CMPA
Canadian Media
Producers Association
Ottawa | Toronto | Vancouver

March 14, 2018

Filed via Intervention/Comment/Answer Form

Mr. Claude Doucet
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Dear Mr. Doucet:

Re: DHX Television Ltd. Broadcasting Licence Renewal Applications for Family Channel (formerly Family) (Application no. 2017-0821-5), Family CHRGD (formerly Disney XD) (Application no. 2017-0822-3), and Télémagino (formerly Disney Junior) (Application no. 2017-0823-1) – Intervention from the Canadian Media Producers Association

Introduction

1. The Canadian Media Producers Association (CMPA) is pleased to provide the following comments with respect to the above-noted broadcasting licence renewal applications for DHX Television Ltd.'s (DHX Television) discretionary services Family Channel, Family CHRGD, and Télémagino. In the event the Commission announces a public hearing with respect to these licence renewal applications, the CMPA requests to appear to further elaborate on this intervention.

2. The CMPA is the country's leading member-based advocacy organization for independent producers. We represent hundreds of companies engaged in the development and distribution of English-language content made for television, cinema, and digital media channels. The CMPA works to promote the continued success of the Canadian production sector and to ensure a future for the diverse content made by Canadians for both domestic and international audiences. We wish to note that DHX Television is owned by DHX Media

251 Laurier Avenue West, 11th Floor
Ottawa, Ontario, K1P 5J6
+1.800.656.7440
ottawa@cmpa.ca

160 John Street, 5th Floor
Toronto, Ontario, M5V 2E5
+1.800.267.8208
toronto@cmpa.ca

600-763 Granville Street
Vancouver, British Columbia V6Z 1G3
+1.866.390.7639
vancouver@cmpa.ca

www.cmpa.ca

Ltd. (DHX Media) who is a member of the CMPA. We are pleased to share that many CMPA members have reported positive working relationships with DHX Television and that our members look forward to continuing to work with this broadcaster in the new licence term.

3. The CMPA supports the renewal of the broadcasting licences for DHX Television's discretionary services, subject to the following comments.

Executive Summary

4. The CMPA conditionally supports DHX Television's proposals for a group-based licence (whether it includes three services with specific requirements for the English- and French-language markets or two English-language services) or the renewal of Family Channel, Family CHRGD, and Télémagino on an individual basis. In each case, our support is predicated upon the Commission imposing conditions of licence (COLs) which would maintain appropriate levels of Canadian programming (CPE), programs of national interest (PNI), and independently-produced programming expenditures for these services as follows:

   - Should the Commission approve a modified group-based licence for DHX Television's three services then we request a 20% CPE, 15% PNI, and a COL that 60% of the expenditures related to PNI be made to an independent production company for the acquisition or commission of original, first-run programming, with separate proportional obligations for the English- and French-language services;

   - Should the Commission approve a modified group-based licence for DHX Television's two English-language services (Family Channel and Family CHRGD), then we request a 21% CPE, 15% PNI, and a COL that 60% of the expenditures related to PNI be made to an independent production company for the acquisition or commission of original, first-run programming, as well as a 10% CPE for the individual French-language service Télémagino; and

   - Should the Commission approve the DHX Television services on an individual basis then we request a 22% CPE, 17% PNI, and a COL that 60% of the expenditures related to PNI be made to an independent production company for the acquisition or commission of original, first-run programming for Family Channel; a 11% CPE for Family CHRGD; and a 10% CPE for Télémagino.

5. DHX Television is one of the top children's broadcasters in Canada and is owned by DHX Media, a world leader in children's programming production and distribution. Due to this broadcaster's dominance in the children's programming market, it is critical that its COLs with respect to independent production are maintained in the new licence term, including the 40% cap on broadcasting Canadian programming produced by the licensee or a person related to it.

