

Terms of Trade

April 25, 2008

OVERVIEW

1. What **NOT** to expect from Terms of Trade Negotiations
2. Overview of Terms of Trade in the U.K.
3. Effects of Terms of Trade on U.K. production
4. What to expect from Terms of Trade negotiations
5. Importance of Terms of Trade to the Canadian Film and Television Industry

WHAT NOT TO EXPECT

- “It is not the job of the CRTC to get involved in the contractual arrangements among the various players in the industry. We have **no intention of setting rates or arbitrating prices** between producers and broadcasters. Our role is to foster an environment within which the parties themselves can resolve the issues between them.
- *Konrad von Finckenstein - Feb 21, 2008, Prime Time in Ottawa*

TERMS OF TRADE IN THE U.K. - pt. 1

- Independent producers own all rights including copyright in the program they produce.
- Broadcasters licence the program for a period of 5 years. Broadcaster can extend for further 2 years on payment of 4% of the licence fee.
- Broadcasters will pay production companies repeat fees for uses of programming during licence period not covered by the initial licence. Producers of regional programs transmitted on the network receive enhanced payment.
- Independent producers control all distribution, including international rights, format rights, commercial new media rights, video and DVD rights and merchandising - subject to certain protections required to protect the broadcast licence
- Broadcaster has the right to use clips of the programme for Public service uses, but not to enable them to create new compilations or 'Best of' programmes
- Broadcaster gets (included in Licence Fee) exclusive Free VOD for 7 days before and after first transmission including **floating window** and **series stacking**

TERMS OF TRADE IN THE U.K. - pt. 2

- Floating window:
 - After user has downloaded the Programme, they are allowed to keep the program on their hardware for until they access it (or a maximum of 13 weeks from the download, whichever comes first).
 - After accessing, the user has 7 days to view the programme/episode after which it expires
- Series Stacking:
 - the rights in each episode of the programme extend to 7 days after the last linear transmission of the final episode of the Programme
 - the stack is capped at a total of 13 weeks of programming available at any one time
 - floating window applies to series stacks
 - stacking does not apply to repeats

TERMS OF TRADE IN THE U.K. - pt. 3

- Exclusivity:
 - Broadcasters will release back to the producer 6 months after first broadcast (for one-offs and limited series).
 - Longer periods for digital channels (e.g. BBC 3, BBC 4) including co-commissioned programmes.
 - Comedy - 2 yrs
 - Drama - 18 months
 - Entertainment - 1yr
 - Leisure/Lifestyle - 1yr
 - Specialist/Arts - 2yrs
 - General Factual - 18 months
 - 5 years for Children's programming across all channels

TERMS OF TRADE IN THE U.K. - pt. 4

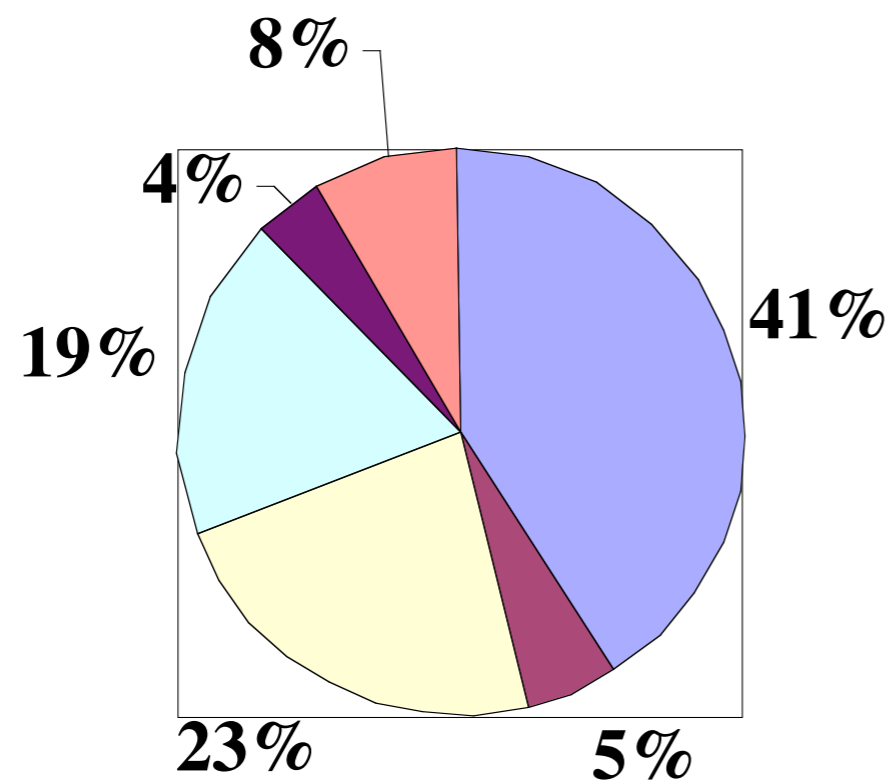
- Broadcasters are entitled to a share in the net profit from exploitation of all rights in the programming
 - Linear TV sales:
 - For sales in the UK during licence period - 75/25 in favour of the producer
 - For subsequent sales - 85/15 in favour of the producer
 - Video on Demand:
 - For sales in the UK during licence period - 75/25 in favour of the producer
 - For subsequent sales - 85/15 in favour of the producer
 - Download to Own:
 - 85/15 in favour of the producer
 - can be exploited 8 days after 1st broadcast

EFFECTS OF TERMS OF TRADE IN THE U.K. - pt. 1

- Increase in revenues to the independent sector:
 - 2005 - £1.6 billion (before Terms of Trade)
 - 2006 - £1.95 billion
 - 2007 - over £2 billion
 - Total increase of 26.6% in real terms over 3 years (34% nominal)

EFFECTS OF TERMS OF TRADE IN THE U.K. - pt. 2

Revenue growth by type 2005-2007



EFFECTS OF TERMS OF TRADE IN THE U.K. - pt. 3

- Innovation:
 - Independent production companies are starting to launch their own VOD platforms
- Investment:
 - independent producers have used the ability to exploit rights to attract additional investment for production
 - the effect has been greatest on small (less than £1m revenues) and medium sized (£1-5m) production companies
- Exports:
 - the ability to exploit rights has lead to an increase in international rights sales

WHAT TO EXPECT FROM TERMS OF TRADE

- CFTPA will be representing all producers
- CFTPA, DOC, ACTRA, WGC, DGC are part of a working group preparing for the terms of trade negotiations
- Bargaining will likely touch upon the same issues present in U.K. terms of trade:
 - licence length
 - exclusivity
 - new media and VOD rights
 - revenue sharing
- CRTC will arbitrate if at the very minimum a draft Terms of Trade agreement hasn't been agreed upon by the time of licence renewal

WHY ARE TERMS OF TRADE IMPORTANT

- Terms of trade agreements are going to become part of the landscape in the Canadian broadcasting industry. They will bring to the negotiation process not only **clarity and stability**, but also some degree of **predictability** – a principle which we consider particularly important in such a volatile industry. Why our emphasis on terms of trade? We feel they are a meaningful addition to the industry and will **create an efficient, balanced and productive relationship between producers and broadcasters**. This will be good for everybody.
- Konrad von Finckenstein - Feb 21, 2008, Prime Time in Ottawa