

**CMPA**

Canadian Media  
Production Association



*Screen-based entrepreneurs*

**Oral Remarks by  
Canadian Media Production Association (CMPA)  
Broadcasting Notice of Consultation CRTC 2014-190**

**Let's Talk TV**

**September 10, 2014**

**Check against delivery**



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Good morning/afternoon, Mr. Chairman, Commissioners.

My name is Michael Hennessy and I am President of the Canadian Media Production Association. With me today, on my right, is Jay Thomson, our VP Regulatory. Also with us today, on my left, is Peter Miller, who prepared two of the evidentiary reports we and others filed with our respective written submissions, namely the Environmental Scan and the Program Rights paper.

Mr. Chairman, as the representative of the Canadian English-language TV and film production industry, we wish to focus our comments today, primarily, on two of the objectives you identified for this proceeding – maximizing choice, and fostering compelling Canadian programming. In particular, we wish to focus on how to address the tension that will arise between those two objectives once Pick and Pay is introduced.

We use the word “tension” because, absent mitigating action, maximizing choice and flexibility through Pick and Pay will likely be incompatible with fostering the creation of compelling, innovative and diverse Canadian programming. That is certainly the overwhelming message from the extensive evidence you have before you. Our submission tries to make achieving those two objectives more compatible.



It is very clear from the evidence that the offering of channels on a Pick and Pay basis will reduce broadcasters' revenues. And, all other things being equal, the more broadcasters' revenues are reduced, the less money they will have to invest in compelling programming, whether Canadian or foreign.

In order to mitigate this impact, we submit that the Commission should pursue only those regulatory changes absolutely necessary to implement Pick and Pay.

Specifically, we submit that you should refrain from making other changes to the current TV regulatory framework which would serve to further reduce the revenues in the system which are needed to support the creation and presentation of Canadian programming across all platforms.

In this respect, we appreciate that, in your recent notice, you proposed maintaining your current approach to authorizing non-Canadian services for distribution in Canada. We strongly support that proposal.

We also appreciate that you have now proposed that exhibition obligations would continue for the evening broadcast period. We see some logic and value in that approach. At the same time, however, we are concerned about its impact on children's services – where there should still be an obligation to broadcast Canadian shows during the daytime.

Lastly, we appreciate your apparent unwillingness to permit some broadcasters to use this forum to continue their attempts to undermine Terms of Trade. Terms of Trade is as important a safeguard for independent producers as the VI Code is for independent BDUs like TELUS and Cogeco, and for independent broadcasters like Blue Ant.

There are still additional proposals on the table, however, which we cannot support. Specifically, we submit that you should **not**

- eliminate or limit Simultaneous Substitution; or
- unduly restrict penetration-based pricing; or
- constrain the ability of BDUs to add additional important programming services to basic or to recover their legitimate basic service costs; or
- alter your long-standing preponderance policy.

None of these additional changes to the TV regulatory framework is necessary in order to give consumers more choice and control through Pick and Pay. But each one of them would exacerbate the negative impact that Pick and Pay will have on revenues in the system, and therefore further undermine the system's ability to support Canadian programming.



We also struggle with how elimination of the genre exclusivity policy would be implemented – in particular, what would happen to existing service-specific obligations like CPE and exhibition levels should a service morph from, say, a genre with low obligations to one with higher requirements.

### Simultaneous Substitution

Let me start with Simultaneous Substitution.

As the Commission has long recognized, Simultaneous Substitution ensures that broadcasters can fully and legitimately exploit the exclusive territorial programming rights they acquire, whether those rights are for dramas, lifestyle or reality shows, or for live sporting events like the Super Bowl.

In our view, there is no logic to the Commission encouraging broadcasters to offer more compelling Canadian content, including more local programming, while, at the same time, proposing to undermine the broadcasters' ability to finance that content. But that is what would happen by eliminating or restricting Simultaneous Substitution.

