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January 20, 2025

Marc Morin  
Secretary General  
Canadian Radio-Television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

**Re: Broadcasting Notice of Consultation CRTC 2024-288 –  
The Path Forward - Defining “Canadian program” and supporting the creation and  
distribution of Canadian programming in the audio-visual sector**

Dear Mr. Morin,

**Introduction**

1. The Black Screen Office (BSO) welcomes the modernization of the *Broadcasting Act* and this opportunity to participate in continued public consultations regarding aspects of implementing the regulatory framework required by the new Act. We welcome the inclusion of online streamers into the regulated Canadian broadcasting system. We are particularly pleased by the more substantial commitment to Black and other racialized content creators and audiences now contained in the Act.
2. The BSO respectfully submits the following responses to the questions in the Notice of Consultation. We have limited our responses to those questions where we feel that we can benefit the Commission’s deliberations based on the experience of BSO and the Black members of the screen industries we represent.
3. BSO was founded in 2020 by some of Canada’s top Black film and television creators, with financial support from Telefilm Canada. It was a time of racial reckoning, and this was an opportunity to transform Canada’s screen industries. Since then, BSO has undertaken many activities with various partners, all aimed at dismantling Anti-Black Racism within Canada’s screen industries and bringing about a more inclusive and equitable film, television and interactive digital media industry. BSO’s mandate is to build a screen industry across Canada and in English and French, free of anti-Black racism, by working with industry decision-makers to change practices and build systems for accountability, directly catalyzing the production of Black-led content and supporting the career advancement of Black professionals. BSO was named by *Playback*,

Canada's screen industry publication, "Changemaker Organization of the Year 2022" in recognition of its efforts.

4. The BSO advances its mandate to empower Black talent and address systemic barriers in the screen industry through pioneering initiatives and advocacy efforts. Groundbreaking research such as [Being Seen](#), [Being Counted](#), and [Being Heard](#) provides actionable insights to help the industry create authentic and inclusive content, understand diverse audience needs, and spotlight the challenges facing Black screen professionals in Canada. Building on this foundation, BSO is developing additional reports, leading a Collaborative Network to establish common standards for authenticity, and crafting an Anti-Black Racism Policy Framework for cultural industries.
5. The BSO's Accelerator Framework delivers targeted support to Black talent, including programs like the BSO-Rogers Script Development Fund, the Mid and Senior-Level Career Accelerator, the BSO-DGC Black Women Directors Accelerator, and producer delegations to international markets. BSO also champions Black talent publicly, co-presenting significant events like the launch of *Brother* in Washington, D.C., and celebrating Black excellence in Canadian media with notable projects like *The Porter* and *Patty vs. Patty*.
6. In policy advocacy, BSO has made key contributions to legislative reforms, including amending Bill C-11 to explicitly reference "Black and other racialized" talent, ensuring the unique challenges faced by Black Canadians are addressed. Statistics Canada data shows that Black Canadians face disproportionate barriers, with 46% reporting experiences of discrimination compared to 27% of other racialized groups.<sup>1</sup> BSO urges the CRTC to prioritize the specific needs and interests of Black Canadians in shaping a modern regulatory framework to ensure equitable representation and inclusion in the screen industry.
7. With that in mind, BSO is happy to share our expertise and experience as we respectfully respond to the questions in the Notice of Consultation related to BSO's activities. The BSO is actively concerned with helping build a regulatory framework to support Black content creators and ensure Canadians from all backgrounds have access to Black Canadian content. We represent a community of Black talent who fulfill many roles in production and within broadcasters, funders, distributors and all other sectors of the screen industries. They work in all genres of content production. Our comments reflect the diversity of the community.

## Questions

8. **Q1. Currently, if a production does not have a sufficient number of key creative positions to attain the minimum 6 points, the Commission's approach has been to require that all key creative positions of production be filled by Canadians. Should the Commission continue with this approach? If not, under the Commission's preliminary view above, what should be the minimum threshold for a production to be certified Canadian?**

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<sup>1</sup> [Experiences of discrimination among the Black and Indigenous populations in Canada](#), 2019, Statistics Canada

