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Mr. Robert A. Morin
Secretary General,
Canadian Radio-television and
Telecommunications Commission
Terrasses de la Chaudière
1 Promenade du Portage
Gatineau, Quebec J0X 4B1

Dear Mr. Morin,

Re: BPN 2009-113 - Licence Renewals for Private Conventional Television Stations

Introduction

1. The DOCUMENTARY ORGANIZATION OF CANADA | l'association des DOCUMENTARISTES DU CANADA (DOC) is the collective voice of independent documentary filmmakers across Canada. DOC is a national non-profit arts service association representing over 850 directors, producers and craftspeople in the documentary community, from all provinces and regions of our nation. 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.

2. DOC represents Canadian small business owners working in a priority programming genre that has been woefully under-represented and under-financed in the private conventional broadcasting sector, as demonstrated in the following pages.

3. DOC has examined the submissions by the conventional broadcasters. Because many of the broadcasters have suggested similar proposals, we have separated our submission in two parts. The first responding to those positions which have been declared by several broadcasters, and the second responding to the specific submissions, broken down by broadcaster.

4. It has been exceedingly difficult in the course of our research, to ascertain the specific financial data on broadcaster expenditures on documentary production. Consequently, we would like to petition the

commission to consider providing details of financial expenditures on long-form documentaries (Category 2b). Currently they are aggregated with all Category 2,3,4 and 5 programming. Because no details on Category 2b are provided, we can only assume the levels of expenditure on independently produced long-form documentaries by inferring from CTF envelope figures.

DOC's Overall Policy Views

5. DOC is not unsympathetic to the difficulties experienced by the conventional side of the broadcasting sector. We understand that in the current economic climate the advertising revenues have shrunk significantly, and we are concerned about the effect that has had both on employment and local station viability. Our members have felt the effects as there has been a chill on new commissions. Despite the gloom, DOC would like to stress our belief that this economic downturn is temporary. We would urge the commission to carefully consider and weigh any measures currently proposed by the broadcasters and not to make decisions based on short-term economic pain, as they have the potential to dramatically impact the entire sector for years to come. The economy will recover, as will the advertising market, and subsequently the profits of the conventional broadcasters.

6. In light of the proposals in the broadcaster submissions, combined with the recent announcement regarding the CMF, DOC is concerned about the future of independent production. Compared to specialty, the conventional broadcasters already commission a very low percentage of independently produced programming in comparison to their other programming expenditures. See Appendix A - Table 1.

7. In addition, the consolidation of ownership and increasing demands for greater rights (and longer periods) has led to the virtual disappearance of second-window licence fees which independent producers have depended on either as revenue or more often as part of their production financing scenario. In previous years, a producer may have been able to get a second window licence on specialty channels for their shows. Now, the broadcasters (having consolidated ownership) are paying a smaller licence fee and demanding rights for all platforms (conventional, specialty, VOD, PPV) that form the part of their corporate group. They are also demanding rights for a wider territory and longer periods making it difficult for producers to monetize the production in other markets.

8. Broadcasters have also consistently demanded that producers contribute the maximum amount of their provincial and federal tax

credits towards the production of the commissioned programs. In certain cases this demand has equaled 100% of tax credits available to the production. When tax credits were introduced, their express purpose was to ensure that production companies were able to survive between projects and invest in future productions, but now the majority of those funds are devoted solely to production financing.

9. The broadcasters have suggested that the main reason for their financial situation is the regulatory burden they face in the form of Canadian content and local programming requirements. Considering the percentage of revenues Canadian content expenditures represent, (see Appendix A), DOC does not find this to be a compelling argument and we oppose any suggestion that Canadian content should be eliminated or significantly decreased.

