

***Review of certain aspects of the
Regulatory framework for over-the-air television***

**Broadcasting Notice of Public Hearing CRTC 2006-5:
16 interests?**

Oral remarks by the
Canadian Conference of the Arts
Présentation orale de la Conférence canadienne des arts

December 1 décembre 2006

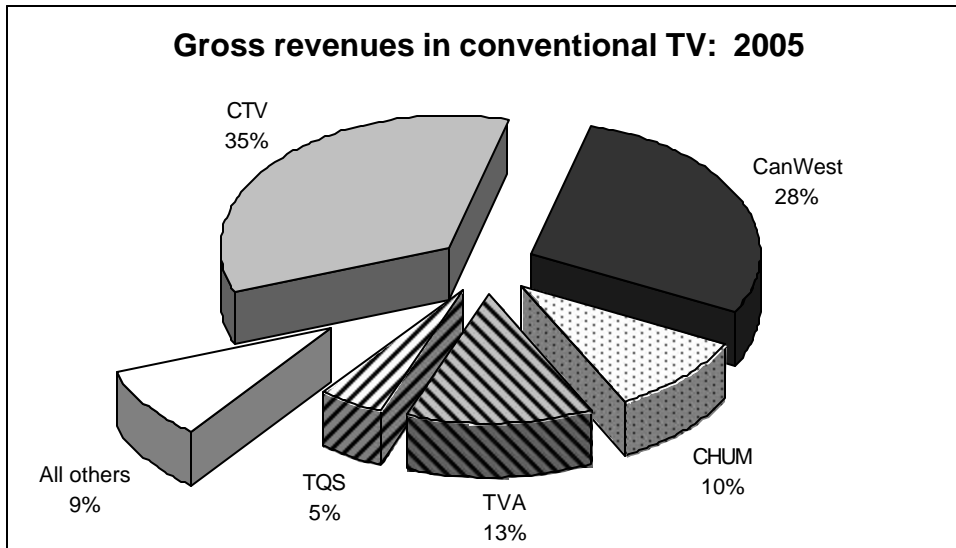
Alain Pineau, Directeur général/National Director

- 1 Merci M. le Président. Je m'appelle Alain Pineau, et je suis le directeur général de la Conférence canadienne des arts. With me today is our legal counsel, Monica Auer. The CCA is Canada's largest cultural policy development organization. We are preoccupied with the interests of Canadian artists, creators and arts professionals in every discipline and, more generally, with the cultural interests of all Canadians.

