January 17, 2025

Marc Morin
Secretary General
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario K1A 0N2
CANADA

Filed Online

Dear Secretary General Morin:

Re: Broadcasting Notice of Consultation CRTC 2024-288: *The Path Forward – Defining "Canadian program" and supporting the creation and distribution of Canadian programming in the audio-visual sector*

Introduction

1. The National Foreign Trade Council (NFTC) appreciates the opportunity to provide input through public consultation CRTC 2024-288. NFTC represents a diverse membership base with several members implicated by the Canadian Radio-television and Telecommunications Commission's (CRTC) Regulatory plan to modernize Canada's broadcasting framework, including the definition and requirements around "Canadian programming" (Canadian content or CanCon). NFTC members operating in the Canadian market are deeply committed to creating, supporting and amplifying access to diverse Canadian creators, storytellers, voices and content within Canada and amplifying it to the world. This submission outlines our significant concerns, however, that CRTC's overall regulatory modernization, including the definition of Canadian programming, is unworkable for modern online streaming services, is discriminatory, runs counter to Canadian trade obligations, and, most importantly, the restrictive requirements around Canadian programming will undermine our members' ability to develop the best domestic programming for Canadians and bring it to the world.

About the NFTC

2. NFTC is the premier association for leadership and expertise on international tax and trade policy issues. We believe trade and tax policies should foster fair access to the opportunities of the global economy and advance global commerce for good. NFTC serves as a nimble and effective forum for businesses to engage critical and complex issues

together and to foster trust with governments to improve policy outcomes in the U.S. and around the world. Leveraging its broad membership and expertise, the NFTC contributes to a greater understanding of the critical role that an open, rules-based international economy plays in the success of American businesses, entrepreneurs and workers, and shared global prosperity. NFTC has more than 100 member companies across our committee structure. More information and a list of our Board Companies can be found at www.nftc.org/

Overview

3. Notice of Consultation CRTC 2024-288, "The Path Forward – Defining 'Canadian program' and supporting the creation and distribution of Canadian programming in the audio-visual sector", provides a vital opportunity to modernize the definition of "Canadian programming" (Canadian content or CanCon) in a manner that preserves the continued growth of Canada's broadcasting ecosystem while recognizing the realities and differentiated nature of production in 2025, including by foreign online undertakings. Unfortunately, the proposed definition of CanCon adds to the already burdensome requirements advanced throughout the regulatory modernization.

4. The CanCon definition must value the significant investments and economic impact US streaming companies bring to the Canadian creative landscape. This includes incorporating sufficient flexibility in the framework and definition to permit foreign online undertakings to contribute in ways that align with their business models, rather than necessitating that each undertaking satisfy every objective of the Act.

Q1. Currently, if a production does not have a sufficient number of key creative positions to attain the minimum 6 points, the Commission's approach has been to require that all key creative positions of a production be filled by Canadians. Should the Commission continue with this approach? If not, under the Commission's preliminary view above, what should be the minimum threshold for a production to be certified Canadian?

5. The outcomes of this consultation should recognize that one doesn't have to be Canadian to effectively tell Canadian stories. It further necessitates flexibility where a production is not disqualified if certain key positions are shared by multiple people or held by a non-Canadian. The proposal to expand the list of key positions while increasing the required points to be eligible for CanCon will continue to make qualifying programming difficult. It also restricts the inclusion of global talent that can complement and bring prominence to productions. CanCon should rather include a general cultural determination in the certification process that can help validate productions that are objectively Canadian or those that provide significant economic and, by extension, production benefits to Canada. The United Kingdom's cultural test for film provides one example of a more flexible approach.[1]

1 The Cultural test for film, British Film Institute, https://www.bfi.org.uk/apply-british-certification-expenditure-credits/cultural-test-film#:~:text=The%20test%20is%20points%2Dbased,contribution%20(up%20to%204%20points)

Q15. How can the Commission incorporate the use of ownership and financial control of Canadian programs to help ensure the exportability of Canadian programming and formats through its modernized regulatory framework?

6. It is critical that Canadian entities controlled by a U.S. company are eligible to produce qualifying Canadian programming, which will support U.S. companies meeting CanCon obligations while being able to own the intellectual property of programs/films which is critical to their ability to bring Canadian stories to a global audience. This is supported by paragraph 31 of the consultation, which recognizes that differing models of IP ownership can:

> "*Support investment and balance the economic benefits of holding/sharing the intellectual property of a production with incentives to collaborate and partner between Canadians, including Canadian undertakings, and foreign online undertakings."*

7. U.S. streaming services encourage the viewing and exportation of Canadian programs by new and recurring audiences, which brings continued profile to Canadian productions while making it financially feasible to invest in distributing and promoting Canadian stories globally.

8. Preventing foreign online undertakings from owning IP in Canadian programs will result in smaller budgets, fewer jobs, and, by extension, less exportable content. An IP ownership model that permits financial control and supports investment from Canadian and foreign undertakings can incentivize increased investment in Canadian programming.

Q20. Should the CPE requirements for traditional Canadian broadcasters and foreign online undertakings be similar or different? How can the Commission impose equitable requirements that respect the different business models of the various undertakings and broadcasting groups?

9. Modern online streaming platforms cannot be considered equitably to traditional Canadian broadcasters. They have fundamentally different business models, with different equities, and the former must balance both their role and commitment to service global markets. Their productions in jurisdictions such as Canada, however, generate significant economic benefits for Canadian creatives, which is evidenced by the Motion Picture Association, which highlights that:

> *"Global studios and streamers generate almost 60% of total income paid to Canadian creative workers, with global production fueling employment at a rate three times higher than that of domestic production over the 2012-22 period. In 2022/23 global studio projects like The Good Doctor, Fargo and Star Trek: Strange New Worlds and*

more contributed to a total of $6.86 billion volume in Foreign Location Service (FLS) production across the country."[2]

As the overall regulatory modernization plan has been framed, NFTC is concerned that the proposed framework disproportionately burdens U.S. broadcast platforms. The Canada-United States-Mexico Agreement (CUSMA) prohibits domestic content thresholds and local sourcing requirements, and requires non-discriminatory treatment of U.S. digital products, services, service suppliers, investors, and their investments in Canada. As proposed, it appears the regulatory modernization plan may contravene CUSMA requirements. Moreover, while CUSMA contains an exception that applies to Canadian cultural industries, the Agreement permits the United States to respond with measures "of equivalent commercial effect." It is critical that the CRTC avoid these unintended consequences that could invite retaliation, particularly given the incoming administration's objective of addressing unfair trading practices.

<u>Conclusion</u>

11. The CRTC's stated goal is to *"facilitate flexible audio-visual Canadian programming and a financial support ecosystem that encourages a variety of productions, and a variety of business, broadcast and distribution models."* Meeting this objective in a manner that does not discriminate against U.S. platforms necessitates avoiding onerous CanCon provisions, requires flexible approaches that allow foreign platforms to maintain ownership of their IP, and recognizes the dual role U.S. online platforms perform in supporting the creation of Canadian content and amplifying Canadian creators and stories around the world. NFTC remains available to support discussions and consultations on how the broadcasting reform provisions can be amended to meet CRTC's objectives while not unduly burdening U.S. companies.

Sincerely,

B. Wood

Brad Wood
Senior Director, Trade and Innovation Policy

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2 Driving Economic Growth, Motion Picture Association, https://www.mpa-canada.org/what-we-do/driving-economic-growth/#:~:text=As%20production%20levels%20from%20global,jobs%20go%20to%20Canadian%20workers

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