10. However, we find strong merit in the proposals for re-examination of a fee-for-carriage regime. We find that broadcasters should be fairly compensated by the BDU's for the carriage of distant signals. However, should such a regime be implemented, DOC strongly suggests that it should also be accompanied by specific conditions:
    i. Broadcasters should not be permitted to lower their Cancon obligations;
    ii. Any proposed fee-for-carriage regime MUST also include the national public broadcaster and the educational broadcasters;
    iii. A set percentage of fee-for carriage revenues would have to be spent on Canadian Content Priority Programming (DOC suggests 45-55%);
    iv. Of the fee-for-carriage revenues allotted for Canadian Programming, a minimum set percentage would have to be spent on independent production (DOC suggests 60%).

Disappearance of Documentary Programming

11. DOC is particularly concerned about the steady decline of documentary programming on the private conventional networks, for the following reasons:
    i. The spending by the private networks on documentary programming is staggeringly low. For example, independently produced Category 2-5 programming (of which documentary is only a portion) represents only 2% of Canadian Content spending by CTV (Canada's largest private broadcaster). The actual spending on documentaries would therefore be an even lower fraction of those expenditures.
    ii. Most private networks have unofficially frozen commissioning of independent documentaries until the next fiscal year.

Considering that some have (like CTV) largely dissolved their documentary commissioning departments, it is unclear whether new independent documentary programming will return to conventional television.

iii. Some broadcasters have proposed no spending whatsoever on long-form documentaries (category 2b). One such example is OMNI, which has been a strong supporter of independent documentaries in the past. Their current financial projection allocated $0 on Category 2b for the next seven years – in spite of the current commitments by CTF and the announced Canadian Media Fund to third-language programming.

12. DOC finds it disheartening that in spite of the fact that long-form documentaries are classified a part of priority programming, licence fees for documentaries on the private networks have decreased.

Independent Production and Control of Rights

13. DOC strongly opposes the suggestion brought forward by several broadcasters that expenditures on independent production are hampering their ability to stay profitable. As provided in Appendix A, the broadcaster expenditures on independently produced Canadian content represent a small fraction of their overall Canadian content expenditures and an even tinier fraction of their revenues.

14. DOC opposes the proposal introduced by the broadcasters that they need to control all the rights to keep them profitable or that regulation is somehow hampering them in being able to control those rights. This is simply not true.

15. The Broadcasters pay a fraction of the costs of program production. In exchange ror their contribution, the broadcasters receive the right to broadcast the program for a limited term.

16. The majority of the financing dollars (this is particularly true in the case of documentaries) come from international licence fees and public funds such as the CTF, tax credits, NFB and Telefilm.

17. None of the broadcasters have provided any specific financial numbers demonstrating that the lack of total rights ownership has denied them a potential lucrative market. Without specific figures, their argument remains at the level of conjecture.

18. Considering that broadcasters only contribute a small fraction of the budget required to produce a successful show, DOC sees no rationale

in the broadcasters demand to control all of the rights – and strongly opposes any such demand.

Priority Programming

19. While proposing the elimination of priority programming, some of the broadcasters (see Rogers Citytv application) have simultaneously suggested that neither the CRTC nor independent production community should be concerned – because tangible benefit funds are in place that would somehow *stand-in* for those requirements. DOC finds such proposals extremely dangerous, not only to independent production but to Canadian content in general.

20. As an example, CTV has effectively shut down its commissioning of independent docs as their tangible benefits expire. In their application pertaining to OMNI channels, Rogers have clearly stated that they do not intend to invest in independently produced priority programming once their benefits packages run out.

21. If no priority programming requirements are in place, it is clear that broadcasters will not invest in them, and DOC opposes all the proposals by the broadcasters to abolish priority programming requirements.

Terms of Trade

22. DOC has been involved in developing Terms of Trade. We have extensively consulted with the CFTPA and have materially contributed to the process. We support the Terms of Trade document presented by the CFTPA to the Commission.

23. DOC opposes the notions put forward by the broadcasters that the Terms of Trade should be a "Best Practice" document because:
    i. Such a document would be broad and non-specific;
    ii. It would not have enforcement powers;
    iii. It would ultimately leave all the negotiation power in the hands of the broadcasters.

