



**Intervention of the
Canadian Conference of the Arts**

**Review of the Regulatory Frameworks for
Broadcasting Distribution Undertakings and
Discretionary Programming Services**

CRTC Notice of Public Hearing 2007-10 et ss.

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Introduction

- Thank you, Mr. Chairman and Commissioners.
- Mon nom est Alain Pineau et je suis directeur général de la Conférence canadienne des arts. À mes côtés, M. Garry Neil, président de Neil Craig Associates. Garry est un ancien vice-président de la CCA.
- À ce moment-ci, je prie tout membre francophone du panel et tout francophone intéressé par la question de m'excuser, mais la limite des moyens à notre disposition me force à ne livrer qu'en anglais la fin de ma présentation. Il me fera cependant plaisir de répondre à toute question en français.
- The CCA is a non-partisan organization representing the full spectrum of the arts and culture sector in Canada, both English and French. Founded more than 60 years ago, it is by far Canada's largest arts advocacy and cultural policy development organization in the country. The CCA has participated actively in CRTC processes for decades and most particularly, on several occasions over the past two years, as the Commission's agenda started accelerating.
- I realize you will be hearing many parties over the next several weeks, many of whom are members of the CCA, so my opening comments will concentrate on a few key issues we deem to be of public interest.

Proposed distribution model

- We have briefly reviewed the CRTC's proposed model. Our main concern is that it would provide distributors and broadcasters with additional revenues and greater flexibility, without ensuring there is more and higher quality Canadian programming available in all genres. A simple preponderance of services requirement would mean that Canadian content available to audiences would be less than a majority, since Canadian services are permitted to carry foreign programs.
- CCA submits that the existing regulatory system of Canada's Broadcast Distribution Undertakings, Pay TV and Specialty Services generally works. Canadians have access to a range of quality programming choices, including Canadian shows and the best from abroad. Advertising and subscription revenues of Pay and Specialty services are growing rapidly. BDUs make huge profits and some of their revenues find their way to Canadian programming through the CTF.

April 8, 2008

- Right now, Canada's pay and specialty services spend almost twice as much on Canadian programs as they do on foreign content, and they have enjoyed operating profit margins higher than twenty percent in each of the past four years.
- CCA hopes that these hearings will bring improvements in the pursuit of the cultural objectives set out in the *Broadcasting Act*, of which you are the stewards.
 - CCA has suggested that regulating of Internet Service Providers will ensure new distribution systems have an appropriate place in the system and will help fulfil the objectives of the *Act*.
 - Canadian Programming Expenditures and Cancon exhibition requirements should be raised for the more successful broadcasters and for Video-on-demand and Pay-per-view services.
 - Additional funding for the Canadian Television Fund should be provided by the BDUs.
 - Appropriate rules must be put in place to ensure that vertically integrated companies do not give unfair preference to services they own.
- CCA believes that BDUs should fund more Canadian content without any regulatory *quid pro quo*. There is simply no evidence to support the idea that they need even more revenue opportunities, whether from new advertising spots or relaxation of self-dealing rules. BDUs' operating profit margins exceeded thirty-five percent throughout the 1990s, and for the last five years have exceeded forty percent. These high profits demonstrate why BDUs not only can do more for Canadian content, but *should* do more.

Operating profit margins, by type of broadcaster

Operating Margin	1990	1995	2000	2005	2006	2007
TV	10.9	16.1	17.5	14.6	7.8	8.7
Radio	9.0	9.4	19.8	23.8	23.5	na
P&Sp	19.6	18.3	19.4	26.8	25.1	25.8
BDUs	36.0	37.5	37.6	42.7	42.3	40.4
DTH & MDS				13.6	15.6	17.2

The drive for deregulation

- Given the success of the sector, CCA was surprised when the CRTC's first Public Notice for this hearing introduced a strange reverse onus and asked those who support existing regulations to prove why they are necessary. No one favouring deregulation was required to prove how market forces would ensure the objectives of the *Broadcasting Act* are achieved. This is what the Dunbar-Leblanc Report was probably supposed to provide, but did not. It came up with many opinions in favour of deregulation but didn't support them with evidence. Mr. Pineau will comment later on the process followed by the Commission. At the moment, let me say that the best evidence against deregulation is to examine what happened as the CRTC gradually deregulated our conventional television sector, based on the arguments that this would strengthen its ability to spend more on Canadian content.

- This experiment has failed miserably. Canada’s private TV broadcasters now spend fifteen percent more on foreign programming than on Canadian programming. In 1998, the same broadcasters spent thirty-three percent more on Canadian programming than on foreign programming, and in 1995 they spent a whopping sixty-one percent more on Cancon.

Comparison of Canadian to foreign program expenditures over time

1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
64%	79%	61%	56%	38%	33%	23%	13%	8%	4%	(1%)	0%	(5%)	(10%)	(15%)

- The CRTC’s attempt over the last fifteen years to unleash so-called “market forces” simply has not worked in conventional over-the-air broadcasting. If it had, spending on foreign TV programs would now be lower, not higher, than spending on our own content and content aired on our radio stations would be predominantly Canadian, instead of predominantly foreign.
- If deregulating Canada’s pay and specialty services has the same impact on Canadian programming expenditures that deregulation has had in conventional TV, the one bright light in our broadcasting system over the past twenty years will be extinguished.