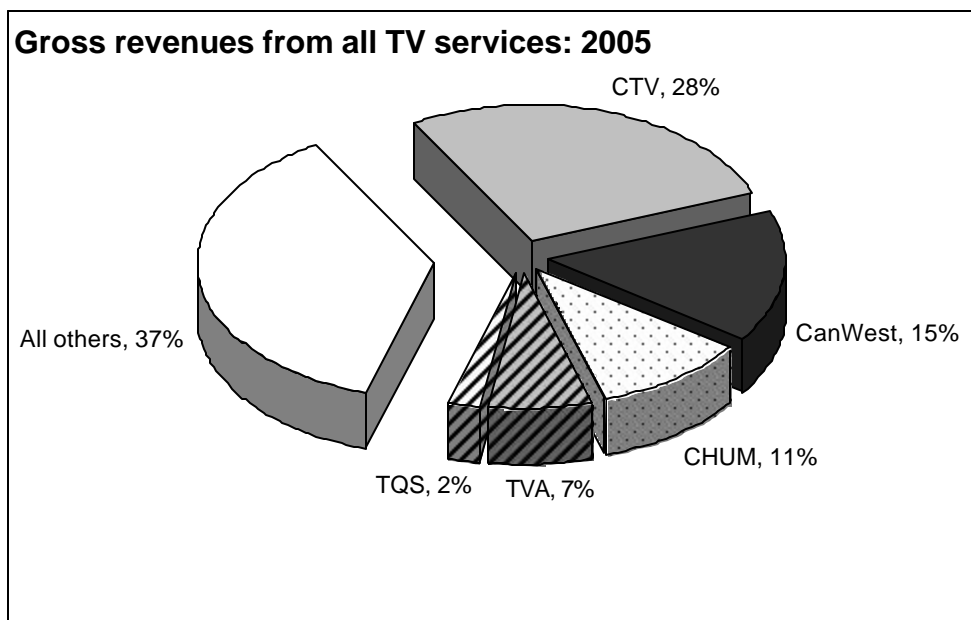
The CCA's written submission

- 2 Our written submission focussed primarily on Canadian drama, local programming and the proposed fee for carriage. Our main focus today will be on the latter and on the fundamental issue of adequate financing for Canadian content on our television sets, which is certainly the most broadly consumed expression of our culture. We will file with you a supplementary brief by December 20th where we will refute some things heard here during the week and expand as much as possible on the ideas I am going to talk about today.

- 3 This hearing is crucial for anybody who, like the CCA, worries about the production and the distribution of Canadian programming outside of news and information, and particularly with the production of Canadian dramatic programming. To quote from Minister Oda's speech to the CAB convention a few weeks ago, "There wouldn't be "carriage" if there wasn't something to be said, seen or heard—in other words "content"". Whether it's through a telephone, cable or satellite company, or a TV or radio station, what matters is that there is Canadian content, regardless of how *it is created* or by whom it is conveyed."
- 4 I cannot think of any better way of saying it! This hearing is not about how to best ensure the profitability of broadcasters or of BDUs: it is about ensuring that we finally lay our hands on the Holy Grail of CanCon.
- 5 Notre mémoire dresse un bilan plutôt négatif des 20 dernières années en ce qui a trait à cette quête. Je me contenterai de citer ici quelques faits importants: en 2005, 5 des 16 diffuseurs privés recueillaient 91% de la totalité des revenus de ce secteur et 65% de l'ensemble des revenus de la télévision traditionnelle, des services spécialisés et de la télévision payante.



Source: CRTC, *Broadcasting Policy Monitoring Report 2006*, at pp. 61 and 63.



Source: CRTC, *Broadcasting Policy Monitoring Report 2006*, at pp. 61 and 63; CRTC, *Individual Pay and Specialty Services: Statistical and Financial Summaries, 2001-2005*.

6 Un autre fait: l'an dernier, les diffuseurs privés ont dépensé 24 millions \$ de plus pour l'acquisition de programmation étrangère

(essentiellement américaine) que pour des programmes canadiens. Au cours de la dernière décennie, nous avons estimé que plus de 800 millions \$ qui auraient pu être investis dans le développement et la production d'émissions dramatiques canadiennes ont été dépensés à d'autres fins... et apparemment pas pour la transition au numérique ou la haute définition!

Les prétentions des diffuseurs privés en matière d'émissions canadiennes

- 7 Face à pareilles réalités, imaginez notre surprise d'entendre au moins deux de nos 5 principaux diffuseurs dire que la politique adoptée en 1999 est un succès sur lequel ils entendent bâtir. En fait, cette audience aura été une reprise de tant d'autres : le ciel nous tombe sur la tête, nous avons besoin de plus d'argent et de plus de flexibilité et, bien sûr, (la main sur le cœur) nous sommes *tellement* engagés à l'égard du contenu canadien que nous n'avons besoin d'aucune réglementation à ce sujet.
- 8 Let's have a quick reality check in the single case of drama: in Fall 1993, for instance, CJOH-TV carried 3 hours of Canadian drama between 8pm and 11pm, when most Canadians watch TV.

Canadian Programs on CTV (CJOH) Fall 1993 (Baton Broadcast System)								
Time	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Time
20:00	Evening Shades	Full House	Unsolved Mysteries	Café American	It Had to Be You	Dr. Quinn Medicine Woman	Lois & Clark: The New Adventures of Superman	20:00
20:30	Murphy Brown	Home Improvement		Sinbad	Boy Meets World			20:30
21:00	CTV Monday Movie	Roseanne	Melrose Place	ENG	Getting By	Counterstrike	Movie	21:00
21:30		The John Laroquette Show			Love & War			21:30
22:00		NYPD blue	Herman's Head	W-5 with Eric Malling	Paul Poundstone	Matrix		22:00
22:30			Nurses					22:30

- 9 This fall, CJOH is airing a full *half an hour* of Canadian drama in the same period (minus commercials, of course!).