6. As well, the CMPA submits that a public hearing should be called if the Commission is considering DHX Television's proposal for a group-based licence. With the exception of the current round of licence renewal proceedings, the Commission has called public hearings for all group-based licence applications and renewals. A public hearing allows for more meaningful input from the public on issues such as DHX Television's proposed group composition and reductions to required expenditures on PNI and independent production. Moreover, it would be procedurally unfair for the Commission to approve these modified group-based licences without a public hearing due to the significant changes proposed to their COLs as well as the proposed exceptions to Commission policies.

7. Finally, the CMPA is also taking the opportunity provided by the licence renewal process to request that the Commission review its standard definition for "independent production company" as well as emphasize the importance of transparent reporting by broadcasters.

Should the Commission approve a modified group-based licence for DHX Television comprised of its three discretionary services, it must require distinct obligations by linguistic market and appropriate expenditure levels for Canadian programming, programs of national interest, and independent production

Linguistic Markets

8. The CMPA supports the proposal of a Family Services Group composed of all three discretionary services as long as the Commission requires distinct obligations by linguistic market and appropriate expenditure levels for Canadian programming, PNI, and independent production. It is the Commission's practice to separate English- and French-language services into different group-based licences due to the distinct conditions of these

Canadian television markets and their discrete regulatory requirements.[1] The aim of the group-based policy is to ensure appropriate contributions to Canadian programming within the broadcasting system as a whole, as opposed to allowing the shifting of resources between linguistic markets. For example, the bilingual service TELETOON/TÉLÉTOON may be part of Corus Entertainment's English-language designated group but the Commission requires this service to ensure a certain level of expenditures on French-language Canadian programming which results in a proportional CPE based on total revenues generated by the service's French-language feed.[2] Likewise, the Commission should ensure that both the English- and French-language requirements are separately maintained between Family Channel and Family CHRGD as English-language services on the one side and Télémagino as a French-language service on the other. There is no reason to grant an exception in this case.

Appropriate CPE and PNI Levels

9. With respect to CPE requirements for a group-based licence, the CMPA notes that the Commission determined in Broadcasting Regulatory Policy 2017-148 that "a standard 30% CPE level for each group and every service within the groups is appropriate" to ensure the appropriate contribution to the creation of Canadian programming by the group.[3] This standard level was adopted to avoid situations where fluctuations in the revenues of individual services and any changes to the group's composition would impact the CPE requirements of group-based licences. Moreover, the Commission determined that a more standardized approach to CPE is warranted following the Create Policy because discretionary services no longer benefit from genre protection and mandatory carriage.[4] For these reasons, the Commission may wish to impose the standard 30% group CPE requirement on the Family Services Group. This approach would ensure regulatory parity within the broadcasting industry across large ownership and independent broadcaster groups alike.

10. However, we submit that it would be more appropriate for CPE and PNI requirements to be based on historical levels rather than applying the standard group CPE of 30% to an

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[1] Broadcasting Regulatory Policy CRTC 2010-167, *A group-based approach to the licensing of private television services*, para. 19, and the Create Policy, para. 218.

[2] Broadcasting Decision 2017-150, *Corus Entertainment Inc. - Licence renewals for English-language television stations and services,* para. 79.

[3] Broadcasting Regulatory Policy 2017-148, para. 30.

[4] *Ibid.* para. 28.

independent broadcaster. This approach aligns with the Commission's previous approval of a modified group-based licence for another independent broadcaster, the Blue Ant Group. In that decision the Commission determined that it would approve a modified group-based licence because while "independent broadcasters are important players in the provision of diverse Canadian programming to the broadcasting system"[5] it also determined that it would not be appropriate to hold an independent broadcaster to the same standards as a large ownership group in the group-based licence framework.

11. In the Create Policy, the Commission determined it would impose CPE levels based on historical expenditures levels on all discretionary services at licence renewal.[6] In accordance with Commission policies and as provided in Appendix 4 of the DHX Television licence renewal applications, the historical levels for CPE and PNI across the three services provide an average of 20% CPE and 15% PNI. Accordingly, we submit that the Commission should impose a CPE of 20% and a PNI of 15% for each of the services within the Family Services Group in the event a modified group-based licence is approved.

