

CMPA
Canadian Media
Production Association



Screen-based entrepreneurs

Oral Remarks by

The Canadian Media Production Association (CMPA)

Broadcasting Notice of Consultation CRTC 2011-379

Licence renewals for the Canadian Broadcasting Corporation's French- and English-language services

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1. Good afternoon, Mr. Chairman, Commissioners. My name is Michael Hennessy and I am the President and CEO of the Canadian Media Production Association.

2. Please let me introduce my colleagues. On my immediate left is Reynolds Mastin, our Chief Negotiator and Chief Legal Officer, and next to him is Marla Boltman, the CMPA's General Counsel. Reynolds and Marla are the CMPA's experts on Terms of Trade. On my right is Jay Thomson, our VP Regulatory.

3. Thank you for the opportunity to be here today. I will let you know right up front that I am going to use most of my ten minutes to speak about Terms of Trade.

4. However, I do not want to leave the impression that Terms of Trade, while critical, is the only significant issue we have in this proceeding. We have serious concerns about the degree of flexibility CBC is seeking. In our view, such flexibility would amount, amongst other things, to virtually no requirements to commission independently-produced programming, the potential for even greater reductions in original children's programming, as well as no firm commitments to film or to regional production.

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5. But first, Terms of Trade.
 6. On Monday, Commissioner Simpson asked the CBC Panel to provide an update on the Terms of Trade negotiations. In their answer, the CBC advised that a deal would be done and would be done soon.
 7. I want you to know that we are committed to continue working with the CBC to conclude a deal.
 8. But, using Commissioner Simpson's analogy, it is hard to say where this train is on its journey from Halifax to Vancouver. Right now, I'd say it's stationed in Toronto - where we and the CBC plan to meet again in the week after the oral phase of this hearing concludes.
 9. Still, we can't see that train getting anywhere near its final destination without the Commission intervening to make sure a deal happens as part of this licence renewal process.
 10. Back in 2000, when the Commission last renewed the CBC's licences, you called on the CBC to be "a model for others" in respect of their dealing with independent producers. You called on the CBC "to foster collaboration with the independent production industry".

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11. And you called on the CBC to formalize a Terms of Trade Agreement with producers that would “ensure a mutually satisfactory relationship” between our two “important sectors of Canadian cultural life”.¹
 12. A couple of years after that, we and the CBC agreed to a general “Independent Production Protocol” which neither proscribed any commercial terms nor – at the CBC’s insistence – was legally binding.
 13. So, here we are, near the end of 2012, and we still do not have a real Terms of Trade Agreement with the CBC that actually establishes the economic terms and conditions governing our relationship.
 14. Notably, we do have such an Agreement with the private broadcasters – an Agreement they signed back in April 2011.
 15. So that begs the question: if the privates can sign a deal, why can’t the CBC?
 16. As the Commission itself has long recognized, terms of trade agreements are “in the best interest of the Canadian broadcasting system” because, amongst other things, they “provide stability and clarity for both producers and broadcasters”.²

¹ Decision CRTC 2000-1, at par. 65.

² See, e.g., Broadcasting Decision CRTC 2011-441, *Group-based licence renewals for English-language television groups – Introductory decision*, at par. 119.

17. That is why you require the private broadcasters to adhere to their Agreement with the CMPA as a condition of their licences.
18. And that is why, in your initial notice for this proceeding, you told the CBC that, if they did not reach an agreement prior to this hearing, you would impose appropriate terms in your decisions.
19. The CBC has told you that a lack of a Terms of Trade Agreement has not stopped “business as usual” when it comes to their commissioning independent productions. We would argue that “business as usual” is the very problem we are trying to address.
20. Because of industry consolidation in recent years, a small number of broadcasters possess substantial market power when it comes to buying Canadian programming, to the detriment of independent producers. Terms of Trade is intended to place limits on how those broadcasters can exploit their market power. That is what our deal with the private broadcasters does.
21. However, because we have no deal with the CBC, the terms they impose on independent producers are far more onerous than the private broadcasters’ terms. Not only is this asymmetric situation problematic for independent producers, it also creates distortions and instability in the system as a whole.

