

17 June 2016

Ms. Danielle May–Cuconato
Secretary General
Canadian Radio–television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Filed Electronically

Dear Ms. May–Cuconato:

Re: Broadcasting Notice of Consultation CRTC 2016–195: Call for comments on standard requirements for television stations, discretionary services, and on-demand services

1. These are the comments of the Canadian Media Producers Association (CMPA)¹ in response to the above–noted Notice of Consultation (the Notice).
2. In this brief submission, we address the following proposals as set out in the Notice:
 - Requirements relating to the calculation and payment of the contribution to Canadian programming;
 - Requirement to remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films; and
 - Broadcast of commercial messages.

¹ The CMPA represents the interests of screen–based media companies engaged in the production and distribution of English–language television programs, feature films, and new media content in all regions of Canada. The CMPA’s member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing, producing and distributing original content for Canadian and international audiences.

3. We take no position on the other proposals set out in the Notice.

Requirements relating to the calculation and payment of the contribution to Canadian programming

4. The CMPA supports the Commission's proposal to harmonize the language of the standard requirements for VOD and PPV services relating to the calculation and payment of the contribution to Canadian programming so that they are not only consistent with each other but with the associated requirements of other programming services.
5. The CMPA anticipates that some BDUs will oppose the Commission's proposal and attempt to argue yet again that BDU-affiliated VOD services should be relieved of a CPE requirement on the grounds that it somehow represents "double taxation" because their respective BDUs are already subject to an obligation to contribute financially to Canadian programming. The Commission has repeatedly rejected this argument²; it should do so again.
6. Notwithstanding that VOD services are typically owned by companies which also own BDUs, the two services are licensed and regulated as distinct categories of broadcasting undertakings, the former as programming undertakings and the latter as distribution undertakings. The fact that the owner operates the services in an integrated manner does not make the services any less distinct from a regulatory perspective. In this respect, a BDU-owned VOD programming undertaking is no different than a BDU-owned specialty programming undertaking.
7. Specialty programming undertakings (even BDU-owned ones) pay their CPE on their "wholesale" revenues notwithstanding that BDUs pay their contribution based on associated retail revenues. It is clear and universally accepted that this long-standing system does not constitute inequitable "double taxation". Accordingly, there is no credible basis to argue that the same system applied to VOD programming undertakings is somehow inequitable "double taxation".

² See for example, Broadcasting Regulatory Policy CRTC 2011-59, *Standard requirements for video-on-demand undertakings*, <http://www.crtc.gc.ca/eng/archive/2011/2011-59.htm> and Broadcasting Decision CRTC 2012-292, *Various national and regional video-on-demand programming undertakings - Licence renewals and amendments*, <http://www.crtc.gc.ca/eng/archive/2012/2012-292.htm>.



Requirement to remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films

8. The Commission proposes to delete the above requirement in light of the fact that licensees of PPV and VOD services are authorized to negotiate revenue sharing agreements with the rights holders, distributors and providers of Canadian feature films, and because other conditions of licence support the distribution of Canadian feature films on an on-demand basis.
9. The CMPA agrees with the Commission that, for these reasons, this condition of licence is no longer necessary.
10. The CMPA notes and supports the fact that the deletion of this condition of licence will result in PPV and VOD licensees no longer being permitted to exclude the amount remitted to Canadian feature film rights holders as revenue for the purpose of calculating the required contribution to Canadian programming.

Broadcast of commercial messages

11. The CMPA addressed the issue of VOD advertising in responding to the CRTC's 2008 call for comments on a new regulatory framework for VOD.³ While acknowledging that VOD licensees would (and should) be able to contribute more to Canadian programming if access to advertising were to help them increase their revenues, the CMPA cautioned the Commission against disrupting the existing broadcasting advertising model during the then-economic crisis.
12. Subsequently, in our intervention in the 2011 VOD licence renewal process⁴, the CMPA noted that the broadcasting advertising market was then in much better shape than it had been in 2009 and that the substantial vertical integration that had recently taken

³ Broadcasting Notice of Consultation CRTC 2008-101, *Call for comments on a proposed regulatory framework for video-on-demand undertakings*, <http://www.crtc.gc.ca/eng/archive/2008/pb2008-101.htm>.

⁴ Broadcasting Notice of Consultation CRTC 2011-600, *Applications to renew the broadcasting licence for various national video-on-demand ("VOD") programming undertakings*, <http://www.crtc.gc.ca/eng/archive/2011/2011-600.htm>.



place in the broadcasting industry meant that the major broadcasters and major VOD providers were generally owned by the same entities (which continues to be the case). For those reasons, the CMPA stated that the time had come for VOD licensees to be accorded increased opportunities to earn advertising revenues.

13. We likewise submit that licensed on-demand services (now including both PPV and VOD) should now be permitted to sell and broadcast commercial messages. We submit that this policy change should only apply to licensed on-demand services since they are the only ones obliged to contribute a percentage of the revenues they would generate from advertising to support Canadian programming.
14. We oppose permitting exempted on-demand services – including new Hybrid VOD services – to sell and broadcast commercial messages since granting such services that added financial benefit would not translate into direct benefits for Canadian programming, as exempt VOD services have no obligations to contribute to Canadian programming.⁵ In this respect, we reiterate our argument that there is no justification to allow Hybrid VOD services to operate over closed BDU networks without Canadian programming requirements similar to those of licensed VOD services.⁶

Sincerely,

original signed by

Jay Thomson, LL.B, LL.M
Vice President, Broadcasting Policy & Regulatory Affairs

*****End of Document*****

⁵ See Broadcasting Regulatory Policy CRTC 2015–355 and Broadcasting Order CRTC 2015–356, *Revised exemption order for certain classes of video-on-demand (VOD) undertakings and updated standard conditions of licence for licensed VOD undertakings*, <http://www.crtc.gc.ca/eng/archive/2015/2015-355.htm>.

⁶ See *ibid.*, at par. 27.