12. We note that DHX Television has proposed a PNI of 10% for its group. This amount is unacceptable because it is inconsistent with the Commission's policy to base PNI requirements on historical levels. As provided in the attached Boon Dog Report "Analysis of Financial and CPE and PNI Spending Data Filed by DHX Television as part of its Licence Renewal Applications" (the "Boon Dog Report"),[7] the difference between a PNI of 10% and 15% is dramatic. Based on DHX Television's projected revenues for the new licence term, a PNI of 10% would result in roughly $2.6 million dollars less of PNI each year than required by a 15% PNI.[8] Over the course of a five-year licence term this is a difference of $13.3 million dollars, which could mean fewer quality Canadian television series in the broadcasting system.[9] The Boon Dog Report also provides a snapshot of the PNI variation between 10% (proposed) and 16% (current level) in terms of actual PNI required in the 2014-15 broadcast year for the Family Channel alone.[10] The results are significant: a 10% PNI

[5] Broadcasting Decision CRTC 2013-465, *Blue Ant Media Solutions Inc. and 8182493 Canada Inc., partners in a general partnership carrying on business as Blue Ant Media Partnership* (BD 2013-465), para. 14.
[6] Create Policy, para. 217.
[7] The Boon Dog Report is enclosed as Appendix A.
[8] Boon Dog Report, page 3.
[9] Please see the addendum to the Boon Dog Report enclosed as Appendix B which shows the five-year total of $13,306,664.
[10] Boon Dog Report, page 1.

would mean that Family Channel would have been required to spend $3.4 million (or 37.5%) less over the course of just one year.

13. The CMPA requests that the Commission impose a PNI of 15% for each of DHX Television's services to ensure an appropriate contribution to the broadcasting system. Requiring expenditures on PNI is one of the key ways that the Commission fulfils the objectives of Canada's broadcasting policy. Recognizing the importance of supporting PNI for the achievement of the objectives of the Act, the Commission announced in the Create Policy that it intended to maintain existing PNI expenditure requirements where it stated:

> *The objectives set out in the Act declare that the programming provided by the Canadian broadcasting system should be varied, comprehensive and encourage the development of Canadian expression by providing programming that reflects Canadian values and attitudes. The objectives also declare that the programming should include a significant contribution from the Canadian independent production sector. To ensure the fulfilment of these objectives, the Commission has encouraged the production of certain types of programs -- drama, long-form documentary, music/variety and award shows-generally through expenditure requirements. These are called programs of national interest (PNI).*
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> […]
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> *The Commission considers that PNI expenditure requirements continue to be an appropriate tool for ensuring that Canadians have access to the maximum number of programs from program categories that are of national interest and that require continued regulatory support.*
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> […]
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> *Given the relatively short timeframe in which the PNI requirements have been in place, the Commission considers it would be premature to alter the policy at this time. The current requirements relating to PNI including the specific program categories in each linguistic market will therefore be maintained.*[11]

[11] Create Policy, paras. 276, 288, and 289.

14. The Create Policy was developed after years of unprecedented consultation with the industry and the Canadian public. It was released less than three years ago and provided deeply considered policy rationale based on the state of the broadcasting industry at that time. While there have certainly been changes in the broadcasting industry since the release of the Create Policy, there is no good reason to deviate from the Commission's fact-and data-based policy decision on PNI expenditures for DHX Television.

15. Finally, children's PNI expenditures are on the decline in the industry and this important programming category requires support. *Profile 2017: Economic Report on the Screen-based Media Production Industry in Canada* Profile 2017 reveals that English-language children's and youth television production volumes dropped from $539 million to $449 million from 2015-16 to 2016-17, representing a 16.7% decrease.[12] We wish to draw attention to the intervention submitted by the Shaw Rocket Fund in this proceeding which urges the Commission to implement appropriate policy measures to ensure the creation of original Canadian children's content;[13] our request that PNI levels be maintained with historical levels for this children's broadcaster would do just that.