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22. Our deal with the privates restored some balance and fairness to our program licensing negotiations with those broadcasters. A workable Agreement with the CBC will do the same with the public broadcaster.
 23. A workable Agreement with the CBC is critical to helping producers build or, in many cases, simply sustain their businesses, so that they can produce more and better Canadian shows, and increase the quality and diversity of the programming available to Canadian audiences. That is what our deal with the privates is doing.
 24. The *Broadcasting Act* states that the Canadian broadcasting system should “include a significant contribution from the Canadian independent production sector”. Our deal with the privates is helping us meet that policy objective. So too will a workable deal with the CBC.
 25. It’s important to appreciate, Mr. Chairman, that producers gave up a lot in order to get a deal with the privates. Under that deal, producers gave up virtually all domestic rights for 5 years for linear, mobile, streaming and SVOD (which includes Netflix). We also gave broadcasters the opportunity in certain circumstances to share in international profits. In return, producers secured some level of financial stability through the preservation of their international rights, and by retaining their producer fees and a small portion of their tax credits.

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26. So, what does a workable deal with the CBC look like?
 27. In many ways, it actually looks pretty close to what we and the CBC have on the table right now.
 28. Unfortunately, though, there are still significant concessions that the CBC is seeking that would radically undermine the balance we achieved in our deal with the privates, as well as the stability and clarity in the marketplace that now exists because of that deal.
 29. Therefore, it is important to address Commissioner Simpson's question on Monday as to what makes the CBC so different from the privates that our agreement with the privates won't also work for them.
 30. Now we recognize that the CBC has a special role to play in the Canadian broadcasting system. That is why, unlike the private broadcasters, they receive a Parliamentary appropriation.
 31. We also recognize that, unlike the privates, the CBC has few channels in their corporate family and so they are limited in their ability to sublicense programs to themselves. We've made it clear to the CBC that we're willing to address that difference.

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32. But even acknowledging these differences, we just do not see any basis for the CBC, with their cultural rather than financial mandate, to get a better financial deal than the privates, who have to answer to their shareholders.
33. Mr. Chairman, almost 13 years after the CRTC asked *the CBC* to be a model for terms of trade, we actually do have a model agreement. Ironically, however, that model agreement is with the private broadcasters and not the CBC.
34. So, where does this leave us? You said in your notice that, if the CBC didn't come to you with a deal, you would establish the terms of the deal *in this process*. Contrary to what the CBC suggested on Monday, it is clear to us that you have the jurisdiction to do just that.
35. We therefore ask that, when the CBC comes back in Reply (or whenever else you deem it most appropriate from a procedural standpoint), you advise them that a deal must be done and done before the close of this proceeding. And advise them that, if a deal is not done by then, you will impose in your licence renewal decisions the deal we've signed with the private broadcasters.

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36. Then, if there's still no deal by the close of this proceeding, we ask you to exercise your jurisdiction to: 1) establish the terms of the private broadcasters' agreement as the terms that will apply to the CBC; and 2) require the CBC to adhere to those terms by condition of licence.
37. Alternatively, if you wish, you could impose on the CBC an obligation to adhere to the terms of the private broadcasters' agreement until such time as the CBC signs an agreement of its own with the CMPA.
38. In either case, we urge you to act within the timeframe of this proceeding. We share the view that you heard yesterday from our colleagues at the APFTQ that, if this issue gets deferred, we will be back at the next licence renewal still seeking closure on Terms of Trade with the CBC.
39. Thank you Mr. Chairman, Commissioners. We would be pleased now to answer your questions, including of course any questions about the positions in our written submission respecting the CBC's programming commitments, whether to independently-produced programming generally, kids' shows, feature films or other areas of programming in their mandate.



CMPA Panel

Jay Thomson	Michael Hennessy	Reynolds Mastin	Marla Boltman
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