



**CRTC 2009-411 – POLICY PROCEEDING ON A GROUP-BASED
APPROACH
TO LICENSING TELEVISION SERVICES**

**NOTES FOR A PRESENTATION BY
ALAIN PINEAU, NATIONAL DIRECTOR**

CANADIAN CONFERENCE OF THE ARTS

November 25, 2009

MERCI M. LE PRÉSIDENT ET BONJOUR À VOUS TOUS COMMISSAIRES

MON NOM EST ALAIN PINEAU ET JE SUIS LE DIRECTEUR GÉNÉRAL DE LA CONFÉRENCE CANADIENNE DES ARTS. DEPUIS PRÈS DE 65 ANS, LA CCA EST LE FORUM NATIONAL DES ARTS, DE LA CULTURE ET DU PATRIMOINE. PRÈS DE 600 ORGANISMES, ARTISTES, ORGANISMES GOUVERNEMENTAUX ET ACTIVISTES CULTURELS SONT MEMBRES DE LA CCA ET CONTRIBUENT À SON TRAVAIL AU SEIN DE LA SOCIÉTÉ CANADIENNE.

À CE MOMENT-CI, JE VAIS PRIER LES MEMBRES FRANCOPHONES DE VOTRE PANEL DE ME PARDONNER : DES CONSIDÉRATIONS DE TEMPS ET DE RESSOURCES FERONT QUE JE NE PUIS PROCÉDER À MA PRÉSENTATION QU'EN ANGLAIS. IL ME FERA CEPENDANT PLAISIR DE VOUS RÉPONDRE EN FRANÇAIS.

BECAUSE BROADCASTING IS THE DOMINANT CULTURAL MEDIUM AND SINCE THE BROADCASTING ACT CONTAINS THE MOST COMPLETE EXPRESSION OF CULTURAL POLICY EVER ADOPTED BY PARLIAMENT, THE CCA HAS PARTICIPATED ACTIVELY IN CRTC PROCESSES FOR DECADES, INCLUDING ON SEVERAL OCCASIONS IN THE PAST FOUR YEARS AS THE COMMISSION'S AGENDA ACCELERATED.

I AM DELIGHTED TO BE AT THESE HEARINGS BECAUSE IT GIVES THE VOICE OF CANADIAN ARTS AND CULTURE A CHANCE TO BE HEARD ABOVE THE DIN CREATED BY THE UNSEEMLY SCHOOL YARD BRAWL THAT HAS ERUPTED BETWEEN CANADA'S CABLE COMPANIES AND MAJOR BROADCASTERS.

THE CURRENT MASSIVE ADVERTISING CAMPAIGNS, WORTH HUNDREDS OF THOUSANDS OF DOLLARS, ARE SPREADING MISINFORMATION TO CANADIAN CITIZENS, PARTICULARLY THE ONE RUN BY BDUs. I GUESS THE ONE POSITIVE ASPECT OF THIS CAMPAIGN IS THAT SOME OF THE ADS ARE BEING PLACED ON OVER THE AIR STATIONS AND THIS GIVES THEM MUCH NEEDED REVENUES!

HOWEVER, IN THIS CLIMATE, IT MAY BE DIFFICULT FOR ALL OF US TO REMEMBER WHAT THIS PROCESS IS ALL ABOUT. FOR CCA, PUT SIMPLY, IT IS THIS. WITH THE *BROADCASTING ACT* AS OUR GUIDE, WE ARE HERE TO DISCUSS:

- 1) HOW EFFECTIVELY THE BROADCASTING SYSTEM IS MEETING THE REQUIREMENTS OF THE *ACT* TO PROVIDE CANADIANS WITH A VARIETY OF CANADIAN PROGRAMS THAT WILL "INFORM, ENLIGHTEN AND ENTERTAIN" THEM.

- 2) THE ROLE OF THE OVER-THE-AIR TELEVISION BROADCASTERS NOW CONSOLIDATED INTO SEVERAL LARGE COMPANIES, IN MAKING THESE PROGRAMS AVAILABLE TO US LOCALLY AND NATIONALLY. ARE THEY, AS THE ACT STIPULATES, MEETING THEIR OBLIGATION TO MAKE “MAXIMUM (AND IN NO CASE LESS THAN PREDOMINANT) USE OF CANADIAN CREATIVE AND OTHER RESOURCES IN THE CREATION AND PRESENTATION OF PROGRAMMING?” AND
- 3) HOW CAN THE NECESSARY RESOURCES TO MAKE THESE PROGRAMS BE MOBILIZED AND, SPECIFICALLY, WHAT IS THE APPROPRIATE CONTRIBUTION THAT EACH ELEMENT OF THE SYSTEM SHOULD MAKE “TO THE CREATION AND PRESENTATION OF CANADIAN PROGRAMMING.”

