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Mr. Claude Doucet
Secretary General
Canadian Radio-television and
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Ottawa, Ontario
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Dear Mr. Doucet:

Re: Broadcasting Notice of Consultation CRTC 2019-379-3 – Licence renewals for the Canadian Broadcasting Corporation’s English-language audio-visual services (2019-0282-5). Final reply by the Directors Guild of Canada.

A. Introduction

1. This is the final reply of the Directors Guild of Canada (the “DGC”) with respect to the renewal of the broadcasting licences for CBC’s English- and French-language audiovisual programming services. The DGC appreciated having the opportunity to appear at the January 2021 public hearing to elaborate on its past interventions and react to the presentation made by the President and leadership teams of the Canadian Broadcasting Corporation (hereinafter, the “CBC” or the “public broadcaster”).
2. The DGC’s comments in this intervention are limited to CBC’s comments and responses to the Commission’s questions made during the hearing. Once again, DGC’s comments in this intervention are equally applicable to CBC’s English- and French-language services.
3. The DGC appreciates CBC’s reply to the undertaking No.15¹ and its willingness to propose and elaborate on a new expansive regulatory framework, but has several reservations.
4. On the last day of the hearing, CBC’s CEO Catherine Tait acknowledged that CBC’s initial proposal for the next licence term may not go far enough: “Maybe our ‘bridge to the future’ should go further and include all of our digital activities.” The DGC fully agrees.

¹ 15. Provide your views on the most appropriate way to calculate a cross-platform CPE requirement if the Commission were to impose one coming out of this proceeding (Transcript reference: Vol 3, paragraph 3232)

5. CBC's spending and plans for its digital platforms (Gem and Tou.TV) has been at the centre of this proceeding. Missing data on digital has made the examination challenging. For example, in response to undertakings, we learn that the "Corporation's Strategic Plan and the new CRTC licence term do not align". The three-year Strategic Plan "*Your Stories, Taken to Heart*", was launched in May 2019. So, it is quite difficult to envision CBC's "bridge to the future" knowing that this strategic plan will soon expire.
6. From its very first intervention, the DGC's priority has been the implementation of a cross-platform approach with expenditure requirements for all CBC/Radio-Canada conventional and digital media platforms, which would include both CPE and PNI conditions of licence. This approach would preserve existing conditions of licences with exhibition hours requirements.
7. Since the beginning of this proceeding, the DGC has expressed support for CBC's diversification strategy – creating programming adapted to perform on each platform and responding to Canadian audience's shifting needs, whether they consume the content on linear TV or online platforms.
8. The DGC understands that CBC's future-facing strategy is platform-agnostic but notes that, as it stands, it is regrettably budget-agnostic, and does not consider the importance of budget transparency by genre. Budgets do matter, especially for PNI genres and categories.
9. Despite CBC's claims that they have an excellent record when it comes to CanCon, CPE is still a cause for concern. CBC leadership sidestepped the issue when asked to comment specifically on PNI, which according to them necessitates more flexibility.
10. By the same token, cross-platform PNI was not even mentioned by CBC in its reply to undertakings. Instead CBC introduced the notion of "programs of national consciousness" (PNSC), apparently as a replacement or proxy for PNI. No clear definition or policy rationale was provided for applying this alternate metric.
11. Regardless of any possible merits of using PNSC, a renewal proceeding – particularly the very end of one – is not the appropriate forum for changing established policy. Comparable metrics across the industry are essential and there is no rationale or past data we can use as a base to determine the efficiency and validity of PNSC.
12. Expenditures attached to specific genres encompassed by the PNI are the core of the PNI policy. Moreover, as established by the Commission in the Let's Talk TV process, and even more evident cross-platform, PNI is better described in terms of expenditure commitments than hours.