Independent Production Obligations

16. With respect to independent production, we note that since the introduction of the group-based licensing framework the Commission has imposed the COL that at least 75% of PNI expenditures on every group-based licence with the exception of the modified group-based licence for Blue Ant Television approved in BD 2013-465. In that decision, the Commission determined it would not be appropriate to hold Blue Ant Television to the same obligations as large ownerships groups because it does not meet the criteria for a group-based licence as it is an independent broadcaster, it does not own and operate any conventional television stations, and four of its television services serve fewer than one million subscribers.[14] Accordingly, the Commission determined that "it would not be appropriate to impose the 75% requirement applied to larger broadcast ownership groups" to the Blue Ant Group.[15] Instead the Commission applied an independent production COL based on exhibition.

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[12] Profile 2017, Exhibit 3 - 2 Volume of Canadian production by genre and market.
[13] Shaw Rocket Fund Intervention, para. 5.
[14] BD 2013-465, para. 12.
[15] BD CRTC 2013-465, para. 27.

17. DHX Television is requesting that the same obligation that "25% of all Canadian programs broadcast, other than news, sports, and current affairs programming, be produced by independent production companies."[16] However, an independent production COL based on exhibition is no longer appropriate following the determinations in the Create Policy to focus on expenditures and quality programming rather than exhibition quotas.

18. The CMPA submits that the Commission should maintain the COL for the Family Channel that 60% of PNI expenditures be allocated to original, first-run programs from independent producers and extend it to the other services in DHX's proposed group of three. We are making this proposal in recognition that the modified group-based licence for an independent broadcaster should not be required to meet the same obligations as large ownership groups like Bell, Corus, and Rogers. However, DHX Television must still be required to make contributions to independent production in line with the Act, the group-based licensing framework, and the Create Policy. Family Channel was previously part of a group-based licence and, as such, had been required to allocate 75% of its expenditures on PNI to independently-produced programming. The Commission determined that it was appropriate to reduce this independent production expenditure COL from 75% to 60% original, first-run programming when this television service was removed from a group-based licence because that level would still "ensure that a substantial amount of new, original programming produced by independent production companies is added to the Canadian broadcasting system."[17] We submit that the obligation of allocating 60% of PNI expenditures to independent production strikes the correct balance and should be maintained.

19. This is the same COL that the Commission imposed upon DHX Television, and the licensee agreed to adhere to, when it acquired Family Channel in Broadcasting Decision CRTC 2014-388.[18] This COL seeks to address DHX Television's dominance in the children's programming market as a producer, distributor, and broadcaster, and should be maintained as all those same issues regarding power within the children's programming market remain. The Commission should likewise maintain the COL that the licensee may exhibit programming that has been produced by the licensee or a person related to it, provided that

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[16] *Ibid.*

[17] *Ibid.*, para. 34.

[18] Broadcasting Decision CRTC 2014-388, *Change in the effective control of Disney Junior, Disney XD and Family Channel from Bell Media Inc. to DHX Media Ltd. and licence amendments*, paras. 32-36.

in each year, the amount of such programming, exclusive of filler programming, not exceed 40% of its overall Canadian programming schedule.[19]

20. Furthermore, independent production COLs ensure that the objective regarding independent production enshrined in the broadcasting policy of Canada is upheld. Independent production requirements set out in Canada's broadcasting policy are important for a number of reasons. First, the Canadian broadcasting system must serve the interests of all Canadians and their need to express themselves, in order to "safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada."[20] The system must also encourage Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas and values, by displaying Canadian talent and by offering a Canadian point of view.[21]

21. In order to do so, the Canadian broadcasting system seeks to reflect a diversity of expression, voices, culture, and range of opinions articulated by contributors that are independent of those who control the exhibition of the programming: in this case, DHX Television. As noted by Peter S. Grant and Chris Wood in their book *Blockbusters and Trade Wars*,

> The television and film universe falls into two very broad parts: making shows and showing shows. The most direct way competition policy can secure a diversity of expression is to keep the two apart. Policies that limit the extent to which exhibitors of cultural products may own the production houses that supply films or television programs also prevent those exhibitors from favouring their own products and discriminating against others.[22]

22. In order to ensure that Canadian audiences receive programming from different sources and voices, the broadcasting system must include a significant contribution from companies that are truly independent from the few broadcasters that remain. Without appropriate regulatory measures, and the proper implementation and enforcement of those measures,

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[19] Appendix to Broadcasting Decision CRTC 2014-388, COL #9.

