



July 25, 2023

Amy Awad
Director General, Digital and Creative Marketplace Frameworks
Department of Canadian Heritage
25 Eddy Street
Gatineau, Quebec J8X 4B5
(decretinstructions-policydirection@pch.gc.ca)

Dear Ms Awad:

Re: Comments of the Writers Guild of Canada regarding Canada Gazette, Part I, Volume 157, Number 23: Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework), June 10, 2023

I am writing to provide the comments of the Writers Guild of Canada (WGC) on the Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework), published in the Canada Gazette, Part I, Volume 157, Number 23, on June 10, 2023 (the Policy Direction).

The WGC has also submitted these comments via the Government of Canada portal at <https://www.gazette.gc.ca/rp-pr/p1/2023/2023-06-10/html/reg1-eng.html>. This letter provides the same comments as submitted there, simply in the format of a letter.

Section 4

The ecosystem for the production and presentation of Canadian programming is in a state of collapse. The *Broadcasting Act* (the Act) is predicated on the simple fact that a healthy and vibrant culture and media sector in Canada is not a natural market outcome. Rather, it is the result of social and political will. The emergence of the Internet generally, and large foreign streaming services specifically, has created new and immense competitive pressure on traditional Canadian broadcasters. The result has been, among other things, a stark decline in private, English-language broadcaster licence fees that contribute to financing Canadian programming, while the cost of producing world-class content remains high. We must make a clear distinction between programming which is the subject of the Act—Canadian programming—and foreign location and service production (FLS), which is not. While FLS has grown amidst the “content boom” of the past decade, top-line Canadian television production data show stagnation at best. Canadian broadcasters are clearly in decline and are threatening to exit the system. And Canadian screenwriters, whose jobs are at the leading edge of the wedge, are fully in crisis. Based on our own internal data, over the past five years the aggregate earnings of the WGC’s confirmed

366 Adelaide Street West
Suite 401
Toronto, Ontario M5V 1R9

A Member of the International Affiliation of Writers Guilds

Tel 416 979-7907
1-800-567-9974
Fax 416 979-9273
info@wgc.ca www.wgc.ca

Canadian citizen members have declined by nearly 22% in inflation-adjusted terms. This is incredibly significant, and represents a catastrophic decline for our members and the opportunities for screenwriters in this country.

Given this, the Government must have, as a key objective, growth for the Canadian domestic audiovisual sector. In particular, this must include growth for the role of Canadian screenwriters. The promise of the *Online Streaming Act* was always growth. It was never “make whole” for Canadian creators while traditional broadcasters bowed out. In touting the benefits of the Bill C-11, the Government provided an estimate of around \$1 billion annually in contributions by online broadcasters to Canadian content and creators. This was from online undertakings alone, and not a combined level from both online undertakings and traditional Canadian broadcasters. This significant new money in the system was always the promise of the *Online Streaming Act*, and we respectfully submit that the Policy Direction must uphold this goal. The draft Policy Direction already directs the Commission, at section 8(c), to “respect audience choice and, where possible, increase the options available.” If the Government is willing to direct the Commission to increase options available to consumers, it should be willing to direct the Commission to increase the amount of Canadian programming in the broadcasting system.

For this reason, the Policy Direction must refer directly to increasing overall amount of Canadian programming in the broadcasting system. This should be added at the end of section 4 of the draft Policy Direction, so that the section states, in full:

4 The Commission is directed to impose requirements on broadcasting undertakings that ensure that the Canadian broadcasting system — which is to be effectively owned and controlled by Canadians and includes foreign broadcasting undertakings that provide programming to Canadians — strongly supports a wide range of Canadian programming and Canadian creators. The requirements, both financial and non-financial, must be equitable given the size and nature of the undertaking and equitable as between foreign online undertakings and Canadian broadcasting undertakings. The requirements must have the objective of significantly increasing the overall amount of Canadian programming in the broadcasting system.

Section 8

Section 8 of the draft Policy Direction is entitled, “Flexible and adaptable regulatory framework.”

Subsection 8(a) directs the Commission to, “minimize the regulatory burden on the Canadian broadcasting system.” This unfortunate language is already being leapt upon by private Canadian broadcasters to justify requests to dramatically reduce their regulatory obligations to support Canadian programming and serve Canadian audiences. By our count, in the written submissions in the ongoing proceeding before the Commission, Broadcasting Notice of Consultation CRTC 2023-138, this section of the draft Policy Direction, or the concept it appears to convey, is referenced: by Bell Media, 7 times; by Corus Entertainment, 4 times; and, by Rogers Communications, 32 times. To hear these broadcasters tell it, the Government has directed the Commission to slash their regulatory obligations across the board.