MR. CHAIRMAN, THE CANADIAN BROADCASTING SYSTEM IS NOT BROKEN, BUT IT IS COMPLETELY OUT OF BALANCE AT THE PRESENT TIME AND IT'S URGENT FOR THE CRTC TO ACT AS QUICKLY AS IT CAN TO RESTORE SOME EQUILIBRIUM. HOW IS IT OUT OF BALANCE?

- PRIVATE ENGLISH CANADIAN BROADCASTERS SPEND MORE MONEY ON THEIR FOREIGN PROGRAMS THAN ON THEIR CANADIAN PROGRAMS. THIS IS SOMETHING WE HAVE DENOUNCED IN FRONT OF YOU SEVERAL TIMES OVER THE PAST THREE YEARS AND IT MAY WELL BE A VIOLATION OF THE ACT.
- ENGLISH-SPEAKING CANADIANS DO NOT HAVE SUFFICIENT ACCESS TO DRAMA, SCRIPTED COMEDY AND LONG FORM DOCUMENTARY PROGRAMMING THAT SPEAKS TO THEIR LIVES. OVER THE YEARS, AND PARTICULARLY RECENTLY, WE HAVE ALSO WITNESSED A SERIOUS DECLINE IN THE SUPPLY OF LOCAL NEWS AND INFORMATION PROGRAMMING.
- WE HAVE NO CANADIAN ARTS PROGRAMMING ON OUR CONVENTIONAL TELEVISION CHANNELS, WHERE WE FIND MOST CANADIANS WATCHING TV.
- IN THE FACE OF THE WORST ECONOMIC RECESSION IN 75 YEARS, CANADA'S BDUs MADE MORE THAN \$2 BILLION PROFITS LAST YEAR WHILE CONVENTIONAL BROADCASTERS STRUGGLED TO BREAK EVEN. THERE IS INDEED SOMETHING AMISS WHEN THE DISTRIBUTION SYSTEMS BRING IN MORE MONEY THAN THE ORGANIZATIONS RESPONSIBLE FOR PROVIDING THE CONTENT.

AS WE HAVE SAID IN PREVIOUS APPEARANCES BEFORE YOU, WE HAVE LITTLE SYMPATHY FOR ENGLISH PRIVATE CONVENTIONAL BROADCASTERS BECAUSE THEY HAVE BROUGHT MANY OF THE PROBLEMS ON THEMSELVES, BY

OVERPAYING FOR U.S. PROGRAMS AND USING MASSIVE AMOUNTS OF DEBT TO FINANCE THEIR CONSOLIDATION.

BETWEEN 2004 AND 2008, REVENUES OF PRIVATE ENGLISH BROADCASTERS INCREASED BY 3.4%: IN THE SAME PERIOD THEIR SPENDING ON U.S. PROGRAMS WENT UP BY 35.3% ... AND THEY WERE USING CANADIANS DOLLARS THAT APPRECIATED IN VALUE BY 5.5% BETWEEN 2004 AND THE END OF 2008! THEY WERE CLEARLY UNPREPARED WHEN THE ECONOMIC RECESSION STALLED THEIR REVENUE GROWTH.

WE FULLY SHARE WITH THE PRODUCTION COMMUNITY, AS WELL AS THE BROADCASTERS, THE POSITION THAT, OVERALL, THERE ARE INSUFFICIENT RESOURCES AVAILABLE FOR THE PRODUCTION OF HIGH QUALITY CANADIAN PROGRAMS OF ALL KINDS, BOTH LOCAL AND NATIONAL, AND THIS PROCESS MUST ADDRESS THIS SHORTFALL.

THE NETWORKS CONTINUE TO ATTRACT LARGE AUDIENCES AND BILLIONS OF DOLLARS IN ADVERTISING AND OTHER REVENUES. IN 2008, DESPITE THE EMERGENCE OF THE INTERNET, CANADIANS STILL SPENT AN AVERAGE OF 26.6 HOURS PER WEEK WATCHING TELEVISION.