B. A more expansive regulatory framework for CBC

13. During the public hearing, the Commission raised the prospect of imposing cross-platform expenditure requirements on CBC/Radio Canada, which would apply to both the Corporation's linear network and online audiovisual services. In its response to undertakings, CBC suggested that the only practical approach is to treat all of CBC's online activities as a single undertaking and issue a single licence to the Corporation for CBC digital services. The DGC respectfully disagrees.
14. When examining how to implement a cross-platform system based on expenditures, several options present themselves. In contrast to the CBC, the DGC does not see the need to carve CBC digital services out of the Digital Media Exemption Order² (DMEO). A cross-platform expenditure approach could simply involve conditions of licence applied to linear licensed television services that 'extend' to CBC's digital media platforms by way of how compliance is calculated. This was an approach specifically contemplated by the Commission in 2019.³
15. CBC proposes the regulation of online audiovisual services as a 'practical' issue, submitting that all of CBC's online activities would be considered in a single undertaking, including alphanumeric content.
16. Far from being 'practical', we believe the CBC's proposal may be designed to appear so complicated as to deter the Commission from acting. In any event, if the Commission were to follow CBC's suggestion and carve CBC/Radio-Canada online services out of the DMEO, this would require the licensing of CBC/Radio-Canada's broadcasting activities over the Internet, but not all digital media services.
17. According to CBC, a combination of two regulatory approaches, namely exhibition and expenditure requirements linear and digital media services would represent "unduly burdensome regulatory obligations⁴":
18. The DGC disagrees. Private broadcasters have both exhibition and expenditures. And CBC has already been tracking both by service and platform, this information is just not being shared publicly.
19. To justify its proposed approach of exhibitions or expenditure requirements, but not both, the CBC invokes section 5(2)(g) of the Broadcasting Act concerning the administrative burden created by regulation.
20. CBC's plea for lesser requirements not only ignores the fact that the imposition of exhibition and expenditure requirements is common for private broadcasters, it also asks

² 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*), <https://crtc.gc.ca/eng/archive/2012/2012-409.htm>

³ <https://crtc.gc.ca/eng/archive/2019/2019-91.htm>

⁴ CBC's reply to undertakings, February 3, 2021, page 1.

us to ignore the fact that the Corporation draws a large part of its funding from a parliamentary appropriation. Here lies a contradiction between the nature and expectations of a public broadcaster and its search for flexibility.

21. While CRTC's Harnessing Change 2018 report did speak to introducing a "nimble regulatory approach", this does not mean the same rules should apply to foreign streaming platforms operating in Canada and the CBC. There is no valid argument to lessen requirements for the national public broadcaster.
22. There are several other reasons why the DGC disagrees with CBC's proposed approach.
23. First, CBC's proposal for a single licence for all digital services is inconsistent with the arguments made in its 2019 application for a group cross-platform approach based on exhibition hours. CBC repeatedly claimed the need for more flexibility to reallocate the programming budget between linear television and online platforms, which a group licence would provide.
24. Second, CBC's original programs made for CBC's linear television are made available on Gem. That flexibility is already embedded in CBC's programming system, which makes a group approach based on expenditure requirements a natural extension.
25. Third, if the Commission was to choose to create a separate or single licence for CBC's digital services, how should the Commission or CBC determine the allocation of funds for CBC digital services? Among other things, as projected by CBC, digital services are expected to grow in size, so how does one determine a fixed share of CBC's parliamentary appropriation to serve digital?

C. CBC/Radio-Canada publicly available data: what should be measured and reported.

26. Almost all interveners representing the audiovisual sector asked the CRTC in this proceeding to impose additional measurement and reporting requirements on CBC/Radio-Canada. We believe this would be a sound outcome.
27. For the purposes of a group cross-platform approach based on expenditures, the DGC believes the CBC should file the following data in addition to reporting on the existing conditions of licence during the next licence term:
 - a. Filing disaggregated digital revenues and operating expenses for English and French language digital platforms separately, for the purposes of the proposed cross-platform approach based on expenditures.
 - b. Provide further details with respect to expenses, including: programming expenses, Canadian programming expenses, and non-programming expenses by language market, with disaggregated numbers by platform (linear television or

digital media) for the purposes of the proposed cross-platform expectations for PNI.

- c. Provide end of year report with a breakdown of programming expenses by PNI category for both linear television and applicable CBC digital media platforms.

28. But reporting data is not always about compliance. Detailed and multiple data sets will inform the public on what has worked and did not work in terms of programming decisions and strategy, as well as for investments in specific genres. There is no actual risk of data overlap and each data piece will inform the reasoning to contribute to better regulatory policies

29. We noticed numerous contradictions in CBC's response about reporting to the undertakings:

“performance measures should be clear, transparent, verifiable, cost-effective, and informed by industry best practices. Where possible, measures should be from third-party vendors and allow for industry-wide comparison. Any measurement framework should be flexible, to adapt to new methodologies or change in methodologies⁵.”

30. Although CBC seeks lighter measurement, they admit that reporting should be clear, informed by industry best practices and allow for industry-wide comparison.