24. DOC rejects the notion by the broadcasters that the CFTPA document is an attempt at a "Master Licence Agreement" that "would set prices [...] for the licensing of independent production projects". DOC is of the view that the Terms of Trade document presented by the CFTPA is fair and balanced and outlines the basic, minimum points in negotiating a licence agreement. DOC would like to point out that a different but similar Terms of Trade agreement exists in the UK and has been

successful, both for the broadcasters and the independent producers, precisely because it is both specific and enforceable as well as sufficiently flexible.

RESPONSE TO SPECIFIC BROADCASTER APPLICATIONS

Canwest

25. Brief financial overview:
    i. Total expenditure (in-house, affiliated and independent) on Canadian programming represents 26.55% of total revenues.
    ii. Total expenditure on independently produced programming represents 4.06% of total revenue.
    iii. Total expenditure on independently produced Category 2-5 represents less than 0.99% percent of total revenue of which documentaries are only a fraction of this amount.
    iv. Total expenditure on independently produced Category 2-5 represents 3.74% percent of spending on Canadian content of which documentaries are only a fraction of this amount.

26. We are particularly concerned about the decrease in documentary spending as evidenced by:
    i. Spending on Independent Category 2-5 represents less then 1% of revenues for 2008 and less than 4% of spending on Canadian content. Documentaries represent only a fraction of that figure.
    ii. The spending on independent Cancon documentaries has decreased over the last four years, while spending on other genres has increased as evidenced by CTF figures. Canwest conventional total CTF envelope has increased by 27% since 2006/07, while indy doc spending has dropped by 24% in the same period (see table below).

	Total CTF Envelope	Drama	Documentary
2006/07	$7,996,898	$5,230,671	$1,256,326
2007/08	$8,205,356	$5,264,880	$1,166,626
2008/09	$9,654,397	$6,757,413	$1,218,005
2009/10	$10,135,842	$7,504,009	$955,604

Table 1. Canwest conventional CTF envelope and allocation to Drama and Documentary Genres

iii. Canwest has stated that: “conventional television has two (2) highly unprofitable businesses: Canadian drama; and local news/programming. Our view is that we can no longer live with that paradigm.” DOC believes that, considering the above figures, the Canwest statement raises an important question: If that is the case, why has Global consistently increased their expenditures on drama while lowering their expenditures on documentary programming?

27. DOC opposes the Canwest proposal for a drastic reduction of local programming obligations down to 10hrs per broadcast week.

28. DOC opposes the Canwest proposal to completely eliminate priority programming.

29. DOC opposes the notion that Cancon spending is the reason for lower profits, as Cancon spending represents a meagre 26.55% of the total revenue of Canwest global.

30. The Canwest proposal for 50% of all Canadian programs other than news, sports and current affairs to be produced by independent producers is irrelevant without a corresponding commitment to priority Canadian programming. Coupled with the proposal to reduce Canadian content levels and elimiate priority programming, this proposal raises the question: What is 50% of zero?

31. DOC finds some merit in the Canwest proposal for non-simultaneous substitution/deletion, but urges that the additional ad revenues collected from non-simultaneous substitution/deletion should be apportioned in the same way as fee-for-carriage revenues noted previously. Specifically:
    i. A set percentage of the non-simultaneous revenues would have to be spent on Canadian Content Priority Programming (DOC suggests 45-55%);
    ii. Of the non-simultaneous revenues allotted for Canadian Programming, a minimum set percentage would have to be spent on independent production (DOC suggests 60%).

32. DOC strongly opposes the proposal by Canwest that CBC should be disallowed from soliciting and airing commercial messages. Such a drastic reduction in CBC’s revenues would lead to a collapse of the national public broadcaster.

33. If the CRTC would ever ponder such a step it would only be possible if the lost ad revenue were replaced by additional government funds which would correspond 1:1 to the lost ad revenue.