AS CANADA EMERGES FROM THE RECESSION, WE KNOW THAT REVENUES OF OVER THE AIR BROADCASTERS WILL BEGIN AGAIN TO GROW, ALBEIT MODESTLY. THEY NEED TO BE PRUDENT, BUT THEY ALSO NEED TO FUFILL THEIR RESPONSIBILITIES UNDER THE ACT AND IT IS YOUR DUTY, AS STEWARDS OF THE ACT, TO MAKE SURE THAT THEY DO.

YOUR RESPONSIBILITIES ARE SPECIFICALLY TO USE ALL THE TOOLS AT YOUR DISPOSAL, INCLUDING REGULATION, TO MAKE SURE CANADIANS HAVE ACCESS TO HOMEGROWN QUALITY PROGRAMMING AS ORDAINED BY PARLIAMENT. IF THE MARKET CANNOT DELIVER HOMEGROWN PROGRAMMING ON THAT FRONT, PARLIAMENT HAS MANDATED YOU TO INTERVENE AND FIND A SOLUTION.

WITH RESPECT TO THE CENTRAL ISSUE YOU ARE EXAMINING IN THIS PARTICULAR HEARING, CCA SUPPORTS A CORPORATE GROUP-BASED APPROACH TO LICENSING TELEVISION SERVICES FOR THE FOLLOWING REASONS:

- IT WOULD SIMPLIFY THE ADMINISTRATIVE BURDEN ON LICENSEES.
- IT WOULD MORE ACCURATELY REFLECT THE MANNER IN WHICH BROADCASTING GROUPS ACQUIRE THE RIGHTS TO AND SCHEDULE PROGRAMS. IT IS NOW STANDARD PRACTICE FOR A COMPANY TO OBTAIN RIGHTS FOR ALL OF THEIR BROADCASTING ASSETS, FROM OTA TO SPECIALTY SERVICES.

- IT WOULD ALLOW EVERYONE TO CONSIDER THE ROLE OF CANADIAN PROGRAMMING ACROSS ALL SERVICES OWNED BY THE SAME COMPANY.
- ADDITIONALLY, WE COULD EXAMINE HOW EFFECTIVELY THE COMPANY USES THE INTERNET TO EXTEND THE REACH OF ITS CANCON.
- EVEN MORE IMPORTANTLY, SINCE CANADIAN CONTENT CPE AND EXHIBITION REQUIREMENTS ARE *MINIMUMS*, IT WOULD PROVIDE AN OPPORTUNITY FOR BROADCASTING GROUPS TO DIFFERENTIATE THEMSELVES FROM THEIR COMPETITORS BY SELECTIVELY ACQUIRING AND SCHEDULING ADDITIONAL CANCON FOR THEIR MORE SUCCESSFUL SERVICES.

IN ARGUING FOR REGULATORY FLEXIBILITY IN EARLIER YEARS, BROADCASTERS USED TO TALK ABOUT HOW CANADIAN CONTENT WOULD BE THEIR COMPETITIVE ADVANTAGE IN THE WORLD OF 500 CHANNELS. THEY WERE RIGHT, ALTHOUGH THEY DIDN'T FOLLOW THROUGH, AND THIS REMAINS TRUE TODAY.

IN RESPONSE TO THE VARIOUS IDEAS PUT FORWARD BY THE COMMISSION AND INTERVENORS, WE URGE THE COMMISSION TO ADOPT THE FOLLOWING APPROACHES TO CANCON FOR EACH LICENSED GROUP:

1. MAINTAIN THE EXISTING SPENDING AND EXHIBITION REQUIREMENTS FOR SPECIALTY AND DISCRETIONARY SERVICES, UPDATED AS APPROPRIATE. THESE ARE WORKING, BOTH FOR THE BROADCASTERS WHICH ARE MAKING MONEY, AND FOR THE SYSTEM SINCE THEY ARE PROVIDING GOOD QUALITY CANADIAN PROGRAMMING CHOICES. MAINTAINING EXISTING REQUIREMENTS ALSO RESPECTS THE COMPETITIVE LICENSING PROCESS.
2. IMPOSE A CANADIAN PROGRAMMING EXPENDITURE ("CPE") REQUIREMENT OF 30% OF GROSS REVENUES ON CTVGLOBEMEDIA, CANWEST GLOBAL AND ROGERS. WE HAVE TO BEGIN TO RETURN SOME BALANCE BETWEEN SPENDING ON CANADIAN PROGRAMS AND SPENDING ON NON-CANADIAN PROGRAMS.
3. IMPOSE A SPECIFIC MINIMUM CPE OF 6% OF GROSS REVENUES FOR DRAMA AND SCRIPTED COMEDY ON ALL ENGLISH-LANGUAGE BROADCASTING GROUPS (THIS SPENDING IS ALSO PART OF THEIR OVERALL CPE). THIS IS THE PROGRAMMING GENRE MOST UNDER-REPRESENTED IN THE SYSTEM AND THE MOST ESSENTIAL FOR

CULTURAL REASONS. THE COMMISSION HAS ALREADY ACKNOWLEDGED THIS SHORTCOMING.