We submit that the Commission should maintain the current Simultaneous Substitution rules: to do otherwise would be inconsistent with the objective of fostering compelling Canadian programming, including local programming, and would be unnecessary in order to implement Pick and Pay.

### Penetration-based Pricing

Second on our list of unnecessary changes: undue restrictions on penetration-based pricing.

We submit that broadcasters should retain the opportunity to negotiate penetration-based rates in order to recover the subscriber and advertising revenues that they will lose as a result of their distribution on a Pick and Pay basis. Otherwise, they will have even less to spend on Canadian programming.

That being said, just because broadcasters *should* have the opportunity to negotiate “make whole” rates doesn’t mean they will succeed in doing so. But, in our view, that should be a market-based call. Nevertheless, if a broadcaster could not achieve a rate that would generate sufficient revenues to at least partially offset its losses due to Pick and Pay, the net result would be less money to spend on content.

## Basic Make-up and Pricing

Third, Mr. Chairman, and along similar lines, we submit that BDUs should not be required to price their basic service in a manner that would preclude them from recovering their legitimate costs or from including services that contribute most to the objectives of the Act.

We appreciate that the Commission has now proposed the possibility that more services could be offered on skinny basic. We submit that, as is the case now, non-Canadian services on the eligible satellite list should not qualify.

Whatever the rate or skinny option, we submit it is important to ensure the mandatory inclusion of children's services at a minimum, and the option to add other Canadian services that focus particularly on other forms of PNI, whether Canadian drama or documentaries.

Like the Shaw Rocket Fund and the Youth Alliance, we believe that, while children's programming is essential for content diversity, it is also at risk in a pure market-based, Pick and Pay environment. We all pay taxes for kids' education regardless of whether we have children in school, because it's an investment in the future. Surely the same applies to investing in Canadian programming for our younger citizens.



You will have noted that, in our written submission, we also identified Canadian theatrical films as an at-risk genre. Being mid-way through yet another successful TIFF, I'd like to let you know that we are currently working with broadcasters to come up with a mutually-beneficial, incentive-based approach to getting more broadcaster support for Canadian films.

### Preponderance

Fourth, we continue to submit that the Commission should maintain its policy of requiring preponderance at the subscriber level. In a Pick and Pay model, preponderance only at the carriage level would mean that, beyond skinny basic, subscribers could opt for foreign services only. In other words, they could effectively abandon the Canadian system. Frankly, we cannot fathom how that would achieve the objectives of the *Broadcasting Act* or foster the creation of compelling and diverse Canadian programming.

There is no technical impediment to maintaining the current preponderance rule in a Pick and Pay environment. The current rule is working now, even where BDUs offer pick-a-pack options and limited Pick and Pay.



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## Offsetting the Revenue Losses from Pick and Pay Through New Contributors

Mr. Chairman, Commissioners: having identified the changes we submit should *not* be made, I want to speak now to an additional change that *should* be made.

Even if the Commission accepts the recommendations I've just outlined, the fact remains that Pick and Pay will still reduce the system's ability to invest in Canadian content and platforms. Unless, we submit, the Commission turns to other ways to generate revenues from elsewhere in the system.

One way to help mitigate that forthcoming drop in program funding is to require contributions from all services offering broadcasting services in Canada, including OTT subscription-based SVOD services, both Canadian and foreign.

You have proposed that licensed Canadian broadcasters would have to include their online broadcasting revenues when calculating their CPE obligations. We support that approach, but we also submit that fairness dictates a similar approach for foreign online services broadcasting in Canada.

Netflix, the predominant digital or broadband TV broadcaster in Canada, collects hundreds of millions of dollars in subscriber fees from Canadians. And it is the emergence of such foreign OTT SVOD services broadcasting in Canada that requires a debate as to whether and, if so, how they should contribute to, and *participate in*, the Canadian broadcasting system.

Please note that we are serious when we speak of foreign OTT services not just contributing to the system, but also “participating” in it. One argument foreign OTT services have put forth is that it would be unfair to require them to contribute to Canadian programming when they cannot benefit from access to Canadian programming support funds, like the CMF.

