



November 25, 2016

Filed Electronically

The Honourable Mélanie Joly
Minister of Canadian Heritage
c/o House of Commons
Ottawa, ON K1A 0A6

Dear Ms. Joly:

Re: WGC submission to Canadian Content in a Digital World Consultations

1. The Writers Guild of Canada (WGC) is the national association representing more than 2,200 professional screenwriters working in English-language film, television, radio, and digital media production in Canada.
2. The WGC is pleased to provide these comments in the current consultations, entitled “Canadian Content in a Digital World”. We would like to take this opportunity to thank you for initiating and leading this process, which we agree comes at a historic time in Canada’s cultural sector. We appreciate your energy and commitment to this important component of the Canadian cultural economy, and commend you and your staff on the efforts you have dedicated to these matters.
3. The WGC’s comments relate particularly to the English-language film and television sector in Canada. The WGC does not operate in the French-language market, and we understand that the realities of French-language production and consumption are different than that of the English market. Further, our members work primarily in the genres of dramatic television series (including comedy), children’s television and animation, feature films, movies of the week, and documentaries. These genres—serial drama and comedy in particular—are among the most popular, and most watched television genres,¹ and are highly culturally relevant as a result. As such, our comments will relate primarily to this type of content.
4. Our comments in this submission centre on two primary points. Firstly, the Canadian domestic film and television industry requires meaningful, ongoing, and stable government support in order to remain viable and healthy. The federal cultural policy toolkit has been essential to building the successful audiovisual sector that we have today, and it must be adapted such that it continues to build upon that success. Secondly, Canadian creators—and in particular, Canadian screenwriters—

¹ “Table 4.2.10 Average weekly viewing hours (millions) for Canadian programs broadcast by Canadian television services, by language market, program origin, and program category.” *Communications Monitoring Report 2016*, CRTC, <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2016/cmr.pdf> Accessed 18 Nov 2016, p. 152.

must be a core component of how we define domestic Canadian content. Screenwriters sit at the creative heart of what is fundamentally a creative industry, and that position must be maintained and strengthened.

5. In general terms, the WGC would like to see the Canadian audiovisual sector become more screenwriter- and talent-driven. Film and television is ultimately a business, and business concerns will always play an important role in how it operates. But it's also a creative sector, and creativity *is* our business. In the WGC's view, English-Canadian film and television production in the 21st century is over-rotated towards the mechanics of business deals, too often at the expense of creativity. WGC members who work as screenwriters and showrunners in other jurisdictions, mostly notably in the United States, detect a different attitude there towards screenwriters, and a different focus on creative risk-taking. Those jurisdictions see their business interests as resting on the foundation of well-executed creative vision. Canada has no shortage of talent and expertise, working in all parts of the audiovisual sector. Nevertheless, wherever a "Golden Age" of television or other media has dawned, in our view it has done so based on creative vision and investment in the artists who realize that vision. Canada must build upon a similar strategy.
6. All dollar figures in this submission are in Canadian dollars, as calculated according to exchange rates in November, 2016, unless otherwise indicated.

HISTORY AND CONTEXT OF THE ENGLISH-CANADIAN FILM & TELEVISION SECTOR

7. There are a number of important historical and structural characteristics of the film and television sector of English Canada, all of which contribute to our unique position in the global media ecosystem. Many of these characteristics combine to result in the following statement on television drama programming by Peter S. Grant, lawyer, author, and former law professor at the University of Toronto:

In [smaller English-language countries outside the United States], the production of high-cost local drama has always required government intervention to occur. The reason is simple. In the absence of government subsidy or regulatory requirements, broadcasters would always tend to acquire U.S. drama programs instead of local drama, since although U.S. drama series have production costs far in excess of the costs of local drama, broadcast rights to these programs can be acquired at a fraction of the cost of making local programming. Accordingly, while local drama can be extremely popular with viewers, it is usually more economic for broadcasters to import drama from other English-speaking countries, particularly the United States.²

8. This is true in English-Canada in particular, and in perhaps more so than any other jurisdiction in the world. Numerous factors contribute to and/or exacerbate this fact.
9. English-Canada is linguistically, geographically, and culturally proximate to the United States. English-Canadians not only speak the same language as Americans, but also generally do so without a recognizable accent. English-speakers from the United Kingdom, Ireland, or Australia are

² Grant, Peter S., *Stories Under Stress: The Challenge for Indigenous Television Drama in English-Language Broadcast Markets*, December, 2008 https://www.mccarthy.ca/pubs/IAWG_DRAMA_REPORT_FINAL.pdf Accessed 18 Nov 2016, pg. 1.

distinguishable from Americans by virtue of a spoken accent, which immediately “places” them in their country or region of origin. Outside of a few regions of Canada, Canadians have no distinguishing accent. Further, Canada shares a geographical border with the United States, and approximately 75% of the Canadian population lives within 160 kilometres of that border.³ This puts a majority of Canadians within close proximity of a number of major American metropolitan markets—and within their broadcasting contours. English-Canadians also have cultural similarities to the United States. Crucially, Canadians also have a number of key *differences* as well, and these differences are significant and form part of the very rationale for having a Canadian cultural policy to begin with⁴—something we will expand upon below. Yet it’s also true that Canadians have historical, political, and cultural characteristics in common with Americans. This, combined with decades of exposure to American media have contributed to a “comfort level” with American cultural product which may be more pronounced than as between other countries.

10. The English-Canadian population—and hence the English-Canadian market—is a fraction of the size of the U.S. market. The current population of the United States is approaching 325 million people⁵, compared to just over 35 million for Canada⁶. The English-speaking Canadian population is smaller yet, at 23 million to 28 million⁷. It is the size of the *English*-Canadian market that is most relevant to us, because in non-English markets “the language barrier in these other markets typically lessens the attractiveness of inexpensive English-language foreign drama.”⁸ This means that English- and French-speaking Canada are effectively different markets and should be treated distinctly from each other. This fact is recognized in the *Broadcasting Act*, which states that, “English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements.”⁹ Even in comparison with smaller “major markets”, English Canada is small. The United Kingdom, for example, has a population of 65 million people.¹⁰ The English-Canadian market is around one-third the size of the United Kingdom, and one-twelfth the size of the United States. As Grant has stated:

These economic realities mean that market size is a key determinant in recovering the high costs of TV drama. And in this respect, the United States has a crucial advantage over all other English-language markets. Because of its size, the U.S. is the only English-language market

³ See Kerr-Wilson, Jay, and Ariel Thomas. *The Canadian Rights Market Under Siege*. 18th Biennial National Conference New Developments in Communications Law and Policy, 5 May 2016 (Print), pg. 1-5.

⁴ McGrath, Denis. “COMMENTARY: When your Moral Compass doesn’t point True North” *Cartt*, 13 July 2016 <https://cartt.ca/article/commentary-when-your-moral-compass-doesnt-point-true-north> Accessed 18 Nov 2016.

⁵ “U.S. and World Population Clock.” United States Census Bureau, <http://www.census.gov/popclock/> Accessed 18 Nov 2016.

⁶ “Population by year, by province and territory.” *Statistics Canada*, <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo02a-eng.htm> Accessed 18 Nov 2016.

⁷ “Population by knowledge of official language, by province and territory (2011 Census).” *Statistics Canada*, <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/demo15-eng.htm> Accessed 18 November 2016.

⁸ Grant, pg. 2.

⁹ Canada. *Broadcasting Act* (S.C 1991, c11), *Justice Laws Website*, <http://laws-lois.justice.gc.ca/PDF/B-9.01.pdf> Accessed 18 Nov 2016, S. 3(1)(c). S. 3(1)(c)

¹⁰ “Population estimates.” *Office for National Statistics*, <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates> Accessed 18 Nov 2016.

where high-cost TV drama can be produced profitably without government or regulatory support.¹¹

11. The United States is one of the largest media producers in the world, and *the* largest producer of English-language content in the world. The size of the U.S. film sector alone has been estimated to generate approximately \$9.33 billion in production volume in 2014.¹² This compares with an English-Canadian production volume for film and television *combined* of \$2.14 billion¹³. In the same year, U.S. television revenues were worth \$187.36 billion¹⁴ in 2014, compared to \$7.35 billion for Canadian TV revenues, both English and French combined.¹⁵ That's a difference of more than 25 times, which is itself 2.5 times greater than the difference that could be accounted for by population alone (and Canadian TV revenues would include revenues generated by U.S. programming aired by Canadian broadcasters). These disparities indicate the sheer size of the industry to the south that we are competing with. A large supply of both money and content makes it easier for the U.S. market to constantly provide content options to English Canadians.
12. Professional content production is expensive. While the advent of cheaper, consumer- and "prosumer"-level production technologies, combined with video sharing Internet sites like YouTube, have made very low-budget content production and distribution possible, the costs of producing professional content such as drama series programming is high and increasing. For example, between 2003-2004 and 2014-2015, average budgets for English-language programs funded by the Canada Media Fund (CMF) increased in every programming category except one-off variety and performing arts.¹⁶ In the case of one-hour drama series, average budgets increased by 73%, from \$1,108,000 per hour in 2003-2004 to \$1,922,000 per hour in 2014-2015.¹⁷ International hits like *Game of Thrones* cost around \$8 million per episode¹⁸, setting audience expectations ever higher.¹⁹

¹¹ Grant, pg. 11.

¹² "Movie Budgets." *The Numbers*, <http://www.the-numbers.com/movie/budgets/all> Accessed 18 Nov 2016.

¹³ Canadian Media Producers Association (CMPA), Association Québécoise de la production médiatique (AQPM), Department of Canadian Heritage, Telefilm Canada and Nordicity Group Ltd. "Exhibit 2-4 Volume of total Canadian film and television production, by language." *Profile 2015: Economic Report on the Screen-based Media Production Industry in Canada*, <http://www.cmpa.ca/sites/default/files/documents/industry-information/profile/PROFILE-2015-ENG.pdf> Accessed 18 Nov 2016, p. 25.

¹⁴ "Figure 1.2 Communications sector revenues, by country, 2014." *Ofcom International Communications Market Report 2015*, https://www.ofcom.org.uk/_data/assets/pdf_file/0020/31268/icmr_2015.pdf Accessed 18 Nov 2016, p. 22.

¹⁵ CMPA et al. "Total revenue in the broadcasting sector, by subsector." *Profile 2015: Economic Report on the Screen-based Media Production Industry in Canada*, <http://www.cmpa.ca/sites/default/files/documents/industry-information/profile/PROFILE-2015-ENG.pdf> Accessed 18 Nov 2016, p. 68.

¹⁶ CMF. "Appendix A." "CMPA Proposals for CMF Guideline Changes: Eligible Licence Fees, Thresholds and Other Rights, 2", 2 Nov 2015. Note that while the document as a whole was created by the CMPA, the data table in Appendix "A" was provided by the CMF.

¹⁷ Ibid.

¹⁸ Garofalo, Alex. "'Game of Thrones' Big Budgets Bring Huge Success: How HBO Series Makes Money with High Cost per Episode." *Ibtimes*, 14 Aug 2016, <http://www.ibtimes.com/game-thrones-big-budgets-bring-huge-success-how-hbo-series-makes-money-high-cost-episode-1658966>. Accessed 18 Nov 2016.

¹⁹ See also: Smith, Gerry. "TV's 'Golden Age' Won't Last Because You're Not Watching Enough." *Bloomberg*, 28 May 2015 <http://www.bloomberg.com/news/articles/2015-05-28/tv-s-golden-age-won-t-last-because-you-re-not-watching-enough> Accessed 18 Nov 2016: "... 'Mad Men' debuted with mostly unknown actors. Now producers are signing up hotshot directors like Martin Scorsese and Woody Allen as well as big-name actors such as William H.

13. The high cost of drama increases the risk of producing it. "Cultural products like TV drama operate in a market that has very high risk. Most new TV shows fail."²⁰ To consumers of content, what's good—or, rather, what *they* like—appears eminently obvious once they see it. Consumers may be tempted to believe, therefore, that the people making the content must have known too, from the beginning, how it would turn out. That the logical conclusion to this line of thought is that content makers the world over have intentionally made thousands of hours middling-to-bad content, knowing all along how poor the results of their labours would be, is rarely discussed. The truth is, nobody knows what's a hit until it's crafted, polished, and completed for the audience. For that reason, content industries have always relied on a certain quantity—a critical mass—to produce quality. It's called the "hit model", and in it the prevalence of hits follows a power law relationship. A certain quantity of content is made, a minority of that content is a hit, and the revenues from those hits pay for the cost of producing all the content. But for each individual production, the risk of failure is high.
14. The above characteristics have had, and continue to have, a number of impacts on the Canadian domestic film and television industry. As noted above by Peter S. Grant, there is an economic disincentive for English-Canadian broadcasters to commission higher-cost Canadian television programming, such as drama, *even when that programming is popular with Canadians*. This has not just been observed by Grant. The Canadian Radio-television and Telecommunications Commission (CRTC) has observed:

Canada's small domestic market continues to make it difficult to finance the creation of competitive Canadian programs. Whereas U.S. producers can recover the majority of their production costs through domestic licence fees, the licence fees earned in Canada by most Canadian program producers represent only a fraction of their total production costs.

The financial disincentives broadcasters face in acquiring Canadian drama, documentaries and children's programs have resulted in a situation in which such programs are particularly under-represented on Canadian television screens. As a general rule, Canadian programs are not more costly to produce than non-Canadian programs. They are, however, more costly for Canadian broadcasters to acquire. Even if a Canadian and a non-Canadian program draw similar audiences and advertising revenues, the margin between the cost of the Canadian program and the revenues it generates tends to be much smaller than the margin for the equally-popular non-Canadian program, and may even result in a net loss for the broadcaster.²¹

15. It was in this policy decision that the CRTC created the precursor fund to today's CMF. But of course, the challenges go beyond this issue. Proximity and shared language have also made it easier for Canadian talent to exit the Canadian industry to work in Hollywood. Canadian actors like Ryan Reynolds, Ellen Page, and Rachel McAdams are among the most well-known expatriates to Los Angeles, but many more Canadians work behind the scenes as writers, directors, and other creative

Macy and Robin Wright. Expensive locations are increasingly common. As a result, production costs are soaring, with some shows consuming as much as \$10 million per episode."

²⁰ Grant, pg. 10.

²¹ "Public Notice CRTC 1994-10 The Production Fund." CRTC, 10 Feb 1994
<http://www.crtc.gc.ca/eng/archive/1994/PB94-10.HTM> Accessed 18 Nov 2016.

roles. Several Canadian writers have begun their careers in Canada before moving to Hollywood to work, such as Semi Chellas,²² R. Scott Gemmill,²³ and Hart Hanson.²⁴ The pull of Hollywood is strengthened by the fact that U.S. studios celebrate the screenwriter, more so than in Canada, as well as by Canadian broadcasters who increasingly require American financing in Canadian shows. These things are part of the reason that California is the WGC's second largest membership region. The success of Canadians in Hollywood and elsewhere is to be celebrated, and it is a testament to the depth of Canada's talent pool that many more Canadians choose to stay in Canada to create content within the Canadian system. But to the extent that film and television production, like other creative industries, tends to form synergizing clusters, the pull of talent south of the border challenges the Canadian broadcasting system to retain a critical mass of creators.

16. English Canada has a history of direct exposure and access to American film and television content. In feature film, Hollywood studios have long distributed their product directly into Canada, and continue to do so today.²⁵ Indeed, Canada is considered part of the Hollywood studios' *domestic* market.²⁶ Hollywood films dominate Canadian cinemas, such that in 2000, the Canadian Feature Film Policy, *From Script to Screen*, established a 5% goal for the Canadian share of feature film theatre box office receipts, a target that has generally not been met.²⁷ In television, from the very beginning of broadcasting, Canadians in border regions—as indicated above, a very significant portion of the population—could receive television signals over the air from adjacent American cities. For example, much of the "Golden Horseshoe" region of southern Ontario, which includes the Greater Toronto Area and is one of the largest population concentrations in Canada, is capable of receiving over-the-air television signals from Buffalo, New York. With the introduction of cable television, Canadians not living within range of American transmitters subsequently obtained access to U.S. television via cable, and this access to U.S. programming has been directly linked to the growth and popularity of cable television in Canada.²⁸ The direct importation of U.S. signals to Canada via cable and, later, satellite television was arguably but one policy option for Canadian broadcasting, and not an uncomplicated one at that, since U.S. border stations generally did not hold the broadcast rights to the programming in question in Canada. The presence of U.S. television services on Canadian cable and satellite offerings remains challenging, and a variety of regulatory options, such as "simultaneous substitution", have been employed to respond to the challenges to the Canadian rights market.²⁹ Canadian broadcasters also purchase Canadian rights to American programming, providing additional

²² Creator and writer for *The Eleventh Hour*, then writing and producing AMC's *Mad Men*.

²³ Writer and producer for *JAG*, *ER*, and *NCIS: Los Angeles*.

²⁴ Writer for *The Beachcombers*, *North of 60*, and *Traders*, now creator and writer of Fox's *Bones*

²⁵ Canadian Heritage. *Study of the Audiovisual Distribution Sector in Canada*, Nordicity, 31 March 2011. http://publications.gc.ca/collections/collection_2012/pc-ch/CH44-142-2011-eng.pdf Accessed 18 Nov 2016.

²⁶ Vlessing, Etan. "Canada Box Office: Revenue Rises to \$699M in 2015." *The Hollywood Reporter*, 8 Jan 2016 <http://www.hollywoodreporter.com/news/canada-box-office-revenue-rises-853273> Accessed 17 Nov 2016.

²⁷ Canadian Heritage. *Study of the Audiovisual Distribution Sector in Canada*. Nordicity, 31 March 2011 http://publications.gc.ca/collections/collection_2012/pc-ch/CH44-142-2011-eng.pdf Accessed 18 Nov 2016, pg. 41.

²⁸ Standing Committee on Canadian Heritage. *Our Cultural Sovereignty: The Second Century of Canadian Broadcasting*, June 2003 <http://www.parl.gc.ca/content/hoc/Committee/372/HERI/Reports/RP1032284/herirp02/herirp02-e.pdf> Accessed 18 Nov 2016, pg. 49.

²⁹ See Kerr-Wilson, Jay, and Ariel Thomas. *The Canadian Rights Market Under Siege*. 18th Biennial National Conference New Developments in Communications Law and Policy, 5 May 2016 (Print).

availability to Canadians. As such, the Canadian content marketplace has *never* been a "closed" market. Canadians have long had direct and easy access to American film and television content, almost to the same degree as Americans themselves. Even other small English-language markets, such as Australia or New Zealand, have had geographical barriers between themselves and foreign content. In Canada, while some critics argue that Canada can no longer maintain a "walled garden" approach to media, we would argue that we've never had a wall to begin with.

17. While little discussed, it's also worth noting the extent to which English Canadians suffer from "cultural cringe" in respect of much Canadian content. "Cultural cringe" has been described as follows:

Cultural cringe, in cultural studies and social anthropology, is an internalized inferiority complex which causes people in a country to dismiss their own culture as inferior to the cultures of other countries. It is closely related, although not identical, to the concept of colonial mentality, and is often linked with the display of anti-intellectual attitudes towards thinkers, scientists and artists who originate from a colonial or post-colonial nation. It can also be manifested in individuals in the form of cultural alienation.³⁰

18. Australian writer Henry Lawson expressed it in the context of his country over 100 years ago:

The Australian writer, until he gets a "London hearing," is only accepted as an imitator of some recognized English or American author; and, as soon as he shows signs of coming to the front, he is labelled "The Australian Southey," "The Australian Burns," or "The Australian Bret Harte," and lately, "The Australian Kipling." Thus no matter how original he may be, he is branded, at the very start, as a plagiarist, and by his own country, which thinks, no doubt, that it is paying him a compliment and encouraging him, while it is really doing him a cruel and an almost irreparable injury. But mark! As soon as the Southern writer goes "home" and gets some recognition in England, he is "So-and-So, the well-known Australian author whose work has attracted so much attention in London lately"; and we first hear of him by cable, even though he might have been writing at his best for ten years in Australia.³¹

19. The existence of "cultural cringe" in Canada or a "Canadian inferiority complex" has been debated in various circles. As a psychological state it is hard to quantify, or even to prove that it exists. No doubt, it may be a sensitive subject for some, since it suggests a reality that many Canadians may not wish to acknowledge. Nevertheless, we believe that it exists, because it is part of our members' daily working experience. It is one of the reasons that the WGC argues for the primacy of Canadian screenwriters in the domestic Canadian film and television sector, and for the policy tools to support them. WGC members do battle with the phenomenon of cultural cringe, and the business attitudes that go with it, all the time. In particular, we see the beliefs, held by some producers and/or broadcasters, perhaps born of the anxiety of risk-taking inherent in the medium, that success can be better assured if only an American or British screenwriter can bring some of their "magic" to bear upon their Canadian production. "If only we could get an American or British screenwriter, *then* we'd really have something!" WGC members report encountering this attitude on a regular basis. Yet when some of those same Canadian writers leave the country and find success in Hollywood, many of

³⁰ "Cultural cringe." *Wikipedia*, http://en.wikipedia.org/wiki/Cultural_cringe Accessed 18 Nov 2016.

³¹ Lawson, Henry. *Henry Lawson Autobiographical and Other Writings 1887–1922*. Edited by Colin Rodrick. (Angus & Robertson, 1972.) pp. 108–109.

those same producers and broadcasters ask why, and muse about somehow luring them back to Canada. That said, we believe that the Canadian industry is increasingly overcoming these obstacles, and that Canadians do and will continue to appreciate their efforts in putting Canadian cultural expression on a firm, confident footing with the best content that the world can offer.

20. A number of these factors combine to create a culture of conservatism in the Canadian broadcasting sector when it comes to Canadian content. Our members report that Canadian broadcasters generally, with rare exceptions, prefer tried and tested formulas—police or medical procedurals, for example—rather than take creative risks on new, innovative ideas. This may be partly because of Canada’s smaller market, which makes the risks of failure greater. It may also be partly because many broadcasters make most of their money on imported U.S. shows, so at an organizational level they are less invested, financially and in their corporate culture, in domestic production. Another factor may be the desire to obtain financing from international markets, primarily the U.S., and with that a belief that content must be “generic” in order to travel well—something that may colour producers’ views as well as broadcasters’. But whatever the cause, WGC members regularly report a tendency in Canada to “play it safe” creatively. When critics ask where Canada’s contribution to the “Golden Age of Television” is, we would first argue that we have made contributions, with edgy (but under-promoted and/or quickly cancelled) shows like *Strange Empire*, or *Intelligence*. But in addition, the creative conservatism of many Canadian broadcasters and producers is a big factor. Screenwriters in English-Canada report being given endless “notes” on every aspect of their scripts from a great variety of people, and are expected to accommodate most or all of these notes, even when they are contradictory. The end result is a watered-down vision that often makes it impossible to create truly original, distinctive, and high-quality content. We will offer a potential solution to the lack of creative risk-taking in Canada below when we talk about development.
21. Collectively, the above challenges have been responded to over the years by a number of federal government policies, together often referred to as the “policy toolkit”. They include the regulation of broadcasting, public funding for content production, public broadcasting, and ensuring “shelf space” and “discoverability” options for Canadian content. These tools have worked effectively over the years. The volume of domestic production (measured as the total of all budgets) reached \$2.96 billion and generated more than \$3.7 billion in GDP for the Canadian economy in 2014-2015³². This is the second highest level of production spending in the past 10 years.³³ The domestic industry also generated 62,100 full-time equivalent (FTE) jobs in 2014-2015, including 37,700 spin-off FTEs in other Canadian industries.³⁴ One million viewers per episode is the mark of success in Canada and hit series like *Motive*, *Murdoch Mysteries*, *Rookie Blue*, and *Saving Hope* have regularly drawn at least 1.4 million viewers. The Canadian Broadcasting Corporation’s (CBC) huge hit, *The Book of Negroes*, attracted nearly 2 million Canadians for its premiere and continued to draw an average of 1.6 million over its six episodes.³⁵ These numbers are well within the Numeris weekly Top 30 ratings successes, and are

³² CMPA et al. *Profile 2015: Economic Report on the Screen-based Media Production Industry in Canada*, <http://www.cmpa.ca/sites/default/files/documents/industry-information/profile/PROFILE-2015-ENG.pdf> Accessed 18 Nov 2016, p. 20.