Canadian Programs on CTV (CJOH) October 2006 (http://www.ctv.ca/generic/generated/tvlist/CJOHtvlist.html)								
Time	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Time
20:00	Corner Gas	30 Rock	Lost	CSI	Ghost Whisperer	CSI New York	The Amazing Race	20:00
20:30	The Class	Twenty Good Years						20:30
21:00	Justice	Law & Order: CI	Criminal Minds	CSI	Close to Home	Dancing with the Stars	Desperate Housewives	21:00
21:30								21:30
22:00	CSI Miami	Law & Order: SVU	CSI New York	Criminal Minds	Law & Order	TBA	Studio 60 on the Sunset Strip	22:00
22:30								22:30

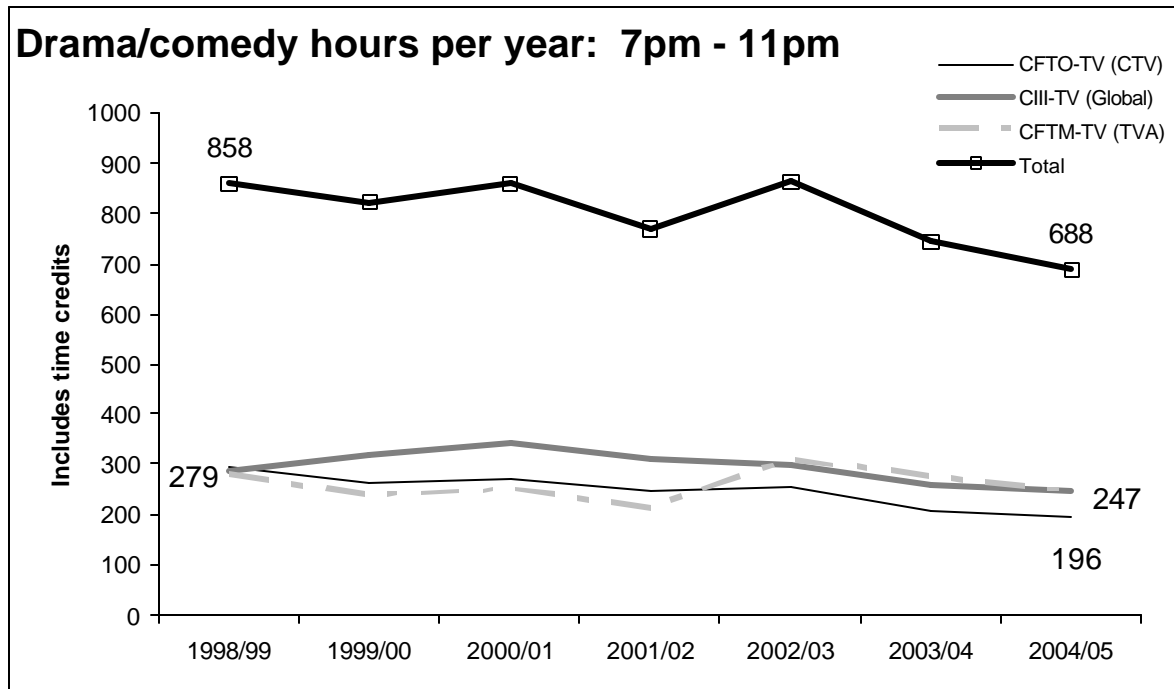
10 In Fall 1993, CanWest Global carried 3 hours of Canadian drama in the evenings.

Time	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Time
20:00	Ready Or Not	The Simpsons	Beverly Hills 90210	The Simpsons	Madison	Cops	Murder, She Wrote	20:00
20:30	Dave's World				Mad About You			20:30
21:00	Destiny Ridge	Second Half	Mad About You	Seinfeld	X-files	Hearts of Courage	Married, with Children	21:00
21:30						Ray Bradbury	Daddy Dearest	21:30
22:00	Northern Exposure	Missing Persons	Moon over Miami	L.A. Law	20/20	Commish	CanWest Global Showcase	22:00
22:30								22:30