While presently there may be certain regulatory and tax barriers that would limit foreign OTT from participating in the system in that way, we submit that we need to at least explore how to remove those barriers in the new broadcasting environment, rather than simply abandon the concept of OTT contributions.

But, in saying all this, Mr. Chairman, we are more than aware that, no matter how much money foreign OTT services take out of the Canadian system, requiring them to contribute something back to the system has now clearly been taken off the table for this proceeding. So we are proposing another, more politically palatable and perhaps more significant way to ensure that the balance between choice and compelling content is achieved.

As an alternative, we recommend that the CRTC re-apply the tangible benefits policy to BDU acquisitions.

Mr. Chairman, in your recent benefits policy review decision, you noted this idea was not covered within the scope of that proceeding. In our view, however, re-applying the policy to BDUs may actually be the best way to offset the impact of Pick and Pay arising out of this proceeding.

The line between broadcasting and broadcast distribution has blurred due to digital developments. I think we all agree that our broadcasting system is in for a period of prolonged disruption, with or without regulatory intervention. And we believe, as a consequence, there will be further consolidation not only as programming services are sold but also as broadcasting distributors change hands. This suggests to us that, if the Commission re-applied its benefits policy to BDUs, the end result could be hundreds of millions of incremental dollars to the CMF and independent funds to help achieve one of the CRTC's over-arching objectives for this proceeding.

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## The Big Picture

Mr. Chairman, before concluding, I'd like to step back and look at the big picture.

In that respect, it is important for stakeholders to appreciate that, in this proceeding, we are focused on more choice in *channels* on demand, and not about *programs* on demand. And that's appropriate because the market has already moved to provide choice in programs on demand.

PVRs, VOD, SVOD, broadcaster websites, shomi, Netflix and iTunes are only a few of the ways the market is already responding to consumer demand by delivering more programming choice. This is happening without regulatory intervention. And this reality is important to appreciate, because some argue that the future of broadcasting is more about individual programs on demand, not channels.

We suspect it's a bit of both: programs *and* channels on demand. However, we also submit that because there is already a functioning VOD/SVOD/broadband TV market delivering personalized choices in terms of individual programs, the Commission can proceed more cautiously in introducing choice in terms of channels.

This to us is a critical point, because the revenues to support compelling shows still come primarily from subscription and ad revenues derived from bundling channels. This is the case even as VOD is becoming an increasingly important option.

Bundling not only generates revenues to support Canadian programming, it also lets neighbours “float each other’s boats”, from the preference for one household for science to the preference of the neighbour for kids’ programming.

So the more we diminish the value of channels and bundles, the more we may hurt the delivery of compelling content on Canadian channels, absent offsetting measures.

And even as you move to implement Pick and Pay, it is also important to note the financial pressure on broadcasters that it will create will be further compounded by the programming cost increases broadcasters are already facing to meet other consumer demands.

Specifically, broadcasters already have to spend more on acquiring the rights to their programs in order to offer consumers the catch-up opportunities, stacking and multi-platform access that they’re demanding.



## Conclusion

In conclusion: as we have said, there are two ways in which you can mitigate the negative impact which, according to the evidence, will be inevitable under Pick and Pay. We advocate you adopt both.

First: don't do more than you have to. Don't make changes to the regulatory framework for TV that are not absolutely necessary to offer choice and flexibility through Pick and Pay.

Second: pursue new sources of financial support for Canadian programming to replace – or at least partially offset – the revenues that will disappear under Pick and Pay.

Mr. Chairman, we submit that, if the Commission does not accept the need to mitigate lost broadcasting revenues, you won't be able to achieve your twin objectives of maximizing choice *and* fostering compelling Canadian programming.

Thank you. We would be pleased to respond to your questions.



Remarks by the Canadian Media Production Association to the CRTC  
pursuant to Broadcasting Notice of Consultation CRTC 2014-190

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### **CMPA Seating Chart**

Jay Thomson	Michael Hennessy	Peter Miller
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