³³ Ibid., p. 23.

³⁴ Ibid., p. 24.

³⁵ “CBC’s Primetime Schedule Garners Record-Breaking Numbers.” *CBC Media Centre*, 6 Feb 2016 www.cbc.ca/mediacentre/press-release/cbcs-primetime-schedule-garners-record-breaking-numbers Accessed 18 Nov 2016.

very competitive with top U.S. shows. The export value of Canadian film and TV series has reached an all-time high of more than half a billion dollars, with demand growing steadily over the past decade.³⁶ This success simply would not have been possible without the supportive policies of the federal cultural policy toolkit.

22. At the same time, it is important to note that the “digital revolution”—the availability of increasingly more powerful and affordable computing devices and software, combined with the global interconnectivity and access provided by the Internet—does not, by itself, adequately address any of these challenges. The digital revolution does not alter the size of the English-Canadian market, nor does it mitigate the challenges of our proximity to the United States. The Internet does not make professional content production cheaper, and indeed the world-leader in Internet-based content production and distribution, Netflix, recently announced that it would spend over \$8 billion on content production in 2017.³⁷ The digital revolution does not reduce the risks involved in spending large amounts of money on cultural products whose success is uncertain. The Internet itself doesn’t finance content, and while it does provide the possibility of “crowdfunding”, such an option appears effective for only a limited number of projects, generally those with an already established fan base and/or with particularly small budgets. Crowdfunding statistics provided by the CMF indicated a 20% success rate for Canadian crowdfunding campaigns, and an average funding amount of just over \$20,000 per project.³⁸ Canada’s small market remains as much of an issue for crowdfunding as for traditional financing.³⁹ Despite Internet-based crowdfunding being available for nearly a decade, it has not shown itself to be a viable option for many Canadian audiovisual projects. Indeed some “traditional” audiovisual crowdfunding campaigns have drawn criticism for using the platform.⁴⁰ And while “Over-the-Top” services (OTTs) do finance content, they are not “the Internet” per se, but rather are content distributors operating on the Internet, and they create their own set of challenges for Canadian domestic production which we will discuss in greater detail below.
23. As such, in many respects the Internet exacerbates the challenges faced by Canadian audiovisual content creators, because it undermines elements of the policy toolkit and opens up the Canadian marketplace to international competition even further, a phenomenon that always tends to benefit the biggest, most established players. Certainly, the Internet also brings opportunities for Canadians, but the challenges are just as great if not greater.

³⁶ CMPA et al. *Profile 2015: Economic Report on the Screen-based Media Production Industry in Canada*. <http://www.cmpa.ca/sites/default/files/documents/industry-information/profile/PROFILE-2015-ENG.pdf> Accessed 18 Nov 2016, p. 10.

³⁷ Castillo, Michelle. “Netflix plans to spend \$6 billion on new shows, blowing away all but one of its rivals.” *CNBC* 17 October 2016. <http://www.cnn.com/2016/10/17/netflixs-6-billion-content-budget-in-2017-makes-it-one-of-the-top-spenders.html> Accessed 18 Nov 2016.

³⁸ “Statistics: Crowdfunding in Canada in 2015” CMF, 20 April 2015 http://crowdfunding.cmf-fmc.ca/facts_and_stats/statistics-crowdfunding-in-canada-in-2015 Accessed 18 Nov 2016.

³⁹ *Crowdfunding in a Canadian Context: Exploring the Potential of Crowdfunding in the Creative Content Industries*. CMF Aug 2012 <http://www.cmf-fmc.ca/documents/files/about/publications/CMF-Crowdfunding-Study.pdf> Accessed 18 Nov 2016, s. 2.2.3.

⁴⁰ Child, Ben. “Zach Braff Kickstarter controversy deepens after financier bolsters budget.” 16 May 2013 <https://www.theguardian.com/film/2013/may/16/zach-braff-kickstarter-controversy-deepens> Accessed 18 Nov 2016.

24. This bears emphasis, because there is a pervasive view, generally promulgated by people who have no experience making professional content, that the digital revolution and/or the Internet automatically solves the problems facing our sector. The solution, according to this view, is simply to “innovate”, to take advantage of the Internet as an “open platform”, and to sell Canadian content into a global market that is more accessible now than ever before. Yet it is worth noting that all of the digital tools currently available to content makers have been available for years, and nothing about the current policy toolkit prevents people from eschewing the traditional system to make and distribute their content. Despite this, we have yet to see a Canadian cultural renaissance born of the digital shift itself. Digital cameras and non-linear editing software has been available for over a decade. YouTube was launched in 2005.⁴¹ There are absolutely no legal or regulatory barriers to prevent Canadians from raising money—or spending their own money—to develop, produce, and distribute content using digital technologies. As such, we submit that what we can expect from a “free market”, Internet-based content ecosystem in the future is similar, if not identical, to what we see today—for example, a variety of low-cost, generally short-form audiovisual content, popularly known as “YouTube videos”. While we recognize the value of such content—and applaud the success of Canadian YouTube stars such as Lilly Singh and Corey Vidal—we also submit that such content cannot be the sum total of the output of “Canadian media”, either from a cultural or an economic policy perspective. There must be more than that, whether it means Canadian journalism, Canadian drama, or Canadian children’s programming. “The Internet” will not, by itself, produce such content at an optimal quantity, quality, and/or diversity, and the evidence of that is that it has not done so already.
25. Since the Internet doesn’t finance content, the traditional problems facing Canadian content-makers—a small domestic population, proximity to the U.S., etc.—remain just as relevant in a digital world as in an analog one. In this sense, “traditional” platforms continue to matter, not so much because they are “essential” distribution platforms—though, for example, traditional television viewing continues to far exceed online television viewing in Canada, even if current trends imply that won’t always be the case⁴²—but because they are a vital source of production financing.
26. Finally, it is important to note in this discussion the difference between Canadian “domestic” production and Canadian “foreign service” production. Domestic Canadian productions are made by and for Canadians. Domestic productions are made by Canadian creators, are intended primarily for a Canadian audience, and generally reflect Canadian stories, themes, and/or a Canadian sensibility. Foreign service productions are made to a significant degree in Canada, often using Canadian crews and some Canadian talent, but are creatively driven from elsewhere, usually Hollywood. Such productions come to Canada for a variety of reasons—usually financial reasons, such as a low Canadian dollar and/or Canadian foreign service tax credits, but also because of Canadian locations and/or developed film and television production infrastructure. While there is a place for both types of production in Canada, the WGC is focused on *domestic* Canadian production. Foreign service production is creatively controlled from outside of Canada, the subject matter of the production is often unrelated to Canada, and such productions never hire resident Canadian writers. Projects like *Pacific Rim*, *Supergirl*, or *Deadpool* provide an economic benefit to Canada, but they are not *Canadian* films or television. The WGC comments are primarily with respect to *domestic* Canadian film and television.

⁴¹ “YouTube.” *Wikipedia*, <https://en.wikipedia.org/wiki/YouTube> Accessed 18 Nov 2016.

⁴² *Communications Monitoring Report 2016*, CRTC <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2016/cmr.pdf> Accessed 18 Nov 2016, pg. 32.

WHY IT MATTERS

27. The Consultation Paper prepared by the Government for this process⁴³ amply sets out the rationales for Canadian cultural policy. As stated in the Paper, cultural policy has both economic and cultural goals. With respect to the former, Canada's cultural sector currently represents 3 percent of GDP or 54.6 billion dollars in economic activity, and accounts for more than 630,000 jobs. In terms of domestic film and television, volume of domestic production (measured as the total of all budgets) reached \$2.96 billion and generated more than \$3.7 billion in GDP for the Canadian economy in 2014-2015. About \$2.6 billion comes from television production while \$349 million is from theatrical film. The domestic industry also generated 62,100 full-time equivalent (FTE) jobs in 2014-15, including 37,700 spin-off FTEs in other Canadian industries. These numbers don't just represent jobs—they represent sought-after, creative, knowledge-based jobs, creating intellectual property in a 21st-century economy. We submit that these jobs are critical to the modern Canadian economy, and have knock-on effects elsewhere.⁴⁴

28. The cultural impacts are just as important. As stated in the Paper:

The social benefits of culture are well understood. A strong cultural sector contributes to the vitality of our communities. By sharing our stories with one another and engaging in dialogue, we build an inclusive and open society where citizens can freely express themselves.⁴⁵

29. The WGC agrees. Denis McGrath, Canadian screenwriter and WGC Council member, wrote an article on this topic. This excerpt perhaps captures the main point:

[I]n addition to sparking social conversations, TV programs have the ability to reflect a society, and thereby strengthen common values and community. There's something powerful about seeing something normalized by being portrayed on screen as a matter of course.

This is a cultural argument for telling your own stories that has been out of vogue in Canada for a decade, as Conservative values (which...diverge a lot from the Canadian majority) held sway.

A Canada that does not make space for its own storytellers and programs is a country that reflects issues or attitudes that are not in step with the people. In short, you're inculcating people with narratives that are at odds with what society thinks. It's profoundly alienating, and potentially distorting. Is crime really that high? Is immigration bad? Is that family with two kids less than you because the parents aren't married? Everyone says that they're not

⁴³ Canadian Heritage. *Canadian Content in a Digital World: Focusing the Conversation*, Sept 2016 <http://www.canadiancontentconsultations.ca/Consultation-Paper> Accessed 18 Nov 2016.

⁴⁴ Also see: Nordicity. *The Economic Contribution of the Film and Television Sector in Canada*. July 2013 <http://www.nordicity.com/media/2013724dgfjbufnd.pdf> Accessed 18 Nov 2016.

⁴⁵ Canadian Heritage. *Canadian Content in a Digital World: Focusing the Conversation*, Sept 2016 <http://www.canadiancontentconsultations.ca/Consultation-Paper> Accessed 18 Nov 2016, pg. 10.

influenced by media, though study after study seems to demonstrate otherwise. But on a more basic level, the philosophical question I have is simple. What GOOD is it to give over the vast majority of your broadcast timeslots and media space to programs that don't reflect an accurate moral compass of your people? What good comes from framing issues that are not controversial here, as still deeply divisive, because your entertainment provider hasn't caught up?⁴⁶

30. We would argue that this view holds true, no matter what you believe "Canadian identity" really is. In a *Globe & Mail* article, Charles Foran, expanding upon Prime Minister Justin Trudeau's statement that Canada is the "first postnational state", argued that our country as a 19th-century nation-state is an "inadequate conception" of Canada, and argued instead for Canada as "an experiment in the process of being realized."⁴⁷ If true, that experiment has just as much of a role for Canadian artists and creators as any "traditional" cultural identity, and perhaps even more so. The first postnational state needs creators who can fully express just what that means.
31. For all these reasons, the WGC strongly believes that the challenges outlined above must be effectively responded to, both in terms of supporting our industry and in terms of ensuring Canadian screenwriters have a central role in that industry. We are pleased that you have chosen to take this time to examine these questions. Below are our discussion and proposals on how to modify and strengthen Canada's cultural policy toolkit.

DISRUPTION: THE POLICY TOOLKIT TODAY

32. As noted above, there are a variety of policy tools in the current federal policy toolkit for supporting domestic Canadian film and television. These policy tools have some characteristics in common, while other characteristics are unique to that particular tool. Some policy tools involve direct spending by government, while others require spending by private entities pursuant to regulation. Some policy tools target specific genres of production, while others support a wide range of genres and cultural/content activities. Some are easily comparable with other jurisdictions, while others can frustrate attempts at direct comparison. While recognizing these challenges, the WGC would like to attempt to summarize and quantify what we view as the key elements of the cultural policy toolkit as it pertains to domestic Canadian English-language film and television. We ultimately have two goals in this respect: 1) To compare Canada to several other international jurisdictions; and, 2) To highlight the "pressure points" in the system that are resulting from the digital revolution.
33. Firstly, cultural policy tools can be monetary or non-monetary. The Parliamentary appropriation to the CBC would be an example of a monetary policy tool, since it involves the spending of money on a certain activity; whereas minimum exhibition requirements for Canadian programming pursuant to CRTC regulation would be an example of a non-monetary policy tool, since it involves making "shelf

⁴⁶ McGrath, Denis. "COMMENTARY: When your Moral Compass doesn't point True North." *Cartt* 13 July 2016 <https://cartt.ca/article/commentary-when-your-moral-compass-doesnt-point-true-north> Accessed 18 Nov 2016, para 11.

⁴⁷ Foran, Charles. "Canada's identity is an experiment in the process of being realized." *The Globe and Mail*, 17 June 2016 <http://www.theglobeandmail.com/news/national/canadas-identity-is-an-experiment-in-the-process-of-being-realized/article30505358/> Accessed 18 Nov 2016.

space” available to Canadian content.⁴⁸ While both monetary and non-monetary policy tools exist within the current system, the effects of the digital shift have meant that monetary tools are increasingly more important and relevant. As such, we will focus on those. Secondly, with respect to monetary tools, these could be characterized as “direct” or “indirect”. “Direct” support means spending directly by the government, such as the CBC’s Parliamentary appropriation, or expenditures under the Canadian Film or Video Production Tax Credit (CPTC). “Indirect” support means spending by non-government, private entities pursuant to regulation, such as contributions from broadcasting distribution undertakings (BDUs) and private broadcaster’s Canadian Programming Expenditure (CPE) requirements. These are not the only ways to look at the cultural policy toolkit, either in Canada or internationally, and the reality is that the cultural policy toolkit is complicated and nuanced—perhaps unavoidably so. We hope, however, that this provides a kind of framework to examine where we stand today and where we might wind up in the years to come.

34. Canada’s overall direct contribution to film and television production amounts to approximately \$2.29 billion annually. This is comprised of approximately \$1.036 billion by way of Parliamentary appropriation to the CBC,⁴⁹ \$280 million for the CPTC,⁵⁰ \$95.5 million to Telefilm Canada,⁵¹ \$134.1 million from the Department of Canadian Heritage to the CMF,⁵² and \$683.6 from various provincial organizations, of which the largest are Ontario (\$302.9 million⁵³), Quebec (approximately \$181 million⁵⁴), and British Columbia (\$96.8 million⁵⁵). CRTC-regulated contributions from BDUs are arguably something of a special case. These contributions—5% of BDUs gross revenues—are not provided directly from government. They are, however, required under government regulation, and a large portion are administered independently of the BDUs themselves. In the case of the CMF, the direct contribution for the Department of Canadian Heritage is combined with BDU contributions, and the entire allocation is administered together under the same mandate and program guidelines. For the purposes of international comparison, it could be argued that such contributions are analogous to the “licence fee” in the U.K., under which the BBC receives the lion’s share of its funding. For those purposes, therefore, we will include this contribution. For the purposes of evaluating the impacts of

⁴⁸ Of course, even such “non-monetary” policies can have a monetary component. In this example, time slots/shelf space has a financial value to a broadcaster, so exhibition requirements may have a monetary impact on that broadcasters. In a sense, virtually anything is reducible to a monetary impact.

⁴⁹ CBC/Radio-Canada. *#CreatingConnections 2014-15 Annual Report*, <http://www.cbc.radio-canada.ca/site/annual-reports/2014-2015/documents/annual-report-2014-2015.pdf> Accessed 18 Nov 2016, p. 6.

⁵⁰ Department of Finance Canada. *Federal Tax Expenditures: Concepts, Estimates and Evaluations 2016*, <https://www.fin.gc.ca/taxexp-depfisc/2016/taxexp-depfisc16-eng.pdf> Accessed 18 Nov 2016, p. 39.

⁵¹ Telefilm Canada. *Talent Without Borders 2014/15 Annual Report*, <http://report.telefilm.ca/2015-2016/> Accessed 18 Nov 2016, p. 34.

⁵² CMF. “Management Discussion and Analysis.” *CMF Annual Report 2015-16*, http://ar-ra15-16.cmf-fmc.ca/finance/management_discussion_and_analysis/ Accessed 18 Nov 2016.

⁵³ Ontario Ministry of Finance. *Expenditure Estimates for the Ministry of Tourism, Culture and Sport (2016-17)* Vote 3808-1; Ontario Media Development Corporation. *OMDC 2014/15 Annual Report*, p. 6; TV Ontario. *TVO Annual Report 2014-2015*. p. 55.

⁵⁴ SODEC. *Rapport Annuel de Gestion 2015-16*, p. 56. Accessed 18 Nov 2016.

⁵⁵ BC Ministry of Finance. *Estimates Fiscal Year Ending March 31, 2017*. <https://www.ontario.ca/page/expenditure-estimates-ministry-tourism-culture-and-sport-2016-17> Accessed 18 Nov 2016, p. 188; Creative BC. *Activity Report 2014-2015*, http://www.creativebc.com/database/files/library/Final_Creative_BC_Activity_Report_2014_15.pdf Accessed 18 Nov 2016, p. 10; Knowledge Network Corporation. *2015-16 Annual Service Plan Report*, https://www.knowledge.ca/sites/knowledge.ca/files/page/attachments/KNC%202015-16%20Annual%20Report_FINAL_with%20donors-signed.pdf Accessed 18 Nov 2016, p. 19.

the digital revolution on the Canadian film and television sector, however, we will emphasize that BDU contributions are “indirect” in that they rely upon regulation of private entities and upon a specific television distribution model. In 2015, BDU contributions included \$219.6 million to the CMF, \$64.7 million to the Certified Independent Production Funds (CIPFs), and \$152.6 to community channels,⁵⁶ for a total of \$436.9 million.⁵⁷ Adding this to the “direct” supports above brings the total of \$2.67 billion.

35. These amounts include funding for both television and other media, and in some cases operating and/or administrative costs. In the CBC’s case, the allocation includes radio, digital media, and broadcasting infrastructure. The CMF also funds digital media through its Experimental Stream. The WGC’s focus with respect to broadcasting is on television content, so we would exclude non-television content costs from our analysis, to the extent possible. The amounts also combine the English and French. As noted earlier, however, these two language markets should be treated distinctly. Content produced in and for the English market is generally not targeted to or consumed in the French market, and vice versa. Despite the best efforts of Canada and Canadians, in 2011 only a minority of Canadians (17.5%) count themselves as functionally bilingual, and the number was lower (10.3%) outside of Quebec.⁵⁸ Even fully bilingual Canadians are likely to live in a majority-language community, and will tend to consume information and entertainment media for and from that cultural/linguistic community. Successful French-Canadian content, like *19-2* and *Nouvelle adresse*, is re-made for the English-Canadian market, not typically imported in its French-language version. As discussed earlier in this submission, language is often a market barrier and a cultural identifier, and this is the case (almost) as much within Canada as between Canada and other countries. Perhaps regrettably, we largely remain a country of “two solitudes”. As such, we believe that English-Canada must be considered as a separate market for the purposes of quantifying and assessing monetary cultural policy tools.
36. It is not always easy to parse the publicly available data by medium or “non-content costs”, and in some cases data is not publicly available by language market. Given all this, we have had to make some assumptions and simplifications, and we invite the Government to do its own calculations with our comments in mind. As noted above, our tally is partly for the purposes of comparison to other jurisdictions, so we have tried to make them as “apples-to-apples” comparable as possible. The nuances make the analysis somewhat complex. Nevertheless, we feel the following provides a reasonable approximation of the funding and support environment in English-language Canadian film and television.

⁵⁶ The amount dedicated to community channels is arguably of a different nature than those directed to the CMF and CIPFs, since they are *not* administered by an independent body, but are directly controlled by BDUs themselves. Given recent changes to the *Policy framework for local and community television* (Broadcasting Regulatory Policy CRTC 2016-224), vertically integrated entities will now be able to direct BDU contributions to local news, which is a scenario increasingly similar to CPE as described below. Nevertheless, for simplicity we are including this number, even though it could arguably be excluded from the category of “direct” support.

⁵⁷ “Figure 4.3.9 Contributions to Canadian programming by type (millions).” *Communications Monitoring Report 2016*, CRTC, <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2016/cmr.pdf> Accessed 18 Nov 2016, p. 198.

⁵⁸ Lepage Jean-Francois, and Jean-Pierre Corbeil. “The Evolution of English-French bilingualism in Canada from 1961 to 2011.” *Statistics Canada*, 28 May 2013 <http://www.statcan.gc.ca/pub/75-006-x/2013001/article/11795-eng.htm> Accessed 18 Nov 2016.

37. It is our understanding that of the Parliamentary appropriation to the CBC, 60%, or \$621.7 million, is allocated to English-language operations.⁵⁹ The CMF allocates roughly two-thirds of its program resources to the English market and, in the 2015-2016 program budget, that amounted to approximately \$213.4 million in English-language “Convergent” television funding, comprised of both a direct contribution from the Department of Canadian Heritage and BDU contributions.⁶⁰ 60% of NFB funding, or \$36.2 million, is directed to English-language content,⁶¹ and 70% of Telefilm Canada funding, or \$66.9 million, is directed to English-language film. The proportion of English and French access to the CPTC is not publicly reported, but since roughly two-thirds of funding to the English market seems to be in line with other organizations noted above, applying that ratio to CPTC annual spending seems appropriate and yields a result of \$186.67 million. With respect to CIPF funding, not all CIPFs provide funding by language, but from what is available it seems that many CIPFs generally direct approximately 70% of funding to English projects and 30% to French. Applying this ratio to the total CIPF funding (\$64.7 million) results in \$45.3 million of English-language funding.⁶² And if funding to community channels is similarly prorated by language, this would amount to approximately \$107 million.⁶³ This amounts to approximately \$1.277 billion annually which could be characterized as “direct” (or, “‘direct’ plus BDU contributions”) federal support to English-language Canadian domestic film and television, less whatever amount of the CBC’s Parliamentary allocation is attributable to radio, digital media, and facilities.⁶⁴ At the provincial level, the allocations to English- and French-language projects—primarily, tax credits and funding to provincial educational broadcasters—are not publicly reported by all provincial organizations, but operating on the broad assumption that all Quebec provincial funding is directed to French-language productions and all other provincial funding to English-language productions,⁶⁵ we get approximately \$500 million in direct provincial support to English-language Canadian domestic film and television. Put together, current Canadian governments at both the federal and provincial level either spend directly, or require by regulation, \$1.777 billion

⁵⁹ CBC/Radio-Canada. *#CreatingConnections 2014-15 Annual Report*, <http://www.cbc-radio-canada.ca/site/rapports-annuels/2014-2015/documents/annual-report-2014-2015.pdf> Accessed 18 Nov 2016, p. 56.

⁶⁰ “2016-2017 Program Commitment Allocation.” *Canada Media Fund*, <http://www.cmf-fmc.ca/documents/files/programs/2016-17/guidelines/2016-17-cmf-program-budget.pdf> Accessed 18 Nov 2016. It is perhaps debatable whether BDU contributions to the CMF could as “direct” government funding, but given that they are paid by BDU subscribers pursuant to CRTC regulation, and this could be compared with, of example, the licence fee for the BBC in the U.K., we include the contribution to the CMF, and those to the CIPFs and community channels here.

⁶¹ National Film Board. *Annual Report 2014-2015*, http://onf-nfb.gc.ca/wp-content/uploads/2016/05/ENG_Annual-Report_2014-2015_WEB_V2.pdf Accessed 18 Nov 2016, p. 44.

⁶² Figure 4.3.9 Contributions to Canadian programming by type (millions).” *Communications Monitoring Report 2016 CRTC*, <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2016/cmr.pdf> p. 198.

⁶³ *Ibid.*. Again, we hesitate to include this number, since community television is generally *not* professionally produced content, and it’s certainly not the kind of production, like drama or children’s programming, that is amongst the WGC primary concerns with regard to Canadian cultural policy. Nevertheless, in the interests of completeness and making a conservative comparison, we include it here.

⁶⁴ We are unable to deduct this amount ourselves, but given our comparisons with U.K. and Danish public broadcasters below, it seemed appropriate to consider the entire allocation for comparative purposes, since the BBC and Danish public broadcasters also presumably have similar expenses.

