives to strengthen the sector within the broader film production industry.
3. Regarding this proceeding, DOC will limit its comments to the creation of a group-based framework for the French market and the licence renewals of Astral Media Inc. and Quebecor Media Inc.
4. DOC lends its conditional support to the licence renewals of Astral and Quebecor insofar as both companies are subject to a group-based framework designed specifically for the French broadcasting market. In our submission, we outline the requirements we deem necessary for such a framework, but in short, we believe the framework must balance flexibility with appropriate support for PNI and independent production and, specifically, documentaries.

Preliminary Note

5. The CRTC dedicated over 2 years to the creation of the English group-based licencing framework. Yet, for this proceeding, it has streamlined the discussion of the French market to a single proceeding bundled with the licence renewals of the two major French corporate groups. DOC understands that the Commission's

regulatory calendar is quite full, and that certain evaluations are overdue, but the swiftness of the proceeding is a cause for concern

6. Moreover, historical information about the performance of the corporate groups that was available during the proceedings related to the development of English framework isn't available for this proceeding. We recognize that Astral and Quebecor were never obliged by their conditions of licence to submit the same kinds of information as the English broadcasters, but without sufficient information relating to the performance of their services, we feel hampered in our ability to express an opinion on their performance.

The French Broadcasting Market

7. Research and ratings show that Francophones watch more Canadian content than Anglophones.¹ This is why broadcasters respond to this demand by commissioning Canadian content. The top 30 programs in the French market are all Canadian made. Almost all of them were broadcast on conventional television, and a large number of them are broadcast by TVA. As for specialty and pay services, the French market has a wide variety of channels serving different interests and niches. Unlike Canada's English private conventional stations which occasionally stray from their conditions of licence, it appears that the French private broadcasters are programming their stations according to the principles of the Broadcasting Act and with little regulatory intervention.
8. Similar to the English market, there is a great deal of media convergence and even higher levels of concentration of ownership in the French market. The English market has 4 private corporate groups that capture 76.3% of the total viewership of the market,² whereas in the French market, there are 3 private broadcasting corporate groups capturing over 60% of French television viewership.³ Astral and Quebecor own more than 50% of the television services. Société Radio Canada remains a major competitor to these corporate groups owning 19% of all services.
9. Given their great influence over the media environment, these corporate groups require regulation to ensure that the principles of the Broadcasting Act continue to be met, namely:
 - Make maximum use (predominant use) of Canadian creative resources⁴ (support for independent production);
 - Creating programming that appeals to a wide variety of audiences⁵ (supporting a diversity of programming);
 - That the content be Canadian⁶ (Canadian content regulations).
10. Certain applicants argue that specific regulations aimed at Canadian programming expenditure requirements and independent production quotas are superfluous

¹ DOC, *Getting Real* 4, pg. 51.

² CRTC, *Communications Monitoring Report 2011*, pg.65.

³ CRTC, *Communications Monitoring Report 2011*, pg.65.

⁴ Broadcasting Act, 3.f.

⁵ Broadcasting Act, 3.i.i.

⁶ Broadcasting Act, 3.d.ii-iii

given their past performance of supporting independent Canadian programs. But it is worth noting that it was not long ago that the French television schedules were overloaded with dubbed content from south of the border. Canadian content is popular with Francophone audiences now, but if tastes change, the barrier erected by language will not stop broadcasters from licencing dubbed non-Canadian content.

11. The applicants wish to be exempted from the PNI regime claiming that they already program the PNI genres out of a response to the market. That is to lose sight of the PNI's overarching principle that trumps simple market demands and that commits to the creation of certain programming as primary vehicles to represent Canadian stories to Canadians.
12. Given their reach and practical monopoly of the airwaves, the French market private broadcasters have an additional obligation to serve the interests of their audiences. The Commission must not lighten the regulatory load of the largest corporate groups, but instead, it must adapt the English group-based system to suit the specifics of the French market. Indeed, in the interests of maintaining the symmetry of the general regulatory process in Canada, and the regulatory mechanisms, the French market should not be denied the benefits of a group-licence system.