9. It is common in certain genres for key creative positions to not exist on the production. For example, in most documentaries, there is no need for a Costume Designer or Hair/Makeup Artist. For television movies, lifestyle and documentaries, there is often no Showrunner. BSO recommends that the minimum threshold for a production to be certified Canadian should be commensurate with the minimum 9 out of 15 points, or in other words, there should be a minimum of 60% of point positions filled by Canadians, regardless of the available positions.
10. As for the minimum threshold, the CRTC proposes that a minimum of nine out of 15 points be attained to qualify as Canadian programming. That minimum would be consistent with the current 6 out of 10 minimum, and BSO supports that proposal.
11. **Q2. In productions where rights for pre-existing or pre-recorded music were purchased from both Canadians and rights holders, should the Commission still grant a point? If not, please explain.**
12. The BSO supports providing pre-existing or pre-recorded music purchased from Canadian rights holders or Canadian composers with a point as it will support the Black music industry in Canada and provide additional revenue opportunities to Black musicians and composers within the screen industries.
13. **Q3. Does the Commission’s preliminary view regarding key creative positions help ensure that the creative direction and control of a Canadian program remain Canadian? If not, how should this preliminary view be modified?**
14. Canadian creative direction and control are important to BSO and the Black talent community. Canadian control will ensure that Black Canadians are given job opportunities, career advancement, and opportunities to tell their stories. These opportunities may not exist if non-Canadians are in a position to fill roles with other non-Canadians. There is a particular concern within the Black Canadian community that the large Black American talent pool could easily limit their career opportunities if they are not protected. Therefore, the BSO supports the proposed creative direction and control provisions, specifically requiring that either the writer or director is Canadian, the showrunner must be Canadian, and the first or second lead performer must be Canadian. Each of these provisions has been demonstrated to ensure that programs are genuinely Canadian and, in the case of all but showrunner, have been successfully implemented for many years. There is no need to adjust these provisions.
15. **Q4. The Commission currently does not have a definition for the position of a “showrunner.” Please provide details on what such a definition should entail.**
16. The BSO supports adopting a definition of “showrunner” being proposed by the Writers Guild of Canada, namely:

*A showrunner is a writer-producer who is the chief custodian of the creative vision of a series and whose primary responsibility is to communicate the creative vision of that series through control of both the writing process and the production process—often from the pilot episode through to the finale.*

This definition aligns with industry practices and reflects the integral role of showrunners in shaping and guiding a series' creative direction. However, we recognize that the showrunner's responsibilities may sometimes be fulfilled by other roles, such as a director-producer or an executive producer, depending on the production's creative leadership structure. This variability highlights the need for clarity in how the Commission identifies and verifies the showrunner role.

17. While enshrining this position in regulatory frameworks such as a point system and Canadian content requirements has the potential to open doors for Black Canadian screenwriters to advance into showrunner roles, achieving this goal will require intentional industry efforts beyond policy definitions. For example:
  - Dedicated training programs that prepare Black screenwriters for showrunner responsibilities, including managing production and creative teams, are crucial.
  - Recognizing that the road to showrunner may not be linear or exclusive to writers, industry initiatives should ensure that Black creatives in various roles—writers, directors, and producers—have equitable access to leadership opportunities.

The BSO also emphasizes that increasing the number of Black showrunners will require systemic changes, including addressing barriers to career progression, providing mentorship and opportunities for Black creatives to helm productions, and fostering industry support for Black-led stories.

18. It should be noted that there is no 'showrunner' credit on productions. The Commission will require an attestation or contract to confirm the showrunner's identity. Attestation or contractual requirements for identifying showrunners should include a diversity reporting mechanism to monitor and encourage representation in these roles.
19. **Q5. Please comment on the Commission's preliminary view that if a production includes a showrunner, a Canadian must occupy that position.**
20. The BSO supports the Commission's preliminary view. As mentioned above in the Writers Guild's proposed definition, the showrunner is the 'chief custodian' of the creative vision. A showrunner will ensure that a program is true to its creative, reflects Canadian values and hires as much Canadian talent as possible.
21. To reiterate, we recommend the Commission consider:
  - Measures to ensure underrepresented creators, including Black Canadians, have equitable access to pathways leading to creative leadership roles like showrunning.
  - Establishing transparent mechanisms, such as attestation or contractual proof, to verify the identity of the showrunner or equivalent creative leader.
  - Encouraging productions to prioritize diversity in their creative leadership to reflect Canada's multicultural identity.
22. **Q6. Should the Commission include cultural elements within the certification framework? If yes, please describe what would constitute a "cultural element." Further, how should the Commission identify such elements in an objective way**