⁶⁵ We are aware that this is not actually correct—Quebec provincial funding do support some English-language projects, and other provincial organizations do support some French-language projects. Provincial agencies may also support Aboriginal-language or other-language projects. However, we make our presumption in the sake of simplicity, understanding that it likely inflates the number for English-language funding somewhat.

annually in support of English-language Canadian domestic film and television.⁶⁶ Assuming an English-Canadian population of 25 million people, this works out to approximately \$71 per capita per year.

38. The WGC appreciates government support for our sector, and acknowledges that this is a significant contribution to Canadian film and television, for which we are grateful. However, it is helpful to look at how other countries support their audiovisual sectors, especially to the extent that we wish to consider applying their example to Canada. All figures are in Canadian dollars.
39. The U.K. is one such example, sometimes cited for the way that its “Creative Britain” initiative successfully grew the sector there, and for the degree to which film and television exports are viewed as a success story. According to our calculations, the U.K. provides approximately \$7.3 billion annually in direct support to British film and television.⁶⁷ This includes public funding to the BBC, Film Tax Relief, High End TV Tax Relief, and funding to the British Film Institute. We understand that the vast majority of this would be directed to English-language activity. This amount of funding support is more than four times greater than English-Canadian support. This is a very significant level of support. U.K. funding is also greater on a per-capita basis, at \$114 per person in the U.K., which is 1.6 times higher than English-Canada. And this level of support does *not* include nearly \$2.2 billion spent annually on British programming by broadcasters such as Channel 4, Channel 5, and ITV, under their “public service remit”, nor does it include major satellite TV services like Sky, which is a major source of popular sports programming in the U.K. Needless to say, the overall size of the U.K. film and television sector is much, much larger than the English-Canadian sector, both in terms of public funding, and overall scale and activity.
40. We also can compare Canadian support levels to Denmark, which our calculations show provides approximately \$945.7 million annually,⁶⁸ but against a much smaller population of 5.6 million people. This represents a per capita level of support of nearly \$169, or 2.4 times more than Canada’s support for the English-Canadian market on a per-capita basis.
41. Even the U.S., which on a per-capita basis does not direct a great deal of public funding to its own film and television sectors—it doesn’t have to, given it’s already-dominant position in the global media market—nevertheless spends approximately \$3.275 billion annually on a mix of funding for PBS and state-level tax credits. That’s nearly double what English-Canada spends for its English-language market.⁶⁹
42. In addition to “direct” government support, English Canadian film and television receives “indirect” support. As described above, this would be support which is not provided directly by government, nor made through a regulated contribution to a funding body (such as the BDU contributions discussed above). This would include minimum spending obligations for private broadcasters under CRTC regulation. In one sense, this “indirect” support is similar to the 5%-of-revenue contributions from BDUs, in that they are provided by private entities pursuant to CRTC regulation. In another sense, they are different in that they represent spending by broadcasters on content that they

⁶⁶ Again, less the portion of the Parliamentary allocation to the CBC which is directed to radio, digital media, and facilities.

⁶⁷ See Appendix A “U.K. Public Support for Film and Television”

⁶⁸ See Appendix B “Denmark Public Support for Film and Television”

⁶⁹ See Appendix C “U.S. Public Support for Film and Television”

generally control and/or hold exclusive rights to, and some of this activity would likely occur in the absence of broadcast regulation.⁷⁰

43. According to our calculations, this totaled \$1.83 billion in CPE in 2015 for the English-language market.⁷¹ We urge caution, however, when considering this amount. “CPE” includes virtually all Canadian programming across all genres. Importantly, it includes national news and mainstream sports programming. National news and mainstream sports programming have two key features that distinguish them from other types of programming—they are generally popular and competitive in the marketplace, and are expensive to produce. Essentially, national news and mainstream sports consume a great deal of resources—the cost of sports rights in particular have exploded over the past decade or so, nationally and internationally⁷²—but they are also highly popular and profitable in Canada. National news is not “importable”, and mainstream sports is supported by the international rights market and Canadians’ preference for a national perspective on certain international events, like the Olympics. Noting their profitability, the CRTC has treated discretionary television services for sports and national news differently than other services.⁷³ CPE requirements apply to such services, but they essentially match what those services would likely do—or were already doing—even without regulation. As such, it would be misleading to consider overall English-language CPE as a regulatory support in the same way that the Parliamentary appropriation to CBC, or funding to the CMF, are. In assessing cultural policy tools, one of the key questions is to what extent the desired activity would occur even in the absence of the policy tool in question. In the absence of government funding to the CBC, it is a virtual certainty that the CBC would not receive that funding from elsewhere—not without fundamentally changing what the CBC is and does. But the total English CPE number is not like that. It must be parsed in terms what regulation effectively supports activity, and what regulation and/or what data simply reflects reality. For example, English-language specialty services reported over \$498 million in CPE on sports programming in 2015.⁷⁴ This was nearly half—46.7%—of *all* CPE reported by English-language specialty services that year. Much of CPE—generally between a half and two-thirds—reflects the acquisition of rights from various professional sports leagues, such as the National Hockey League, Major League Baseball, and Canadian Football League.⁷⁵ It would be misleading, then,

⁷⁰ Though, as discussed below, this more generally applies to national news and sports, and *not* with respect to PNI programming, which is the WGC focus in this submission.

⁷¹ See Appendix D “Canadian Programming Expenditures (CPE) 2014/15 for All English-language Conventional and Pay & Specialty Services”.

⁷² Spangler, Todd. “Sports Fans: Get Ready to Spend More Money to Watch your Favorite Teams.” *Variety*, 13 August 2013 <http://variety.com/2013/tv/news/sports-fans-to-spend-more-money-to-watch-favorite-teams-1200577215/> Accessed 18 Nov 2016.

⁷³ “Broadcasting Regulatory Policy CRTC 2010-167 A group-based approach to the licensing of private television service.” CRTC www.crtc.gc.ca/eng/archive/2010/2010-167.htm Accessed 18 Nov 2016, paras. 120-122.

⁷⁴ “Table 4.2.23 CPE and expenditures on non-Canadian programming reported by specialty services, by language of broadcast and program category.” *Communications Monitoring Report 2016*, CRTC <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2016/cmr.pdf> Accessed 18 Nov 2016, p. 170.

⁷⁵ E.g. “Individual Pay, Pay-per-view, Video-on-demand and Specialty Services – Financial Summary 2011-2015. The Sports Network (TSN)”

<http://www.crtc.gc.ca/eng/publications/reports/BrAnalysis/psp2015/individual/ips235.htm> Accessed 18 Nov 2016; and “Individual Pay, Pay-per-view, Video-on-demand and Specialty Services – Financial Summary 2011-2015. Sportsnet (formerly Rogers Sportsnet).” CRTC, <http://www.crtc.gc.ca/eng/publications/reports/BrAnalysis/psp2015/individual/ips202.htm> Accessed 18 Nov 2016.

to consider this amount as comparable to support to the CMF, Telefilm Canada, the CPTC, or even to the CBC, which does relatively little sports programming when compared to specialty sports channels. Similarly, if it were to be included in international comparisons, then on the other side of the ledger, major U.K. sports services, for example, like Sky Sports, would also have to be included—something we have not done in our comparison.

44. Arguably more relevant to our discussion, however, are Programs of National Interest (PNI) spending requirements by large English-language broadcast groups. The CRTC created the concept of PNI in the 2010 policy, *A group-based approach to the licensing of private television services*,⁷⁶ in which it said:

The Commission considers that there is a continuing need for regulatory support for key genres of Canadian programming. The Commission notes that over 40% of all viewing to English-language television in Canada is to drama programs; drama is thus the genre of programming that Canadians choose to watch more than all others. Drama programs and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values.⁷⁷

45. The CRTC therefore imposed an expenditure requirement on each designated broadcast group, “In order to ensure that programs of national interest are created and available on whatever platform Canadians choose to consume their media.”⁷⁸ PNI levels were to be based on historical spending on PNI genres by the applicable groups, and in 2011 the CRTC settled on 5% for Bell Media, 5% for Shaw Media, and 9% for Corus, all percentages being of gross revenues from broadcasting.⁷⁹ Rogers was initially set at 2.5%, but was later raised to 5%.⁸⁰
46. These PNI requirements resulted in \$105.4 million of English-language spending in 2015, having declined from \$158.5 million in 2012, and represented 80% of total PNI expenditures for all English-language services during that period.⁸¹ The bulk of the remainder was likely made up most of spending by the CBC.⁸²

⁷⁶ “Broadcasting Regulatory Policy CRTC 2010-167: A group-based approach to the licensing of private television services.” *CRTC*, 22 March 2010 <http://www.crtc.gc.ca/eng/archive/2010/2010-167.htm> Accessed 18 Nov 2016.

⁷⁷ *Ibid*, para. 71.

⁷⁸ *Ibid*, para. 74.

⁷⁹ “Broadcasting Decision CRTC 2011-441 Group-based licence renewals for English-language television groups – Introductory decision.” *CRTC* 27 July 2011 www.crtc.gc.ca/eng/archive/2011/2011-441.htm Accessed 18 November 2016, para. 48. Broadcasting Decision CRTC 2011-441, Para. 48.

⁸⁰ “Broadcasting Decision CRTC 2014-399 Rogers Media Inc. – Group-based licence renewals.” *CRTC*, 31 July 2016 <http://www.crtc.gc.ca/eng/archive/2014/2014-399.htm> Accessed 18 Nov 2016.

⁸¹ “Broadcasting Notice of Consultation CRTC 2016-225 Renewal of television licences held by large English- and French-language ownership group.” *CRTC* 15 June 2016 <http://www.crtc.gc.ca/eng/archive/2016/2016-225.htm> Accessed 18 Nov 2016, para. 19.

⁸² We note an apparent discrepancy between the PNI stated in Broadcasting Notice of Consultation CRTC 2016-225 and that reported in the *Communications Monitoring Report 2016*, in that the numbers reported in the latter (e.g. Table 4.2.18) appear significantly larger than those reported in the former. We have been unable to identify the cause of the discrepancy, or even confirm that there is one, but we again invite the Government to make its own calculations along similar lines if it wishes. Our own rough calculations suggest that the correct number is

47. PNI spending levels by private, English-language broadcasters were set in 2011 based on their historical spending—in other words, what they were already doing. But what they were doing in 2011 was dictated by a previous CRTC policy framework which included requirements for certain types of high-risk programming, then called “priority programming”.⁸³ The WGC has been critical of the “priority programming” concept, and the policy framework it was a part of from 1999 to 2010. But this framework nevertheless set minimum requirements for certain types of programming—drama chief among them—that, as we’ve explained above, simply would not exist in the absence of regulation. In the circumstances, then, we would strongly argue that the full regulatory requirement for PNI spending, or \$105.4 million in the English market in 2015, would not exist but for the PNI regulatory regime. That said, PNI spending is different than some other regulatory requirements, such as BDU contributions to the CMF, because broadcasters hold exclusive rights to these programs, and earn advertising revenue against them. Broadcasters also increasingly seek larger bundles of program rights, which they use to distribute content over other platforms, OTT included, and/or generate revenues from international sources. As such, these spending requirements are in no way a “loss” to broadcasters of the amount spent. To the contrary, given the availability of CMF funding, the CPTC, and other sources, broadcasters often commit a minority of the necessary production financing to a given project. Given this, and the potential for a return on investment, PNI (or CPE) should not be considered in the same way as, for example, contributing to a fund might be.⁸⁴
48. As such, on the one hand, PNI spending is not “direct” funding to Canadian content as defined above. On the other hand, it is *essential* financing, largely if not entirely reliant upon regulation to exist, and it is under threat from the digital shift, as described below. If PNI spending were to be included in a quantification of total support to English-Canadian film and television, this would be reasonable. However, it would also seem reasonable to add “public service remit” spending to the U.K. side of the tally.
49. See below for a table summarizing these numbers as they pertain to Canada, the U.K., Denmark, and the U.S. Note that we have not included spending pursuant to tangible benefits packages,⁸⁵ because such amounts are unpredictable and temporary, and are generally believed to play little or no role in the future because much if not all potential corporate consolidation in the communications sector has likely already occurred. Whichever way you slice it, however, government support for English-language film and television is vital to its continued existence and growth, and current support in Canada is not excessive by international standards. To the contrary, a number of other jurisdictions do much more, in absolute terms, on a per-capita basis, or both.

approximately \$200 million, rather than \$105.4. If so, this would adjust this number upwards by roughly \$100 million.

⁸³ “Public Notice CRTC 1999-97 Building on Success - A Policy Framework for Canadian Television.” CRTC, 11 June 1999 <http://www.crtc.gc.ca/eng/archive/1999/pb99-97.htm> Accessed 18 Nov 2016.

⁸⁴ But even BDU contributions to the CMF or other funds can be seen as investments that “come back to them”, in the form of funding to broadcasters which they in turn also own, at least with respect to vertically integrated entities.

⁸⁵ See “Broadcasting Regulatory Policy CRTC 2014-459 Simplified approach to tangible benefits and determining the value of the transaction.” CRTC 5 Sept 2014 <http://www.crtc.gc.ca/eng/archive/2014/2014-459.htm> Accessed 24 Nov 2016

		Canadian Dollars	
		Amount (000,000s)	Per-Capita
English-Canada (Federal & Provincial)	Direct Government Support	\$1,484	\$59
	Direct Government Support + BDU 5%	\$1,777	\$71
United Kingdom	Direct Government Support	\$7,300	\$114
Denmark	Direct Government Support	\$945.7	\$169
United States	Direct Government Support	\$3,275	\$10
English-Canada (Federal & Provincial)	Direct Government Support + BDU 5% + Private Group PNI	\$1,882	\$75
United Kingdom	Direct Government Support + Public Service Remit	\$9,453	\$148

50. Yet major disruptions threaten two of the foundational pillars of the current policy toolkit, both of which are due to the growing popularity of Internet distribution: 1) the shift from traditional broadcasting to “over-the-top” services; and 2) the shift from BDU-based to “Internet Service Provider” (ISP)-based delivery of programming.

SUPPORTING THE CANADIAN FILM AND TELEVISION SECTOR IN THE 21ST CENTURY

51. As discussed above, the Canadian domestic English-language film and television sector simply cannot exist to any meaningful degree without meaningful government support. While a variety of policy options may be explored with respect to export, discoverability, and promotion—many of which the WGC supports, and which we will discuss in more detail below—the simple fact is that in order for something to be promoted, discovered, or exported, it must come into existence in the first place. It is our view that despite changes wrought by the digital revolution, Canada is still faced with a problem of producing a sufficient quantity of high-quality drama, comedy, children’s and animated film and television, and still requires government regulatory and/or financial support as a result.

52. At the outset, we would argue that the current system is absolutely *not* “broken”. While there are undeniable changes on the horizon, and existing structures are beginning to show signs of strain, we must also recognize that today’s system has supported a national success story of Canadian content, and one which is only getting better. Things must change as we enter the next 10-20 years and beyond, but that doesn’t mean that what we have now doesn’t work or needs to be torn down.

53. The WGC strongly believes that the Government must look at ways to modify or replace existing support structures so that their reliance on traditional production models does not result in an overall decline in the quality and quantity of Canadian programming. In short, as content consumption migrates from traditional broadcast television to Internet-based alternatives, analogs or replacements must be found to offset: 1) the reduced spending on Canadian programming by private, English-language broadcasters; and 2) reduced contributions by BDUs to production funds, primarily the CMF.

54. As noted above, pursuant to CRTC regulation, BDUs are required to spend the equivalent of 5% of their annual broadcast-related revenues to the creation and production of Canadian programming⁸⁶, and that amounted to \$436.9 million to Canadian programming in 2015.⁸⁷ But the digital shift has put pressure on these revenues, as some viewers reduce the size and cost of their BDU subscription in favour of (currently) cheaper Internet-based alternatives to save money (“cord shaving”), or cancel their BDU subscription entirely for the same reason (“cord cutting”). This phenomenon is already happening, and while the numbers involved are so far relatively small, the pace is accelerating. As recently as November 7 of this year, Boon Dog Professional Services reported that Canadians “continued to cut the television cord in record numbers,” and that “Canada’s publicly traded TV service providers combined lost approximately 98,500 TV subscribers,” in the last two fiscal quarters, which is 11,500 (13%) more TV subscribers than the 87,000 lost in the same two quarters in 2015.⁸⁸ To the extent that cord cutting/cord shaving reduces BDU revenues, largely to migration to ISP and wireless services, these contributions are at risk.
55. As also noted above, pursuant to CRTC regulation, private English-language broadcasters are required, by ownership group, to spend 30% of their gross revenues from broadcasting on Canadian programming (CPE), and 5% of their gross revenues from broadcasting on PNI. This amounted to \$1.83 billion in “CPE” in 2015 for the English-language market, including \$105.4 million in PNI by large English-language broadcast groups. To the extent that Canadian viewers migrate away from traditional broadcasters and towards “online broadcasting”, or “OTT”, services, these contributions are also at risk.
56. Given the above, the shift to digital is putting up to \$2.1 billion⁸⁹ in financing to English-Canadian domestic production at risk, with approximately \$411.2 million⁹⁰ of that at *serious* risk, much of which with respect to the culturally valuable genres of drama series, animation, children’s programming, and documentary. Failure to find new sources of funding and government support will see the Canadian domestic production sector decline by roughly the same amount, with devastating results for jobs and cultural output.

⁸⁶ “Broadcasting Distribution Regulations” *Justice Laws Website*, <http://laws.justice.gc.ca/PDF/SOR-97-555.pdf> Accessed 18 Nov 2016, s. 34 and s. 52(1).

⁸⁷ “Figure 4.3.9 Contributions to Canadian programming by type.” *Communications Monitoring Report 2016*, CRTC <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2016/cmr.pdf> Accessed 18 Nov 2016.

⁸⁸ Boon Dog News Release: *Skinny basic TV and other flexible TV package options so far not slowing ‘cord-cutting’ in the Canadian traditional TV service market*. 7 Nov 2016 http://www.boondog.ca/News_files/Boon%20Dog%20News%20Release_Greater%20Consumer%20Choice%20Not%20Slowing%20Cord%20Cutting_November%207-2016.pdf Accessed 18 Nov 2016.

⁸⁹ I.e. \$1.83 billion in CPE in 2015 for the English-language market, as noted above, plus \$305.8 million representing the English-language portion (70%) of BDU contributions in 2015, also as noted above.

⁹⁰ I.e. \$305.8 million representing the English-language portion (70%) of BDU contributions in 2015, as noted above, plus \$105.4 million in English-language PNI, as also noted above. We emphasize again, however that the PNI totals referenced here are sourced from Broadcasting Notice of Consultation CRTC 2016-225, which appear to be significantly *smaller* than those stated or implied in the Communications Monitoring Report 2016, Table 4.2.18. We invite the government to perform its own analysis to confirm or amend our estimated size of impact. Our own rough calculations suggest that the correct number is approximately \$200 million, rather than \$105.4. If so, this would adjust this number upwards by roughly \$100 million.

57. The Government has several options to respond to this shift. The WGC understands that a number of these options may be challenging from a political perspective. We acknowledge this challenge. No Canadian wants to see additional taxes, fees, or other costs, and many Canadians may not understand how and why support for the sector is needed, nor the impacts on the Canadian culture or economy of reducing support. Nevertheless, we hope we have made the case for why it is necessary, and we trust that the Government will feel confident making the decision to maintain and enhance this vital support.

Cultural Contribution from OTT Services

58. The first option is to require OTT services, both domestic and foreign, to contribute to Canadian content production in the same way that Canadian broadcasters do. The WGC has supported this option for some time, and we understand that many in the Canadian creative community do as well. The concept as also put forward by the Canadian Centre for Policy Alternatives.⁹¹

59. OTT services are effectively “broadcasters”. In 1999, the CRTC determined that the transmission of programming over the Internet constituted “broadcasting” under the *Broadcasting Act*, but chose to generally exempt such activity from regulation.⁹² The CRTC spoke to the question of technological neutrality as follows:

The Commission notes that the definition of “broadcasting” includes the transmission of programs, whether or not encrypted, by other means of telecommunication. This definition is, and was intended to be, technologically neutral. Accordingly, the mere fact that a program is delivered by means of the Internet, rather than by means of the airwaves or by a cable company, does not exclude it from the definition of “broadcasting”.⁹³

60. The CRTC has revisited and upheld this approach a number of times since 1999, and it is currently expressed in the 2012 *Exemption order for digital media broadcasting undertakings*.⁹⁴ As such, OTT operations such as Netflix and CraveTV are carrying on “broadcasting” in Canada, and are subject to the policy objectives section 3 of the *Broadcasting Act*. “Traditional” broadcasters currently have a number of obligations under the Act, including minimum CPE and PNI spending requirements. These are legitimate and effective policy support for Canadian programming, consistent with the cultural policy objectives of the Act and are in response to the demonstrated need as discussed earlier in this submission. From our perspective, OTTs are fundamentally no different. They operate a “broadcasting” undertaking in Canada, and should be subject to the similar rules.

61. Continuing to exempt OTT services from Canadian cultural policies have two negative impacts. Firstly, it deprives Canadian content creators of the resources they need to survive and thrive, both in Canada and internationally. As these digital platforms grow, they fragment the consumer market for content

⁹¹ Anderson, John. “An Over-the-Top Exemption: It’s Time to Fairly Tax and Regulate the New Internet Media Services.” *Canadian Centre for Policy Alternatives*, 21 June 2016
<https://www.policyalternatives.ca/publications/reports/over-top-exemption> Accessed 18 Nov 2016.

⁹² “Public Notice CRTC 1999-84 New Media.” *CRTC*, 17 May 1999 <http://www.crtc.gc.ca/eng/archive/1999/pb99-84.htm> 17 Nov 2016.

⁹³ *Ibid*, para. 38.

⁹⁴ “Broadcasting Order CRTC 2012-409 Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings).” *CRTC*, 26 July 2012 <http://www.crtc.gc.ca/eng/archive/2012/2012-409.htm> Accessed 18 Nov 2016.

in Canada, necessarily at the significant expense of traditional platforms. As such, the regulated base for Canadian content erodes, and the losses experienced on that side of the ecosystem are not made up on the other. Secondly, the exemption creates a regulatory asymmetry between traditional broadcasters and OTT services, in which the former has obligations and costs that the latter does not bear, in a marketplace in which the two are increasingly competing with each other for viewers. Unfortunately, many seek to eliminate this asymmetry not by expanding cultural policy obligations to new services, but by abolishing such obligations for traditional broadcasters. From a cultural content perspective, this amounts to curing the disease by killing the patient. Nevertheless, we see calls not only from broadcasters,⁹⁵ but also from certain (arguably right-leaning) think tanks⁹⁶ which we would argue amount to throwing up our hands and conceding defeat simply because that option is “simpler”.

62. To be clear, the WGC believes that traditional broadcasters and OTTs still serve largely different markets, and are currently more complimentary than competitive. Many consumers have *both* a traditional television service and an OTT subscription, and the growth of the latter has not come entirely, or even significantly, at the expense of the former. As such, we strongly believe that maintaining “regulatory asymmetry” is an acceptable response in the short-to-medium term, and is far preferable to elevating symmetry over the substance of Canadian cultural policy. Nevertheless, we recognize that this likely cannot continue indefinitely, and we would argue that the solution is to ensure that OTTs make a cultural contribution to the market they operate in.
63. As we understand it, there are several typical responses to this argument from those who oppose a regulated OTT cultural contribution. One is to suggest that OTT “regulation” would have to look exactly like current linear television regulation, and then to point out how such regulations—such as “exhibition requirements” for an on-demand platform, or compulsory licensing for all Internet video sites—are unworkable for OTTs. We consider these to be “strawman” arguments. The WGC is not suggesting that an on-demand platform should be regulated like a linear broadcast platform, nor are we suggesting that “every YouTube channel must have a CanCon quota.” We are aware of no serious cultural policy advocates who are doing so either. Rather, we believe that current CRTC obligations for video-on-demand services should be modified for OTTs, primarily the requirement to contribute to a production fund such as the CMF.⁹⁷ Such a model accommodates the on-demand nature of such services.
64. As for the notion that OTT regulation implies “regulating the Internet”, we would first respond that Netflix, CraveTV, Amazon Prime, and others are not “the Internet”. These are particular companies that operate on the Internet, and are distinct from other Internet-based applications and from the

⁹⁵ “Broadcasting Notice of Consultation CRTC 2016-225 Renewal of television licences held by large English- and French-language ownership group.” CRTC 15 June 2016 <http://www.crtc.gc.ca/eng/archive/2016/2016-225.htm> Accessed 18 Nov 2016.