A French Corporate Group Regulatory Framework

13. DOC supports the structure of the English television group-based regulatory framework for its application in the English market. In the French market, this framework requires modifications to suit the market's particularities. Overall, the fundamental principles and mechanisms of the framework should remain intact, such as:
 - Canadian programming expenditures;
 - Canadian programming exhibition requirements;
 - The Programs of National Interest framework;
 - Independent production requirements;
 - Restrictions for transferring CPE across the corporate group (from conventional to specialty);
 - Maintaining conditions of licence that support independent production on specialty services;
 - Exclusion of news and sports services;
 - Inclusion of Category B channels when their subscription rates reach a certain threshold;
 - And a 5 year licence term instead of a 7 year one.

CPE and PNI

14. French broadcasters spend more on Canadian programming because of market demand which is why a higher CPE % should be set than that of their English counterparts. The same follows for their PNI allocation. Because of the absence of historical financial information regarding each of the corporate groups' Canadian programming expenditures over their previous licence terms, it is difficult for DOC

to calculate appropriate rates for the French broadcasters based on their previous performance.

15. The Commission is in possession of this confidential information, and consequently, it can review the past performance against the future promises of the broadcasters. When the Commission establishes a base rate for the CPE and PNI for these services, DOC recommends that it consider the past performance against what the services should be contributing given their market dominance and profitability. A suitable floor would appear to be a 15% PNI allocation and a 40% CPE for the French market.

Category B Thresholds

16. Another aspect of the group-based system requiring modification is the threshold for inclusion in the group-based framework. In the English framework, a category B service must exceed 1 million subscribers to qualify as a service of the framework. The French market has a lower population than the English one, and consequently, reaching 1 million subscribers would not be an appropriate threshold. DOC recommends that the threshold be reduced to 500,000 subscribers for category B services in the French market.

Dual-Language and Bilingual Corporate Groups

17. Astral and Quebecor's corporate groups contain both English and French services, which creates a possible issue for group licencing. These services could transfer their Canadian programming expenditures from its English services to its more profitable French services resulting in a diminished number of Canadian English programs. This issue can be prevented by maintaining the specific programming requirements of the English services, namely independent expenditure requirements for the individual services. Preserving the status quo on these services would reduce the possibility of linguistic CPE migration. DOC recommends that the Commission maintain the independent production and Canadian content production requirements on the services of corporate group to prevent any market turbulence.

Regional Production

18. Whether they are located outside of Montreal or beyond the province of Quebec, French market corporate groups fail to represent the issues and voices of Francophones from the regions. The group system may result in further entrenchment of this practice. The Commission should institute regional programming commitments for the French market corporate groups; otherwise programming from BC dubbed into English will continue to be considered regional. Any conditions of licence that benefit regional programming in the corporate groups must be maintained.

Documentaries in the French market

19. Over the last 4 years, the viewership of documentaries in the Quebec francophone market has increased by 33%, from 9.3 million hours viewed to 12.4 million hours viewed.⁷ The surge in viewership is attributable to specialty services whose

⁷ CRTC, Communications Monitoring Report 2011, pg.61.

viewership grew from 7.6 million hours of documentaries viewed to 10.4 million hours.⁸ Despite the near absence of documentaries on private conventional stations,⁹ documentary viewership grew from 0.6 million hours viewed to 1.1 million hours.¹⁰ Some private conventional stations miscategorize their reality television as documentaries, and thus, the growth on private conventional is questionable.¹¹ These trends show a growing appetite for documentaries on French television.

20. French audiences prefer Canadian documentaries over non-Canadian ones; in 2009-10, 80% of all documentaries viewed in the French market are Canadian.¹² Between 2006 and 2010, Canadian documentary viewership also grew. French audiences viewed 6 million hours of Canadian documentaries in 2009-10,¹³ an increase of 20% from 2006-07. Most of the growth is attributable to growing viewership on specialty services where Canadian documentary viewership grew from 3.8 million hours of documentaries viewed to 4.5 million hours.¹⁴
21. As the number of French specialty services increase, they are choosing documentary content to fill their schedules. Since 2007-08, French documentary production is rising. Unfortunately, in the race to find inexpensive programming, French broadcasters pay smaller licence fees, and budgets are shrinking. Over the last 10 years (1999-2009), the median licence fee for a French documentary one-off program has dropped from \$75,000 to \$60,000. For documentary series, the median licence fee remains below \$45,000 per hour.
22. The inevitable result of low licence fee contributions is smaller budgets. This downward trend is forcing producers to undertake underfunded projects or face the choice of not working at all. CTF/CMF funding, producer tax credits, and public funds are picking up the slack for decreasing private broadcaster licence fees. Since 1998-99, the average budgets of both documentary one-offs and series dropped 40% and 20%, respectively.¹⁵ In 2008-09, the average budget of a French one-off was \$265,000. The per-hour documentary budget for a series was \$127,000.¹⁶
23. The Commission should intervene to prevent any further harm to the independent documentary sector. This race to the bottom may be profitable for the broadcasters, but it is unsustainable for the French documentary producers. Expenditure requirements tied to the revenues of the broadcasters ensures a constant level of Canadian programming. Dedicating a portion of the PNI allocation may not result in higher licence fees, but it would at least provide some