**and incorporate those elements into the definition?**

23. The BSO feels strongly that there should be no cultural test included as part of the definition of Canadian programming. There is no objective way to assess what is Canadian culture. The BSO advises against the CRTC introducing a selective element into an objective process.
24. We would like to provide you with a concrete example to demonstrate our concern. A recent feature film written and directed by Kelly Fyffe-Marshall, *“When Morning Comes,”* takes place almost entirely in Jamaica, as a young boy spends his last days before his mother sends him north to live in Canada with his grandmother. It is the newcomer story of many Jamaican-Canadians. The film qualified as Canadian, but under Telefilm, Canada’s selective process was provided with financing. However, we can imagine that someone unfamiliar with immigrant stories or the Jamaican-Canadian experience might not see that as a Canadian story, given that it takes place outside Canada. BSO does not want its community to take the risk that they could be told that their story is not culturally Canadian when a project is objectively Canadian under all other elements.
25. **Q7. Would this new flexible approach incentivize more collaboration and partnerships between Canadian and foreign creators?**
26. The BSO is most interested in collaboration and partnerships with countries that are part of the Black Diaspora, such as Caribbean, African and South American countries. Many of these countries are not part of the treaty co-production framework managed by Heritage Canada and Telefilm Canada. Some of them, such as Caribbean countries, have such small domestic production industries that they are unlikely to qualify for the treaty co-production framework. The increase in key creative points may provide room for Black Canadian producers to work with these other countries and include more talent from those countries without jeopardizing Canadian content certification.
27. **Q8. Would this new, flexible approach facilitate the exportability and discoverability of Canadian programming domestically and abroad?**
28. The new, flexible approach suggested by the CRTC should increase opportunities to collaborate with talent within the Black Diaspora, therefore helping producers export their programs in the home territory and that region. For example, working with Jamaican talent would increase exportability throughout the Caribbean. Nigeria is one of the largest screen sectors in Africa but has never signed a co-production treaty agreement with Canada. Working with Nigerian talent would open up export opportunities throughout Africa.
29. However, we are unclear about what is intended by linking flexibility in Canadian content certification with discoverability. If there are distinct non-Canadian elements, then the producer or platform can leverage those audiences to promote the program at home and abroad. Still, many other factors influence discoverability, including the cost of promotion, competition and commitment by the platforms. Flexibility could influence discoverability, but there is no guarantee that it will.

**30. Q9. Would this new flexible approach ensure that a production remains culturally relevant and reflective for Canadians, and that Canadians continue to exercise significant creative input and control in a production?**

31. Provided that there is Canadian creative control and a minimum number of Canadians fill key creative positions, no matter what the subject, the program will be culturally relevant and reflective for Canadians. There should be no cultural test because a program made by Canadians is Canadian. Science fiction made by Canadians reflects Canadian values. Documentaries about subjects outside our borders reflect Canadian values and perspectives.

**32. Q10. Currently, the director or screenwriter/scriptwriter/storyboard supervisor position must be filled by a Canadian for a production to be eligible for certification. Please comment on whether the Commission should maintain this approach on top of the new flexibility proposed above (i.e., 80% of Canadians). Should other key creative positions be opened to this flexibility?**

33. The BSO represents screenwriters, directors, producers and other members of the creative community. Accordingly, the BSO does not take a position on this question, though we reserve the right to comment further at a later stage in the proceeding.

**34. Q11. Currently, for a production to be certified, the following positions must be filled by a Canadian:**

**(a) the first or second lead performer (performer or voice); and**

**(b) camera operator (for animation productions other than continuous action animation).**

**Please comment on whether the Commission should maintain this approach.**

35. The BSO supports the Commission in maintaining this approach as it provides flexibility to engage Black Diaspora talent while continuing to support Black Canadian talent. The BSO sees no policy reason why that approach should be changed.

**36. Q12. Currently, for an animation production to be certified, the following functions must be performed in Canada:**

**(a) Key Animation (1 point)**

**(b) Camera Operator (1 point)**

**Please comment on whether the Key Animation function should now be performed “by Canadians” instead of “in Canada,” and whether this should be mandatory for certification. Also, please comment on whether the Commission should continue to require that the “Camera Operator” function be performed in Canada as a mandatory requirement for certification.**

37. The Key Animation function should be performed by Canadians rather than in Canada, consistent with the performance of other key creatives. For example, at no time does the Canadian content certification process require a screenwriter to write in Canada. This is

important to the Black community because few Black Canadian animators exist. The priority should be supporting the engagement of Black Canadian animators wherever they live rather than requiring them to do the work in Canada.

38. **Q13. Please provide an intellectual property rights model (or models) for the Commission to consider based on the different ways that a definition of “Canadian program” would account for intellectual property rights as set out in paragraph 31. Please explain how the proposed model(s) would incentivize collaborations and foreign equity investments, and ensure that Canadian programming is competitive in the global market.**
39. BSO looks forward to reading the submissions of other stakeholders to learn more about their proposals. BSO may comment further at the Public Hearing or Final Reply.
40. **Q14. In light of an approach based on Canadian intellectual property rights retention, should the Commission maintain the requirement that the key producer roles (producer, co-producer, line producer and production manager) be filled by Canadians to ensure Canadian financial and creative control? If not, please explain why.**
41. The provision that key producer roles are filled by Canadians is a key element to ensuring that a production is truly Canadian in terms of production and the creative direction. It is an important element in addition to intellectual property ownership and key creatives and is part of Canadian financial and creative control assessment. There is no justification for weakening this provision.
42. **Q15. How can the Commission incorporate the use of ownership and financial control of Canadian programs to help ensure the exportability of Canadian programming and formats through its modernized regulatory framework?**
43. Exportability and ownership are two separate issues. There have been attempts in the past to argue that lower point counts can generate more sales; however, the reality is that good ideas and good execution ensure exportability. 10-point shows such as “Murdoch Mysteries” and “Heartland” have been consistent export successes. The BSO may have further comments at the Public Hearing or Final Reply after reading the submissions of other stakeholders.
44. **Q16. Is the current co-venture model used by the Commission relevant to a modernized definition of “Canadian program” that includes a requirement relating to the retention of intellectual property rights?**
45. BSO looks forward to reading the submissions of other stakeholders to learn more about their proposals. BSO may comment further at the Public Hearing or Final Reply.
46. **Q17. Are there any special considerations that the Commission should give to the ownership of intellectual property rights by public broadcasters?**