⁹⁶ Katz, Len and Sean Speer. *A New Digital Policy for the Digital Age: a Mandate Review of the CRTC*, MacDonald-Laurier Institute, October 2016 <http://www.macdonaldlaurier.ca/crtc-can-con-policy-are-overdue-for-an-overhaul-mli-paper-by-sean-speer-and-len-katz/> Accessed 18 Nov 2016; and Globberman, Steven. *Technological Change and its Implications for Regulating Canada’s Television Broadcasting Sector*, Frasier Institute, May 2016. <https://www.frasierinstitute.org/sites/default/files/technological-change-and-its-implications-for-regulating-canadas-tv-broadcasting-sector.pdf> Accessed 18 Nov 2016.

⁹⁷ “Broadcasting Regulatory Policy CRTC 2016-436 Standard requirements for television stations, discretionary services, and on-demand services.” CRTC, 2 Nov 2016 <http://www.crtc.gc.ca/eng/archive/2016/2016-436.htm> Accessed 18 Nov 2016.

interconnectivity protocols of the Internet itself. We *already* “regulate” aspects of the online world, when we enforce privacy legislation or criminal laws involving communications. As Peter Miller has argued, “Psst...We’re already regulating the Internet.”⁹⁸ The question of how to enact such regulation, *without* infringing on the rights of free communication of individuals or “putting CanCon quotas on people’s YouTube birthday party videos” can be addressed, and has been addressed perhaps most notably by the Australian Government as part of their Convergence Review in 2012.⁹⁹ The Australian Convergence Review Committee stated:

A key finding of the Review was that the community expects significant enterprises controlling professional media content to have some obligations, no matter how they deliver their services. The Review proposes a policy framework that will regulate these enterprises based on their size and scope, rather than how they deliver their content.

The Review recommends that these significant media enterprises be defined as ‘content service enterprises’ and be subject to regulation. Organisations would be defined as content service enterprises if they:

- > have control over the professional content they deliver
- > have a large number of Australian users of that content
- > have a high level of revenue derived from supplying that professional content to Australians.

The threshold for users and revenue would be set at a high level to exclude small and emerging content providers. This proposed framework is only concerned with professional content. For example it would include ‘television-like’ services and newspaper content but exclude social media and other user-generated content. As a guide, modelling conducted for the Review indicates that currently around 15 media operators would be classified as content service enterprises. This modelling suggests that currently only existing broadcasters and the larger newspaper publishers would qualify as content service enterprises.

65. To our knowledge these recommendations have not been implemented by the Australian government, and this was largely as result of lack of political will. The larger point, however, is that serious consideration of these options has been and are being explored elsewhere,¹⁰⁰ and the results have more sophisticated and nuanced than “whether or not to ‘regulate the Internet’.”

66. Related to these questions is also that of extra-jurisdictional enforceability. The largest OTT service operating in Canada, Netflix, has no offices or employees in this country, and has argued that it is not subject to Canadian jurisdiction. While we acknowledge the challenges, this also should not be

⁹⁸ “Commentary: Psst... We’re already regulating the Internet” *Cartt*, 10 June 2015

<https://cartt.ca/article/commentary-psst%E2%80%A6-we%E2%80%99re-already-regulating-internet> Accessed 18 Nov 2016.

⁹⁹ Department of Broadband, Communications and the Digital Economy. *Convergence Review: Final Report, May 2012* http://www.abc.net.au/mediawatch/transcripts/1339_convergence.pdf Accessed 17 Nov 2016.

¹⁰⁰ Roberts, Jeff John. *France is Pushing for a Tax on YouTube and Netflix*. 17 Oct 2016

<http://fortune.com/2016/10/17/france-youtube-tax/> 18 Nov 2016.

treated as an insurmountable barrier. Peter Grant provided a legal opinion on the enforceability of Canadian broadcasting law to foreign entities, and found that it was possible.¹⁰¹ He said, “Canadian courts can and have asserted jurisdiction over such undertakings and there are a number of steps that can be taken to enforce such requirements if deemed appropriate.”

67. We acknowledge that despite all this, requiring a Canadian cultural contribution from services such as Netflix may be unpopular. We would argue that part of the job is in making the case to the Canadian public why it’s necessary. Part of the case has been put by Nordicity, which estimated that the shift to digital extracts, at a conservative estimate, \$700-\$800 million per year from Canada, with \$445 million in subscription revenue being taken out of Canada in 2014 by Netflix alone.¹⁰² This is economic activity that is leaving Canada, to the benefit of other countries, primarily to the U.S., and which costs Canadians jobs. If the average Canadian understood these impacts better, they might be more inclined to see their contribution as one to a very domestic, very Canadian industry, and a necessary counter-balance to help keep jobs in Canada, amidst an increasingly globalized world economy. Given the current political climate in the United States—and the troubling role that fake news on social media seems to have played in that climate¹⁰³—they might also see renewed value in ensuring that our media and cultural landscape reflects our own perspectives and priorities.
68. If a contribution from OTT services is contemplated, the next question may be the quantum of the contribution requirement. Again, the WGC believes that there is precedent in how the CRTC regulates on-demand services now, in particular the requirement that the VOD service, “shall contribute 5% of its gross annual revenues to an existing Canadian program production fund administered independently of its undertaking.”¹⁰⁴ Similarly, while the PNI spending requirements of large, private, English-language broadcasters are based upon their historical spending on PNI programming—which is the type of programming that OTT services are generally in the business of making—several of the large groups have been set at between 5% and 9% of gross annual revenues from broadcasting. As such, it seems reasonable, at least as a starting point, to look at a similar range with respect to OTT services.
69. Finally, some have questioned why a regulated OTT contribution is necessary when some OTTs are already commissioning Canadian content, and/or that OTTs as a whole are contributing to the growth of the international content market. To the second point first, the commissioning of Canadian productions by Netflix or CraveTV is fantastic and we encourage it, but it must be balanced against the declines in English-Canadian broadcaster spending on PNI¹⁰⁵ or other sources. Any analysis must look both at what OTTs are contributing to the Canadian system, as well as what erosion they may be contributing to. To the first point, growth of the international marketplace will not necessarily benefit

¹⁰¹ Grant, Peter S. *Enforcement of CRTC Jurisdiction over Foreign OTT Services* 13 May 2011 <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=1586704> Accessed 18 Nov 2016.

¹⁰² Nordicity. *Digital Media at the Crossroads: Canadian Media in a Digit Universe*. Jan 2016 <http://www.nordicity.com/media/201652gnritjpxzb.pdf> Accessed 18 Nov 2016, pg. 16-17, 29.

¹⁰³ Parkinson, Hannah Jane. *Click and elect: how fake news helped Donald Trump win a real election*. 14 Nov 2016 <https://www.theguardian.com/commentisfree/2016/nov/14/fake-news-donald-trump-election-alt-right-social-media-tech-companies> Accessed 18 Nov 2016.

¹⁰⁴ “Broadcasting Regulatory Policy CRTC 2014-444, Appendix 6, Condition of Licence 4.” CRTC, 29 August 2014., <http://www.crtc.gc.ca/eng/archive/2014/2014-444.htm> Accessed 18 Nov 2016.

¹⁰⁵ “Broadcasting Notice of Consultation CRTC 2016-225 Renewal of television licences held by large English- and French-language ownership group.” CRTC 15 June 2016 <http://www.crtc.gc.ca/eng/archive/2016/2016-225.htm> Accessed 18 Nov 2016.

all types of production equally, and as we discuss below under “Export”, the WGC’s own data does not show a discernable lift in the volume of content that Canadian screenwriters write that could be attributable to OTT growth. Further, if OTT services are already commissioning Canadian content at a reasonable level, then it does not harm them to impose regulation reflecting what they already do. If OTT services continue to commission Canadian content at that level, then regulation is easily met. But such regulation would ensure that commitments made by OTT services as they enter the Canadian market will be maintained after they are well established here.

VAT/HST from Foreign OTT Services

70. A more modest proposal would be to ensure that non-Canadian OTT services, like Netflix, collect and remit to the Canadian government the HST payable on their subscriptions in Canada. It is our understanding that Canadian OTTs, such as CraveTV, already do so. It’s unclear why Netflix or other foreign services should effectively get a “tax break” in this respect, which grants it a competitive advantage over Canadian alternatives, creates another “asymmetry” in the system, and results in loss of tax revenue from the Canadian government.
71. It is our understanding that HST proceeds currently go to general government coffers, and as such would not necessarily benefit the Canadian cultural sector. We would suggest, however, that ensuring that OTTs pay HST would increase government revenues by a calculable amount. The government could then choose to increase its direct support to the Canadian film and television sector by a similar amount.

Cultural Contributions from ISPs

72. As discussed above, BDUs are required, pursuant to CRTC regulation under the *Broadcasting Act*, to contribute 5% of their gross revenues to Canadian programming.¹⁰⁶ In 2015, BDUs contributed \$436.9 million to Canadian programming, \$219.6 million of which (or 50%) went to the CMF and \$64.7 million (or 14.8%) went to CIPFs. The consumer shift from traditional broadcast platforms to OTTs also involves a shift of the “pipe” that they access those platforms through, from BDU to ISP. So-called “cord cutting” (in which consumers cancel their BDU subscription in favour of Internet-based alternatives), or “cord shaving” (in which consumers reduce the size and cost of their BDU subscription for the same reason) therefore results in a net loss to Canadian programming, since that 5% contribution does not apply to ISPs.
73. As such, the WGC believes it would be appropriate to implement a contribution regime for Canadian content for ISP services, similar to that which current applies to BDUs. Like the BDU contribution, the proceeds would be directed to the CMF and/or the CIPFs.
74. The rationale for such a policy is effectively the same as the one supporting the current BDU regime. The *Broadcasting Act* states that the Canadian broadcasting system constitutes a single system,¹⁰⁷ and that “each element of the Canadian broadcasting system shall contribute in an appropriate manner

¹⁰⁶ Broadcasting Distribution Regulations” *Justice Laws Website*, <http://laws.justice.gc.ca/PDF/SOR-97-555.pdf> Accessed 18 Nov 2016, s. 34 and s. 52(1).

¹⁰⁷ Canada. *Broadcasting Act* (S.C. 1991, c11). *Justice Laws Website*, <http://laws-lois.justice.gc.ca/PDF/B-9.01.pdf> Accessed 18 Nov 2016, s. 3(2).

to the creation and presentation of Canadian programming”.¹⁰⁸ In the current context, the “pipes” which carry programming to Canadians—the BDUs—contribute to the system through the 5% contribution. To the extent that ISPs are the new “pipes” for broadcasting, such a contribution is appropriate there as well.

75. It must be emphasized at this point just how much ISP traffic—and, therefore, what is driving the demand for ISP services—is currently “broadcasting”. Critics of this proposal often argue that the Internet “is not just video”, and therefore a different paradigm is needed.¹⁰⁹ But while it’s true that not everything on the Internet is “broadcasting”, when it comes to data usage a *great majority is*. According to Sandvine Inc., a Waterloo, Ontario-based networking equipment company:

Streaming audio and video now accounts for 71% of evening traffic in North American fixed access networks. Sandvine expects this figure will reach 80% by 2020.¹¹⁰

76. This is not “just one (small) part of the Internet”. From a bandwidth perspective, this is the *primary* usage of the Internet for many, many Canadians. According to Sandvine, Netflix alone represented 35.2% of traffic on North American fixed networks.¹¹¹ It is generally understood that the quest by consumers for faster Internet speeds and greater bandwidth is largely driving ISP adoption—and ISP profits. And video content is driving the need for greater bandwidth. To us, the connection between the ISP business and video content is obvious. It therefore follows that ISP usage should have a role to play in Canada’s cultural policy toolkit.
77. That said, we are sensitive to concerns about affordable Internet access for Canadians. We agree that Internet access is vital to the economic, political, and cultural participation of Canadians in their society. As such, we take seriously concerns about increasing Internet prices. However, we do not see that as a barrier to a proposal for a cultural contribution from ISPs.
78. Firstly, an ISP contribution would apply to the ISP itself, not to consumers. Like the requirement of BDUs currently, it would be payable by the ISP itself as a percentage of its gross revenues. ISPs would have no obligation to pass on the costs to their customers, and indeed we would argue that as good corporate citizens they should not do so. The contribution would be in relation to the very thing that makes their high-speed Internet businesses—and their high profit levels¹¹²—possible in the first place, namely, access to “broadcasting” content. We would argue that there is plenty of room in ISP’s profit margins to contribute to Canadian cultural policy without asking their customers do so on their behalf.
79. ISPs, however, may choose to pass on the costs. That would be unfortunate, but if they were to do so, we would argue that the contribution itself would be incredibly modest. An ISP contribution at

¹⁰⁸ Canada. Broadcasting Act (S.C. 1991, c11), *Justice Laws Website*, <http://laws-lois.justice.gc.ca/PDF/B-9.01.pdf> Accessed 18 Nov 2016, s. 3(1)(e).

¹⁰⁹ Geist, Michael. 29 Oct 2016. “No Minister Joly, The Internet is Much More than Just Movies, TV and Music.” *Michael Geist*. <http://www.michaelgeist.ca/2016/10/no-minister-joly-the-internet-is-much-more-than-just-movies-tv-and-music/> Accessed 18 Nov 2016.

¹¹⁰ “Global Internet Phenomena Report.” *Sandvine*, June 2016 <https://www.sandvine.com/trends/global-internet-phenomena/> Accessed 18 Nov 2016.

¹¹¹ *Ibid*.

¹¹² “Figure 5.0.3 Telecommunications revenues and EBITBA margins.” *Communications Monitoring Report 2016*, CRTC <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2016/cmr.pdf> Accessed 18 Nov 2016, p. 210.

the same level as that currently made by BDUs would be 5%. That is less than half of the average HST in Canada, and equal to the lowest HST rates in the country. On a \$50 Internet bill, it would amount to \$2.50 per month. We submit that at that level, the question of affordability is minor, bordering on insignificant for virtually all Canadian consumers. Indeed, many consumers already feel that their Internet and other telecommunications services are too expensive, and to the extent that is true, it must be based on factors *other than* a cultural contribution, since no cultural contribution currently exists. As such, if Internet costs are too expensive now, and the true goal of the government and/or cultural policy critics is to significantly reduce these costs to consumers, then the real problem lies elsewhere. Further to this point, we would argue that those who oppose this proposal on affordability grounds must make their case based upon actual affordability metrics. “Affordability” cannot simply mean the opposition to additional, (presumably) government-imposed costs. Otherwise, the logical conclusion would be that the government should eliminate HST on Internet services, or indeed eliminate *all* taxes on Canadian telecommunications companies at all levels, because they too contribute to “affordability issues” for consumers. That we still impose taxes on ISPs—or on toothpaste, gasoline, books, and other things that could be considered “essential” to daily life—suggests a more nuanced approach to these questions. We would argue that those seeking to maintain or reduce Internet costs to “affordable levels” must define what that level is, show how they’ve calculated it, and propose a plan for reaching that level, beyond simply opposing any and all cultural policy initiatives with respect to ISPs.

80. Finally, lest concerns still remain that a 5% contribution would create affordability issues for some Canadians, it seems possible to look at having the contribution only apply for high-speed connections—i.e. to those ISP services which exist largely to facilitate on-line video viewing. Basic, low-cost ISP services could be exempt from such a contribution. We would argue that such a solution should completely deal with any concerns about affordability for lower-income Canadians as it pertains to Canadian cultural objectives, while still ensuring that those ISP services that *do* operate largely to facilitate “broadcast” consumption have a role in fulfilling cultural policy goals.¹¹³
81. In addition to the affordability objection, we have encountered another category of arguments against a cultural contribution from ISPs, loosely organized around the principle of “net neutrality”. Indeed, the Consultation Paper refers to this principle, in an apparent indication that the Government seeks to avoid Internet-related solutions to cultural policy problems. We believe these arguments amount to a red herring.
82. The Consultation Paper states that the Government is committed to net neutrality, which it defines as “the idea that a public information network like the internet is most useful if all content, sites, and platforms are treated equally.” For one thing, this strikes us as an overly broad definition, and therefore an inaccurate statement of what “net neutrality” means. A better definition, in our view, would be as follows:

¹¹³ Perhaps it goes without saying, but we do not feel it must be established that *every* person who would make a cultural contribution under an ISP contribution regime has to be a “video consumer” in order for the contribution to be justified. Many if not most government contribution, levies, or taxes include encompass persons who may not directly benefit from them, just as many if not most Canadians get a greater benefit from one or more government programs than the amount of their individual contribution. This is the nature of living in a society of shared obligations and benefits, and we accomplish nothing by seeking to tie this or other government problems to an individual obligation-benefit calculus.

Network neutrality is the principle that, to the extent feasible, Internet access providers (“ISPs”) should provide access to all content and applications without blocking or discriminating as to source, destination, application, content, or device. More than that, however, network neutrality in some ways crystallizes the ethos of the Internet and its promise of permissionless innovation.¹¹⁴

83. One key detail in this definition, which is missing from the definition in the Consultation Paper, is the identity of the entities which are subject to net neutrality, namely, ISPs. Omitting this detail suggests that net neutrality requires that all content and applications receive equal treatment in an absolute sense, including, presumably, illegal content and applications. But this is not true. Net neutrality is primarily concerned with ISPs, as publicly unaccountable and/or profit-seeking enterprises, from discriminating against certain content or applications. Net neutrality does not prevent governments from implementing laws with respect to the Internet for the common good. For example, net neutrality, properly understood, does not prevent the criminalization of gambling or child pornography on the Internet, nor does it exempt behaviours like criminal harassment simply because they are done online. Also, net neutrality does not prohibit the collection of taxes with respect to e-commerce. All of these things are imposed by government pursuant to public policy objectives—net neutrality is concerned with things imposed by ISPs, largely pursuant to their own objectives.
84. Another key detail in the definition, which differs from the definition in the Consultation Paper, is the question of access. Even with respect to clearly legal content, net neutrality does not require that all such content be “treated equally” in a general way. The issue is with respect to how the ISP, as an essential gateway to the Internet, affects access. If net neutrality really applied in a universal sense to all content on the Internet, surely private entities the world over would be in regular breach of it, since different businesses and individuals make their content and/or applications available in different ways. For example, Netflix relies upon a subscription model to access its content, whereas YouTube relies upon an advertising model. These two companies are therefore not “treating the content equally” as between each other. Yet there is no net neutrality issue engaged by this behavior.
85. A cultural contribution from ISPs, as proposed by the WGC and others, would not engage net neutrality concerns because it would not affect whether or how ISPs provide access to particular content or applications. To the contrary, one of the advantages of the proposal is that it *doesn’t* require any analysis of, or impact on, what content or applications Canadians are accessing, beyond the simple observation that, in the aggregate, they are accessing “broadcasting” to a significant degree. An ISP contribution, therefore, would not trigger net neutrality concerns, because it would not engage an ISP’s own behaviour, nor would it limit or prevent access to any particular content or application, or any class of content or application. Very simply, it would be conceptually identical to charging the HST on ISPs bills, with the only difference being where the money is directed by the government. If HST on ISP subscriptions does not run afoul of net neutrality, neither would an ISP cultural contribution.

¹¹⁴ Abramson, Bram. *Net Neutrality in Canada*. Law Society of Upper Canada. 18th Biennial National Conference New Developments in Communications Law and Policy. 6 May 2016. pg. 7-2.

86. We would note that some critics of a cultural contribution from ISPs raise what at first appears to be related but different objection, by referring to principles of common carriage.¹¹⁵ In fact, however, these arguments appear to be the same as those for net neutrality, simply under a different label.¹¹⁶ Such arguments typically refer to the principles set out at section 27(2) (unjust discrimination) and/or section 36 (a Canadian carrier shall not control the content of telecommunications) of the *Telecommunications Act*.¹¹⁷ Once again, these sections refer to ISP behavior, not government action, and do not prohibit the collection of a contribution with respect to ISP services.
87. Finally, on a policy note, it's worth emphasizing that an ISP contribution would not be for the benefit of ISPs. To the extent that some Canadians may look askance at such a contribution, we again see value in government making the case that these tools are not to pad the profit margins of large telecommunications companies. They are investments in Canadian culture and the Canadian creative economy. They are job-builders and supports for Canadian artists and voices. As with many forms of cultural policy, we would hope that Canadian citizens, when fully informed of what's at stake, would support this proposal.

Spectrum Auction

88. A third source of funding would be from the results of the federal government's auction of the electromagnetic spectrum. It is our understanding that past spectrum auctions have exceeded expectations in terms of revenues raised, and the AWS-3 auction in 2015 reportedly raised \$2.1 billion.¹¹⁸ It is also our understanding that auction proceeds are directed to general coffers. However, as in our points above on an ISP contribution, we feel a similar argument can be made that since the spectrum being auctioned is used to a significant degree to transmit "broadcasting", as defined under the *Broadcasting Act*, the same rationale for using all or a portion of the auction proceeds to support Canadian content exists.

Direct Government Support

89. Finally, the government could choose to increase funding, or offset what is being lost from regulated sources of funding like CPE/PNI and BDU contributions to Canadian programming, with direct contributions from general government revenues. This approach has been argued by some as a preferable alternative to expanding broadcast regulation to online broadcasting services.¹¹⁹

¹¹⁵ E.g. Winseck, Dwayne. "Modular media: A radical communication and cultural policy for Canada." *Canadian Centre for Policy Alternatives*, 1 July 2016. <https://www.policyalternatives.ca/publications/monitor/modular-media> Accessed 18 Nov 2016.

¹¹⁶ In the example cited, the author explicitly states that "net neutrality" is simply what "common carriage" is "better known [as] these days."

¹¹⁷ Canada. Telecommunications Act, S.C. 1993, c. 38. *Justice Laws Website*, <http://laws-lois.justice.gc.ca/eng/acts/T-3.4/> Accessed 18 Nov 2016.38

¹¹⁸ Evans, Pete. "Rogers buys no new spectrum as AWS-3 wireless auction raises \$2.1B." *CBCNews* 6 March 2015 <http://www.cbc.ca/news/business/rogers-buys-no-new-spectrum-as-aws-3-wireless-auction-raises-2-1b-1.2983178> Accessed 18 Nov 2016.