Rogers Citytv and OMNI

34. Brief financial overview:
    i. total expenditure on Canadian programming represents 26.84% of total revenue.
    ii. Total expenditure on independently produced programming represents 1.63% of total revenue.
    iii. Total expenditure on independently produced Category 2-5 represents 0.07% percent of total revenue of which documentaries are only a fraction of this amount.
    iv. Total expenditure on independently produced Categoy 2-5 represents 0.28% percent of spending on Cancon of which documentaries are only a fraction of this amount.

35. DOC opposes Rogers' proposal for complete removal of priority programming requirements.

36. DOC opposes Rogers' proposal for removal of set independent production requirements.

37. Rogers states that there are "already sufficient safeguards in place to ensure the continued health of the independent production sector", and cites CTF and Rogers Telefund as examples. Rogers' proposal to remove requirements for "set percentage of programming to be derived from independent producers" would have catastrophic results on the independent production sector for the following reasons:
    i. Without set spending requirements, broadcasters will drastically reduce their licensing of independently produced programs. Both CTF and Rogers Telefund require a broadcast licence to be in place in order to access the fund. Whether the funds exist would be irrelevant to independent producers if the broadcasters are not obligated to acquire original independent Canadian programming.
    ii. The government recently announced that the CTF and CNMF would be restructured and re-branded into the Canada Media Fund (CMF). The new fund would also be open to broadcaster in-house productions. If there are no requirements in place for broadcasters to acquire independent programming, the broadcasters could effectively shut out independent producers from the CMF.
    iii. The removal of independently produced programming expenditure is particularly unacceptable given the already dismally low spending percentage by Rogers conventional stations.

38. DOC rejects Rogers' offer of tangible benefits as a consolation.

    i. "RBL wishes to make clear, however, that the absence of formal requirements to air priority programming does not mean that Citytv will no longer invest or broadcast Canadian programs from these categories. We intend to uphold the terms and conditions of our tangible benefits funding the majority of which is dedicated to on-screen initiatives in support of priority programming. We also note that 85% of this benefits package is reserved exclusively for the independent production sector.

39. While the Rogers/Citytv benefits package will be a great source of funding for independent production, this funding is limited in scope and duration. The broadcasters should not be allowed to skirt their obligations by referring to benefits packages – precisely because those packages expire. Once those benefits packages are expended the broadcasters will revert to spending minimum amounts, or in some cases. nothing on Canadian programming. An example of this can be found in the OMNI proposal, which clearly states that there is no intention for further spending on Canadian programming once their benefits package is expended. Though OMNI has commissioned a significant number of independent documentaries, their financial forecast for the next seven years proposes $0 (zero) spending on Category 2b (Long-format documentary).

CTV

40. Brief financial overview:

    i. total expenditure (in-house, affiliated and independent) on Canadian programming represents 25.49% of total revenues.
    ii. Total expenditure on independently produced programming represents 7.21% of total revenue.
    iii. Total expenditure on independently produced Category 2-5 represents 0.52% percent of total revenue of which documentaries are only a fraction of this amount.
    iv. Total expenditure on independently produced Category 2-5 represents 2.03% percent of spending on Cancon of which Documentaries are only a fraction of this amount.

41. DOC rejects the CTV proposal that infrastructure and overhead costs should be factored into calculating conventional broadcasters investment in Canadian programming.

42. CTV uses the example of US broadcasters as a best-practice model, but DOC would like to point out that the US model is not the only successful broadcast model.

43. CTV argues that US broadcasters are successful because they are able to own their rights and unhampered by regulations to broadcast domestic programming – but CTV fails to mention that foreign programming is virtually non-existent on the US Networks (unlike the Canadian Networks) and that Canadian broadcasters are not prohibited from owning rights to their programs. On the contrary, the reason why Canadian broadcasters don't own all of their programming is because they don't pay the full price of production on the independently produced programs – they pay for a fraction of the cost by purchasing a licence to broadcast those programs.