47. The BSO can see no policy reasons that would justify providing specific ownership rights to public broadcasters. Independent producers are better positioned to exploit Canadian programs in international markets and, over time, domestically. The revenue generated would help sustain the independent production industry and ensure a healthy sector capable of creating content for Canadian audiences. Independent producers are required to understand the marketplace to secure financing. This insight encourages independent producers to develop content that audiences at home and globally are interested in. While public broadcasters have essential roles in the Canadian broadcasting system, there is no public policy need for them to replace independent producers to any extent.
48. **Q18. How does the Commission’s view regarding PNI align (or not align) with business models and the availability of programming in the current broadcasting system?**
49. **Q19. Would the proposed changes to the definition of “Canadian program” ensure continued financial support for Canadian programs previously supported through the Commission’s approach to PNI? Would the proposed changes ensure that those Canadian programs are not only made available to Canadians, but also exported internationally?**
50. Questions 18 and 19 are addressed together.
51. There are flaws in the Commission’s arguments explaining the proposal to eliminate PNI. The supposition that the business model of online undertakings is based on drama and documentaries, so there is no need for targeted support of PNI, is flawed. There are two problems with that supposition. First, the CRTC’s regulatory framework for broadcasters has consistently been based on the concept that unless they are required to do a thing that could impact their profit margin, the broadcasters will not do it. That is why PNI exists, as without it, CPE would all be spent on lower-cost lifestyle, reality, news, and sports. There is no reason to believe that online streamers would be any different. Given that the catalogues of some foreign streamers are full of lower-cost programming such as “*Queer Eye*,” “*Love is Blind*” (Netflix) and “*Pop Culture Jeopardy*” (Amazon Prime), there is every reason to believe that a CPE would be spent on Canadian versions of low-cost programming leaving us with “*Pop Culture Jeopardy Canada*” rather than great Canadian dramas and documentaries.
52. Some services, such as AppleTV and Disney+, rely on drama and documentaries as part of their business model. They do not yet appear to have moved into low-cost reality and lifestyle programming. In that case, they will have no problem meeting a PNI expenditure requirement. The broadcasting system will also have a minimum requirement if those platforms decide to adjust their business model. The regulatory framework should not rely on current programming strategies, which could change at any time, to develop regulatory support for the Canadian broadcasting system.
53. The BSO does not see the logic behind Q. 19’s suggestion that a flexible definition of Canadian programming would replace the existing support for PNI. No matter how a



Canadian program is defined, it is specifically Canadian drama and documentaries that require support to ensure they are commissioned.

54. After decades of the Black community being prevented from telling their stories due to systemic barriers within the Canadian screen industry, the solution is not to leave streamers and broadcasters open to spending CPE on low-cost programming—many untold stories from Black communities across Canada, both more recent and historical, pre-date Confederation. Continuing a PNI expenditure requirement will support Black talent in telling those stories. The BSO would like to remind the Commission that s. 3(1)(d)(iii) of the Broadcasting Act now says:

S. 1(d)(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests of all Canadians — including Canadians from Black or other racialized communities and Canadians of diverse ethnocultural backgrounds, socio-economic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages — and reflect their circumstances and aspirations, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Indigenous peoples and languages within that society,

A regulatory framework that allows undertakings to spend their CPE on low-cost programming will not ‘serve the needs and interests’ of Black Canadians, nor will it ‘reflect their circumstances and aspirations.’ However, a framework that supports more shows like *“Diggstown”* and the documentary series *“BLK: An Origin Story”* will.