¹¹⁹ Globerman, Steven. *Technological Change and its Implications for Regulating Canada's Television Broadcasting Sector*, Fraser Institute, May 2016 <https://www.fraserinstitute.org/sites/default/files/technological-change-and-its-implications-for-regulating-canadas-tv-broadcasting-sector.pdf> ; Katz, Len and Sean Speer. *A New Digital Policy for the Digital Age: a Mandate Review of the CRTC*, MacDonald-Laurier Institute, Oct 2016

90. Certainly, if the choice is between direct government support and the decline of the Canadian audiovisual sector, the WGC prefers the former. However, we seriously question the notion that "just having the government do everything" is a desirable, or even tenable, option.
91. For one thing, the government must consider the sheer quantum of support that will be lost from the erosion of private-sector regulation of broadcasting, and therefore the quantum that the government would have to "make up" in order to avoid material declines and job losses in the industry. As described at paragraph 55 above, the shift to digital is putting up to \$2.1 billion¹²⁰ in financing to English-Canadian domestic production at risk, with approximately \$411.2 million¹²¹ of that at *serious* risk, much of which with respect to the culturally valuable genres of drama series, animation, children's programming, and documentary. As we've discussed, it is a near certainty that BDUs would not voluntarily continue their contributions to the CMF or CIPFs if given the choice, so that amount is nearly certain to decline (if an asymmetrical broadcast regulatory regime is merely maintained), or to disappear (if the problem of regulatory symmetry is solved by eliminating broadcast regulation in this respect). As for private broadcasters' CPE and PNI spending, some aspects of CPE—i.e. those which are profitable, such as national news, mainstream sports, and potentially some other programming—may continue in the absence of regulation. For PNI, however, we believe much if not all of it would disappear without regulatory intervention. The resulting loss to the system is likely to be well into nine figures. This is how much the government would be asked to provide, annually, in addition to current contributions to things like the CBC and the CPTC program, or else risk watching our industry decline.
92. This is a significant amount of money, and as such it raises the question of stability. Virtually all industries require some degree of stability in order to be viable. Investors will not put money into a sector without knowing whether that sector will be around for long enough to see a return on their investment. Young people will not invest their time and money in education and training for a career that may not be able to hire them when they graduate. Many companies facing a "feast or famine" environment—or the prospect of more famine than feast—may close down and seek a different sector of the economy. Yet a sector largely dependent on direct government support is also a sector that can become a political football when either budgetary priorities or elected governments change. Indeed, one of the aggravating factors for the CBC over the past decade or more has been a government in Ottawa that was either indifferent or hostile to its needs. Broadcast regulations change, but they've always had a piece of legislation to ground themselves in—the *Broadcasting Act*—and their core components have shown a fair degree of stability. For example, notwithstanding a variety of changes to the CMF and its predecessor funds' mandate and structure, the fund itself has

<http://www.macdonaldlaurier.ca/files/pdf/MLISpeerCRTCPaper-10-16-webreadyV3.pdf> ; and Winseck, Dwayne.

"Modular media: A radical communication and cultural policy for Canada." *Canadian Centre for Policy Alternatives*, 1 July 2016 <https://www.policyalternatives.ca/publications/monitor/modular-media> All accessed 18 Nov 2016.

¹²⁰ I.e. \$1.83 billion in CPE in 2015 for the English-language market, as noted above, plus \$305.8 million representing the English-language portion (70%) of BDU contributions in 2015.

¹²¹ I.e. \$305.8 million representing the English-language portion (70%) of BDU contributions in 2015, as noted above, plus \$105.4 million in English-language PNI, as also noted above. We emphasize again, however that the PNI totals referenced here are sourced from Broadcasting Notice of Consultation CRTC 2016-225, which appear to be significantly *smaller* than those stated or implied in the Communications Monitoring Report 2016, Table 4.2.18. We invite the government to perform its own analysis to confirm or amend our estimated size of impact. Our own rough calculations suggest that the correct number is approximately \$200 million, rather than \$105.4. If so, this would adjust this number upwards by roughly \$100 million.

been in existence since the mid-1990s, and has been a reliable source of domestic television funding during that 20 years, largely built in turn on the stability of the 5% BDU contribution. It is unclear what kind of stability our industry could expect from successive governments and/or successive budgetary cycles if everything was under a Parliamentary appropriation.

93. There is also the question of diversity. While consolidation has deeply impacted the television sector over the past decade or so, there are nevertheless still three large private English-language buyers for drama and/or animation programming, plus the CBC and APTN. Having only four or five "doors to knock on" when pitching new ideas is not ideal, but there are at least 4-5 of them. Concentrating all content support with the federal government, either via the CBC or otherwise, would effectively eliminate all but one of those doors. That reduces buyers and opportunities, as well as the ability to sustain a viable talent pool. It also exacerbates the problem described above, namely, that nobody knows for sure what will be successful until it is. Fewer entities commissioning programming means fewer chances for success and less innovation. It also means more concentrated decision-making and potentially less diversity of viewpoints. And if the CBC were to be determined to be the sole place for Canadian television, this could lead to a "ghettoization" of Canadian content itself. Canadian artists already struggle against preconceptions that their work is "not good enough" simply because it's Canadian. If all Canadian television production was effectively shifted to the CBC, this would not counter the unfortunate views of some that Canadian programming "can't compete", because otherwise it would be on private networks. Others share these concerns. The broadcast regulator in the U.K., Ofcom, launched a review of British broadcasting in 2008, and considered whether the BBC should be the sole source of British public-mandate television. It rejected that option, citing its concern to promote pluralism.¹²²
94. Finally, we must question the ultimate objectives of those who argue that the government should shoulder the full weight of Canadian cultural policy with respect to film and television. Some of those who make this argument are themselves regulated entities who, for obvious reasons, would prefer not to have regulatory obligations. Others are commentators whose views seem skeptical of cultural policy overall, and whose packages of recommendations seem more focused on the profitability of private corporations than ensuring that cultural objectives are met. For example, in a public policy paper entitled, *A New Digital Policy for the Digital Age: A Mandate Review of the CRTC*,¹²³ Len Katz and Sean Speer argue for eliminating private broadcaster regulation with respect to Canadian programming, and that "the CBC's mandate should be refocused as the sole vehicle for delivering mandated Canadian content".¹²⁴ Yet the authors seem just as concerned, if not more so, with how much CBC employees are being paid or whether or not the CBC is "unfairly" competing with private Canadian broadcasters for popular content, as anything else.¹²⁵ The authors also say that "these questions have gone largely unfronted as the CBC has responded to one financial crisis after another," and:

¹²² Grant. pg. 24.

¹²³ Katz, Len and Sean Speer. *A New Digital Policy for the Digital Age: a Mandate Review of the CRTC*, MacDonald-Laurier Institute, Oct 2016 <http://www.macdonaldlaurier.ca/files/pdf/MLISpeerCRTCpaper-10-16-webreadyV3.pdf> Accessed 18 Nov 2016.

¹²⁴ Ibid. pg. 26.

¹²⁵ Ibid. pg. 22

Yet the CBC has resisted this type of fundamental thinking about its role, its place in the broader landscape, and how to best position itself to meet its Canadianism objectives. As University of Ottawa law professor Michael Geist (2014) writes: “there is no willingness to radically rethink its future.”¹²⁶

95. So, it's hard to see why Katz and Speer believe that this is the organization that should be "delivering mandated Canadian content". Elsewhere in the paper, the authors incorrectly state that "financing requirements and exhibition quotas – derive primarily from the scarcity of spectrum",¹²⁷ and that "Broadband technologies...diminish the need for domestic financing and broadcasting rules."¹²⁸ As we described above, broadband technologies do no such thing, and we would argue that Katz and Speer would simply have to look around them to see it. Given the totality of their statements, it's very hard for us to see a genuine attempt to reorient Canadian cultural policies to the digital age, and much easier to see an interest in deregulation in private corporate and/or free-market ideological interests, with Canadian culture as an afterthought.

Expanding Funding Triggers

96. The question of funding triggers is not one of new production funding sources, but rather of expanding the range of entities that can “trigger” existing government funding to audiovisual content production. Currently, many funding sources require that eligible applicants and/or eligible projects have business arrangements with another entity, often with a broadcast, distribution, or similar “gatekeeper” role. For example, for the CPTC, at least one Canadian distribution or broadcast agreement must exist, containing a commitment to show or broadcast the production in Canada within the two-year period following its completion, and:

The agreement must be for consideration at the fair market value with:

- a. A corporation that is a Canadian and is a distributor of film or video productions; or
- b. A corporation that holds a broadcasting licence issued by the CRTC for television markets;

To have the production shown in Canada within the two-year period that begins at the earliest time after the production was completed that it is commercially exploitable.¹²⁹

97. For the CMF’s Performance Envelope Program, the Television Component of an eligible convergent project must have “Eligible Licence Fees” which meet a minimum “Licence Fee Threshold”, and such fees must be paid by a CRTC-licensed broadcaster.¹³⁰

¹²⁶ Ibid. pg. 22

¹²⁷ Ibid. pg. 20

¹²⁸ Ibid. pg. 26

¹²⁹ Canada. “CPTC Program Guidelines.” *Canadian Audio-Visual Certification Office*, 2 April 2012

http://canada.pch.gc.ca/DAMAssetPub/DAM-PCH2-Arts-FilmVideo/STAGING/texte-text/cptcGuide_1455637343203_eng.pdf Accessed 18 Nov 2016, p. 27. s. 6.02

¹³⁰ “CMF Performance Envelope Program Guidelines 2016-2017.” *Canada Media Fund*, http://www.cmf-fmc.ca/documents/files/programs/2016-17/guidelines/2016-17_perf_env_guidelines.pdf Accessed 18 Nov 2016. S. 3.2.TV.5.

98. Such funding “triggers” can fulfill one or more of several functions. Firstly, they can act as a form of “market validation”, which demonstrates that there is market interest in the production which is in addition to the interest of its producer(s) and/or creator(s), or to the interest of the funder itself. Secondly, when they involve a minimum financial contribution such as in the CMF’s case, triggers can ensure that private entities are also contributing to the production of content, either to encourage private investment, to ensure that government does not carry an undue portion of the cost, or both. Thirdly, triggers can ensure that Canadian audiences will have access to the resulting production, where those triggers represent a platform that is available to Canadians. Finally, triggers can be used to support the triggering partners themselves, by limiting access to funding unless it is triggered by those who are eligible to do so.
99. The WGC believes that, in general, the first two functions of funding triggers remain valid. There continues to be value in seeking to ensure that government funding aligns with market demand and, where feasible, it remains valuable to encourage financial participation from the private sector.¹³¹ The third function remains valid in theory, however the open platform of the Internet provides many opportunities for creators to reach audiences without going through a traditional “gatekeeper”.¹³²
100. However, the last function—support of triggering partners themselves—also has negative effects, in that it restricts the ability of other, newer and/or digital entities from acting as triggers. A primary example is the ability of OTT services such as Netflix to trigger funding to Canadian productions. To date, Netflix has helped finance a number of Canadian productions because traditional Canadian triggers—i.e. Canadian broadcasters and/or Canadian distributors—have *also* been present. However, at the moment, Netflix *alone* cannot trigger funding from the CPTC or the CMF, because it is neither Canadian nor a licenced broadcaster or distributor. The Canadian Audio-Visual Certification Office (CAVCO) recently addressed this question in a call for comments on an amendment to its interpretation of the “Shown in Canada” requirement.¹³³ The WGC participated in this call for comments, and supported the recommendations therein to allow “online-only productions” to access the CPTC, albeit still through a Canadian producer. The WGC supports a similar approach to other funders, like the CMF or Telefilm Canada, to allow new digital services, both Canadian and foreign, to trigger funding, thereby incentivizing them to make greater investments in Canadian audiovisual content.
101. Having said that, we are aware, at least where funding is limited to a set allocation like for the CMF, that such an “opening up” of the system could adversely affect Canadian broadcasters or others who currently make significant contributions to Canadian production, either due to CRTC regulation or because of their mandate as public broadcasters. The WGC doesn’t believe that such concerns justify remaining closed to these new financing opportunities. However, we also believe the government should be sensitive to the impacts on those that robustly contribute to Canadian content

¹³¹ We note, however, that it can be critical that any “minimum thresholds” for funding be finely calibrated to the ability of market triggers to meet them. At the CMF, consultative discussions often turn on the degree to which some broadcasters in some circumstances will simply pass on a project rather than pay what they view as a Licence Fee Threshold which is too high. As such, care must be taken to find the right balance between encouraging investment and creating disincentives.

¹³² We realize, however, that discoverability and promotion remains a factor.

¹³³ “CAVCO Public Notice 2016-03.” *Canadian Audio-Visual Certification Office*, <http://canada.pch.gc.ca/eng/1455913866222> Accessed 18 Nov 2016.

now, and endeavour to ensure that negative impacts from increasing triggering entities is offset to the extent possible. In particular, we believe it is consistent that if Canadian public funding is effectively benefiting OTT services by virtue of allowing them to trigger funding, that such services should also have Canadian content obligations as discussed previously in this submission.

Development Support

102. Alfred Hitchcock said, “To make a great film you need three things – the script, the script, and the script.”¹³⁴ The film and television industry is replete with quotes echoing this sentiment.¹³⁵ It is even more true in dramatic television, where the showrunner and their writing room are the driving creative force on the production.
103. The importance of a high-quality script to the production of a high-quality film or television show cannot be overstated. A script contains virtually all of the key elements which make up a finished production: the story, characters, settings, themes, tone, and elements of style. In nearly every single narrative (and many non-narrative) films or television series, if something is on the screen, in one form or another it was in the script. If a story has a shocking twist near the end, that was in the script. If a character is dark, or tortured, or has a complex inner life, or is earnest and kind, that was in the script. If a story explores ideas of love and loss, or family dynamics, or a spiritual quest, or socio-economic issues, or what it means to be human, that was in the script. If the atmosphere of a show is bright and airy, or dark and murky, or cold and clinical, or emotionally charged, that was in the script. Even purely cinematic elements can have their genesis in the script material, and in some cases, are directly described in the directions on the page. These are the things that viewers engage with. They are a huge part of what we mean when we say, “That was a great TV show,” or, “That was a great film.” We are talking about things that a screenwriter put in a script.
104. Given the importance of a great script, it is vital to invest sufficient time, energy, and money into ensuring that the script as good as it can be before it goes into production. It is infinitely easier and more cost-effective to work out creative problems while they are still on the page, rather than when they are in front of a camera. Once in production, a veritable army of people has been mobilized to put a world on screen. To shoot even a single scene, a location must be chosen to film it in, or set must be built. The former may involve significant scouting and transportation costs; the latter may involve a designer to design the set and a construction team with time and materials to build it. Actors must be cast to play the characters in the scene, and their casting must reflect the dramatic and/or thematic intensions of the scene. The actors must have time to memorize their lines and then to rehearse. Costly, high-end camera gear must be rented, and a skilled camera crew must be hired to operate it. Lighting and electrical equipment must be obtained, and set up in advance of shooting. Numerous other logistical elements must be taken care of, from ensuring employment/engagement contracts and paperwork are filled out, to transporting elements to the set, to ensuring there is food to eat at lunch, to making sure the payroll is done on time. Once all of these pieces have been put in motion, it is not the time to make major creative changes. While dozens or even hundreds of people are standing around waiting for instructions, that is not the time to begin thinking through the creative elements of the scene, or deciding to change the setting, or add a new character.

¹³⁴ “Alfred Hitchcock: Quotes.” *IMDB*, <http://m.imdb.com/name/nm0000033/quotes> Accessed 18 Nov 2016.

¹³⁵ E.g. “35 Screenwriting Quotes from the Masters.” *Screencraft*, 28 March 2015 E.g. <https://screencraft.org/2015/03/28/35-screenwriting-quotes-from-the-masters/> Accessed 18 Nov 2016.

105. The time to do it is in development. Development is the process when the script is written and rewritten to make it the best it can be. Few works of art exist as a first draft, and film and television is no exception. Development is the process during which ideas are hashed out, put on paper, judged and commented on, thrown away, and then put down on paper again anew. Virtually anybody in the industry will tell you that this a crucial process, and the more time and resources dedicated to it, generally the better the final outcome will be. Producers and broadcasters know it will save them time and money in production. Directors and actors know it will give them better material to work with. Everybody knows it will result in a better final product.
106. This is understood everywhere, including Hollywood, and it has been particularly highlighted as the reason behind Scandinavia's current success in television drama, both domestically and internationally. They call it "One Vision", and it is based on an overriding emphasis on the screenwriter and the development process. Christian Rank of TV2, a Danish broadcaster, discussed this at the CMPA's PrimeTime in Ottawa event on February 5, 2016, and his comments are worth quoting at length:

So the thing is that when they start a show, and they do the budgets like 4 years in advance, so they'll hire a writer, they'll tell them "we're doing your show... we're going to broadcast it in 2020 and we're going to finance it"...And what happens in that process – I've tried it twice – you start out being really, really excited, it's really fun. Then you get one and a half years into the process, then you are frightened, extremely, you try to convince them not to do your show because you really have nothing and they keep saying "but we're going to broadcast it so you better get to writing it" and then you're like... then you cross another hurdle and think "Shit, they're actually going to broadcast this so we better try to do it good" but I think there's some... there's a very large element of trust in that and obviously there's a calmness around the development room because we know that most of the financing is actually in place, and there's a very large amount of trust from the broadcaster to watch the writer. We work with, what we've defined, kind of like a "one vision", that we're doing the writers' vision... so also the writer and the producer of the show together have final cut on the show. And I think that is very large reason of at least a lot of the Danish series – "Borgen", "The Killing", such as "The Legacy" - it's that trust which is put into the creative core that's doing the show and the fact that the financing is more or less in place from the get-go.

Now having said that, and with the success of the Scandinavian series, we're obviously always also trying to do more and as broadcasters we also looking for more drama and we can't keep fully financing everything we do because we don't have that much money. So I think now the challenge we face is that we're more and more moving into co-productions, the best example would probably be as show like "The Bridge" that was co-financed between a Swedish broadcaster and a Danish broadcaster - Norway came along as well - and we more and more are looking into like you know, partnerships to build with independent producers, putting financing together but we can constantly try to merge that together with the 'one vision' / writers vision protecting the creative working room and still focusing on local stories.¹³⁶

¹³⁶ See: "Best-in-Class Models for International Success." *Prime Time Anytime*, 5 Feb 2016
<https://www.youtube.com/watch?v=oKVc764cpDU> Accessed 18 Nov 2016, starting at timecode 15:36.

107. There are several points here, but the two we'd like to highlight are the respect for the screenwriter's vision, and the resources provided *at the development stage* to properly realize that vision.
108. Unfortunately, however, we in Canada appear to be drifting in the opposite direction. While the standard development process in English-Canada has never looked like the Danish model—Canadian screenwriters have *never* had four years of commitment and dedicated financial support for development, and would be excited to get even a quarter of that—the trend over the past 5-10 years is towards even fewer resources for development. In years past, when a screenwriter and/or producer came up with an idea for a television program, they pitched that idea to a broadcaster, orally or with minimal supporting written material. This was a *concept* pitch and, if the broadcaster liked the concept, a development agreement between the producer and broadcaster would be entered into to further develop the idea, often financed by the broadcaster or by the broadcaster in conjunction with a funding body.
109. This model no longer predominates. Today, broadcasters expect significant development materials as part of the initial pitch. Whereas before, broadcasters would have received an oral description of the project, now they want to see fully developed treatments, scripts, bibles, or even produced material such as "sizzle reels" showing the visual look and feel of the program. This effectively front-loads development costs onto the producer and in turn onto the screenwriter him or herself. Broadcasters are investing far less of their own money in development, expecting that much if not all of the work will be borne by the screenwriter and/or producer. This in turn translates into pressure on writers to work for free. The WGC surveyed its membership in 2013, and found a significant number of screenwriters, including very senior ones, had been pressured to perform work for free. For example, 72% of all respondents working in television said that they had provided uncompensated work before signing a writing/development contract with a producer. While some self-directed work may occur at this stage, 54% of this work was "always" or "often" at the request of a producer, either for a new pitch or to rewrite an existing pitch. Even when a contract between screenwriter and producer is signed, the pressure to work for free often remains, with 44% of television writers surveyed reporting that they had worked for free. 63% of those writers said that the pressure to provide free work was coming from the producer, not from themselves. This is not a sustainable model.
110. The result is underdeveloped programming, and screenwriters carrying the burden of financing or co-financing the development phase. The former leads to poorer-quality programming. The latter leads to scriptwriters who carry a portion of the risk of development, which they are not equipped to carry and often do so without the chance of reward generally associated with financial risk. Screenwriters, like everyone, have mortgages and bills to pay—they cannot live on free, and they cannot effectively interim finance development. As a consequence, many senior screenwriters do their best to avoid this situation by working in story departments on established productions, or writing scripts "on spec" that they in turn own and control. Having invested their own sweat equity in the project, screenwriters are more likely to turn to the larger, better capitalized and less risk-averse international marketplace when it comes time to sell, bypassing the Canadian broadcasting system altogether. This would be the very definition of a lost opportunity for the Canadian system.
111. In addition to this specific phenomenon, the WGC believes that for a long time the Canadian industry has tended to "rush to production", and in the process given development too short a shrift. While the ultimate cause(s) of this may vary, it is likely that both broadcasters and producers put most

of their focus on the production phase, though perhaps for different reasons. For producers, production triggers key payments of licence fees and production funding, which is a crucial source of cash flow. For broadcasters, it is production spending that ultimately generates the lion's share of CPE, exhibition, or other broadcast regulatory requirements.

112. For these reasons, the WGC believes it's time for the English-Canadian sector to invest more in development. To the extent that Canadian broadcasters are unwilling or unable to do so, we propose that the government provide the necessary support. We would consider this a form of "seed money", or an investment in "research and development". Indeed, writing and script development is the "R&D" of film and television production, and a key place in which relatively small levels of government support can result in big dividends, both domestically and internationally. Further, we understand that virtually all other industry stakeholder groups support more resources for development, including the Canadian Media Producers Association (CMPA). The CMPA has in fact made proposals for more early-stage development funding to the CMF. We understand that this is an issue that the entire industry supports.
113. Please see the details of the WGC's proposals with regard to government support for script and concept development at Appendix E "WGC Development Fund Proposal", appended to this submission.
114. We believe these proposals are the best way forward for Canada, and we believe they are supported by existing research. We note, for example, a study published by the CMF this year, entitled "National Fiction on the Small Screen: Study on the Performance of Local and International Drama Series in Nine Small Televisual Markets" (National Fiction Study).¹³⁷ While focused on non-English-speaking jurisdictions, primarily in Europe, the rules of creativity are universal, and we believe its recommendations are highly applicable to our market.¹³⁸ In particular, the study found this:

In nearly all the cases studied, the most successful drama series had upstream support by public sector development funding agencies. For the vast majority, this assistance came directly from the public broadcasting corporation that had a stake in the series as buyer.

Besides the public broadcaster's contribution, there were outside contributions in many cases from foundations, institutes, or funding agencies, most of them in the public sector as well. In Norway, all the series we studied had the benefit of combined support from NRK and the Norwegian Film Institute. In Switzerland, a collective of four institutions (RTS, Fondation Cinéforum, Fonds de production télévisuelle, Succès) plays a major funding role.

...

It is also worth recalling that in their commissioning directives, the stakeholders in the Walloon public funding ecosystem required that script proposals should be the product of

¹³⁷ "National Fiction on the Small Screen: Study on the Performance of Local and International Drama Series in Nine Small Televisual Markets." *CMF Trends*, 19 Oct 2016 http://trends.cmf-fmc.ca/media/uploads/reports/National_Fiction_on_the_Small_Screen_FINAL_2016-10-13.pdf Accessed 18 Nov 2016.

¹³⁸ Several of the jurisdictions studied also are also geographically, linguistically, and/or culturally proximate to larger markets against which they must compete. For example, Belgian content must compete with French and Dutch content; Austrian content with German content; and Swiss content with French, German, and Italian content. As such, these jurisdictions are not as culturally or linguistically "protected" as they might at first appear.

writers' collectives. In so doing, they claimed that they hope to contribute toward the creation of a new generation of Walloon writers capable of working collectively on a variety of audiovisual projects, including films, television programs, and digital formats. By assuming a substantial share of the funding, the public sector stakeholders have a legitimate right to impose constraints that will prevent these drama series from becoming the exclusive product of a small number of beneficiaries. Hypothesis H5 on public sector funding and H6 on concentration of investment also support this view.

In conclusion, it can be said that investment in the development of drama series by public and parapublic organisations has a positive impact on the domestic and international performance of those series.¹³⁹

115. The key points: development is key to success, development benefits from public funding, and this funding should not be concentrated in the hands of a limited number of stakeholders (i.e. broadcasters, producers, or institutions). This last point was further expanded upon in the study:

The majority of our contacts actually claimed, on the contrary, that they avoided concentrating their subsidies. As we mentioned in our discussion of H1, this is particularly true of development grants. Preference for writers' collectives represents a decentralized funding strategy that allows many different talents to emerge, who will then be able to contribute to other types of projects.

As we pointed out in our discussion of H5, because drama series in small markets are not an economically viable proposition, it is important to consider the potential economic impact of a "national champions" strategy. By narrowing their aim and subsidizing only a small number of players, public sector institutions in effect privatise public funds in a way that could be seen as unfair.