4. IMPOSE A REQUIREMENT ON EACH OTA BROADCASTER TO SCHEDULE AT LEAST TWO HOURS EACH WEEK OF DRAMA OR SCRIPTED COMEDY IN THE 8-11:00 PM TIMESLOT, SUNDAY TO FRIDAY, CALCULATED QUARTERLY. THE QUARTERLY CALCULATION WOULD PREVENT BROADCASTERS FROM LOADING DRAMA INTO THEIR SUMMER SCHEDULES WHEN FEWER PEOPLE ARE WATCHING TELEVISION.

WE WILL LOOK TO THE COMMISSION TO DETERMINE THE APPROPRIATE PHASE-IN PERIOD FOR THESE OBLIGATIONS DURING THE NEXT LICENCE TERM FOR EACH BROADCAST GROUP.

IN THIS ERA OF CONSTRICTED REVENUES, THE ARGUMENT OF THE BROADCASTERS HAS CHANGED AND THEY NOW CLAIM THAT CANCON IS A MONEY-LOSING BURDEN IMPOSED ON THEM BY THE COMMISSION; AN ALBATROSS AROUND THEIR NECKS. BUT, THANKS TO THE NORDICITY STUDY FILED IN THIS PROCESS BY ACTRA, THE WRITER'S AND THE DIRECTORS' GUILDS AND CFTPA, WE CAN ALL NOW SEE THAT BROADCASTERS CAN MAKE MONEY ON THEIR INVESTMENT IN CANADIAN CONTENT PROGRAMS.

WHAT THEY NEED TO DO IS TO WORK AT IT AND TO AMORTIZE THE COSTS OVER THE USEFUL LIFE OF THE PROGRAM AND ACROSS ALL OF THEIR SERVICES. THE COMMISSION MUST NO LONGER BE SILENT WHEN BROADCASTERS TRY TO CLAIM THAT THEY "LOSE MONEY" ON CANADIAN DRAMA, SCRIPTED COMEDY AND DOCUMENTARY SHOWS. OF COURSE THEY CAN MAKE MORE MONEY ON HIGH QUALITY AND POPULAR U.S. PROGRAMS WHICH ARE DUMPED INTO CANADA, BUT THIS STUDY DEBUNKS THE MYTH OF CANCON BEING A DRAIN ON BROADCASTER RESOURCES.

LET ME CONCLUDE MY OPENING REMARKS BY REVIEWING TWO OTHER MATTERS.

CCA HAS A SIGNIFICANT CONCERN ABOUT ONE ELEMENT OF THE TRIAL BALLOON YOU FLOATED IN YOUR POTENTIAL REGULATORY MODEL INCLUDED IN THE NOTICE OF CONSULTATION. CCA WOULD VIGOROUSLY OPPOSE ANY REDUCTION IN THE REQUIREMENT THAT CONVENTIONAL BROADCASTERS SCHEDULE AT LEAST 60% CANADIAN CONTENT ACROSS THE BROADCAST DAY.

CCA SUBMITS THAT THIS REGULATION IS PERHAPS THE SINGLE MOST IMPORTANT CANADIAN CULTURAL POLICY AND THE CORNERSTONE OF OUR TELEVISION PRODUCTION INDUSTRY. IT IS THE MODEL FOR ALL OTHER AUDIOVISUAL CONTENT QUOTAS AROUND THE WORLD. ALTHOUGH IT COULD CERTAINLY BE BETTER IMPLEMENTED, IT HAS ACHIEVED ITS FUNDAMENTAL

PURPOSE AND IT REMAINS AS RELEVANT TODAY AS IT WAS WHEN IT CAME INTO EFFECT IN 1972.