11 This fall, Global TV is carrying *one* hour of Canadian drama at night.

Canadian Programs on Global (Fall 2006)								
http://www.canwestmediasales.com/advertising/broadcast/television/stations/globalontario/schedule.asp								
Time	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Time
20:00	Prison Break	Friday Night Lights	Bones	Survivor	Crossing Jordan	Andromeda	Simpsons	20:00
20:30							American Dad	20:30
21:00	Vanished	House	Six Degrees	Deal or No Deal	Las Vegas	Blue Murder	Family Guy	21:00
21:30							The War At Home	21:30
22:00	Standoff	Gilmore Girls	Kidnapped	Shark	Numbers	ReGenesis	Brothers & Sisters	22:00
22:30								22:30

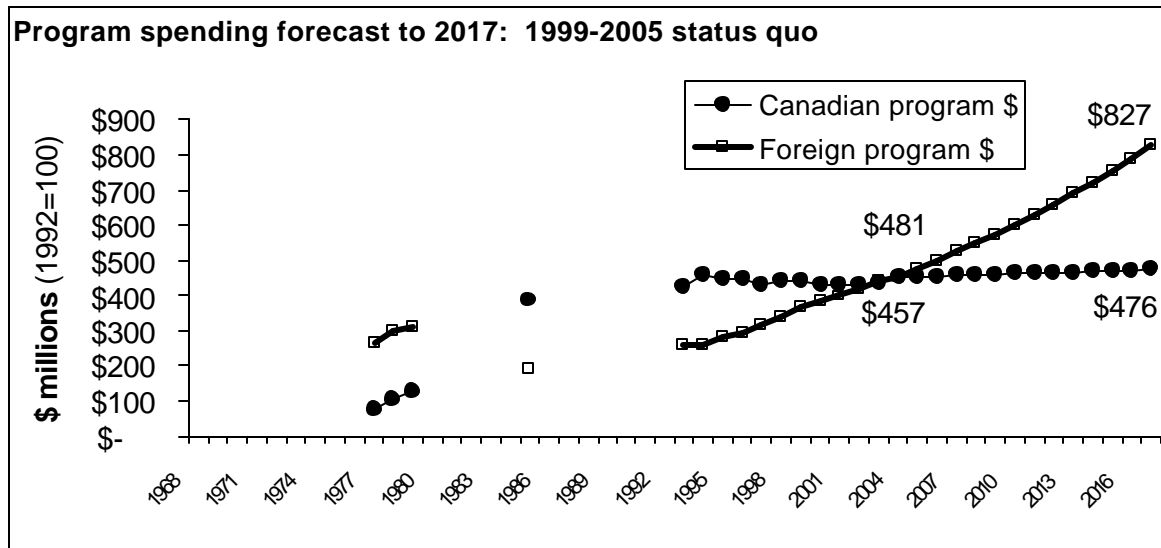
- 12 Four of Canada's largest television stations have reduced the number of hours of Canadian drama by 20% since 1999.



Source: CRTC, *Broadcasting Policy Monitoring Report 2006*, at p. 55

- 13 And meanwhile, since 1994, private television stations earned just over \$2 billion in profits before interest and taxes. Is this how we should define “success”, in achieving the objectives of the *Broadcasting Act*, the most important cultural statement we have in this country and the Commission’s primary concern?
- 14 More to the point, it’s easy to estimate that if total Canadian program spending grows at the rate of the last five years (that is, 0.4%), by 2017 it will have increased by some \$20 million (to \$476 million) But over the same period, growing at its rate of the last

five years (5.3%), foreign program spending could increase by more than 10 times as much, i.e. \$300 million, to reach \$827 million.