CRTC’s role

- While the Commission has to take into account broadcasters’ financial position, its main focus must be on the objectives established by Parliament in the *Broadcasting Act*. These objectives are designed to ensure Canadians have access to high-quality, properly-financed Canadian programming about themselves, in all genres.
- We need special legislation because broadcasting is not a service like others. Broadcasters don’t make or supply widgets, they deliver cultural content. If a free market prevailed in broadcasting, all we would have are foreign programs and some Canadian news, delivered by Canadian subsidiaries of foreign media conglomerates. As far as we know, this is not the aim of the Canadian Parliament
- We all know that broadcasters can make far more money importing foreign television programs and movies sold here at far less than their cost of production and that benefit from the giant U.S. promotional machine. This reality has always hindered the creation of a national indigenous star system outside of Québec.
- But Parliament specifically created the CRTC to regulate the system as part of an industrial employment strategy and to ensure we can have a national audio-visual culture predominantly concerned with our lives – not those of our neighbours to the south. In this regard, Mr. Chairman, CCA was pleased to hear you state that “there will always be some regulation’ ... “because cultural and social objectives cannot be achieved through market forces alone.”
- For example, we are reminded by last weekend’s successful Juno Awards that we would not have a thriving Canadian music industry and stars who achieve

international stature if the CRTC had not regulated the radio industry in the 70s. The realities of our demography and geography make these regulations just as relevant today as they have been for the past 40 years.

- In fact, we are all sitting here forty years after Parliament created the CRTC, waiting for a system that allocates a PREDOMINANT share of its resources to Canadian programming. Very simply, Mr. Chairman, CCA believes that more than half of broadcast spending on programs should be on Canadian content.
- In this context, Mr. Chairman, CCA would like to emphasize the importance of clear definitions. If the Commission wants to create a small, locally-oriented basic tier, it must clearly define what a local TV station really is. For example, could a news bureau that only provides segments of a larger program count as a local station? Subscribers should not have to pay an over-the-air carriage fee for something that isn't giving them a significant range of locally produced and originated content. We suggest a minimum in the order of the 22 hours a week which the Commission referred to last week when it turned down the application for an HDTV licence.

Procedure

- Our final point is to state, for the record, our ongoing serious concerns about the procedures the CRTC has used in the public notices leading to this hearing.
- When the hearing was announced last July, the CRTC said it wanted parties' comments on the Dunbar-Leblanc report, along with research and recommendations. When it released late the 300-page Dunbar study in September, the CRTC also asked parties to comment on financial disclosure for BDUs. In November, the CRTC added the fee-for-carriage issue to this agenda, again asking for "research and recommendations".
- On March 14, we received the CRTC's "Focus for the Public Hearing" advisory. It ignored the Dunbar-Leblanc report, set out an assumed distribution model and then added that it wanted parties' views on the appropriate contributions by Canadian and foreign programming undertakings to the creation of Canadian programming.
- We submit respectfully Mr. Chairman, that how we fund Canadian programming deserves an entire hearing of its own. We also think the issue of asking US broadcasters to spend money to support Canadian programming warrants both legal analysis and a separate hearing. These issues certainly deserve more than the 14 working days the CCA had to consider them in the context of what is already a complex and heavy agenda.
- We believe – and the Commission itself has said so before - that it is important for public interest groups like ours to be involved in the CRTC's proceedings. Adding and subtracting items from the agenda of a public proceeding is particularly burdensome for such groups because we have a fixed budget and limited staff resources. We hope you can appreciate it has been difficult for organizations with a lot more resources than our own trying to keep up with the twists and turns of this process.

- With respect, Mr. Chairman, this is not what the April 2007 Cabinet Directive on Streamlining Regulations mandates and, we don't think it's a reasonable way for an important public agency to operate.
- Looking to the future, what might help is for the Commission to include public-interest groups such as ourselves in your annual meetings to set the three-year agenda. We also request that, unless there is an emergent situation, you provide adequate time when you issue notices of consultation, particularly when the issues raised are so critical to so many.

Conclusion

- To conclude, Mr. Chairman, we certainly realize that all regulated companies want to reduce the regulatory burden since this increases their profits.
- But for CCA, the bottom line is this: without empirical evidence that some undue regulatory burden actually exists, the CRTC must not deregulate BDUs, Pay TV, specialty services or any other player in the Canadian broadcasting system. We argue rather that there must be increased mandatory financial support for Canadian programming and by this, we mean by enforceable conditions of licence.
- We support the concept of a reasonable fee for carriage for over the air broadcast undertakings on condition that the proceeds be channeled towards more and better Canadian quality programming, based on enforced conditions of license for all distribution platforms.
- And, if there is demonstrable evidence of some undue regulatory burden that warrants deregulation, at least some of the financial savings obtained from deregulation must be returned to subscribers' pockets.

I thank you for your attention, and we would be happy to answer your questions.

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April 8, 2008