WHILE THE FRAMERS OF THIS POLICY MAY HAVE HOPED THE QUOTA WOULD EVENTUALLY BECOME IRRELEVANT BECAUSE CANADA'S BROADCASTERS WOULD BE ROUTINELY EXCEEDING IT WITH HIGH QUALITY CANADIAN CONTENT PROGRAMS IN EVERY GENRE, THE FACT IS THAT, AFTER ALMOST 40 YEARS, THIS QUOTA REMAINS A MAXIMUM CANCON LEVEL, NOT A MINIMUM AT ALL. AND SURELY, CANADIANS ALREADY HAVE SUFFICIENT ACCESS TO FOREIGN PROGRAMS ON OUR TELEVISION SCREENS IN 2009 WITHOUT INCREASING THE SUPPLY AVAILABLE TO THEM FROM THEIR OWN DOMESTIC SERVICES? WE CAN SEE NO JUSTIFICATION WHATSOEVER FOR REDUCING THIS HISTORIC BENCHMARK.

FINALLY, WE WANT TO WADE INTO THE DEBATE ABOUT THE MONEY REQUIRED TO ENSURE THAT THE CULTURAL OBJECTIVES OF THE *BROADCASTING ACT* ARE ACHIEVED. IN OUR VIEW, THE CRTC HAS ALREADY LAID THE FOUNDATION FOR SOLVING THE LOCAL PROGRAMMING PROBLEM WITH THE CREATION OF THE LOCAL PROGRAMMING IMPROVEMENT FUND.

WE WOULD HOWEVER LIKE TO SEE THE CABLE CONTRIBUTION INCREASED TO 2.5% AS RECOMMENDED BY ALL PARTIES IN THE JUNE 2009 HOUSE OF COMMONS HERITAGE COMMITTEE REPORT, WITH A 1% CONTRIBUTION SPECIFICALLY DESIGNATED FOR CBC/RADIO-CANADA.

WE HAVE ALSO TABLED OUR SUPPORT FOR A PAYMENT BY THE BDUs TO CONVENTIONAL BROADCASTERS TO COMPENSATE FOR THE REDISTRIBUTION OF THEIR SIGNAL, PROVIDED THIS NEW REVENUE IS DIRECTED TO THE PRODUCTION OF CANADIAN PROGRAMS. THIS IS AN INTEGRAL PART OF OUR RECOMMENDATIONS ABOUT THE APPROPRIATE LEVEL OF CPE.

BUT WE WANT TO BE ABSOLUTELY CLEAR – WHAT WE SUPPORT IS NOT A *TELEVISION TAX*, AS BDUs HAVE CUNNINGLY LABELLED THE VALUE FOR SIGNAL PROPOSITION YOU HAVE PUT FORWARD. RATHER, WE SAY THAT CANADIANS ALREADY PAY SUBSTANTIAL SUBSCRIPTION FEES FOR CABLE AND SATELLITE SERVICES, NOT TO MENTION THAT WE INDIRECTLY PAY FOR THE TELEVISION ADVERTISING WHICH IS SO IMPORTANT TO BROADCASTERS. CANADIANS ALREADY PAY ENOUGH, BUT WE DO NOT RECEIVE A SUFFICIENT RETURN ON OUR CULTURAL INVESTMENT, IN THE FORM OF CANADIAN CONTENT PROGRAMMING CHOICES.

THE CRTC MUST REBALANCE THE SYSTEM TO MAKE SURE THAT AN APPROPRIATE AMOUNT OF OUR SUBSCRIPTION FEES FINDS ITS WAY ONTO OUR TELEVISION SCREENS. IF THIS REQUIRES YOU TO RE-REGULATE CABLE RATES, THEN SO BE IT, THE CABLE COMPANIES WILL HAVE NOTHING TO BLAME FOR IT BUT THEIR OWN GREED. AND OF COURSE, AS MENTIONED

PREVIOUSLY, WE ALSO URGE YOU TO BRING BACK REGULATION TO ENSURE THAT BROADCASTERS THEMSELVES FULFILL THEIR OBLIGATIONS WITH REGARDS TO CANADIAN PROGRAMMING.

IN CONCLUDING, WE INVITE YOU TO BE COURAGEOUS. IF YOU TAKE THE STRONG ACTIONS THAT ARE NECESSARY TO REBALANCE OUR BROADCASTING SYSTEM AND USE THE TOOLS THAT THE LEGISLATOR HAS GIVEN YOU TO ENSURE THAT THE CULTURAL OBJECTIVES CONTAINED IN THE BROADCASTING ACT ARE MET, WE KNOW THAT CANADIANS WILL SUPPORT YOU.