[20] *Broadcasting Act*, s. 3(1)(d)(i).

[21] *Broadcasting Act*, s. 3(1)(d)(ii).

[22] Peter S. Grant and Chris Wood, *Blockbusters and Trade Wars: Popular Culture in a Globalized World*, Douglas & McIntyre, Vancouver, p. 275.

the Canadian broadcasting system risks representing too few concentrated voices, both in terms of the amount of programming available to Canadians and in terms of ownership and control of the programs themselves.

23. Finally, we wish to emphasize the critical role of independent production COLs as safeguards for independent broadcasters. In 2017-18, DHX Television spent 42% of its Canada Media Fund (CMF) broadcaster performance envelope on in-house or affiliated productions.[23] While large broadcasters (e.g. Bell, CBC, Corus, and Rogers) may only spend a maximum of 15% of their broadcaster performance envelopes on in-house and affiliated production,[24] there is no such cap for smaller broadcasters like DHX Television and Blue Ant Television.[25] This issue underlines the critical nature of independent production expenditure COLs for independent broadcasters: these COLs ensure that independent broadcasters fund Canadian independent production in accordance with the objectives of the Act.

24. For all of the above reasons, the CMPA requests that the Commission impose a 20% CPE,[26] 15% PNI, and a COL that 60% of the expenditures related to PNI be made to an independent production company for the acquisition or commission of original, first-run programming for the three services should it decide to approve this modified group-based licence along with separate proportional obligations for the English- and French-language services.

Should the Commission approve a modified group-based licence for DHX Television comprised of English-language services only, it must require appropriate expenditure levels for Canadian programming, programs of national interest, and independent production and introduce a CPE requirement for Télémagino

25. The CMPA supports DHX Television's proposal for a group-based licence for Family Channel and Family CHRGD on the condition that the Commission impose appropriate expenditure

[23] Data provided by the Canada Media Fund on request. Note that the CMF year runs from April 2017 – March 2018 and this envelope has been fully spent.

[24] Canada Media Fund, *Performance Envelope Manual 2017-18*, section C.2.8.

[25] We wish to note that small broadcasters have smaller performance envelopes than the large broadcasters.

[26] As demonstrated on page 3 of the Boon Dog Report, the CMPA wishes to note there appear to be inaccuracies in Appendix 5 of DHX Television's licence renewal application because the projected CPE for the new licence term do not reach the proposed CPE of 20%.

levels for Canadian programming, PNI, and independently-produced programming. Based on the same reasons provided in the above section regarding Commission policies and practices, we submit that appropriate levels for CPE and PNI will be based on historical levels which results in a CPE of 21% and a PNI of 15% for Family Channel and Family CHRGD.[27] Finally, for all the same reasons provided in the above section regarding independent production, we submit that the Commission should maintain the COL that 60% of the expenditures related to PNI be made to an independent production company for the acquisition or commission of original, first-run programming.

26. In this scenario, the French-language service Télémagino would be renewed on an individual basis and, as such, we agree with DHX Television's proposal that the Commission should impose the minimum CPE of 10% because its historical levels are less than this minimum floor for discretionary services. This approach is in accordance with the Create Policy.[28]

Should the Commission approve the renewal applications of Family Channel, Family CHRGD, and Télémagino on an individual basis, it must maintain expenditure levels for Canadian programming, programs of national interest, and independent production for Family Channel and introduce CPE requirements for Family CHRGD and Télémagino

27. The CMPA supports DHX Television's proposal for the renewal of Family Channel, Family CHRGD, and Télémagino on the condition that the Commission impose appropriate expenditure levels for Canadian programming, PNI, and independently-produced programming for each of these services in accordance with Commission policies and practices.