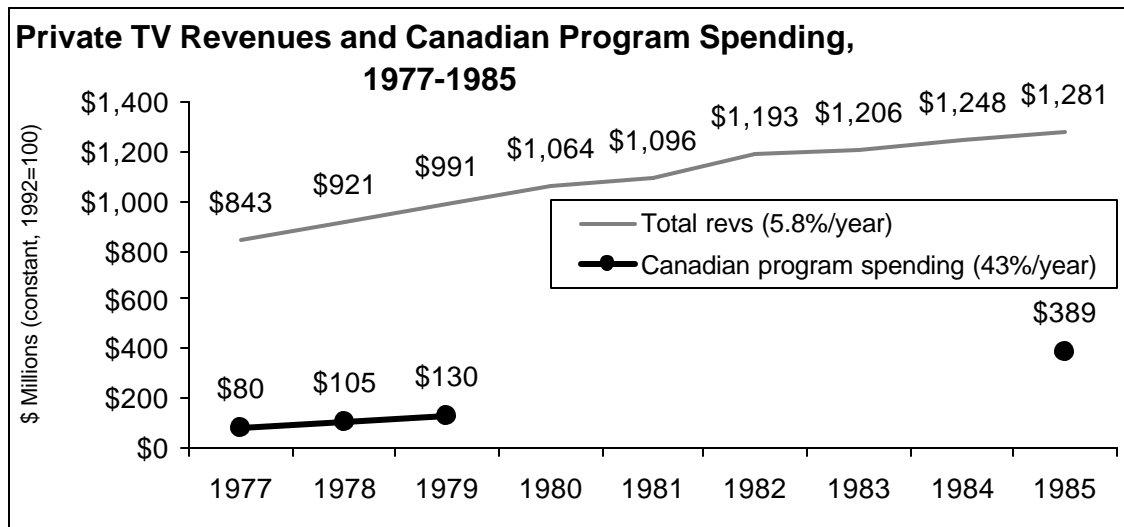


- 15 In other words, under the current scenario, in ten years foreign drama spending will be 74% higher than Canadian drama spending. Is this the commitment to be expected of our broadcasters?

Le besoin de régler

- 16 Sur la foi de ces faits, la CCA vous invite instamment à ignorer le chant des sirènes et à régler les investissements dans le contenu canadien de sorte qu'ils augmentent *cette fois-ci enfin* pour vrai.

- 17 Il existe des précédents encourageants à ce sujet: entre 1977 et 1985, l'argent consacré à la programmation canadienne a augmenté en moyenne de 43% par année, passant de 130 millions à 389 million \$ 7 ans plus tard.



- 18 Le ciel ne s'est pas effondré, personne n'a fait faillite: les revenus des diffuseurs privés on même crû en moyenne de 6% par année durant cette période.

- 19 Et, bien franchement, en dépit des cris d'alarme à l'effet que les diffuseurs privés sont menacés de changements cataclysmiques quant à leur revenu, nous n'en avons pas vraiment vu la preuve au cours de cette audience. Sûrement, avec tous les avantages de la consolidation, les économies d'échelle et les progrès technologiques, nos diffuseurs privés ont l'expertise et

l'entrepreneurship nécessaires pour répéter les succès des années 1977-1985, particulièrement s'ils peuvent compter sur une nouvelle source de financement par le biais d'une levée auprès des entreprises de distribution!

Carriage fee proposal

- 20 We were initially quite reluctant to see a fee for carriage imposed, but reading others' arguments and sitting through the hearing here, we have come to the conclusion that this may well be one of the keys to ensuring some degree of stability and more appropriate levels of funding for the kind of programming Minister Oda – and you, the CRTC – are rightly preoccupied with.
- 21 Our suggestions today are obviously lacking in precision because of time constraints, but we intend to pursue the work. As we said in our brief, one of the problems in dealing with these crucial issues is that they are looked at in a patchwork fashion.
- 22 The results from your report on the impact of technology on the broadcasting system will only be available at the end of this month, making discussions about the future of the television broadcasting system at this time somewhat speculative.

- 23 The debate about the mandate of the CBC, which has a crucial bearing on the overall ecology of our broadcasting system, has still to take place.
- 24 Just as importantly, no debate has yet happened to address the concentration of ownership in Canadian communications nor on the impact of the convergence of telecommunications and broadcasting can have on the Broadcasting Act...and on your own mandate.
- 25 Be that as it may, the CCA has looked at different scenarios for our broadcasting system and we will venture to make some suggestions as to where we should be in 10 years and how to get there.

Recommendation 1: increase administrative simplicity

- 26 The CCA believes that the easiest way to achieve administrative simplicity for Canada's television broadcasters is to set out a straightforward and stable policy that focuses on Parliament's objectives for the broadcasting system: well-financed Canadian programs that offer viewers local, regional and national content.

- 27 We support a subscriber fee of around \$3 a month across the land to help finance the production of Canadian programming.

9,094,000 subscribers x \$3.00 x 12 months: \$327,384,000

Private television broadcasters programming expenditures, 2005	
Foreign drama	\$401,510,563
Canadian drama	\$82,226,776
Difference	\$319,283,787

CRTC, *Television Statistical and Financial Summaries, 2001-2005* at p. 7.