Such an outcome cannot have been the intention of the *Online Streaming Act*. Moreover, the language in subsection 8(a) of the draft Policy Direction appears to mirror that of 5(2)(g) of the new *Broadcasting*

Act, which includes as the Regulatory Policy that the Commission, “is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.”

Section 5(2)(g) of the *Broadcasting Act* does not risk undercutting its own objectives by directing the Commission to “minimize the regulatory burden” but, rather, when setting out regulation, to be “sensitive” to the “administrative burden” that such regulation may bring. Section 5(2)(g) goes to the method of regulation, not the fact of it. Section 5(2)(g) seeks mere efficiency of regulation, all else being equal. Subsection 8(a) of the draft Policy Direction, on the other hand, is ripe for misreading in such a way as to suggest that the Commission should broadly deregulate the sector.

The potential for this misreading should be eliminated by replacing 8(a) of the Policy Direction with language that matches that of section 5(2)(g) of the *Broadcasting Act*, referring to “administrative” burden.

In addition, the draft Policy Direction would benefit from something important that the Act contains: A conflict provision. Section 5(3) of the *Broadcasting Act* states that, “The Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).”

This conflict provision clarifies that the concerns of the Regulatory Policy, such as sensitivity to administrative burden, do not overrule the substance of what the *Broadcasting Act* is trying to achieve in the first place, namely to further the Broadcasting Policy for Canada in section 3(1). It reduces the possibility of the acceptance by the Commission that one single comment about “burden” does not negate the entire purpose of the Act, as broadcasters are effectively now arguing.

Section 8 of the draft Policy Direction broadly mirrors section 5(2) of the *Broadcasting Act*, in that both are concerned with how the Commission carries out its regulatory activities in pursuit of its goals. As such, like section 5(2) of the Act, section 8 of the Policy Direction should include a statement that it is subject to the pursuit of the substantive objectives of the *Broadcasting Act*, as well as sections 3-7 and 9-19 of the Policy Direction, and does not take precedence over those objectives or sections in the event of a conflict. In particular, section 8 should be expressly subject to section 4 of the draft Policy Direction on “Supporting Canadian programming,” and should state that the Commission shall give primary consideration to section 4 of the Policy Direction if, in any particular matter before the Commission, a conflict arises between section 4 and section 8.

Section 9

Section 9 of the draft Policy Direction provides an important direction on maximizing the use of Canadian creative and other human resources in the creation, production and presentation of programming in the Canadian broadcasting system. This language should not be weakened or removed. We would support anything that strengthened it further towards ensuring that the use of Canadian creative and other human resources is maximized in the Canadian broadcasting system for the support of Canadian creators.

Section 12

Section 12(e) of the draft Policy Direction directs the Commission, where appropriate for a given business model and set of objectives, to prioritize the imposition of requirements to make expenditures directly on the creation, production and presentation of Canadian programming.

Broadcasting undertakings, including foreign online undertakings, are using this language to argue that the Commission's modernization plan and framework, as announced in Broadcasting Notice of Consultation CRTC 2023-138, is inconsistent with the draft Policy Direction, in that it includes an "initial base contribution" to funding bodies.

The WGC believes this interpretation by these broadcasting undertakings is incorrect. "Prioritize" does not mean "do first" and/or "to the exclusion of anything else," and 12(e) specifies, "where appropriate for a given business model and set of objectives," and the Commission's plan may involve a set of objectives for which this approach is not appropriate. However, such arguments by these broadcasting undertakings, if accepted, could force the Commission to halt its entire process and start over, significantly delaying the implementation of the *Online Streaming Act* and threatening another of the Government's objectives in the draft Policy Direction, which is the timely implementation of the Act within two years. This cannot have been the Government's intention, nor an outcome it desires.

As such, given that the Commission has already launched its modernization proceeding, and this level of direction is not necessary for the Commission to move forward, we submit that the Government should delete section 12(e) of the draft Policy Direction.

Section 13

Section 13 of the draft Policy Direction is entitled, "Determination of Canadian programming."

Subsection 13(b) states that, in its determination of what constitutes Canadian programming, the Commission is directed to, "support Canadians holding a broad range of key creative positions, in particular those with a high degree of creative control or visibility."

This is an incredibly important direction to the Commission that should not be weakened or removed. It can, however, be further improved by including the concept of "Canadian authorial voice," and it should be so improved.