28. In BD 2014-388, the Commission imposed a CPE of 22% on Family Channel and stated that it would re-evaluate the service's CPE level at licence renewal.[29] Based on the average historical expenditures for the last two years, the CPE for Family Channel should remain at 22% CPE. DHX Television has agreed to adhere to this COL in its application and we wish to lend our support to maintaining this obligation in the new licence term.

[27] Boon Dog Report, page 2.
[28] Create Policy, para. 221.
[29] Broadcasting Decision CRTC 2014-388, para. 23.

29. A review of the historical PNI expenditures for this service results in a PNI of 17% and not the 10% being proposed by the licensee.[30] Again, for all the same reasons provided above, such a significant reduction to the required expenditures for PNI is inconsistent with the Commission's practices regarding historical levels and should not be approved.

30. Finally, we request that the Commission maintain the independent production COLs for Family Channel in the new licence term.[31] DHX Television agreed to adhere to these COLs when it acquired Family Channel and it is critical that it is maintained to provide a safeguard for DHX Television's dominance in the children's programming market, domestically and worldwide.[32] DHX Television is a producer, distributor, and broadcaster, and is part of a global, integrated media company and should continue to be treated as such by the Commission.

31. Should the Commission renew Family CHRGD and Télémagino on an individual basis then we support the proposed CPE levels of 11% and 10%, respectively. These figures align with the Create Policy that the Commission will impose a CPE on all discretionary services in the new licence term based on the service's historical expenditure levels for Canadian programming or, if that calculation yields a requirement of less than 10%, a CPE requirement of 10% of the previous year's gross revenues.[33]

Should the Commission be considering the proposal for a Family Services Group then the public interest and procedural fairness require a public hearing

32. If the Commission is considering DHX Television's proposal for a Family Services Group[34] then the CMPA submits that a public hearing ought to be called in order to uphold the public interest and ensure procedural fairness. With the exception of the current proceedings, the Commission has called all previous applicants for a new or renewed group-based licence to a public hearing. A public hearing seems appropriate in this case

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[30] Boon Dog Report, page 2.

[31] Appendix to Broadcasting Decision CRTC 2014-388, *Terms, conditions of licence and expectations for the national English-language pay television Category A service Family Channel*, COLs #3 and #9.

[32] Broadcasting Decision CRTC 2014-388, *Change in the effective control of Disney Junior, Disney XD and Family Channel from Bell Media Inc. to DHX Media Ltd. and licence amendments*, paras. 32-36.

[33] Create Policy, para. 221.

[34] In its application, DHX Television refers to its proposed group as the "Family Services Group."

due to the major changes DHX Television is proposing to its COLs, including the request for a modified group-based licence and reductions to required expenditures on PNI and independent productions.

33. While the Commission has recently implemented a "more efficient" procedure for licence renewal applications,[35] it is important that the Commission initially determine whether the public interest requires a public hearing.[36] A public hearing for the proposed Family Services Group is in the public interest because it will allow the Commission to fully canvass interested parties for their input on these applications, beyond what is permitted within the standard Part 1 application process. The fuller discussions provided by a public hearing leads to a more complete record before the Commission, which in turn, strengthens its decision-making.

34. The Commission held a public hearing for the recent licence renewals for the television services of large English- and French-language ownership groups.[37] In the Notice of Consultation, the Commission stated that it would "examine the effectiveness of the group-based approach over the last licence term for the large ownership groups, as well as its application to the next licence term" and "implement certain policy decisions set out in the Broadcasting Regulatory Policy CRTC 2015-86" (the "Create Policy").[38] We submit that the reasons the Commission called a public proceeding to renew the television licences held by the large ownership groups similarly apply to DHX Television, namely:

- to examine the application of a modified group-based licence approach for DHX Television in the new licence term, and
- to implement certain policy decisions set out in the Create Policy.[39]

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[35] Preamble to Broadcasting Information Bulletin CRTC 2015-116, *New procedures for licence renewal applications* (BIB 2015-116).