The Danish counter-example is interesting here. As we mentioned, production of Danish drama series has long been the near-exclusive preserve of DR, the public broadcaster. These series have been produced – from scriptwriting to broadcast – 100% in-house, with contributors engaged as service providers, or else as employees, throughout the production period. This was particularly true of *Borgen*, one of the best-known series.

Apart from the unique case of Danish production, a concentrated funding approach basically tends to favour more conventional approaches and more conservative scripting. When people are banking on a very small number of stakeholders, contributors, and television products, error is not an option, and the safest bet is to recycle the tried-and-true formulas.

As we shall see in H7, the success of drama series in small markets depends very little on production conditions or concentration of public investment on a few stakeholders.

The explanation seems to lie in how broadcasters and funders approach their series portfolios. Investing in a more diverse range of projects offers more chances that at least one will deliver better-than-ordinary performance.¹⁴⁰

¹³⁹ Ibid, pg. 22.

¹⁴⁰ Ibid, pg. 25-26.

116. We believe this is consistent with our proposal to focus on screenwriters themselves, rather than funneling everything through broadcasters and/or producers. Importantly, we already have development funding in Canada that is triggered by broadcasters and primarily accessible to producers.¹⁴¹ Our proposal is intended to be something different—to complement those programs by focusing on talent and innovative, creative risk-taking.

Creative Risk-Taking

117. This leads back to an observation we made earlier in this submission, and which bears expanding upon now. Creative success demands the willingness to take creative risks. Many a producer, broadcast executive, studio head, or cultural policy analyst has wondered to themselves how it might be possible to produce, commission, or fund only hits. All of their jobs would no doubt be easier if they were able to invest their time and money only in successful projects, and not to bother with the failures. We can report that screenwriters too wish they could write nothing but successes, every time. Unfortunately, that is simply not possible. Despite the best of intentions—for example, to focus on “quality over quantity”, as if the two were unrelated—we cannot have creative successes without risking creative failures. In short, English-Canada requires a greater appetite for creative risk-taking.
118. There may be a number of factors that contribute to the conservatism of many Canadian broadcasters, as mentioned earlier in this submission. No doubt, a small domestic broadcast market is likely one of them. But whatever the reasons, we cannot be successful if we don’t take chances. Once again, the National Fiction Study provides important insight. The study sees a special role for the public broadcaster in this respect, and we don’t disagree. That said, given current size and role of private broadcasting in English-Canada, along with the sheer necessity of creative risk-taking to find success, we would hope such a philosophy would not be limited to the CBC:

Pressure from the advertising market should not prevent bold creative, which is often the first step to success with domestic audiences, and all the more so internationally. In our interviews, we were able to measure the extent to which public broadcasters in the countries studied accepted creative risk-taking with drama series as part of their mission. The Danes have been doing it on DR for over 15 years, and their productions have generated major audience ratings in their own market, besides earning international distribution. Given these successes from Denmark (*Borgen*), Sweden (*Wallander*), and now Finland (*Black Widow*), the series in these countries are being singled out in advance by international buyers looking for series to distribute and adapt. The public broadcasters, with their major involvement in the development process, consider it their mission to bring out and promote new talent, and take the necessary risks. These series owe their domestic and international success to their presentations of complex characters that are deeply rooted in the reality of the territories where their stories unfold. The *Lilyhammer* series, depicting the shambolic career of an Italian American Mafioso who is hiding out in Norway, is a sterling example. Most of the

¹⁴¹ E.g. the “CMF Development Program.” CMF, <http://www.cmf-fmc.ca/funding-programs/convergent-stream/development/> Accessed 18 Nov 2016.

public broadcasters, then, clearly accept their role and are not under the thumb of advertising sales figures.¹⁴²

119. We wholeheartedly concur.

Export

120. This consultation, and the Liberal Government generally, has emphasized the importance of international export as a driver of success in the Canadian film and television sector. The WGC supports this goal. We support steps that can improve the changes for increased Canadian sales, as well as increased international financing for Canadian production.¹⁴³ This is subject, however, to our concerns about the role that Canadian screenwriters and Canadian talent will continue to play, discussed in greater detail below.

121. We would first emphasize that Canada has already seen significant export success of Canadian domestic productions. International sales for Canadian TV is worth more than half a billion dollars, with demand growing steadily over the past decade. In 2014-2015, the export value reached an all-time high of \$539 million.¹⁴⁴ Our television series are sold to upwards of 200 countries and territories, including the following:¹⁴⁵

10-point Canadian TV series	# of Countries and Territories
Drama and Comedy	
<i>Call Me Fitz</i>	192
<i>Degrassi</i>	140+
<i>Heartland</i>	119
<i>Murdoch</i>	110
<i>Orphan Black</i>	170+
<i>The Listener</i>	180
<i>The Next Step</i>	100+
Kids TV	
<i>Caillou</i>	100+
<i>Johnny Test</i>	200+
<i>Wild Kratts</i>	180+

¹⁴² "National Fiction on the Small Screen: Study on the Performance of Local and International Drama Series in Nine Small Televisual Markets." *CMF Trends*, 19 Oct 2016 http://trends.cmf-fmc.ca/media/uploads/reports/National_Fiction_on_the_Small_Screen_FINAL_2016-10-13.pdf

Accessed 18 Nov 2016, pg. 29.

¹⁴³ As we will discuss in greater detail below, these are two different things.

¹⁴⁴ CMPA et al. "Exhibit 1-5 Export value of film and television production in Canada." *Profile 2015: Economic Report on the Screen-based Media Production Industry in Canada*, <http://www.cmpa.ca/sites/default/files/documents/industry-information/profile/PROFILE-2015-ENG.pdf>

Accessed 18 Nov 2016, p. 10.

¹⁴⁵ See Appendix F for sources.

122. There are numerous examples of our recent critical and commercial success around the world. *19-2* was nominated for an International Emmy for Best Drama this year, in competition with the top series in the world from Argentina, Germany and the United Arab Emirates. The New York Times said: "To watch *19-2* is to be reminded that there is more than one way to pace a police drama...The series is in the tradition of shows like *'The Wire,'* portraying law enforcement less flashily and less noisily than others, and thus more accurately."¹⁴⁶ *Killjoys* is in the Top 10 best-rated shows on SyFy – a cable channel that reaches 94.8 million American households,¹⁴⁷ and was described by Variety as, "a light, well-made, zippy TV show that knows what it is and delivers solid action, adventure and character development despite its limited budget. The cast has terrific chemistry, and the second season of the show ably builds on the strengths of the quite enjoyable first."¹⁴⁸ The children's series *Odd Squad* won more Daytime Emmys this year than *Sesame Street*, and it beat *Sesame Street* to win Best Writing in a Children's Preschool Series, a category *Sesame Street* had dominated.¹⁴⁹ *Murdoch Mysteries* was the #1 original series on the leading U.K. crime drama channel, Alibi, and was one of the Top 3 best-rated shows on France Television with an average viewership of 3.5 million.¹⁵⁰ There's a three-hour marathon of *Murdoch Mysteries* every Sunday in France.¹⁵¹ In Finland, *Murdoch Mysteries* beat *Downtown Abbey* as the most watched foreign program in November 2014.¹⁵² The Hollywood Reporter said, "Syfy's *Wynonna Earp* was developed for television by Emily Andras [*Lost Girl* showrunner]....Looking over the résumés of the show's other writers and stars, you'll notice a lot of *Lost Girl*, *Killjoys*, *Dark Matter* and *Being Human* credits, a reminder of how good the Canadian genre pipeline has been to [American cable service] Syfy."¹⁵³ *Degrassi: The Next Generation* provided the first creative role to Canadian recording artist Drake. And this year, Tatiana Maslany won the Primetime Emmy Award for Outstanding Lead Actress in a Drama Series for *Orphan Black*, the first Canadian to win in a Canadian TV series.¹⁵⁴

123. These are fantastic success stories, and reason for our industry to celebrate. But while we have seen and are seeing export success, we know we can always do better.

¹⁴⁶ Genzlinger, Neil. "Review: '19-2,' a Police Drama on Acorn TV, Is a Slow Burn." *The New York Times*, 17 Jan 2016 http://www.nytimes.com/2016/01/18/arts/television/review-19-2-a-police-drama-on-acorn-tv-is-a-slow-burn.html?_r=0 Accessed 18 Nov 2016.

¹⁴⁷ "Syfy." *Wikipedia*, <https://en.wikipedia.org/wiki/Syfy> Accessed 18 Nov 2016.

¹⁴⁸ Ryan, Maureen. "TV Review: 'Killjoys' and 'Dark Matter'" *Variety*, 24 June 2016 <http://variety.com/2016/tv/reviews/killjoys-dark-matter-hannah-john-kamen-aaron-ashmore-luke-macfarlane-syfy-1201803180/> Accessed 18 Nov 2016.

¹⁴⁹ Johnson, Zach. "2016 Daytime Emmy Award Winners: The Complete List." *ENews*, 2 May 2016 <http://www.eonline.com/ca/news/761317/2016-daytime-emmy-award-winners-the-complete-list> Accessed 18 Nov 2016.

¹⁵⁰ "Murdoch Mysteries." *Shaftsbury/Smokebomb*, <https://shaftsbury.ca/murdoch-mysteries/> Accessed 18 Nov 2016.

¹⁵¹ Vodarek, Lindsey. "Murdoch Mysteries." *Eye On Canada*, 5 July 2016 <http://www.eyeoncanada.ca/blog/entry/murdoch-mysteries> Accessed 18 Nov 2016.

¹⁵² Murdoch Mysteries." *Shaftsbury/Smokebomb*, <https://shaftsbury.ca/murdoch-mysteries/> Accessed 18 Nov 2016.

¹⁵³ Fienberg, Daniel. "'Wynonna Earp': TV Review." *The Hollywood Reporter*, 30 March 2016 <http://www.hollywoodreporter.com/review/wynonna-earp-tv-review-879404> Accessed 18 Nov 2016.

¹⁵⁴ Knegt, Peter. "Why Tatiana Maslany's Emmy win is a huge moment for Canadian artists." *CBC*, 19 Sept 2016 <http://www.cbc.ca/beta/arts/why-tatiana-maslany-s-emmy-win-is-a-huge-moment-for-canadian-artists-1.3768891> Accessed 18 Nov 2016.

124. In the process, however, it is important to remember that Canada remains a small market playing in the English-language global content market, and the challenges are significant. As noted above, Canada's industry is a fraction of the size of Hollywood, and public supports for content creation in the U.K. are several times bigger than those for English Canada. This provides U.S. and U.K. content makers with a much larger, more stable platform to jump off from into the international marketplace. In addition, the U.K. sector has had greater levels of support for longer than English Canada has, allowing them more time to build a critical mass. As is often the case, bigger players are generally better positioned to compete in big markets.

125. As such, we feel that comparisons between English Canada and the U.K. must be undertaken with care. The U.K.'s export success is widely attributed to "Creative Britain", a British government strategy to grow the creative industries in the U.K., starting with the election of the Labour Party government in 1997. This was a major government initiative, which involved multiple stages, including a task force, which reported on the economic importance of the sector and made key recommendations, and ultimately led to greater government investment. Government support included programs for training, export and access to markets, and government funding to content makers. Such an approach could certainly be implemented in Canada, but we would argue that we would have to look both at the significant financial investment that the U.K. government made, as well as Canada's unique position in the world, which differs somewhat from the U.K.

126. It is also important not to over-rely on export success as a kind of "magic bullet" that will, by itself, maintain or grow the Canadian industry. As stated by Peter Grant:

The suggestion is also sometimes made that domestic producers should focus more on increasing their export revenue, following in the footsteps of U.S. producers. There are a number of domestic programs in the countries studied that have achieved export success. Famous examples include the Australian series *Home and Away* and the Canadian series, *Degrassi: The Next Generation*. However, the reality is that this avenue is a very limited one. Only successful series can be exported, and most series fail. *Outrageous Fortune*, for example, was a hit in New Zealand but failed in the U.K. Moreover, the prices obtained for domestic programs in the export market are still only a small fraction of their production cost. All countries finance their indigenous programs largely from their domestic market and then sell their programs abroad (if they can sell them at all) at prices that are a fraction of cost. While the producer of a program that achieves unexpected export success will be rewarded, this is not a means to build or grow an industry.¹⁵⁵

127. This was echoed by the National Fiction Study:

In the course of our research and interviews with producers and broadcasters, it emerged that exports of drama series, were often an exercise in cultural diplomacy and a demonstration of soft power by the countries in this study, rather than having real economic importance. First of all, the international market for subtitled (or even dubbed) series coming from the Nordic countries, Belgium, or Switzerland is actually growing, though its

¹⁵⁵ Grant, Peter S., *Stories Under Stress: The Challenge for Indigenous Television Drama in English-Language Broadcast Markets*, December 2008 https://www.mccarthy.ca/pubs/IAWG_DRAMA_REPORT_FINAL.pdf Accessed 18 Nov 2016, pg. 57-58.

contribution to economic success is relatively limited. The actual impact of the exported series is measured differently.¹⁵⁶

128. The study found that, “the real economic potential is more likely to exist in the area of format buys or adaptations.” And while the Canadian sector overall would likely benefit from increased sales of formats or adaptations, we cannot build our industry—and in particular, our industry for dramatic programming—on such a model.
129. In the WGC’s experience, recent growth of the export market, largely driven by international OTT services, primarily Netflix, has had limited benefit to our members overall. We have our own data showing production volume (i.e. aggregate budget amounts) for productions within our jurisdiction going back to 1999. The data demonstrates a U-shaped curve in budget levels between then and now, with a significant decline from 1999 to 2006, following by moderate growth in the period from 2006 to present, but which nevertheless did not return us to 1999 levels. The post-2006 growth is entirely attributable to higher-Canadian content productions commissioned by Canadian broadcasters. The WGC does not link this post-2006 growth to the international content market. Such growth may have multiple causes, but given its domestic focus, combined with the introduction of the CRTC’s *A group-based approach to the licensing of private television services* in 2011, various tangible benefits packages as a result of industry consolidation, and the steady growth of the resources of the “10/10” CMF over the past two decades, it seems more likely that these Canadian policy drivers are responsible. This is especially so given the timeframes involved. The growth of domestically-focused production has been on a slow, steady climb for over 15 years, whereas any international content boom precipitated largely by Netflix is a phenomenon of only the past two years.
130. To the extent, however, that we seek export success for Canadian drama programming—whether for economic or cultural purposes—we think Denmark is an important example to consider, in particular given its small size and how it has punched well above its weight internationally, especially in television. It seems that there are three key components to Denmark’s success: 1) A focus on creative quality, which means focusing on the vision of the screenwriter; 2) The financial resources and support of that vision; and 3) Putting domestic audience first.
131. We have already touched on the earlier two points above, in the section on development. We add to this the emphasis on domestic audiences:

It was Denmark’s [Katrine] Vogelsang, however, who summed up best the challenge of building local content with an eye to international success – as factual formats do so successfully. While it’s all the rage to say you want your show to do well at home and then have a glamorous life abroad, the reality is that the home market really does have to remain at the forefront, she said.

“You need to be very well aware of your home audience. The more local we [TV2] go, the better it travels. I’m worried about all the distributors coming into the market that want to

¹⁵⁶ “National Fiction on the Small Screen: Study on the Performance of Local and International Drama Series in Nine Small Televisual Markets.” *CMF Trends*, 19 Oct 2016 http://trends.cmf-fmc.ca/media/uploads/reports/National_Fiction_on_the_Small_Screen_FINAL_2016-10-13.pdf
Accessed 18 Nov 2016, pg. 16.

be producers and the focus on sales not story. It's not just about finance – it's about making a great show."¹⁵⁷

132. The National Fiction Study also stated that "Local success, then, is quite a clear indicator of the potential for a given series to grow beyond its national market."¹⁵⁸

133. As such, the WGC believes that we can improve export success by investing in Canadian talent and Canadian screenwriters, by focusing on domestic success first, and then by supporting Canadian producers' and screenwriters' access to international markets and trade shows. In many ways, this strategy is simple: Focus on quality, focus on what makes Canada unique, and showcase that to the world. The alternative—to transform the domestic industry into a foreign service-production model—would simply undermine Canada's creative advantage and shackle the entire sector to the control of foreign corporations.

CREATORS—AND SCREENWRITERS—ARE ESSENTIAL

134. Just as crucial to the health and vitality of the domestic film and television sector as a whole is the place that Canadian creators and artists have in that sector. In fact, this goes to the very definition of "domestic Canadian production", and what it means to say, "that's a *Canadian* TV show," or, "that's a *Canadian* film." In the WGC's view, it is far from sufficient to claim that a production is Canadian simply because it was shot within our borders, or its copyright is owned by a Canadian producer or production company, or its distribution or broadcast rights are held by a Canadian distribution company or broadcaster. Canadian creative work is fundamentally made by Canadian *creators*. We would not say that a painting is Canadian simply because it was commissioned by a Canadian art collector, or exhibited in a Canadian-owned gallery, if the painter himself or herself was not Canadian; we would not say that a book is Canadian simply because it was published by a Canadian publisher or sold in a Canadian-owned bookstore, if the author was not Canadian. In virtually every creative medium there are a number of important roles to get a work from an idea—or before there was an idea—to a final product in the hands (or on the screens, or onto the digital devices) of consumers. Yet in no creative medium is the artist somehow secondary, or frankly even on par, with those other roles when it comes to defining the identity of the work. We say that the frescoes of the Sistine Chapel ceiling are the work of the artist commonly known as Michelangelo, and the fact that the frescoes were commissioned by Pope Julius II or paid for by the Catholic Church makes them no less Michelangelo's. Everybody knows that Michelangelo painted *The Birth of Adam*—few people even know who Pope Julius II is. Ludwig van Beethoven's 9th Symphony is fundamentally *Beethoven's* symphony, and not that of the Philharmonic Society of London, which commissioned it. This is true of virtually all works of art, and the fact that film and television production is more collaborative than painting or music composition does not change that fact. Films and television still bear the stamp of their creators—of an authorial voice and of individual artistry. Sometimes more than one person contributes to that voice, but more often there is one voice, and in serial dramatic television, that voice is the showrunner.

¹⁵⁷ "MIPTV: The power of local in a global market." *Playback*, 5 April 2016

<http://playbackonline.ca/2016/04/05/miptv-the-power-of-local-in-a-global-market/> Accessed 18 Nov 2016.

¹⁵⁸ "National Fiction on the Small Screen: Study on the Performance of Local and International Drama Series in Nine Small Televisual Markets." *CMF Trends*, 19 Oct 2016 http://trends.cmf-fmc.ca/media/uploads/reports/National_Fiction_on_the_Small_Screen_FINAL_2016-10-13.pdf Accessed 18 Nov 2016, pg. 14.

135. We will speak more about the showrunner below, but for the moment the key point is that films and television shows have creators who fundamentally *make* the production, and in television drama that person or persons is/are screenwriters. In Canada, however, we have a lengthy tradition of looking elsewhere to define the "Canadianess" of a production. When it comes to the individuals involved, the Canadian federal policy toolkit has generally identified the producer as the locus of "ownership and control" of a production, and therefore as the central position that must, in all cases, be held by a Canadian.¹⁵⁹ Our system has long taken this orientation as a given. If it was ever an appropriate orientation, however, it is becoming less and less appropriate now. In serial drama, showrunners, who are fundamentally both screenwriters and creative producers, and the writing rooms they lead, are where creative control lays. More generally, however, the WGC submits that it is the creative talent that makes content, and it is *Canadian* talent that makes *Canadian* content. We must support our talent in this country, because they are the key to our current and future success, both domestically and on the international market.

136. An expression of the contrary view—and, we would argue, a fundamental failure of both Canadian cultural policy and simple good sense—occurred in August of this year, when the CRTC released the *Policy framework for Certified Independent Production Funds* (the CIPF Decision).¹⁶⁰ The CIPF decision, among other things, reduced the minimum Canadian certification points requirement to allow more productions to be eligible for funding from Certified Independent Production Funds (CIPFs). The CRTC stated its rationale for this decision as follows:

The current criterion requiring eight out of ten Canadian content certification points to qualify for CIPF funding is restrictive and excludes many productions that could otherwise be of high quality and qualify as Canadian. Moreover, a reduced requirement could help smaller and perhaps more innovative projects to qualify for funding.

A reduced requirement of at least six points could also facilitate the hiring by production companies of non-Canadian actors or creators, who may increase a project's attractiveness and visibility in international markets....¹⁶¹

137. The implication was clear: Canadian creative talent is less innovative, less attractive, and less "visible" than non-Canadian talent, and we need to import creativity from outside the country in order to find success, in international markets or otherwise. The WGC finds this not only absurd, but an insult to talented, creative Canadians everywhere.¹⁶² And it's not just us. The reaction from the

¹⁵⁹ Canada. "CPTC Program Guidelines." *Canadian Audio-Visual Certification Office*, 2 April 2012 http://canada.pch.gc.ca/DAMAssetPub/DAM-PCH2-Arts-FilmVideo/STAGING/texte-text/cptcGuide_1455637343203_eng.pdf Accessed 18 Nov 2016, s. 4.09 and 4.10.; and "CMF Performance Envelope Program Guidelines 2016-2017." *Canada Media Fund*, http://www.cmf-fmc.ca/documents/files/programs/2016-17/guidelines/2016-17_perf_env_guidelines.pdf Accessed 18 Nov 2016. s. 3.1. and 3.2.TV.3

¹⁶⁰ "Broadcasting Regulatory Policy CRTC 2016-343 Policy framework for Certified Independent Production Funds." *CRTC*, 25 Aug 2016 <http://www.crtc.gc.ca/eng/archive/2016/2016-343.htm> Accessed 18 Nov 2016.

¹⁶¹ *Ibid.*, paras 56-57.

¹⁶² The WGC also located a significant error in the decision, in which a statement in support of the points reduction was misattributed to the CMF, despite the CMF not having made such a statement. The CRTC ultimately corrected the attribution in the decision, nevertheless the WGC questioned the rigour of the process that preceded this,

creative community and beyond was loud and clear. A variety of news sources sought comment from Canadian screenwriters:

...*Orphan Black* co-creator Graeme Manson says it's a "vote of non-confidence."

"The underlying message from the CRTC is we need foreign help to tell Canadian stories. That's frankly insulting to all of us," he told CBC News.

If these changes had been in place when he and co-creator John Fawcett were first pitching *Orphan Black*, Manson said, [Tatiana] Maslany would likely not have been chosen as the lead — a complex role that requires her to play multiple characters.

"The points system would have opened up the show to American casting — far more than we were," he said.

"The networks would have pushed for a name."¹⁶³

138. The week before, Tatiana Maslany had won an Emmy Award for her work on *Orphan Black*, the first time a Canadian had won an Emmy for a leading role on a Canadian show. And Manson wasn't the only one who was concerned:

If new funding rules for the production of Canadian television were in place years ago, Simon Barry fears he wouldn't have kept his job as executive producer on his made-in-Vancouver TV series *Continuum*, which ran for four seasons before ending last year.

"I would have been replaced immediately," said Mr. Barry, now working in Vancouver on the series *Van Helsing*. "They would have said, 'We're going to spend all this money on a big sci-fi show with a big cast and it's ambitious. We shouldn't trust this to the guy who created it just because he's Canadian.'"¹⁶⁴

139. Hart Hanson, one of Canada's most talented and successful expatriates, tweeted and retweeted on the subject more than a dozen times, over the course of a month or more. He said, "I emigrated and may have lost the right to comment but I hoped getting rid of Harper's anti-culture gov't would mean a sincere CRTC. #Wrong"¹⁶⁵

given this error. WGC Press Release: *CRTC Gets the Facts Wrong*. WGC, <http://www.wgc.ca/files/CRTC%20Gets%20the%20Facts%20Wrong%20News%20Bulletin.pdf> Accessed 18 Nov 2016.

¹⁶³ Wong, Jessica. "Does loosening Cancon rules hobble Canadian TV creators?" *CBCNews*, 22 Sept 2016 <http://www.cbc.ca/news/entertainment/cancon-crtc-tv-creators-1.3772919> Accessed 18 Nov 2016.