31. In its reply to undertakings, the CBC also mentions detailed reporting on programming expenditures by genre, but does not provide details⁶. The DGC suggests that CBC should report specifically for each genre and sub-genre of PNI programming.

A new template for data reporting

32. During the public hearing, the Commission sought feedback and recommendations from interveners on a new data reporting template for CBC.

33. The DGC believes that, as in most CRTC decisions and regulations, consistency should prevail. This is why the DGC recommends the CRTC model CBC's reporting requirements on those currently applicable to licenced private broadcasters, namely the production report to be completed annually by large English- and French-language ownership groups⁷.

⁵ CBC's reply to undertakings, February 3, 2021, page 6.

⁶ CBC's reply to undertakings, Social, Cultural and Economic Metrics, page 7

⁷ Broadcasting Information Bulletin CRTC 2019-304

The counting of original, first-run programming

34. In its September 30 2019 submission, the CBC proposed the following new condition of licence: “the Commission expects that the report on original, first-run programs will cover both the Corporation’s networks and its digital platforms⁸”.
35. Despite the new proposed condition of licence, the CBC did not state clearly how they are planning to report on original, first-run programming on linear networks and digital platforms.
36. Logically, original first-run programming has always been counted in terms of exhibition hours for linear TV. First-run programming online can and should still be reported, however, the DGC believes that original, first-run should also be counted by genre or category rather than just by hours. As demonstrated previously in this proceeding, exhibition hour requirements do not translate well online, and provide little value.
37. Again, the DGC has no issue with the new CBC proposed definition for original-first-run programming, but identified an issue related to reporting consistency between public and private broadcasters. In other words, the DGC believes that all licenced broadcasters should be subject to the same definition.
38. The CBC has admitted that a lot of library content, or content which had a first broadcast on linear networks, is available on Gem. We assume that the contrary is uncommon, meaning that many programs produced for the Gem platform are not broadcasted later on conventional television.
39. Nevertheless, CBC assured during the hearing that there would no “double counting” across platforms. But we note that the current PNI requirement for the main network is actually not for original, first-run programming. This condition of licence will only report on hours, which may open the door to repeats.
40. This regulatory context potentially creates a double counting issue, given CBC’s reporting method for original, first-run programming. Incidentally, we noted that original, first-run programming did not represent 100% of CPE in 2020, but is in decline and closer to 85% of total CBC English TV CPE⁹.
41. To avoid double counting, CBC should be required to file a comprehensive report of hours of original, first-run programs, by genre, for both the linear services and digital platforms, ensuring that a program can only counted once, whether it is broadcast on conventional or online. This report should also take into account the allocation of CPE and PNI expenditures between platforms.

⁸ New Proposed expectation by the CBC in its document⁸ from the September 30, 2019 proposal

⁹ CBC’s 2020 annual return,

https://crtc.gc.ca/public/5040/CBC_2020_Television_Aggregate_Return_public.pdf

D. DGC comments on CBC/Radio-Canada cross-platform approach based on expenditures

42. In its response to undertakings, the CBC did not propose a specific percentage for a cross-platform CPE or PNI. CBC's aggregate annual returns show that PNI expenditures have been as low as \$96.6 million in 2014 and as high as \$166.3 million in 2017.¹⁰ As a percentage of previous year's revenue, PNI has similarly fluctuated from a low of 13.5% in 2014 to 28.6% in 2018. Moreover, while in this proceeding CBC projected PNI expenditures of \$145.6 million in 2019 and \$154.4 million in 2020, its actual PNI expenditures were only \$134.2 million (7.8% lower) and \$126.8 million (17.9% lower) in those years, a drop well in excess of the 5% over/under margin acceptable for private broadcasters.
43. What the historical data teaches us is that CBC's projection for a 30% PNI level in 2021-23 are not credible. The DGC finds this is a compelling justification to introduce a group expenditure approach with minimum PNI requirements. A similar argument applies to CPE.¹¹ Based on CBC/Radio-Canada's total TV plus estimated Gem revenues, the DGC proposes a cross-platform 54% CPE and 28% expenditure commitment for PNI.
44. The new concept of TPE would replace the percentage of past revenues to calculate the yearly CPE and PNI levels. The DGC does not support this new approach, as it is not comparable with the private broadcaster's current calculation method, and not supported by current CRTC policy.
45. The CBC has proposed in its reply to undertakings that each of CBC and Radio-Canada would be subject to separate obligations with regards to their cross-platform expenditures requirements. The DGC consider this approach to be appropriate as the two different language market respond to two different realities.
46. We agree with CBC's proposal of standardizing¹² the calculation of CPE for the Doc Channel and other discretionary services. In the meantime, the DGC submits that the calculation of PNI should also be standardized for these services in order to maintain a baseline.