55. BSO agrees that news is important to support. However, support for news should not come at the expense of PNI. Both can and should be supported. Further, as the Notice suggests, not all broadcasting undertakings may be necessary to support news. Some of the foreign streamers do not include news in their business model. Eliminating PNI for platforms that also do not have a news CPE would provide those streamers with no obligation to support either challenging programming category.
56. In conclusion, BSO feels strongly that both Canadian broadcasters and foreign streamers should have PNI expenditure requirements to ensure continued support for Canadian dramas and documentaries.
- 57. Q20. Should the CPE requirements for traditional Canadian broadcasters and foreign online undertakings be similar or different? How can the Commission impose equitable requirements that respect the different business models of the various undertakings and broadcasting groups?**
58. The BSO does not take a position on this question at this time. We await with interest reading the submissions from Canadian broadcasters and foreign online undertakings and may take a position at the Public Hearing or the Final Reply stage.
- 59. Q21. Please explain how the Commission should determine:**
- (a) what types of expenditures would fulfill the needs in the broadcasting system relating to Canadian programming, in particular news programming; and**

**(b) how these expenditures should be allocated.**

60. The BSO sees the need for a news CPE requirement, particularly to support regional and local news to ensure that all Canadians are represented in news stories; however, we leave it to those with more experience in the news field to propose how it should be determined and allocated. However, we repeat our position stated above that any news CPE should not come at the expense of any PNI requirements.
- 61. Q22. Should different approaches be undertaken for the English- and French-language markets in a modernized CPE framework? For example, should the Commission impose a minimum expenditure requirement for Canadian original English- and French-language programs? If yes, should the approaches differ in both official language markets?**
62. The BSO is of the opinion that the CPE should ensure that there is a minimum expenditure on original programs to prevent platforms from meeting their requirements by licensing old programming. While there is a benefit to providing existing programming with access to larger global audiences, as Netflix has done with many CBC programs such as “Kim’s Convenience” and “Schitt’s Creek,” one of the goals of the *Online Streaming Act* was to ensure that foreign online streamers contributed to the Canadian broadcasting system. That contribution should include commissioning new Canadian programming and not merely acting as a subsequent window for existing programming. Otherwise, it would burden Canadian broadcasters with all the risk of developing and producing new programs, leaving foreign streamers to cherry-pick from the successes.
63. The BSO represents both English and French Black Canadians and sees no reason that English and French language markets should have asymmetrical regulation.
- 64. Q23. How can a modernized expenditure framework support Indigenous content and content created by and for equity-deserving groups, OLMCs and Canadians of diverse backgrounds?**
65. The CRTC exists because without regulation, broadcasters and now streamers would not fulfill the cultural policy goals of the *Broadcasting Act*. Among other responsibilities, it is the CRTC’s obligation to regulate the Canadian broadcasting system so that it “provides opportunities to Black and other racialized persons in Canada by taking into account their specific needs and interests, namely, by supporting the production and broadcasting of original programs by and for Black and other racialized communities”<sup>2</sup>. We cannot leave it to ‘best efforts’ or ‘expectations’ that streamers and broadcasters will diversify their programming to “serve the needs and interests of all Canadians”<sup>3</sup> because to date, despite audience demand<sup>4</sup>, they have been reluctant to do so. There has been some progress with shows like “*The Porter*,” “*Diggstown*,” “*Bria Mack Gets a Life*,” and

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<sup>2</sup> s.3(1)(d)(iii.11) of the *Online Streaming Act*

<sup>3</sup> s.3(1)(d)(iii) of the *Online Streaming Act*

<sup>4</sup> For evidence of audience demand please see the BSO’s groundbreaking research reports [Being Seen](#) and [Being Counted](#).

“*Shelved*,” but they are averaging one or, at the most, two Black-created drama shows per year within the Canadian broadcasting system.

66. The BSO’s focus is Black Canadians, but as we take an intersectional approach to that community, we are concerned with ensuring that content is created by all Indigenous and equity-deserving groups. The CRTC has made decisions in the past at broadcast licence renewal to provide targeted support to Indigenous and some equity-deserving groups. The BSO believes that the CRTC should build on those previous decisions.
67. In the 2017 [Group-based Licence Renewal](#) policy, group-based broadcasters were provided a bonus of 50% of CPE for programs produced by Indigenous producers and 25% for programs produced by OLMC producers. They were required to file production reports annually identifying the programs that fit those categories. While those categories were significantly more limited than the CRTC is now required to support due to the *Online Streaming Act*, that decision does show a pattern of using bonus credits to incentivize broadcasters to commission programs from underrepresented producers.
68. We draw the Commission’s attention to the recent [CBC Licence Renewal](#) decision, where allocations of CPE were made for independent production from Indigenous producers, OLMC producers and producers from ‘other equity-deserving communities’ (defined in the decision as racialized, disabled and LGBTQ2). To help the CBC meet its expenditure requirements, it was granted a 50% bonus on expenditures made on productions produced by producers from the Indigenous, OLMC, racialized, people with disabilities and LGBTQ2 communities. While the Governor in Council sent this decision back to the CRTC for reconsideration,<sup>5</sup> the issues to be reconsidered did not include expenditure requirements for programs produced by Indigenous and equity-deserving producers.
69. The Commission was very thoughtful in its analysis, looking at the population demographics available at the time and the need for previously excluded communities to ramp up production capacity. The logic behind that framework remains sound with some adjustments.
70. The *Online Streaming Act* identifies that Black Canadians have needs that are distinct from other racialized Canadians because of long-standing systemic and historical biases. Therefore, any expenditure requirement should identify a sub-category for Black producers distinct from other racialized producers. While the CBC’s overall requirement of 30% of independent production, ramping up to 35% by 2026-27, is sound, it does depend on maintaining a percentage of CPE dedicated to independent production. In most licences, including CBC and Group-based licences, a percentage of PNI must be independent production. If PNI is removed, there would need to be another safeguard for independent production, upon which the Commission could calculate the expenditure for Indigenous and equity-deserving programs. Maintaining PNI and the threshold for independent production appropriate for the service is simpler.
71. **Q24. In the modernized CPE framework, what programming, such as news, should be viewed as risky and expensive to produce and difficult to monetize but**