44. DOC opposes CTV's proposal for reduction of Canadian Content requirements and independent production requirements, particularly in light of the low spending by CTV on independent Canadian content in general and documentaries in particular, as evidenced by figures provided above and in Appendix A.

45. CTV identifies fee-for-carriage as one of the reasons for difference between the profitability of specialty channels and the losses of conventional television. DOC sees some merit in this argument and, as previously stated, supports the introduction of a fee-for-carriage regime, provided certain requirements are met.

46. However, CTV goes on to claim that specialty channels also prosper because they have:
    i. more realistic conditions of licence;
    ii. mandatory carriage provisions for most services regardless of whether carried on cable or DTH;
    iii. shelter from foreign competition.

47. DOC finds CTV's position rather unclear. Those specialty channels that are protected from competition and have mandatory carriage provisions not only have more stringent expenditure requirements compared to CTV, but also contribute much more significantly to independent production (see Appendix A).

48. For example, while CTV contributes only 25.49% of their revenues to Canadian content programming in 2007/2008, Discovery (a CTVgm specialty channel) contributed 42.17% of their revenues to Canadian content. While CTV contributed only 7.21% of their revenues to independent production, Discovery contributed 21.44%.

49. DOC would like to assume that by requesting fee for carriage and changes to their licence that would be closer to that of specialty channels, CTV is also suggesting that they would increase their expenditures on Canadian programming in general and independent production in particular. However, DOC is concerned that CTV would like to have the protection of analog specialty channels, while having the programming requirements of Category 2 channels – with no requirements for local programming.

CONCLUSION

50. DOC would like to once again caution the commission that any decisions made in order to resolve this short-term financial crisis will have a lasting impact on the Canadian broadcasting landscape and could have either a positive or a catastrophic impact on the independent production sector.

51. Given the importance of these issues, DOC respectfully requests to appear at the licence renewal hearings in April.

Thank you very much for the opportunity to submit our position on this matter.

Tina Hahn, Co-chair

John Christou, Co-chair

Cc Charlotte Bell, Senior Vice-President, Regulatory Affairs, Canwest Media
Kevin Goldstein, Vice-President, Regulatory Affairs, CTVglobemedia Inc.
Suzanne Guy, Analyst and Project Coordinator/Regulatory Affairs, TVA
Robert Parent, Vice-président exécutif, Télévision, RNC MEDIA INC.
Marc Simard, Président et chef de la direction, Télé Inter-Rives ltée
Susanne Wheeler, Vice-President, Regulatory Affairs, Rogers Media

APPENDIX A

Comparison of Canadian Content and independent production expenditures between conventional networks and specialty programming services

Table 1. Canadian specialty channel Canadian content and independent production expenditures.

Specialty Channel	Owner	Exhibition of Canadian Programs		Cancon Expenditure as % of previous year's revenues (2007 actual)	Acquisition of Canadian rights as a percentage of revenue in 2007	Acquisition of Canadian rights as a percentage of Cancon expenditure in 2007
		Broadcast Day	Evening period			
Discovery	CTVgm	60%	50%	45% (42.17%)	21.44%	50.85%
Mystery	Quebecor	60%	60%	43% (27.28%)	27.28%	100%
Showcase	Canwest	60%	60%	42% (34.72%)	30.85%	88.86%
Sportsnet	Rogers	60%	50%	54% (54.50%)	29.72%	54%

Table 2. Canadian conventional networks Canadian content and independent production expenditures.

Broadcaster	Cancon Expenditure as % of year's revenues Actual 07/08	Acquisition of Canadian rights as a percentage of revenue Actual 07/08	Acquisition of Canadian rights as a percentage of Cancon expenditure Actual 07/08
CTV	25.49%	7.21%	28.32%
Canwest Global	26.55%	4.06%	15.30%
Rogers (City and OMNI)	26.84%	1.63%	6.06%
TVA	41.90%	11.49%	27.42%

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