¹⁰ CBC's aggregate annual returns, <https://crtc.gc.ca/eng/industr/ann.htm>

¹¹ English TV Canadian programming expenditures have dropped precipitously from a high of \$492 million in 2014 to a low of \$274 million in 2017, or on a percentage of previous years' revenues, from 68.6% in 2014 to 37% in 2015

¹² This reflects the language the CRTC has used for CPE conditions of licence for other independent discretionary services that do not have a group-based CPE requirement (e.g., [Broadcasting Decision CRTC 2018-302](#)).

Programming budgets and spending requirements per program categories

47. As demonstrated previously, exhibition hours without expenditure requirements is irrelevant. And expenditure requirements without specific requirements for categories of programming is not sufficient.
48. The gap in budgets for a film or television director can be illustrated by the difference between shooting three pages and ten pages of script a day. How much time available to do the work has a material and measurable result in terms of the program impact and distinctiveness.
49. As stated by Radio-Canada's Executive Vice-President Michel Bissonnette during the public hearing, it is not the platform who justifies the level of investment, but rather the type of content¹³.
50. This takes us to the following important question: what type of content should CBC fund? In terms of economics, getting a series off the ground is one thing, but once it has been accomplished, the investment can be leveraged in many hours of programming. Understandably, this is not the case of a one-off documentary which can require a long research period or a feature film which will incur significant production costs.
51. There is another aspect of CPE and PNI programming that has not been covered: the regional question. CBC does provide regional reports, but we note that British Columbia and the Vancouver region are lumped together with the Western Region, made of the Prairies (Alberta, Saskatchewan and Manitoba). We believe that as an important production centre, programming spend in British Columbia (and the Yukon Territory) should be reported separately by CBC.

CBC's important support to feature films

52. The CBC has a responsibility to do more than replicate popular forms of programming such as scripted drama, or unscripted shows; it should provide material support for a genre that has not found a proper recognition in Canada – Feature Film. This would be a tangible means by which CBC would reflect its stated intention of not trying to compete with the foreign media behemoths in terms of programming choices.
53. Today, feature film remains the most impactful form of narrative creative expression, but also the riskiest. Canada's film industry is underappreciated yet unique. Canadian feature films can bring smaller, intimate and introspective stories that scripted series cannot always deliver.

¹³ Transcript, Virtual Hearing January 28, 2021, https://crtc.gc.ca/eng/transcripts/2021/tb01_28.htm
« 13131 Une des questions qui est revenue souvent pendant ces audiences est celle-ci : est-ce qu'une heure de programmation sur une plateforme numérique vaut moins qu'une heure à la télévision linéaire?
13133 Je l'ai déjà expliqué, ce n'est pas la plateforme qui justifie le niveau d'investissements, mais plutôt le type de contenu. »

54. The Canadian broadcasting landscape has long been deprived of Canadian feature film. And it is no secret that film theatre chains show little Canadian film either. . And while streaming platforms, including Gem, have some Canadian films, financial investments from such platforms are minimal.
55. In spite of this grim picture, data supports Canadians interest in viewing Canadian feature films particularly on television. According to a trend report¹⁴ commissioned by Telefilm Canada in 2015, home has been the preferred viewing location at 66% for movie consumption for Canadians, versus theatre/cinema with 27% and 6% for other locations. Paid streaming platforms are as popular as linear TV for watching movies in Canada, but broadcast television still has the furthest reach.
56. This represents a significant opportunity to bring Canadian feature films to Canadian audiences and CBC is uniquely equipped to contribute to the creation, broadcast and discoverability of feature films.
57. Support for feature film must start at the financing and development stage. The DGC is pleased to note the recently increased long-term support from the federal government for Telefilm Canada. But this is only a piece of the puzzle and broadcasters' commitment to feature films could be a game changer.
58. The CRTC regulatory policies in favour of scripted drama have generally worked well, but not for feature films. For commercial reasons, Canadian broadcasters have all but abandoned feature film. However, material support for feature films fits squarely into CBC's mandate of fostering cultural expression in Canada.
59. Unfortunately, despite encouraging words, CBC's actual investment in feature film remains very low, and is if anything dropping even further.
60. In its intervention, the DGC called for a new feature film expenditure requirement of 5% of CBC's English group revenues (which would include conventional television and online platforms). While CBC's financial projections indicated a 2% expenditure level (of English conventional TV) to feature film, annual returns for 2019 and 2020 reveal that even this far lower level was not achieved.