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<sup>5</sup> <https://canadagazette.gc.ca/rp-pr/p2/2022/2022-09-28/html/si-tr44-eng.html>

**exceptionally important to the achievement of the objectives of the Act? How is such programming not already supported by the various business models in operation in the Canadian broadcasting system?**

72. Programs of National Interest (PNI) were designated as such, and before that, Priority Programming because dramas and documentaries were seen as risky and expensive to produce while still being exceptionally important to achieving the cultural policy objectives of the *Broadcasting Act*. This has not changed. As the business model for news has been disrupted, it may be necessary to add news to that category of 'risky and expensive to produce,' particularly local news. Still, that designation does not remove the need to support Canadian dramas and documentaries across the Canadian broadcasting system. They are the genres with the greatest potential to reflect us back to ourselves. They are also the genres with the greatest competition from U.S. programming domestically and internationally, making them challenging to monetize.
73. **Q25. How should expenditures on news programs be incorporated into a modernized CPE framework?**
74. We leave it to others with more experience with news to share their thoughts on a news CPE. The BSO's concern remains that supporting news should not come at the expense of PNI.
75. **Q26. What other incentives, such as CPE credits, could be used to support certain types of programming (for example, original first-run programs and/or independent productions)?**
76. As mentioned above, the BSO supports building a regulatory framework consistent with the CBC licence to support independent production, Indigenous production, and production produced by Black, racialized, disabled and 2SLGBTQIA+ producers through expenditure requirements combined with CPE bonus credits. Minimum requirements or incentives for original first-run programs and independent production would support both Canadian programs and independent production.
77. **Q27. Should the Commission set out reporting requirements, as described above (for example, through a requirement to provide production reports), for all broadcasting undertakings operating in Canada, whether they are Canadian or foreign, and whether they operate on traditional platforms or online?**
78. **Q28. Should the Commission require the public disclosure of the revenues and programming expenditures of all broadcasting undertakings subject to CPE requirements? Should the information be collected and published by the Commission or published by the undertakings themselves?**
79. In response to Questions 27 and 28, yes, there should be a requirement to provide production reports and reports on revenues and programming expenditures as the Commission currently requires from broadcasters. As online undertakings are being incorporated within the regulatory framework of the Canadian broadcasting system, it is

appropriate to extend the requirements to all undertakings to ensure that there is accountability. Stakeholders should be able to access these reports centrally on the Commission website and not on each undertaking's website. The Commission would, therefore, also be able to monitor compliance on an annual basis.

**80. Q29. Should the published revenue and CPE data be broken down? Should it be published by service, by ownership group, or further, for example, by program category, language, or other elements?**

81. The BSO has no comment on this question.

**82. Q30. What type of data should the production report include or not include (for example, language, region, producer information, and Canadian certification number)? Please explain.**

83. The BSO has no comment on this question.

**84. Q31. To make it easier to work with industry data and to compare such data, should the production report include an identifier that is unique for each program? If yes, please explain how this identifier should work (for example, a serial number or alphanumeric text). Should the identifier itself carry any metadata (that is, data providing information about one or more aspects of the data)?**

85. The BSO has no comment on this question.

**86. Q32. If the Commission decides to use unique identifiers, how could the production report be linked to audience measurement sources, providing information about the viewing patterns and availability of content produced?**

87. The BSO has no comment on this question.

**88. Q33. How should the Commission collect data regarding key creative positions, producer positions and intellectual property for Canadian programming owned by people from the following groups:**

- Indigenous peoples;
- Equity-deserving groups; and
- OLMCs?