⁸ Ibid. pg. 64

⁹ TVA reported broadcasting 5 hours of documentaries in 2009-10.

¹⁰ CRTC, Communications Monitoring Report 2011, pg.63.

¹¹ TVA has misapplied the definition of documentary to *Star Academie*.

¹² DOC, *Getting Real 4*, pg. 51

¹³ CRTC, Communications Monitoring Report 2011, pg.61.

¹⁴ CRTC, Communications Monitoring Report 2011, pg.64.

¹⁵ DOC, *Getting Real 4*, pp 36-37

¹⁶ DOC, *Getting Real 4*, pp 36-37

measure of stability. DOC proposes that within the PNI allocation, a sub-allocation of 30% of the PNI expenditures be dedicated to documentaries.

Genre Protection

24. Similar to their English counterparts, broadcasters are not living up to the mandates for which they were granted a licence. They rebrand their stations without approval, and fill genre-specific services with non-Canadian dramatic programming.
25. A perfect example of a service that is operating outside of its programming mandate is Historia. Historia's mandate allows them to broadcast films and dramatic films series portraying "great achievements and milestones in history, broadcasts recreating the lives of major players and figures in history." One could creatively argue that *Xéna la Guérrière*; and *Dr. Quinn, Femme Médecin*, incorporate historical figures into their dramatic recreations, but these programs hardly constitute direct recreations of the lives of major players or figures in history. *NCIS* and *JAG* are also dramatic programs that require very creative arguments to justify their presence on a service devoted to history.
26. Genre-protection is a regulatory benefit that allows for services to exist without competition from similar services. The French market has so few players in the specialty market that the threat of competition is non-existent. Nevertheless, these services are protected, given priority carriage, and act like generalist services. Such actions question the effectiveness of the Commission's conditions of licence attributable to these services. The Commission must review and enforce genre protection in the French market.

Terms of Trade

27. DOC supports the ongoing negotiations between the APFTQ and broadcasters regarding the creation of Terms of Trade for the French market. A terms of trade agreement creates baselines for equitable contracts between broadcasters and independent producers. We appreciate the Commission's continued support for the negotiation of terms of trade in the Canadian broadcasting sector.

Reporting

28. Much of the required data needed to assess the performance of the applicants was unavailable because of the lack of reporting requirements. In order to maintain regulatory symmetry between the two linguistic markets for the Commission, DOC recommends that the reporting requirements established in the English group licence renewals be universally applied to all broadcasters in a group licence proceeding.
29. Furthermore, past examples of erroneous reporting calls into question whether some of the services' projections are correct. DOC is still baffled as to how *Star Académie* could be reported as a long form documentary. In order for this proceeding to have equal transparency and accountability, DOC requests that the Commission request the applicants ensure the accuracy of their financial

statements related to documentary production. It is better to request corrections now than during the proceeding.

Conclusion

30. The 2010-167 TV regulations create a good framework to support under-represented programming while providing the necessary flexibility for broadcasters. Its fundamental principles and primary mechanisms should be extended to regulate the French Market, but altered to suit its particularities. Furthermore, in order to maintain program diversity, and high quality programming, the Commission should consider instituting a documentary PNI.
31. DOC would like to thank the Commission for this opportunity to comment on these applications. The renewal of these licences sets the stage for 5 years of television programming for the French market. We trust the Commission will consider our positions when evaluating the qualifying broadcaster's applications.

Sincerely,



Katie McKenna
Chair

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