	2013	2014	2015	2016	2017	2018	2019	2020	2021
Gross CBC TV Revenues	717.5	799.5	615.2	665.4	508.6	586.7	489.6	478.5	
Gross CBC TV Revenue Proj.							505.8	488.4	478.2
CBC TV FF Expenditures		9.4	4.1	3.0	0.9	10.3	8.7	2.9	
CBC TV FF Expenditure Proj.							10.3	10.3	10.10
CBC TV FF Actual %		1.3%	0.5%	0.5%	0.1%	2.0%	1.5%	0.6%	
CBC TV FF Projected %							1.8%	2.0%	2.1%

¹⁴ <https://telefilm.ca/wp-content/uploads/audiences-in-canada-trend-report.pdf>

61. Contrary to CBC's projections for English conventional TV of roughly \$10 million annual spending on feature film for the new licence term, in 2019, the Corporation spent just over four fifths of that amount (or 1.5% of previous years' revenues) and in 2010, almost a quarter (or 0.6% of previous years' revenues). Given that these paltry amounts still actually exceed those of some previous years, particularly the less than \$1 million spent in 2017, it is clear that CBC's projection is meaningless, and that without a required regulatory spend on feature film, it will continue to receive little more than lip service from the Corporation.
62. This disconnect between words and action is particularly troubling, given that its cross-platform proposals make CBC an even more logical supporter and champion for this medium via the main service in prime time, or by making them available on Gem.
63. Accordingly, the DGC urges the Commission to impose a requirement that the Corporation invest from 3 to 5% of CBC's English group revenues (which will include conventional television and online platforms) on feature films.
64. CBC's current commitments to Canadian Feature film simply fall within its PNI exhibition requirements. It is however required to report on expenditures to categories 7c (Specials, mini-series, and made-for-TV feature films) and 7d (Theatrical feature films aired on television) on a combined basis.
65. It should be noted that made-for-TV movies (also called movies of the week (MOWs)) and theatrical feature films represent entirely different creative endeavours, effectively at two ends of the spectrum in terms of nature of talent and budgets. The first is a very consistent format and type of storytelling that is more akin to other television drama formats. Feature films on the other hand remain the quintessential form of storytelling. Feature films are diverse and they can be identified by the creative risk taken, the range and type of storytelling.
66. As the distinction between the two categories is evident, it is a mistake to lump them together when thinking about investment but also when reporting. The two categories should not be combined together.

Targets and goals for diversity groups

67. The DGC believes that the CBC has already undertaken structural changes within the organization to reach more inclusion and diversity as demonstrated in CBC's 2018-2021 Diversity and Inclusion Plan¹⁵ based on three pillars: content, workplace culture and workforce.

¹⁵ <https://cbc.radio-canada.ca/en/impact-and-accountability/diversity-and-inclusion/diversity-and-inclusion-plan/2018-21-journey>

68. The DGC also notes that CBC has become a gender parity leader, surpassing the goal of gender parity across all independently produced original, scripted and unscripted Canadian television shows on linear and digital platforms.
69. CBC has proposed a condition of licence to report annually on its effort to achieve a better representation of Indigenous staff, producers and programming budgets commissioned from Indigenous producers.
70. We understand that CBC will provide annual statistics regarding diversity in CBC/Radio-Canada's commissioned programs on the production side (i.e., diversity in key creative positions). CBC's commitment to serve more on and off-screen diversity groups is laudable, but the only way to ensure the change will materialize is to set targets, the same way gender parity was achieved in recent years.

E. Conclusion

71. The CBC licence renewal process has been a challenging one for all stakeholders, as the CRTC seeks to implement the right regulatory framework for CBC's increasingly cross platform programming strategy. Given that CBC's digital activities now represent close to 20% of its revenues, the DGC urges the CRTC to adopt a group licence approach based on cross-platform expenditures – a proven and flexible regulatory tool.

All of which is respectfully submitted.

Directors Guild of Canada



Dave Forget,
National Executive Director

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