¹⁶⁴ Baily, Ian. "New funding rules for Canadian television draw ire." 9 Oct 2016 <http://www.theglobeandmail.com/news/british-columbia/new-funding-rules-for-canadian-television-draw-ire/article32312585/> Accessed 18 Nov 2016.

¹⁶⁵ Hanson, Hart (@HartHanson). "I emigrated and may have lost the right to comment but I hoped getting rid of Harper's anti-culture gov't would mean a sincere CRTC. #Wrong" *Twitter*, 27 Aug 2016. 11:41 am. <https://twitter.com/HartHanson/status/769605725911789568> Accessed 18 Nov 2016.

140. Other screenwriters pointed out that the CIPF Decision wouldn't even achieve its own objectives. Canadian showrunner Emily Andras said, "We are still not going to have the money to attract top-shelf talent... you're going to go from an A-list Canadian to a D-level American."¹⁶⁶ This approach will also not attract back those Canadians who have left the country. Hart Hanson tweeted, "I could never, ever come back under these conditions. I'd be ashamed."¹⁶⁷

141. These are merely some examples. The reaction amongst the WGC membership, and screenwriters generally, was massive and unified against the CIPF Decision and against the logic that motivated it.¹⁶⁸ The Globe and Mail's Kate Taylor, who we consider one of the best commentators on cultural policy issues working in the media today, summed it up:

Media producers had told the CRTC that they need to be able to hire more foreigners in key creative roles and the CRTC listened, buying the dubious argument that, in a globalized, digitized, multiplatform world, Canadians need outside help to create work they can sell abroad. The truth is that the producers want to bring more foreign co-producers or broadcast partners on board and know that they have a better chance if they hand over a certain degree of creative control in the form of jobs for directors, writers and actors. But at a certain point you have to wonder, how many planks can you replace with foreign talent and still call it a Canadian ship?¹⁶⁹

Defining Canadian Content—the CAVCO 10-Point Scale

142. At this point it may help to step back for a moment and look at what writers, producers, and other production roles are, how the cultural policy toolkit current defines what is "Canadian" content in these respects.

143. As discussed above, a film or television project generally begins life as an idea or concept, which is then "developed", usually through various stages, to the point when a complete script is ready to be shot. The WGC's Independent Production Agreement (the IPA)—the collective agreement between the WGC and producers—describes and defines these stages.¹⁷⁰ These concepts have been agreed to as between screenwriters and producers, and as such are effectively the industry standard approach.

¹⁶⁶ Wong, Jessica. "Does loosening Cancon rules hobble Canadian TV creators?" *CBCNews*, 22 Sept 2016 <http://www.cbc.ca/news/entertainment/cancon-crtc-tv-creators-1.3772919> Accessed 18 Nov 2016.

¹⁶⁷ Hanson, Hart (@HartHanson). "@DMcWriterboy @gmbutts @melaniejoly @telfordk @JustinTrudeau I could never, ever come back under these conditions. I'd be ashamed." *Twitter*, 27 Aug 2016. 11:49 am. <https://twitter.com/HartHanson/status/769607896996847616> Accessed 18 Nov 2016.

¹⁶⁸ See also: Liszewski, Bridget. "CRTC Survey: Canadian TV Showrunners & Writers On New Cancon Requirements." *The TV Junkies*, 4 Oct 2016 See also: <http://www.thetvjunkies.com/crtc-survey-canadian-tv-showrunners-writers-new-cancon-requirements/> Accessed 18 Nov 2016.

¹⁶⁹ Taylor, Kate. "Tatiana Maslany is Exhibit A in the case against CRTC's new content rules." *The Globe and Mail* 23 Sept 2016 <http://www.theglobeandmail.com/arts/television/tatiana-maslany-is-exhibit-a-in-the-case-against-the-crtcs-content-rules/article32021138/> Accessed 18 Nov 2016.

¹⁷⁰ See: "Writers Independent Production Agreement: WGC-CMPA-AQPM (IPA 2015-2017)." *Writers Guild of Canada* http://www.wgc.ca/ipa2015_2017/index.html Accessed 18 Nov 2016, Article A2.

144. Two points are critical here: 1) It is not the idea *per se*, but the *expression* of the idea, as developed through the development process and, in the end, articulated in the final shooting script, which is crucial to the ultimate quality and success of the production; and 2) it is the *screenwriter* who does that work. It is a common misconception that a "good idea writes itself", and/or that certain creative successes were so because the concept or premise was so compelling. Virtually every creative person, no matter what the medium, knows that this is untrue. Just about any great idea can be ruined through bad execution, and almost any rote concept can be elevated to greatness through artistry and well-honed craft. The notion that expression matters more than the ideas is even reflected in copyright law and policy, which in Canada and elsewhere holds that ideas are not accorded copyright protection, only "works" are.¹⁷¹
145. It is the screenwriter that creates the "work" upon which a film or television production is based. This work—the script—contains within it all the key elements of the final production: the characters, plot(s), themes, tone, setting, dialogue, and often visual elements such as key camera elements and editing cues. Unfortunately, even some in the film and television industry themselves don't fully understand that. Our members report that some producers believe that it is their ideas, which are "merely worked out" by screenwriters, that are the key elements of a production. This is fundamentally incorrect. An idea may be a fine piece of marble and the desire to make something beautiful out of it, but the sculpture is what an artist chisels from the stone using their artistry and the tools of their trade. Nobody displays an idea in an art gallery, and nobody goes to the cinema to hear somebody talk about their good ideas.
146. The above is especially true in dramatic television, which is universally recognized as being "a writer's medium." Long-form, serialized storytelling is especially reliant on screenwriters, usually led by a showrunner, who create the story and character arcs over multiple episodes and multiple seasons. Producers don't create these elements, and directors generally only work on a few episodes of a given dramatic series. Showrunners creatively guide entire seasons or series. That is why particular successful international series are known primarily in reference to their showrunners—their "Creators": David Chase for *The Sopranos*, Matthew Weiner for *Mad Men*, Adam Price for *Borgen*, Aziz Ansari and Alan Yang for *Master of None*, Shonda Rhimes for *How to Get Away with Murder*, Tina Fey for *30 Rock*, Mindy Kaling for *The Mindy Project*, and Vince Gilligan for *Breaking Bad*.
147. Yet in the Canadian system, it is the producer which is effectively deemed essential. Creative personnel, including screenwriters, are subject to a 10-point system, first implemented in relation to the CPTC and administered by the Canadian Audio-Visual Certification Office (CAVCO). As such, it is usually referred to as the "CAVCO scale". The CAVCO scale for live action productions is as follows:

- Director - 2 points
- Screenwriter - 2 points
- Lead performer for whose services the highest remuneration was payable - 1 point
- Lead performer for whose services the second highest remuneration was payable - 1 point
- Director of photography - 1 point
- Art director - 1 point
- Music composer - 1 point

¹⁷¹ "About Copyright" *Innovation, Science and Economic Development Canada*,
<https://www.ic.gc.ca/eic/site/icgc.nsf/eng/07415.html> Accessed 18 Nov 2016. .

Picture editor - 1 point¹⁷²

148. As stated in the CPTC Guidelines:

To be recognized as a Canadian film or video production, a live action production must (other than where it is a treaty co-production) be allotted a total of at least six points according to the scale below. Points will only be awarded if the person(s) who rendered the services is/are Canadian.

In addition, a production must obtain two of the four points allotted for the director and the screenwriter positions (one of the two positions must be filled by a Canadian). A production must also obtain one of the two points allotted for lead performers (one of these two positions must be filled by a Canadian), other than in circumstances where the production would not have a lead performer, as defined in section 4.05.¹⁷³

149. Other organizations use the CAVCO scale to base their eligibility requirements on. As just stated, the CPTC has a 6-out-of-10 ("6/10") requirement. Telefilm Canada's Canadian Feature Film Fund has an "8-out-of-10" ("8/10") requirement.¹⁷⁴ Until recently, the CIPFs also had an "8/10" requirement. The CMF has a "10-out-of-10" ("10/10") requirement, though with some (very) limited exceptions permitted.¹⁷⁵

150. Two things are notable. One is that while the presence Canadian talent is a "flexible" proposition under the CAVCO scale, producers are currently not subject to a points system. For virtually all Canadian public funding regimes, a Canadian producer is an absolute requirement.¹⁷⁶ This is based on the notion that Canadian producers ultimately "own and control" their productions. But the reality is far more nuanced. Producers may own the applicable legal rights to a production, but they exercise only partial creative control at most because they do not actually do the creative work. That is done by the creative talent and, in television drama in particular, by the showrunner and his/her screenwriting team. The producer is certainly in the position to provide notes to the creative team and to insist upon creative changes, since they do possess a significant degree of financial control. But other financiers hold similar powers, including broadcasters and distributors, both Canadian and non-Canadian. Indeed, since in most cases these other financiers are putting up a greater proportion of the financing than the producer him or herself, they may have even *more* creative influence than the Canadian producer.

¹⁷² Canada. "CPTC Program Guidelines." *Canadian Audio-Visual Certification Office*, 2 April 2012 http://canada.pch.gc.ca/DAMAssetPub/DAM-PCH2-Arts-FilmVideo/STAGING/texte-text/cptcGuide_1455637343203_eng.pdf Accessed 18 Nov 2016, s. 4.02.

¹⁷³ Ibid.

¹⁷⁴ "Canada Feature Film Fund (CFFF) Development Program Guidelines for French and English-language Projects." *Telefilm*, <https://telefilm.ca/wp-content/uploads/guidelines-development-2015.pdf> Accessed 18 Nov 2016. s. 1.2.

¹⁷⁵ E.g. "Performance Envelope Program Guidelines 2016-2017." *CMF*. http://www.cmf-fmc.ca/documents/files/programs/2016-17/guidelines/2016-17_perf_env_guidelines.pdf Accessed 18 Nov 2016, s. 3.2.TV.1.

¹⁷⁶ Some funding bodies, such as the CMF, allow for limited access to funding directly by Canadian broadcasters, for so-called "in-house production". However: 1) given the importance of the CPTC for dramatic, children's, and other high-cost programming, this is rarely taken advantage of; and 2) in such cases, there is still effectively an "in-house producer" present, and control of the production, as represented by a producer, remains a central pillar.

The Showrunner

151. All of this is especially true when there is a showrunner. The showrunner concept emerged in the U.S. in the 1980s, where it has become closely associated with the current "Golden Age" of television, and it has since expanded internationally, including to Canada. Showrunners are writer-producers who control and guide the creative vision of the show.¹⁷⁷ Showrunners are fundamentally both writers and producers, and they creatively control dramatic television production. There are now a significant number of talented, experienced Canadian showrunners. The industry trade magazine, *Playback*, recently profiled Canadian showrunners like Mark Ellis and Stephanie Morgenstern (*Flashpoint*, *X-Company*), Bruce Smith (*19-2*), David Hoselton (*Houdini and Doyle*), and Daegan Fryklind (*Bitten*), in which they discuss in detail their craft, the rise of the showrunner position, and their growing international success.¹⁷⁸
152. The other notable point about the CAVCO scale is that while it does require that *either* the director screenwriter be Canadian, this by itself does not ensure a Canadian authorial voice, because as mentioned earlier, in series television that voice resides with the showrunner. With the greatest respect to our director colleagues, in television it is the showrunner who creatively controls the production, and so much so that David Cronenberg was quoted as saying, "In TV, the director is just a traffic cop...".¹⁷⁹ As such, a system in which only directors in television need be Canadian would be one without a meaningful Canadian authorial voice.
153. Given all this, the WGC strongly believes that the role of Canadian screenwriters and showrunners in domestic Canadian film and television must be maintained at the least and, preferably, expanded.

Support Canadian Screenwriters and Showrunners

154. Firstly, where a showrunner role exists, the WGC submits that this should be an essential requirement to for a project to be deemed "Canadian," just as a Canadian producer currently is. In fact, since a showrunner is essentially a writer-producer, this should already be the case. In this respect, we submit that the current "showrunner exception" in the CPTC Guidelines¹⁸⁰ is self-contradictory, since it purports to allow a non-Canadian showrunner to work on an eligible production, provided that a "non-Canadian showrunner affidavit" is submitted, "declaring that any work performed is done under the direction and control and with the full knowledge of the Canadian producer." Given that a true showrunner *is* the source of creative control on a production, this is not a meaningful distinction, and amounts to stating that a Canadian both controls and does not control

¹⁷⁷ E.g. Collins, Andrew. "Showrunners – TV's lords and creators." *The Guardian*, 16 Sept 2016 <https://www.theguardian.com/media/2013/sep/16/showrunners-tv-writers-creative-power> Accessed 18 Nov 2016.

¹⁷⁸ Dowling, Amber. "Showrunners talk TV." *Playback*, 2 March 2016 <http://playbackonline.ca/2016/03/02/behind-the-scenes-showrunners-talk-tv/> Accessed 18 Nov 2016.

¹⁷⁹ Ahsan, Sadaf. "David Cronenberg turned down directing season two of *True Detective* because 'the script was so bad'." *National Post*, 2 Oct 2016 <http://news.nationalpost.com/arts/television/david-cronenberg-turned-down-directing-season-two-of-true-detective-because-the-script-was-so-bad> 18 Nov 2016.

¹⁸⁰ Canada. "CPTC Program Guidelines." Canadian Audio-Visual Certification Office, 2 April 2012 http://canada.pch.gc.ca/DAMAssetPub/DAM-PCH2-Arts-FilmVideo/STAGING/texte-text/cptcGuide_1455637343203_eng.pdf Accessed 18 Nov 2016, s. 4.13.

the production. Notably, the CPTC Guidelines does not permit other roles, with arguably *less* authority than a showrunner, to be held by non-Canadians. In particular, the CPTC Guidelines state that:

All positions related to the producer function must be held by Canadians, unless the production is a treaty co-production, or where a request for an exemption for a foreign courtesy credit has been granted by CAVCO. Note that no exemption will be granted for the functions of producer, co-producer, line producer, or production manager, as these positions must be held by Canadians.¹⁸¹

155. In the WGC's view, it makes no sense to insist on Canadian control in respect of these positions, but then allow projects to "contract out" of their creative control obligations with non-Canadian showrunners. The CPTC's "showrunner exception" should be eliminated.
156. Secondly, the WGC submits that current CAVCO points requirements must not be reduced further. This is particularly important with respect to the CMF, which currently requires that productions generally adhere to "10/10" requirement. The logic of the CIPF Decision must not be applied to the CMF, which as the primary support for truly *Canadian* domestic television production. If the CMF is reduced, even to a "8/10" fund, the devastating impacts on Canada's domestic sector, as described by screenwriters quoted above in respect to the CIPF decision, will be many times greater and industry-wide. Notwithstanding the demonstrated Canadian successes of *Orphan Black*, *Murdoch Mysteries*, *X-Company*, and many more, the lowered funding standards will allow for international financiers to dictate the terms of Canadian domestic production, and they will do so according to their own preferences and not Canada's cultural or economic priorities. Canadian dramatic television will lose its Canadian voice, and a core component of Canadian cultural policy will have been defeated.
157. In this sense, we should bear in mind that point reductions do not affect all roles equally. Discussing CAVCO points reductions can drift to abstract notions of "flexibility" (see below) and the assumption that reducing points will allow a Canadian production to access a non-Canadian cinematographer in one instance, a non-Canadian actor in another, an editor in yet another case, and a screenwriter in a fourth instance. The argument is therefore sometimes made that this flexibility can benefit the entire system, since it allows the "right people for the right project." Statistically speaking, however, this is not the case. We've seen data and analysis of CPTC-accessed projects that show that as points drop, in particular from "10/10" to "8/10", the screenwriter position is disproportionately affected more than any other, with first lead performer the second-most affected role. For "8/10" productions, the screenwriter was non-Canadian twice as often as the director, and six times more often than the Director of Photography. To our knowledge, this data is not publicly available. As such, if the Government is considering points reductions at the CMF or otherwise, we urge you to your own analysis on this issue. We believe you will clearly see that screenwriters—the authorial voice in television—are the most at risk of disappearing in a lower-point environment. It is not just a question of flexibility in the abstract for them.
158. The WGC has heard a variety of arguments as to why screenwriters and/or showrunners should not be deemed essential, or why CAVCO points requirements should be reduced. We would be happy to address each of these arguments, to the extent that we are aware of them, one by one.

¹⁸¹ Ibid. s. 4.09.

159. One argument is that there are not enough talented Canadian screenwriters and/or experienced Canadian showrunners to support applicable volume of production. Our first response is to ask for the evidence of this. What hard data supports this view? We'd like to see the numbers. And why does this only appear to be an issue with respect to writers? Why aren't there enough talented and experienced producers in Canada, or programming commissions working at broadcasters, or other key positions? It's been left unexplained, at least to us, why Canada has is supposed to have some sort of natural limit on the number of good screenwriters and/or showrunners, but other roles seem to be able to accommodate the size and growth of our industry. It's also unexplained how we can continue to export talent to the United States if we lack a sufficient talent base here. Others have commented that this "talent drain" is part of the problem, and we acknowledge that talented Canadians leaving the country is unfortunate. But we don't keep them in Canada by reducing their opportunities to work here. Canadian screenwriters leave because there is both more work for them in places like Hollywood, and their craft is more respected there than here. Canada cannot compete with the U.S. in terms of money—a Canadian screenwriter can almost always be paid more for their work there than here, and some will leave for that reason alone. For those writers, short of massively increasing public investment in Canadian content here, there's little the government can do to retain that talent. But many other screenwriters *want* to remain in Canada and work here. They *want* to tell what they feel are Canadian stories, and to share them with their fellow Canadians. This desire to communicate with other members of your society is one of the driving forces for creative people. We will do a much better job retaining Canadian screenwriting talent by giving them both creative freedom to tell their stories—to many, just as desirable or more so than money—and the opportunities to tell them. This is how we keep them. By reducing opportunities, we only provide another reason for talent to leave. In that respect, justifying reduced talent requirements on a "lack of qualified talent" would be a self-fulfilling prophecy.
160. In our view, it would be far preferable to do what other successful creative industries do: Support and nurture the talent they have, and take risks on young talent in their first ventures. There are plenty of Canadian screenwriters who are ready to take run their first show, but few will get the opportunity. This is partly because the smaller Canadian industry offers fewer opportunities, but it's also because the conservative Canadian industry generally avoids risk-taking, on new talent or otherwise (as discussed above). This is not how creative sectors grow, and it's certainly not how Hollywood operates.¹⁸²
161. Another argument seems to be to examine current usage of the CPTC and note that, despite it being accessible to "6/10" projects, the vast majority of CPTC-accessed projects are in fact "10/10". The implication seems to be that higher points requirements are not necessary because the market itself is deciding that "10/10" is preferable, and/or that reducing points requirements for funders won't have a real impact.
162. To the last point first, if reducing points requirements truly won't have an impact, then there's no reason to do it. Generally, policy makers seek to make policy changes that will generate favourable outcomes. If the outcomes following a points reduction—say, at the CMF, from "10/10" to "8/10"—are the same as they were before, why make the change? We note that in defending the CIPF

¹⁸² Berkshire, Geoff. "From 'Master of None' to 'Crazy Ex-Girlfriend,' First-Time Showrunners Make an Impact." *Variety*, 2 Aug 2016 <http://variety.com/2016/tv/spotlight/master-of-none-crazy-ex-girlfriend-underground-carmichael-show-billions-showrunners-1201828064/> Accessed 23 Nov 2016.

Decision, CRTC Chairman Jean-Pierre Blais argued before the Standing Committee on Canadian Heritage that CIPF funding only made up 1.6% of all financing for Canadian production.¹⁸³ If the implication is that there will be no real impact of the change, then we question why it was made.

163. As for the first point, we do not believe that the majority of CPTC funding goes to “10/10” projects because of market forces, and there are a number of other things influencing that result. For one, there’s the CMF, which is a “10/10” fund and is seen as indispensable to closing the financing on much drama, children’s and documentary programming in Canada. Where a project seeks multiple sources of funding, that project must meet the highest bar set by any source in order to obtain all of the sources. We feel that the CMF has effectively set this bar for the industry, and appropriately so. For those productions not eligible for the CMF, it may be the case that the pressure to hire non-Canadians is stronger in some genres—such as drama—than in others. It’s possible that for lifestyle programming, for example, we don’t face that same challenges, in particular with respect to screenwriters. That doesn’t mean, however, that simply reducing points requirements overall will have no impact on the genres that *do* face this pressure.
164. Another argument we’ve heard is for greater “flexibility”. In our view, this is primarily an argument based on semantics: “Flexibility” sounds like a good thing, and therefore making anything “flexible” is to improve it, regardless of other considerations. We think that to say, “We need greater flexibility,” is to utter an incomplete sentence. Flexibility for what? Why? Who does “flexibility” benefit and how? Simply saying things are “rigid” in the abstract means nothing. Simply calling for “flexibility” in the abstract is just as meaningless. Where “flexibility” means reducing Canadian talent requirements, then we are discussing the role of Canadian talent, and not intangible notions of flexibility.
165. Of particular note in this context is a study that was commissioned by the CMPA, with the assistance of Telefilm Canada, the CMF, and the Ontario Media Development Corporation, entitled *An International Comparative Study: How National Content is Defined in Canada and Selected Countries for the Purpose of Providing Access to Public Support*.¹⁸⁴ The study examined ten jurisdictions: Australia, Belgium, France, Germany, Italy, the Netherlands, New Zealand, Norway, Spain, and the United Kingdom (the U.K.).

The study examined 1) national funding programs and 2) fiscal incentives that support domestic, independently produced feature films and television production. For the Canadian context, the Canadian Film and Video Production Tax Credit (CPTC), administered by the Department of Canadian Heritage through the Canadian Audio-Visual Certification Office (CAVCO), Telefilm Canada’s Feature Film Fund and the Canada Media Fund’s Performance Envelope Program, were examined.¹⁸⁵

¹⁸³ Canada. Parliament. House of Commons. Standing Committee on Canadian Heritage. *Evidence*. 42nd Parl., 1st sess., Meeting No. 031. 2016 *Parliament of Canada*. 20 Oct 2016
<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=e&Mode=1&Parl=42&Ses=1&DocId=8523994> Accessed 23 Nov 2016.

¹⁸⁴ Communications MDR. “An International Comparative Study: How National Content is Defined in Canada and Selected Countries for the Purpose of Providing Access to Public Support” *CMF Trends*, 9 Aug 2016
<http://trends.cmf-fmc.ca/research-reports/an-international-comparative-study-how-national-content-is-defined-in-canada> Accessed 18 Nov 2016.

¹⁸⁵ *Ibid.*, pg. 2.

166. According to the study, other jurisdictions “have more flexible cultural tests” than Canada¹⁸⁶ and have “less restrictive requirements regarding the nationality of personnel.”¹⁸⁷ The study’s authors stated that, “it may be timely to review the degree of flexibility being afforded Canadian producers to access the CPTC.”¹⁸⁸ The WGC rejects both the findings of this study, and the associated recommendations.

167. Referring to the 6-point minimum requirement for the CPTC, the study states:

The cultural tests of the U.K., France, Germany, Italy, the Netherlands and New Zealand have scales ranging from 31 available points (in the U.K.) to 200 available points (in the Netherlands). By comparison, Canada’s 10-point test affords significantly less flexibility to Canadian productions. These systems afford producers with many different opportunities to pass, by scoring points across a diverse set of categories that reflect the cultural content of the production, the nationality of the personnel and the location of the production (i.e. technical industries used).¹⁸⁹

168. For one thing, it seems at the very least counterintuitive to argue that having more criteria to meet results in greater flexibility, especially when the overall proportion in required points remains the same.¹⁹⁰ But more to the point, neither the study’s authors nor those who typically support lower CAVCO point requirements actually propose 31-point, or 35-point, or 200-point systems for Canada. The study notes that in the other jurisdictions examined, cultural tests include “the cultural content of the project, the nationality of the personnel hired for the production, and the location of the production.”¹⁹¹ Under the U.K.’s “British High-End Television Certification” system,¹⁹² points are awarded for the program being set in the U.K. (or EEA), involving lead characters that are British or EEA citizens or residents, portraying British heritage on screen, and the producer role is subject to the points system (i.e. it’s also subject to “flexibility”). Yet we do not hear proposals for such characteristics being to be adapted by Canada—and we *certainly* don’t hear producers or producer representatives like the CMPA arguing that Canadian producers should be subject to flexibility, such that they are an *optional* component of a Canadian production. That the British High-End Television Certification system includes points for the cultural value of content itself indirectly supports British talent, because British talent will very often be best positioned to express “British creativity” and “British heritage” (up to four points). The U.K.’s system, or similar systems, may or may not be appropriate for Canada, but if we’re looking at comparisons we must consider the entire system, and not just one part of it.