[36] Pursuant to the *Broadcasting Act*, section 18(2), "The Commission shall hold a public hearing in connection with the amendment or renewal of a licence unless it is satisfied that such a hearing is not required in the public interest."

[37] The group-based licence renewal decisions for the large broadcasting ownership groups is currently being reconsidered in Broadcasting Notice of Consultation CRTC 2017-429, *Reconsideration of the decisions relating to the licence renewals for the television services of large English-language private ownership groups* and Broadcasting Notice of Consultation CRTC 2017-428, *Reconsideration of the decisions relating to the licence renewals for the television services of large French-language private ownership groups.*

[38] Broadcasting Notice of Consultation CRTC 2016-225, *Notice of hearing, Renewal of television licences held by large English- and French-language ownership groups*, para. 2.

[39] BNC 2016-225, paras. 1 and 2.

35. As well, given the changes proposed by DHX Television to its COLs, it would be procedurally unfair for the Commission to approve a group-based licence without a public hearing. DHX Television is proposing a new group-based licence as well as significant reductions to its COLs related to PNI and independent production. To make such substantial changes, without giving the parties who are affected by such changes (such as the CMPA's members) or the Commission the opportunity to critically test those proposals would be procedurally unfair. Interveners should be able to avail themselves of a first submission, appearance at an oral hearing, and a final submission - as it stands this is our only opportunity to make our concerns known about the composition of the proposed group as well as reductions to PNI and independent production expenditure requirements.

36. From a practical point of view, we wish to note that the Rules of Procedure permit the Commission to call a public hearing at this time and that timelines allow for an oral hearing before the expiry of the licences on August 31, 2018.[40] Accordingly, the CMPA submits that the Commission should call a public hearing to examine the modified group-based licence proposed by DHX Television in order to meet the public interest and ensure procedural fairness.

The Commission should review its definition of "independent production company" to ensure that programs which fulfill independent production expenditure requirements are truly independently produced

37. The CMPA wishes to address some serious concerns regarding the overall integrity of COLs related to independent production. The Commission's current definition of "independent production company"[41] fails to ensure that programs claimed by broadcasters as "independent" are truly independent in terms of ownership and control or that independent producers retain a meaningful share of the intellectual property rights or profits associated with the content they produce. We are concerned that the Commission's practices are not ensuring that the broadcasting system includes a "significant contribution" from the Canadian independent production sector.[42] Accordingly, the CMPA requests that the

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[40] *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (Rules of Procedure), section 5(1).

[41] Appendix to Broadcasting Decision CRTC 2013-383, COL#8.

[42] *Broadcasting Act*, s. 3(1)(i)(v)

Commission update the definition for "independent production company" provided with respect to the COLs for DHX Television's services in the new licence term.

38. Some broadcasters are exploiting the current definition of "independent production company" to structure and claim programs that they effectively own and control – which necessarily means those programs are not independently produced but are service productions – for the purposes of meeting their COLs. Allowing broadcasters to claim programs that they own and control as "independent" means that the current definition of "independent production company" is not achieving the objectives of Canada's broadcasting policy with respect to independent production.

39. The CMPA requests that the Commission replace the current definition of "independent production company" at all licence renewals to ensure that the programs commissioned and claimed as meeting broadcasters' independent production COLs are actually independently produced. The CMPA proposes the following new definition:

> *For the purpose of this condition of licence, "programs produced by independent production companies" means programs produced by a Canadian company carrying on business in Canada with a Canadian business address, owned and controlled by Canadians, whose business is the production of film, videotape or live programs for distribution and in which the licensee and any company related to the licensee owns or controls, directly or indirectly, in aggregate, none of the equity, and in respect of which the licensee and any related entities is not identified as the producer in the program's credits and does not own or control, directly or indirectly, and cannot exploit or acquire to its benefit any of the following:*
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> - *The copyright in the program;*
> - *Any rights upon which the program is based (the underlying rights);*
> - *Any non-Canadian distribution or licence rights to the program, or to any products or projects ancillary or derivative to the program;*
> - *A share of net profits, or revenue share (unless derived from the exploitation of the program, or any products or projects ancillary or*

derivative to the program), and provided that such share does not exceed, on a percentage basis, the licensee's (including any affiliated or related entities) cash contribution that is over and above the licensee's (including any affiliated or related entities) fair market value cash licence fee contribution to the financing of the program's budget; and