- 28 Consistent with representations the CCA has made previously – and the Minister’s statement quoted earlier – we think in time, this levy should be applied to all forms of distribution, whether it be internet, wireless or any other form of distribution which may appear on the scene.
- 29 We suggest the money be added to the Canadian Television Fund resources and be dedicated entirely to the production of Canadian programming, whether it be drama or non-information local programming. All this on top of the suggestion already included in our brief that what telcos pay to use the spectrum should be increased to help fund CTF too.

Recommendation 2: 3 hours of drama between 8-10 pm

30 Given the dramatic decrease in Canadian drama available to English-speaking Canadians, we urge you to require each English-language licensee to broadcast 3 hours of original Canadian drama each week, between 8pm and 10pm. After all, they did it before – when the CTF was just a gleam in program producers' eyes.

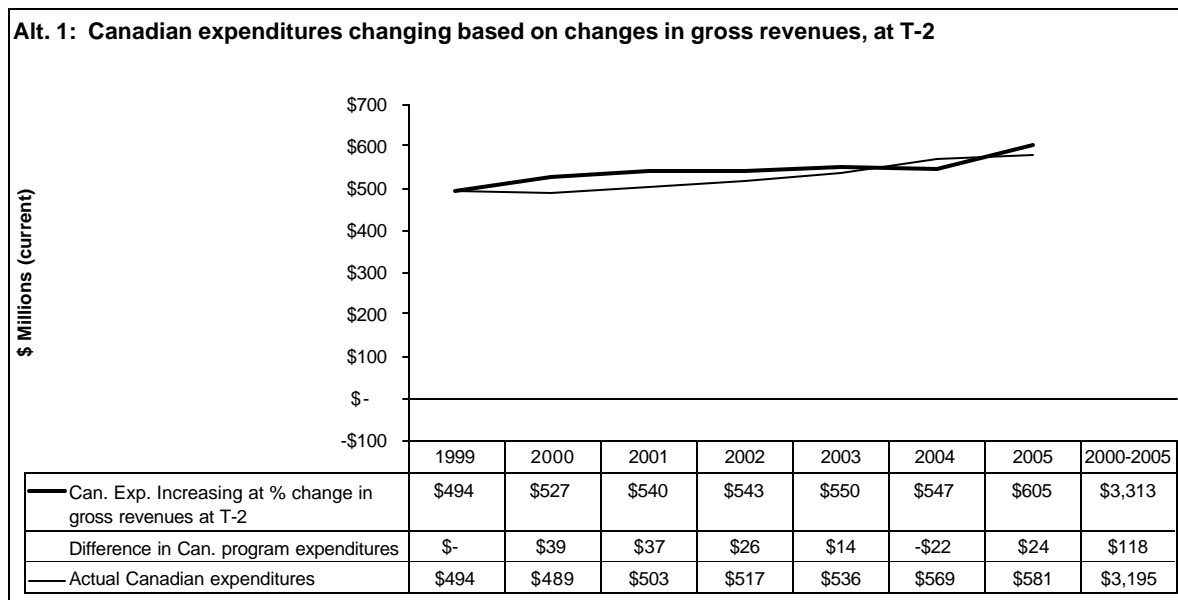
Recommendation 3: annual expenditure requirements

31 We also urge you to set expenditure requirements, especially if you grant television broadcasters a carriage fee. We have included some alternative solutions in this presentation and will repeat them in our supplementary brief.

Alternative 1: Condition of licence linking gross revenues at T-2 to Canadian expenditures

32 Our written submission proposed conditions of licence similar to the ones you used with some success in the late 1980s, at a minimum tying Canadian programming expenditures to the increase in a station's gross revenues two years earlier. We estimate that if this condition had been applied in 1999, \$118