It is impossible to talk about Canadian programming in isolation from who makes it and, in the "writer's medium" of series television, who writes it. Art is made by artists; Canadian art is made by Canadian artists. "Canadian content" is typically creative content—in the broad sense of the word, it is art—so, such a statement should sit at the core of the expressly cultural legislation that is the *Broadcasting Act*, which is fundamentally about supporting Canadian content. A television script is not an outline, a set of suggestions, or "just the dialogue." It is, fundamentally, the production on paper. A script describes all the meaningful action that will take place on screen. It contains virtually all the lines to be spoken and establishes the characters who speak it. It describes the settings, locations, mood, and themes. It tells the beginning, middle, and end of the story. It describes the sets to be built and the props to be obtained or manufactured. It is the narrative of the production and the roadmap for everybody who

works on it subsequently. It is what the producer finances and produces, the dialogue the actors memorize, and what the director directs. The script is ground zero for the artistic vision, from art direction to wardrobe to pace, tone, and style. In dramatic television series, the importance of the scripts—and the writers who write them—is especially pronounced. As stated by television critic Tim Goodman in a 2018 article for *The Hollywood Reporter*, “Television is a writer’s medium. Always has been. ...Great dramatic television is serialized; the stories are ongoing, often from season to season, weaving a vast, multiple-hour tale.” It is difficult to overstate this fact. In serialized television, whether on traditional broadcast or streaming services, no other role is as creatively foundational as the showrunner and the screenwriters in their writing room that they manage. They are the authorial voice of the medium, and the Canadian authorial voice of Canadian content. The Canadian broadcasting system must place them at its centre.

This concept of “Canadian authorial voice” should be added to subsection 13(b), so that the section reads, in full:

(b) support Canadians holding a broad range of key creative positions, in particular those with a high degree of creative control or visibility, and who contribute a Canadian authorial voice to the production;

Finally, the Commission will have to consider residency of key creatives in the regulatory framework. Traditionally, the CAVCO points system, and the Commission’s own related system, functioned in terms of citizenship status. This may have made sense, given the otherwise geographical distinctions between the Canadian domestic industry and Hollywood. Such distinctions may soon be blurred or even erased. If so, the Commission will have to decide what a “domestic (English) Canadian production industry” means. We submit that it cannot mean a talent pool that has already left—or is further induced to leave—Canada for the United States, because the decisions on “Canadian programs” are largely made in Los Angeles by Americans.

To express this concept, we propose that the following be added, as subsection 13(h) of the Policy Direction:

(h) consider the Canadian residency of Canadians holding key creative positions;

Section 19

Section 19 states that the Commission is directed to prioritize the implementation of sections 13 to 16 of the Policy Direction. Broadcasting undertakings, including foreign online undertakings, are using this language to argue that the Commission’s modernization plan and framework, as announced in Broadcasting Notice of Consultation CRTC 2023-138, is inconsistent with the draft Policy Direction, in that it does not deal with the determination of Canadian programming first, before taking any other step.

The WGC believes this interpretation by these broadcasting undertakings is incorrect. “Prioritize” does not mean “do first” and/or “to the exclusion of anything else.” However, such arguments by these broadcasting undertakings, if accepted, could force the Commission to halt its entire process and start over, significantly delaying the implementation of the *Online Streaming Act* and threatening another of

the Government's objectives in the draft Policy Direction, which is the timely implementation of the Act within two years. This cannot have been the Government's intention, nor an outcome it desires.

At the same time, as stated above, the health of English-language Canadian screenwriters is in catastrophic decline, and regulatory support is needed immediately. The Government's own draft Policy Direction reflects the need of timely implementation. We understand that this view is shared by a number of other stakeholders in the Canadian cultural sector.

As such, we submit that the Government should amend section 19 of the Policy Direction so that refers to initial contribution requirements, and includes reference to section 4 of the Policy Direction, so that the section is amended as follows:

19 The Commission is directed to make changes to its regulatory framework that are necessary for the purposes of the implementation within two years after the day on which it comes into force. In doing so, the Commission is directed to prioritize the implementation of significant initial contribution requirements on online undertakings pursuant to section 4 and as well as sections 13 to 16, and to ensure that changes to its regulatory framework are made as soon as feasible and on a continual basis during that two-year period.

Yours very truly,



Neal McDougall
Assistant Executive Director, WGC

Cc: Ron Ahluwalia, Director of Policy, Office of the Minister of Canadian Heritage
Matthew Gray, Policy Advisor to the Minister of Canadian Heritage
Victoria Shen, Executive Director, WGC
WGC Council