- *An equity share in the program, or in any products or projects ancillary or derivative to the program, unless such share does not exceed, on a percentage basis, the licensee's (including any affiliated or related entities) cash contribution that is over and above the licensee's (including any affiliated or related entities) fair market value cash licence fee contribution to the financing of the program's budget.*

40. The CMPA has called upon the Commission to review this definition in previous interventions, including the group licence renewal proceeding for English-language services,[43] the first phase of the broadcasting consultation on future programming distribution models,[44] and Aboriginal Peoples Television Network's application for renewal of its broadcasting licence and mandatory distribution order.[45] We are also including this request in our interventions with respect to the Blue Ant Television broadcasting licence renewal applications (Application nos. 2017-0841-3 and 2017-0842-1) and City Saskatchewan's broadcasting licence renewal application (Application no. 2017-0833-0).

Transparent reporting by broadcasters is integral to the public interest

41. The CMPA wishes to draw attention to the critical importance of transparent public reporting by broadcasters in the licence renewal process and annual reports. Generally speaking, the release of data related to COLs allows the public to monitor broadcaster compliance and instills public confidence in the regulation of the broadcasting system. It

[43] Broadcasting Notice of Consultation CRTC 2016-225, *Renewal of television licences held by large English- and French-language ownership groups*.
[44] Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models*.
[45] Application no. 2017-0641-7.

also allows interveners to provide more informed feedback in policy and licensing proceedings.

42. With respect to independent production COLs, we note that the Commission provides a standard form to broadcasters for their annual PNI reports including a "producer information" section to identify the names of production companies; whether the productions are independent, affiliated, or in-house; location of principal photography, whether the productions are regionally produced, and whether the producer is part of an Official Languages Minority Community (OLMC). While broadcasters do not uniformly provide this requested information as part of their PNI reports, we wish to commend DHX Television for supplying the requested information with respect to independent productions. Without this data, the public is unable to monitor broadcaster compliance with independent production COLs. In order to hold broadcasters accountable to the public for their PNI and independent production COLs, the CMPA requests that the Commission ensure that broadcasters provide all of the information requested in the PNI reports is provided during annual reports, especially the "producer information" section.

43. It is also important that the Commission gather data regarding broadcasters' digital media revenues. DHX Television's programming is available online through various apps, such as the Family Channel app, Family OnDemand, and Family Online. Given the digital shifts in the market, it is imperative that the Commission use its information gathering power to obtain accurate, up-to-date data regarding broadcasters' digital media revenues to both monitor the evolution in the market and to ensure that the Commission has the latest data to inform its policy decisions. This data request is in accordance with the Commission's information gathering requirements as articulated in section 4 of the *Digital Media Exemption Order*.[46] The Commission possesses an information gathering power with respect to digital television services and we request that the Commission use this power to collect this important data.

[46] 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).

Conclusion

44. The CMPA supports the licence renewal for DHX Television's discretionary services, subject to the comments provided in this intervention. We support the broadcasting licence renewal applications for DHX Television, whether it is for a three-service designated group, two-service designated group, or individual discretionary services on the condition that the Commission impose the COLs as provided herein. We appreciate the opportunity to share our comments regarding the applications in this proceeding. Should the Commission require any additional information regarding this intervention, please do not hesitate to contact me directly.

Sincerely,

[*Filed electronically*]

Kelsey McLaren
Director, Regulatory
kelsey.mclaren@cmpa.ca

cc. Joseph Tedesco, Senior Vice-President, DHX Television Ltd., joe.tedesco@dhxmedia.com

Encl.

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