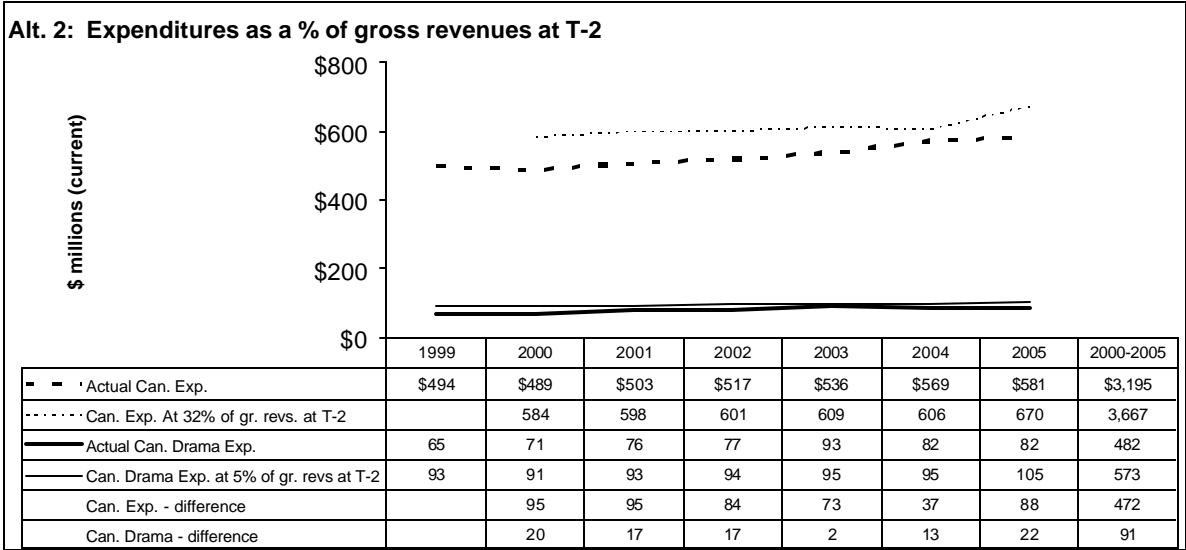
million more would have been spent on Canadian program spending than actually occurred.



33 A draft condition of licence is attached to the written copy of our remarks today.

Alternative 2: Regulation linking previous year’s gross revenues to current year’s spending on Canadian content and drama

34 With the chance to hear from other interveners, and in the interests of administrative simplicity, we would also support a regulation setting out a minimum percentage of the previous year’s gross revenues to be spent on Canadian programming and drama alike, at 32% and 5% respectively.



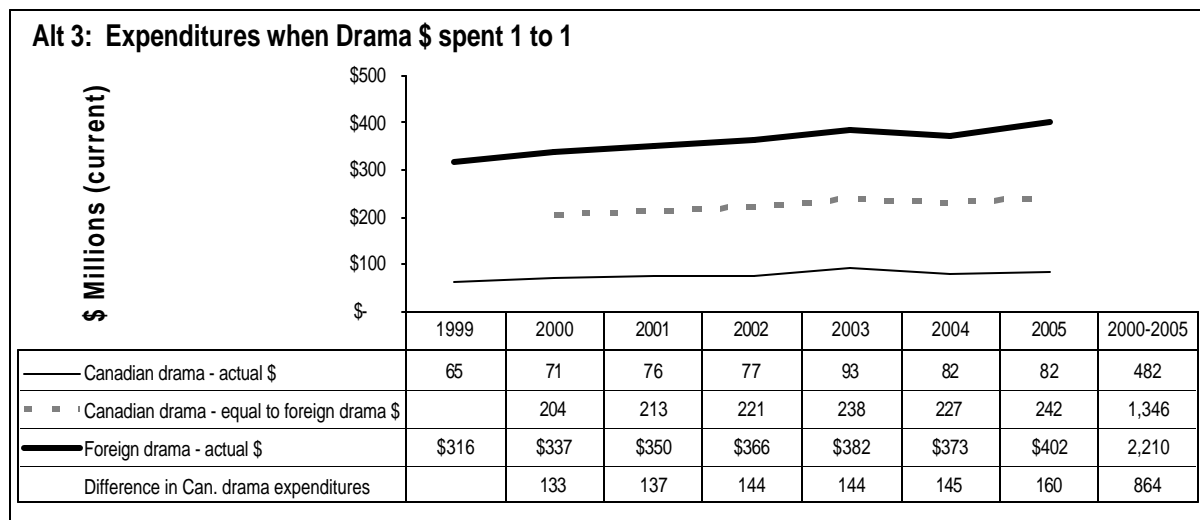
35 If such a regulation had been established in 1999, spending on Canadian programs and drama would have been \$472 and \$91 million higher, respectively, than it actually was. A draft regulation is attached.