169. The study also claims—bizarrely, in our view—that while the “6/10” CPTC is unduly restrictive compared to other jurisdictions, the flexibility exercised by the Canadian Feature Film Fund (CFFF) and

¹⁸⁶ Ibid., pg. 4.

¹⁸⁷ Ibid., pg. 5.

¹⁸⁸ Ibid., pg. 65.

¹⁸⁹ Ibid., pg. 57.

¹⁹⁰ Ibid., The study acknowledges that in the other jurisdictions examined, “The minimum percentage of points required to pass these tests is comparable to Canada, varying between 50% and 63%.”

¹⁹¹ Ibid., pg. 57.

¹⁹² “British High-End Television Certification: High-Eng Television Cultural Test Guidance Notes.” *British Film Institute*, <http://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-british-high-end-television-certification-cultural-test-guidance-notes-2015-07.pdf> Accessed 18 Nov 2016.

the CMF “compares favourably with other jurisdictions,” notwithstanding that they are “8/10” and “10/10” respectively. We wish we could reply to this point more comprehensively, but the study does not clearly explain how it reached this conclusion. The study appears to make a distinction between “film and television tax incentives” and “national funding programs”, and then seems to acknowledge that the latter provide support to “culturally significant films and television productions”, thereby justifying a higher bar. But the study does not clearly explain how this actually works in other jurisdictions. In fact, the study states that the “cultural tests” for both the tax credit and the “national funding program” are the same in both the U.K.¹⁹³ and Australia.¹⁹⁴ For France, the film tax credit actually has a *higher* point requirement (61-out-of-100)¹⁹⁵ than the national film funding program (25-out-of-100).¹⁹⁶ Quite simply, we cannot see how the study has reached its conclusions based upon the evidence that it itself sets out. Given this, we submit that the study’s conclusions are not supported by the evidence.

170. Finally, this study does not examine several of the important differences between Canada and the jurisdictions examined. English-Canada’s linguistic and geographic proximity to the U.S. is not mentioned, nor is the fact that the U.K. has financially supported its domestic film and television industry with more money and for a longer period of time than Canada has, providing it with a stronger “base” to work from (see discussion above re: Export). In addition, eight of the ten jurisdictions examined are (or were, at the time of the report’s publication) within the EU, and the report specifically mentions this as a form of “flexibility” that those countries enjoy over Canada.¹⁹⁷ But the ability of nationals within the EU to work on productions of other EU countries is a unique feature of being in the EU, and Canada cannot replicate this short of attempting, somehow, to also join the EU. For all of these reasons, the WGC submits that this study is seriously flawed, and cannot be relied upon to support a reduction of CAVCO points requirements in Canada.

171. Yet some argue that Canada needs a “sliding scale” of production funding, which would allow for *both* “high Canadian-content” domestic production, as well as “more commercial” or “more internationally-focused” Canadian production. There’s a buried assumption there that “high Canadian-content” productions are *not* commercial or internationally success—something that we dispute above, and would love to see the evidence for from those making the case—but more directly, we *already have* a sliding scale in Canada. Foreign service productions employ Canadian crews and contribute to production infrastructure, but don’t tell Canadian stories or employ Canadian creators in roles that would determine the authorial voice of the production. Such service productions obtain the federal Film or Video Production Services Tax Credit, which is at the rate of 16% of qualified Canadian labour expenditures. Domestic Canadian content with a minimum “6/10” CAVCO points qualifies for the CPTC, with a rate of 25% of qualified labour expenditure. “8/10” feature films

¹⁹³ Communications MDR. “An International Comparative Study: How National Content is Defined in Canada and Selected Countries for the Purpose of Providing Access to Public Support” CMF Trends, 9 Aug 2016 <http://trends.cmf-fmc.ca/research-reports/an-international-comparative-study-how-national-content-is-defined-in-canada> Accessed 18 Nov 2016, pp. 14-17.

¹⁹⁴ Ibid., pg. 43.

¹⁹⁵ Ibid., pg. 21.

¹⁹⁶ Ibid., pg. 20.

¹⁹⁷ Communications MDR. “An International Comparative Study: How National Content is Defined in Canada and Selected Countries for the Purpose of Providing Access to Public Support” CMF Trends, 9 Aug 2016 http://trends.cmf-fmc.ca/media/uploads/reports/National_Content_Definition_ENG.PDF Accessed 18 Nov 2016, pg. 65.

generally qualify for the CFFF, and “10/10” television productions generally qualify for the CMF, which can provide funding up to 49% of the budget.¹⁹⁸ Here we have a range of production supports, at increasing funding levels and/or that can be combined with other funding, based in large part of how Canadian the production is. This is the very definition of a “sliding scale”. So, let's be clear: We already have a sliding scale in Canada—what proponents of reduced Canadian talent requirements want is not a sliding scale, but to slide that scale further in a particular direction. That's what happened in the CIPF decision. CIPFs used to be more in the “middle” of the scale, at “8/10”. They've now been moved to the current low-end for Canadian domestic production, at “6/10”. That's a slide downwards.

172. Finally, we must ask why some producers, broadcasters, and distributors are seeking to reduce Canadian talent requirements, with regard to writers or any talent. What is their motivation? We submit that the answer is in Kate Taylor's article, as quoted above:

The truth is that the producers want to bring more foreign co-producers or broadcast partners on board and know that they have a better chance if they hand over a certain degree of creative control in the form of jobs for directors, writers and actors.¹⁹⁹

173. For one thing, it should be clear that this is not about international *sales*, or international *export* per se, it's about international *financing*. The distinction is important. A “sale” is generally something that happens after a project has been financed—often after a project has been completed—and it generates revenue for producers and investors. “Financing” is the money that it took to make the project in the first place, and by definition it is used to cover the production costs set out in the budget. “International *sales*” would generate the kind of export revenue that we understand the government is seeking as one of its goals in this process. “International *financing*” could grow the budget of a project, or make a project tenable that wasn't before, but it's not going to generate post-completion revenue. International financing is great to have, but we question whether it's the kind of thing that the government means when it refers to “export success”.

174. For another thing, none of the arguments for reducing points has anything to do with the quality or success—critical success, financial success, or otherwise—of the final production. The WGC has argued that we don't need foreign talent to make successful productions, but we're also saying that producers who support talent reductions aren't necessarily even seeking more successful productions by doing so. Rather, they're interested in improving their position as gatekeepers to Canadian public funding by big-pocketed international financiers. In short, many would like to make the “soft money” even softer, with themselves as the key to accessing it. This is a model for *de facto* service production, in which creative control is driven from outside the country and the producer serves primarily as an “access point” to Canadian government funding. Like service production, this may benefit Canadian crews and production infrastructure, as well as the Canadian producers in question—Canadian producers often take fees as a percentage of the budget, which provides a financial incentive simply to grow budgets—but it also results in such productions accessing the higher funding levels for

¹⁹⁸ “Performance Envelope Program Guidelines 2016-2017.” CMF. http://www.cmf-fmc.ca/documents/files/programs/2016-17/guidelines/2016-17_perf_env_guidelines.pdf Accessed 18 Nov 2016 s.s. 2.3.1.

¹⁹⁹ Taylor, Kate. “Tatiana Maslany is Exhibit A in the case against CRTC’s new content rules.” *The Globe and Mail*, 23 Sept 2016 <http://www.theglobeandmail.com/arts/television/tatiana-maslany-is-exhibit-a-in-the-case-against-the-crtcs-content-rules/article32021138/> Accessed 18 Nov 2016.

domestic Canadian productions. Fundamentally, it takes the domestic Canadian sector and turns it into a foreign service production sector. The WGC strenuously disagrees with that approach, but if the vision for our industry is as a service industry—i.e. a branch plant for manufacturing other peoples' stories, and supporting other countries' talent—then we should at least be clear about what we're doing and why. This isn't about making Canadian content better or more innovative. It's about making it less Canadian in the hopes of becoming middlemen for international transactions. This is not a vision for a creative Canada, and we submit it should not be Canada's cultural policy.

175. We also must remember what this discussion is about. We are not debating some law or policy of general application that defines in the abstract what Canadian content can or cannot be. We are primarily defining the eligibility criteria for access to public funding, whether derived from Canadian taxpayers, Canadian BDU subscribers, or otherwise publicly mandated. Right now, anybody in Canada can produce any film and television production and hire anybody they want to make it, irrespective of their nationality, provided that they don't seek public funding to do so. If certain producers feel that they have a great idea, with high market value domestically and/or internationally, and they wish to have non-Canadians write, direct, and star in it, nothing precludes them from raise financing for their projects on the open market and making the production in virtually any way they see fit. But if they seek Canadian public funding, it is entirely appropriate that cultural policy objectives attach to that money. As we've argued strenuously throughout, the support of Canadian talent must be one of those objectives.

Conclusion

176. The WGC is pleased to have had the opportunity to provide our comments in this proceeding. Screen-based content is the most popular form of media, culture, and entertainment. This is where Canadians look to see themselves and the world, and where the world looks for information, self-reflection, and escape. It is essential that Canada and Canadians continue to have a robust place on these screens, as artists, as consumers, as producers, and as citizens. We thank you for launching this historic consultation, and we look forward to continue to working with you to help sustain and grow our domestic film and television sector, at home and around the world.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Maureen Parker', with a stylized, flowing script.

Maureen Parker
Executive Director

c.c.: National Council, WGC

APPENDIX A – U.K. Public Support for Film and Television

Funding Source	£ Millions	Indirect / Direct	National/ Regional	UK TOTAL	References
		INDIRECT	National only		
PSB Commercial					
Channel 4	£ 403.00	£ 1,297.0			<i>Ofcom 2016 PSB Annual Research Report.</i> "Fig 13: PSB network spend on first-run UK originations, by channel" p. 21.
Channel 5	£ 112.00				<i>Ofcom 2016 PSB Annual Research Report.</i> "Fig 13: PSB network spend on first-run UK originations, by channel" p. 21.
ITV	£ 782.00				<i>Ofcom 2016 PSB Annual Research Report.</i> "Fig 13: PSB network spend on first-run UK originations, by channel" p. 21.
		DIRECT			
PSB					
BBC (licence fee)	£ 3,700.0	£ 4,340.5	£ 5,637.5	£ 5,637.5	<i>BBC 2015-16 Annual Report.</i> "Financial Overview", p. 6.
S4C	£ 82.0				<i>S4C 2016 Annual Report.</i> "Public Service Fund Income and Genderal Fund turnover", p. 139. (Licence fee 75,250M + DCMS 6.762M)
Broadcasters and Media	£ 29.0				<i>Central Government Supply Estimates 2016-17: Main Supply Estimates.</i> "M: Support for the Broadcasting and Media sector: Programme (net)" (28.9M), p. 257. April 2016.
BFI	£ 73.0				<i>British Film Institute Group and Lottery Annual Report and Financial Statements 2015-16, "Grant-in-Aid - DCMS"</i> , p. 74. (21M) <i>British Film Institute Group and Lottery Annual Report and Financial Statements 2015-16, "Proceeds from the National Lottery, p. 75. (52M)</i>
Film Tax Relief	£ 340.0				<i>Creative Industries Statistics: Official Statistics on Film, High-End Television, Animation, and Video Games Tax Relief.</i> July 2016, p. 6.
High End TV Tax Relief	£ 96.0				<i>Creative Industries Statistics: Official Statistics on Film, High-End Television, Animation, and Video Games Tax Relief.</i> July 2016, p. 6.
Animation Tax Relief	£ 12.9				<i>Creative Industries Statistics: Official Statistics on Film, High-End Television, Animation, and Video Games Tax Relief.</i> July 2016, p. 18.
Creative England	£ 7.6				<i>Creative Industries Statistics: Official Statistics on Film, High-End Television, Animation, and Video Games Tax Relief.</i> July 2016, p. 6.
U.K. total per capita (pop. 64M)					£ 88.1

Canadian Conversion				
Funding Source		Indirect/ Direct	National/ Regional	CAD TOTAL (millions)
		INDIRECT	National only	
PSB Commercial		\$ 2,153.3		\$ 9,359.4
		DIRECT		
PSB Non- commercial		\$ 7,206.1		

U.K. total per capita (pop. 64m) in CAD	\$ 146.2	CAD 146.2 per capita in the UK
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APPENDIX B - Denmark Public Support for Film and Television

Funding Source	DKK Millions	Indirect / Direct	* National/ Regional	Denmark TOTAL	References
		DIRECT	NATIONAL	DKK 4,798.1	
Licence Fees - PSB TV and Radio	DKK 4,428.6	DKK 4,798.1	DKK 4,773.6		StatBank Denmark. Public funding for cultural purposes by cultural domain, financing arrangements and financing type. "TV and Radio Licence Fee - Public Service Broadcasting" http://www.statistikbanken.dk/ (To: DR & TV2 & non-commercial broadcasters w/out psb obs)
Licence Fees PSB - Film	DKK 6.8				StatBank Denmark. Public funding for cultural purposes by cultural domain, financing arrangements and financing type."FILM - Licence Fee - Public Service Broadcasting" http://www.statistikbanken.dk/
Nt'l Budget - Min of Culture - Film	DKK 332.1				StatBank Denmark. Public funding for cultural purposes by cultural domain, financing arrangements and financing type. "Film National Budget (State Budget) - Ministry of Culture. 2016." http://www.statistikbanken.dk/
Nt'l Budget - Min of Culture - TV / Radio	DKK 0.4				StatBank Denmark. Public funding for cultural purposes by cultural domain, financing arrangements and financing type. "TV and Radio National Budget (State Budget) - Ministry of Culture. 2016." http://www.statistikbanken.dk/
Lotto funds - TV or Film	DKK -				StatBank Denmark. Public funding for cultural purposes by cultural domain, financing arrangements and financing type. "Film or TV and Radio Lotto Funds" http://www.statistikbanken.dk/
New Danish Screen Fund	DKK 5.7				New Danish Screen. http://www.dfi.dk/Service/English/Funding/New-Danish-Screen.aspx
		REGIONAL			
Copenhagen Film Fund	DKK 4.7	DKK 8.0	Regional Film Fund: Copenhagen. http://www.dfi.dk/Service/English/Funding/Co-production_oct_2014/Regional-Film-Funds.aspx		
Film Fyn	DKK 1.8		Regional Film Fund: FilmFyn. http://www.dfi.dk/Service/English/Funding/Co-production_oct_2014/Regional-Film-Funds.aspx		
West Danish Film Fund	DKK 1.5		Regional Film Fund: West Danish. http://www.dfi.dk/Service/English/Funding/Co-production_oct_2014/Regional-Film-Funds.aspx		

			MUNICIP.		
Film (general)	DKK 16.5		DKK 16.5		StatBank Denmark. Public funding for cultural purposes by cultural domain, financing arrangements and financing type. "Municipalities" http://www.statistikbanken.dk/
*Denmark also has access to funds outside the country. This includes Nodrisk Film & TV Fund which serves the 5 Nordic countries with an annual budget of EU10M and Creative Europe which serves EU member and non-EU member states with a 6-year budget (2014-2020) of EU1.468B.					

Denmark total per capita (pop. 5.6M)	DKK 856.8
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Canadian Conversion				
Funding Source		Indirect/Direct	National/ Regional	CAD TOTAL (millions)
		DIRECT	National	
Non-commercial			\$ 947.16	\$ 952.0
			Regional	
			\$ 1.59	
			Municipal	
			\$ 3.27	

Denmark total per capita (pop. 5.6 M) in CAD	\$ 169	\$ 169 per capita in Denmark
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APPENDIX C – U.S. Public Support for Film and Television

Funding Source	USD millions	Indirect / Direct	Federal / State	USD Total	References
		DIRECT only	FEDERAL		
PBS	\$ 445.0	\$ 445.0	\$ 445.0	\$ 2,448.8	Corporation for Public Broadcasting Appropriation Request and Justification FY2016 and FY2018. p. 1.
		\$ 2,003.8	STATE		
34 state tax credits	\$ 2,003.8		\$ 2,003.8		Budgets and annual reports from state finance ministries and arms-length film and TV funds.

U.S. total per capita (pop. 325M)	\$ 7.5
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Canadian Conversion			
Funding Source		CAD Federal/ State	CAD TOTAL millions
		FEDERAL	
PBS		\$ 595.2	\$ 3,275.4
		STATE	
34 state tax credits		\$ 2,680.2	

U.S. total per capita (pop. 325M) in CAD	\$ 10.1	CAD \$10.1 per capita in the U.S.
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**APPENDIX D – Canadian Programming Expenditures (CPE) 2014/15
for All English-language Conventional and Pay & Specialty Services**

Broadcaster	CPE (\$ millions)	Total Revenues (\$ millions)
BCE Conventional	\$ 231.44	\$ 724.45
BCE Pay and Specialty	\$ 393.46	\$ 1,106.23
CBC Conventional	\$ 295.81	\$ 615.24
CBC P&S	\$ 110.71	\$ 167.49
Corus Pay and Specialty	\$ 144.10	\$ 485.03
Quebecor ENG - Pay and Specialty	\$ 6.48	\$ 5.84
Rogers Conventional	\$ 88.64	\$ 221.56
Rogers Pay and Specialty	\$ 304.26	\$ 543.38
Shaw Conventional	\$ 147.72	\$ 405.11
Shaw Pay and Specialty	\$ 108.26	\$ 520.69
Grand total	\$ 1,830.88	\$ 4,795.02
Source: CRTC 2015 Annual Aggregate Returns. http://www.crtc.gc.ca/eng/stats6.htm		

APPENDIX E - WGC Development Fund Proposal

Basic principles of the WGC development proposal:

Two different development streams. Funding split 70% to an **Established Writer Fund** and 30% to an **Emerging Writer Fund**. All genres and formats are included. I.e one-hour series, feature films, comedies, animation, documentary and web series. Absolutely no reality programming.

Payment

All writers accepted into the Funds are to receive the industry wide accepted WGC IPA minimums for each stage of development.

Who Can Apply

The Funds shall be open to resident Canadian screenwriters only. We must retain a professional talent pool in Canada.

These Funds are for professional screenwriters. The WGC recognizes the different levels of experience and the need for emerging writers.

All parties agree the writers' vision will prevail. The screenwriter has veto.

ESTABLISHED SCREENWRITERS STREAM: 70% of the Development Fund

***Established Writer** is defined as a writer with a minimum of ten hours of professional produced work.*

Also an Established Writer will have received at least one executive producer or associate producer credit on a produced third party production.

EMERGING SCREENWRITERS STREAM: 30% of the Development Fund

*All the same principles apply except for professional qualifications. An **Emerging Writer** shall be defined as a screenwriter with a minimum of three writing credits on a professionally produced production and/or a total of at least one hour of produced work on a professionally produced production as a screenwriter.*

SERIES DEVELOPMENT REQUIREMENTS: An eligible writer shall put forward a fully developed concept (to a maximum of ten pages).

Who decides: A paid jury shall be made up of two credited professional screenwriters with executive producer credits, one producer, one broadcaster, and one distributor. Blind judging process. Majority decision of the jury prevail. Only those programs with jury accepted concepts shall proceed to paid development.

Number of concepts approved: Depends on the size of the Fund, and number of applicants. WGC approved rates.

Approved concepts move to **first stage of funded development for series:**

- Paid research as required for initial stages of development.
- Required Option payments for adapted material.
- A bible.
- A pilot script.

Next step: Back to the same jury within six months.

Second stage of funded development: Two additional full scripts. A story room comprised of no more than four screenwriters to be chosen by the successful applicant for a three week minimum to arc outlines for the series. Ongoing optioned rights payments and research costs as required. Time allotted is a maximum of six months. A letter of interest from a third party, broadcaster or distributor, must be received.

Final stage. Scripts put forward for production.

RECOUPMENT OF THE FUND: A writers project that has received funding from either the **Established Writer Stream** or the **Emerging Writer Stream**, and has been accepted into further development and/or production by a producer or broadcaster, shall have any script fees received under either Fund repaid by the production entity.

FEATURE FILM DEVELOPMENT REQUIREMENTS (and other genres): All the same principles apply except for the following: An eligible writer shall put forward a fully developed concept (of no less than ten pages). A verbal pitch may be required if the jury selects the concept for the next applicant stage.

Jury Process: The same as outlined on first page.

First stage of Feature Film funded development:

- Fully paid first draft.
- With a paid story editor for two weeks.
- Research costs necessary to the screenwriter
- And any rights payment to option adapted material.

Second stage of Feature Film development from the Fund: Incorporating distributor's note. The distributor must have invested a minimum of 25% of the budget in order to have a say, but all parties agree the writers vision shall prevail. Second draft. Plus paid story editor services. Plus required research costs and any continuing optional rights payments for adapted material.

All copyright rests with the screenwriter until a program has been produced. As per the Writers IPA.

Appendix F - International Success of Canadian TV Series

10-Point Canadian TV Series	# of Countries and Territories	Sources
Drama and Comedy		
Call Me Fitz	192	“Welcome to Amaze Film + Television.” Amaze, 2015 http://www.amazefilm.com/about-us/ Accessed 18 Nov 2016.
Degrassi	140+	“DHXMedia Acquires ‘Degrassi’ Producer Epitome.” DHXmedia, 3 April 2014 https://www.dhxmedia.com/newsreleases/dhx-media-acquires-degrassi-producer-epitome/ 23 Nov 2016.
Heartland	119	“The Official Heartland Blog.” CBC, 14 May 2015 http://www.cbc.ca/heartland/m/blog/the-first-off-season-report Accessed 18 Nov 2016.
Murdoch	110	“Murdoch Mysteries.” Shaftsbury/Smokebomb, https://shaftsbury.ca/murdoch-mysteries/ Accessed 18 Nov 2016.
Orphan Black	170+	“Orphan Black Season 3 Premiere Becomes Most-Watched Episode Ever with Nearly 700,000 Viewers.” Bell Media, 30 April 2015 http://www.bellmedia.ca/pr/press/orphan-black-season-3-premiere-becomes-watched-episode-ever-nearly-700000-viewers/ Accessed 18 Nov 2016.
The Listener	180	“Global audiences love ‘The Listener’” Variety, 11 March 2009 http://variety.com/2009/tv/news/global-audiences-love-the-listener-1118001100/ 23 Nov 2016.
The Next Step	100+	“The Next Step Temple Street Productions.” Shaw Rocket Fund, 18 Dec 2015 http://www.rocketfund.ca/wp-content/uploads/2013/07/ShawRocketFund_ExamplesofBrands_December182015.pdf 23 Nov 2016.
Kids TV		
Caillou	100+	“Beloved Québec-Born Preschool Series Broadcasting In French On Free National Network For First Time.” DHXmedia, 15 Sept 2014 http://www.dhxmedia.com/newsreleases/dhx-medias-caillou-airing-nationally-on-ici-radio-canada-tele/ 23 Nov 2016.
Johnny Test	200+	“TELETOON Celebrates the 100th Episode of Smash Hit Canadian Series Johnny Test.” 22 Oct 2013. http://www.newswire.ca/news-releases/teletoon-celebrates-the-100th-episode-of-smash-hit-canadian-series-johnny-test-513132431.html 18 Nov 2016.
Wild Kratts	180+	“9 Story’s WILD KRATTS Sees Major Expansion in China.” 9story, 19 Sept 2016 http://www.9story.com/News/NewsDetail?newsID=796 Accessed 18 Nov 2016.

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