**89. Q34. How should the Commission address concerns regarding privacy and self-identification issues? Could the use of a unique identifier help in addressing those concerns?**

90. In response to Questions 33 and 34, first, the BSO would like to see ALL key creatives self-identify rather than isolating only those who are Indigenous, equity-deserving or OLMCs. Requiring identification from all normalizes the process, reduces fear of stigmatization that comes from previous systems and negative ramifications from

identification and provides the industry with a full and detailed picture of who is creating and owning Canadian programming. Requiring self-identification of all key creatives would also be consistent with how funders and broadcasters collect identification data. The BSO also advocates for equity-deserving groups to be identified in at least the four main buckets of Black, Other Racialized, People with Disabilities and 2SLGBTQIA+ with the ability for people to identify as multiple identities to better reflect intersectionality.

91. The BSO strongly recommends that the Commission co-ordinate identity data collection with industry stakeholders for consistency and to prevent data collection fatigue, which could result in lower data collection rates. The Canada Media Fund, Telefilm, other funders, and broadcasters have all been evolving their data collection methods, ensuring privacy protection and implementing security measures. However, each organization has developed their own system with distinct methodology and definitions. The BSO recommends that the Commission work with the industry to develop a centralized data collection system and institute best practices for what currently exists. For example, the CMF Persona-ID system, with its unique identifier that is filed by individuals rather than reported by producers, has been very successful with an 89% response rate in 2023-24<sup>6</sup>.
92. A group of stakeholders (funders, broadcasters, training organizations and advocacy organizations) known as the Collaborative Network have been working on a survey of data collection methods within the Collaborative Network. This survey and report were initiated to help the industry better understand what identification data is being collected, how it is being collected, how it is being used and what the challenges are. The next step will be to develop best practices to help stakeholders develop and/or improve their identity data collection practices. The BSO initiated and facilitates the meetings and work of the Collaborative Network. The BSO anticipates being able to share the results of the survey with the Commission by the time of the Public Hearing to assist the Commission with understanding industry best practices for identity data collection.
93. **Q35. Should certain types of data (relating to, for example, programming or the operation of undertakings) provided by broadcasting undertakings be presumed to be confidential when filed? If yes, please explain why.**
94. We will leave to the broadcasting undertakings the task of requesting confidentiality and may respond on the Public Hearing or Final Reply. However, should the Commission determine that some data should be filed confidentially, the BSO urges the Commission to release publicly aggregate data to allow stakeholders to monitor progress across the industry.
95. **Q36. What is the best way to measure and evaluate the success of the new framework for expenditures on Canadian programming?**
96. The simplest answer is to track expenditures on Canadian programming. This will require a baseline report of expenditures on Canadian programming from the online

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<sup>6</sup> <https://cmf-fmc.ca/news/cmf-releases-second-demographic-report/>

undertakings. There may be other metrics that should be tracked, and we look forward to reviewing the submissions of other stakeholders.

97. **Q37. Given the Commission’s preliminary view with respect to PNI, how can future data collection practices help track which types of programming are risky to produce and difficult to monetize, and consequently require regulatory incentives?**
98. In the past, the Commission listened to the producers and other content creators through public hearings to learn what was risky to produce and difficult to monetize and therefore required regulatory incentives. The Commission identified that there was a need to finance Canadian dramas and documentaries. In the Group-based licensing decision, the Commission was of the view that “Drama programs and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values.”<sup>7</sup> The challenge of being able to finance a big-budget drama or a point-of-view documentary is not something that can be identified through data collection. There is no guarantee that any content from any jurisdiction or of any genre can be successful and monetized. The number of U.S. shows that are cancelled after one season are testament to the inherent riskiness of content production. While there has been a lot of change in the Canadian broadcasting system and global markets since 2010, the need for Canadians to have access to risky-to-produce and difficult-to-monetize Canadian dramas and documentaries has not changed. Accordingly, BSO reiterates the need to maintain regulatory support for PNI.
99. **Q38. How can the Commission measure whether the future modernized definition of “Canadian program” is meeting the desired goals as specified in paragraph 7 of this notice?**
100. The Commission can track the volume of commissioned Canadian programs and part of CPE. However, we encourage the Commission not to wait till licence renewals or a five or seven-year term for review of the regulatory policy to identify if the modernized definition is having a positive impact or if there are unintended consequences. When the Commission removed expenditure requirements in favour of exhibition requirements for Canadian programming in 1999<sup>8</sup>, there was an immediate drop in Canadian drama and documentaries as broadcasters shifted to lower-cost programming. It took until the 2010 Group-based licensing policy, eleven years later, for the Commission to accept the evidence that the content creators and producers were able to make for the negative impact on a generation of Canadian creators. That decision was reversed with the introduction of PNI expenditure requirements. Given the multiple policy goals of paragraph 7 of this notice, we strongly encourage the Commission to monitor progress and engage with stakeholders on an ongoing basis.

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<sup>7</sup> [Broadcasting Regulatory Policy 2010-167](#)

<sup>8</sup> [Building on Success - a Policy Framework for Canadian Television](#), CRTC Public Notice 1999-97.