Alternative 3: Regulation equating Canadian and foreign dramatic program spending

36 If broadcasters are granted subscriber fees, the CCA would support an even simpler, 1-for-1 spending regulation requiring broadcasters to spend equal amounts on Canadian and foreign drama, provided total Canadian spending exceeds total foreign spending.

37 If a 1 for 1 regulation existed in 1999, Canadian broadcasters would have spent \$864 million more on Canadian drama than

actually occurred. (In the short term, the CCA would even support a 50 cents-to-the-dollar approach. If this regulation existed in 1999, Canadian broadcasters would have spent \$415 million more on Canadian drama than they did.)



38 Here again, a draft regulation is attached.

39 A 1 for 1 drama regime would cost broadcasters money that they claim they can't afford. Presumably a carriage fee offers a remedy.

Recommendation 4: semi-annual reporting requirements

40 Whatever approach you adopt, however, we urge that the CRTC report semi-annually about its empirical effects, station by station or programming service by service.

Conclusion

- 41 Without clear, concrete and indisputable evidence that Canada's 16 television systems will suffer irreparable harm by spending more on Canadian programming, the CCA urges the CRTC to focus on the main goal of our broadcasting legislation: Canadian content.
- 42 The hundreds of thousands of Canadians trying to earn a reasonable living in our cultural sector require the same businesslike treatment that Canada's 16 major television systems want from the CRTC.
- 43 Merci de votre attention; nous sommes prêts à répondre à vos questions.

**Canadian content expenditures by
privately-owned, over-the-air television stations**

**Alternative 1
Proposed condition of licence
Based on changes in gross revenues**

1. It is a condition of licence that the licensee expend on Canadian programming, at a minimum:
 - (a) **for the year ending 31 August 2008**, the [*greater of the actual amount expended by the licensee on Canadian programming or the actual amount expended on non-Canadian programming in the year ending August 2007*]
 - (b) **for the year ending 31 August 2009**, the amount set out in paragraph (a) above, increased (or decreased) by the percentage change in the total of the station's total gross revenues for the year ending 31 August 2007 and as reported in the relevant Annual Return;
 - (c) **for the year ending 31 August 2010**, the amount set out in paragraph (a) above, increased (or decreased) by the percentage change in the total of the station's total gross revenues for the year ending 31 August 2008 and as reported in the relevant Annual Return;
 - (d) **for the year ending 31 August 2011**, the amount set out in paragraph (a) above, increased (or decreased) by the percentage change in the total of the station's total gross revenues for the year ending 31 August 2009 and as reported in the relevant Annual Return;
 - (e) **for the year ending 31 August 2012**, the amount set out in paragraph (a) above, increased (or decreased) by the percentage change in the total of the station's total gross revenues for the year ending 31 August 2010 and as reported in the relevant Annual Return;
 - (f) **for the year ending 31 August 2013**, the amount set out in paragraph (a) above, increased (or decreased) by the percentage change in the total of the station's total gross revenues for the year ending 31 August 2011 and as reported in the relevant Annual Return; and
 - (g) **for the year ending 31 August 2014**, the amount set out in paragraph (a) above, increased (or decreased) by the percentage change in the total of the station's total gross revenues for the year ending 31 August 2012 and as reported in the relevant Annual Return.

**Canadian content expenditures by
privately-owned, over-the-air television stations**

**Alternative 2
Proposed regulation
Based on expenditures relative to gross revenues**

4. (1) A licensee holding a private licence shall expend not less than thirty-two percent (32%) of its gross revenues from the previous broadcast year, on Canadian television programming.
4. (2) A licensee holding a private licence shall expend not less than five percent (5%) of its gross revenues from the previous broadcast year, on Canadian programming from category 7 ("Drama").

**Canadian content expenditures by
privately-owned, over-the-air television stations**

**Alternative 3
Proposed regulation
Based on foreign programming expenditures**

4. A licensee holding a private licence shall expend no less on Canadian television programming from category 7("Drama") than the licensee expends on non-Canadian programming from category 7 in the same broadcast year.