101. **Q39. The *Official Languages Act* requires the Commission to establish evaluation and monitoring mechanisms for any positive measures taken in this regard. How can the Commission measure and evaluate the success of the framework for achieving the objectives relating to promoting and protecting the French-language and supporting the vitality and development of OLMCs?**
102. The BSO leaves to organizations more focused on support for OLMC's to address this question.
103. **Q40. Can AI-generated material be considered Canadian content? If yes, on what basis? Please explain.**
104. **Q41. What could the potential impact of AI be on pre- and post-production, including but not limited to tasks such as visual effects?**
105. **Q42. How could the use of AI impact discoverability of Canadian content?**
106. The following are BSO's responses to Questions 40 - 42.
107. The BSO has been working with content creators to explore AI's use in creating Canadian content. From that perspective, we ask the Commission what they mean by 'AI-generated material.' AI can be used as a tool to create content, and in that sense, it is similar to Microsoft Word or Final Draft, software tools used in screenwriting. AI can pull character descriptions from a script into a separate document or read a script and create a summary to include in a funding application. AI can help graphic designers create a look and feel for a pitch document or help production designers present their ideas to a director. However, some have used AI to bypass hiring talent and try to write the scripts or create the content. Those uses of AI tend to be less successful with audiences, given the current status of AI tools, but they are rapidly evolving.
108. The use of AI in content creation is a complex issue that may become even more complex as the tools develop. There may need to be guardrails that encourage the use of AI as a tool for creators while limiting the ability to claim key creative points in circumstances with limited human endeavour.
109. However, these guardrails should not be addressed through three questions in this public notice. The BSO strongly recommends that the Commission do third-party research on the tools, their current evolution, and how they are being used. There could then be a public hearing that might lead to guardrails.
110. **Q43. If the 75% threshold should not be maintained, please explain why and provide an alternative that would ensure continued and significant investment in Canadian resources.**
111. The BSO sees no policy reason to justify reducing the 75% threshold for expenditures on production costs as a condition of qualification as Canadian programming. That



threshold ensures that budgets are spent on Canadians, whether the production shoot is in Canada or not and is an important guarantee that a program is truly Canadian and, therefore supports the cultural policy goals of the *Broadcasting Act*.

- 112. Q44. Should the Commission discontinue the use of time credits as an incentive to make Canadian programming available? If no, please explain why.**
113. Time credits have been phased out as the Canadian broadcasting system has evolved into a more on-demand world. Provided that the regulatory framework continues to have PNI expenditure requirements and expenditure requirements for PNI produced by members of Black and other equity-deserving groups, then there is little value in the exhibition time credits.
- 114. Q45. Is there still a need for the Commission to continue incentivizing the dubbing of productions in Canada by Canadians? Please explain.**
- 115. Q46. If you reply “Yes” to Q45, what types of incentives should be used to ensure that Canada’s dubbing industry continues to thrive? What types of regulatory tools could the Commission use to incentivize the dubbing of productions in Canada by Canadians in a modernized expenditure framework?**
116. The BSO has no comment on Questions 45 and 46.
- 117. Q47. Do you agree with the Commission’s proposal to consolidate the foreign courtesy credits, remove the equivalency-based approach, and replace the notarized affidavit with an attestation of duties for each person who receives a courtesy credit? If not, please explain.**
118. The BSO has no concerns with this approach at this time.
- 119. Q48. Given that the Commission rarely receives applications for Canadian certification of production packages and twinings, should the Commission discontinue certification of these types of productions? Please explain.**
120. The BSO supports streamlining certification by eliminating categories that are rarely used.
- 121. Q49. Should the Commission eliminate pilot projects from the definition of a Canadian program? Please explain.**
122. The BSO supports eliminating the pilot projects that the industry did not request, which were impossible to finance and, therefore, never used.

- 123. Q50. By reference to the factors set out in subsection 10(1.1) of the Act or section 13 of the Government of Canada's policy direction, should adult programming continue to be recognized as Canadian programming? Please explain.**
124. The BSO supports removing adult programming from the definition of Canadian programming.

## **Conclusion**

125. This public notice is a generational opportunity to adjust the definitions of Canadian programming and the regulatory framework to support that programming. That being said, we urge the Commission to not feel the need to provide so much flexibility that the definition of Canadian programming no longer supports the independent production sector, content creators and Canadian audiences.
126. The BSO welcomes elements of flexibility that will encourage Black Canadian talent to work with the Black diaspora worldwide while still prioritizing Black Canadian talent. We have many untold stories to tell. We encourage the Commission to enact a regulatory framework requiring foreign streamers and Canadian broadcasters to showcase our stories and tell them to our fellow Canadians and global audiences.
127. BSO would like to appear at the public hearing in person.