Writers Guild of Canada

June 14, 2024 **Filed Electronically**

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

Dear Mr. Morin:

Re: Submissions on Proposed Conditions of Service Relating to Base Contributions, Broadcasting Notice of Consultation CRTC 2023-138: the Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content

1. The Writers Guild of Canada (WGC) is the national association representing approximately 2,500 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming.

Timing of Payments

2. In Broadcasting Regulatory Policy CRTC 2024-121 (the Policy), the Commission stated that it will:

> …require that applicable online undertakings devote at least 5% of their annual contributions revenues from the previous broadcast year to support the creation of Canadian and Indigenous content in each year, starting in the 2024-2025 broadcast year (i.e., 1 September 2024 to 31 August 2025).[1]

3. In the proposed Condition of Service 1 as set out in the Appendix to the Policy, the Commission proposed that such online undertakings do so, “by 31 August of each broadcast year.”

4. A potential result of this wording in the proposed Condition of Service is that recipients of base contribution amounts may have to wait until 31 August 2025—approximately 14 months from the release of the Regulatory Policy—until they receive any money whatsoever from online undertakings.

[1] Para. 100.

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5. The Commission itself has recognized the time-sensitive nature of the base contribution and its rationale. The Commission stated in the Policy that, "The contributions will be directed to areas of immediate need," and that it has relied on existing funds as much as possible to, "ensure that these areas receive contributions quickly."[2] The objective of contributions being provided quickly to address areas of immediate need is not realized by allowing online undertakings to wait over a year before they need to make a single payment.

6. As such, and in light of the Commission's own stated objectives in the Policy, the WGC proposes that the Commission add language to the proposed orders imposing conditions of service and expenditure requirements for carrying on certain online undertakings requiring monthly payments beginning in September, 2024. This would be consistent with section 36 of the *Broadcasting Distribution Regulations*, SOR/97-555.[3] Section 36 already provides a monthly payment model, including the ability to make payments for September, October, and November based on estimates that may subsequently be corrected. Section 36 also provides existing language to accomplish this, which can be either adapted to the text of the applicable Condition of Service or incorporated by reference to the regulation.

7. We note that the monthly payment requirement in section 36 was the direct result of the events of the winter of 2006/2007, during which the broadcasting distribution undertakings (BDUs) of two major broadcasting companies, Shaw Communications Inc. and Quebecor Media Inc., withheld contributions to the Canadian Television Fund (CTF), as the Canada Media Fund (CMF) was then called. Such payments had been made on a monthly basis as a matter of practice, but this was not strictly required by law. The funding crisis sent shockwaves through the sector, ultimately resulting in a public process and the Commission's "CRTC Report to the Minister of Canadian Heritage on the Canadian Television Fund," in which the Commission undertook to, "amend the *Broadcasting Distribution Regulations* to require that BDUs make their contributions to the CTF on a monthly basis."[4]

8. As such, the potential for financial contributions to be significantly delayed, and the substantial negative impacts upon the Canadian production sector as a result of that delay, are not hypothetical. They have occurred in the past, and we submit that the Commission should ensure that they do not occur again in the future. This is best achieved by implementing a monthly payment requirement as set out in section 36 of the *Broadcasting Distribution Regulations*.

Incentive for certified Canadian content

9. As stated in Broadcasting Regulatory Policy CRTC 2024-121:

> As previously noted, foreign online services argued that they already make significant expenditures on Canadian productions and that these should be considered as part of the base contributions. To provide flexibility and to encourage online undertakings to produce Canadian content, the Commission will allow online undertakings to contribute up to 1.5% of their annual contributions revenues derived from audio-visual activities to the production or acquisition of certified Canadian content – the remainder (0.5%) must be

[2] Summary. Emphasis added.
[3] https://laws.justice.gc.ca/eng/regulations/SOR-97-555/page-6.html#h-1011074
[4] https://crtc.gc.ca/eng/publications/reports/ctf080605.htm

allocated to the CMF. Should online undertakings avail themselves of this incentive, these expenditures can only be deducted from their contribution requirement to the CMF (2%).[5]

10. The logic implicit in this approach is that there is an equivalency between a contribution to the CMF on the one hand, and a contribution to the production or acquisition of certified Canadian content on the other. Indeed, it would make no sense for the Commission to offer a regulated entity a choice between alternatives that resulted in vastly different outcomes from each other, since such a choice would not be a question of the "flexibility" of difference of means to the same outcome, but a difference of ends—i.e. a difference of outcomes.

11. In this case, the Commission has proposed an "alternative" or "incentive" which does just that, resulting in vastly different outcomes depending on the alternative chosen. In the case of the CMF, funding goes to the production of new, original content, and does not result in the acquisition of pre-existing "library" content that was produced some time ago.[6] The Commission itself states above that the purpose of the incentive is, "To provide flexibility and to encourage online undertakings to produce Canadian content". This objective is not advanced through the acquisition of "library" content.

12. When it comes to original production, the CMF is a 10-point fund[7] which, crucially, requires the involvement of a Canadian screenwriter, a key creator and the Canadian authorial voice of serial drama in particular, and a role that the WGC has described at length as being absolutely vital to the cultural and creative identity of the production.[8] Meanwhile, certified Canadian content requires only 6 out of 10 points. Finally, the CMF funds linear programming from select genres of drama, documentary, children's & youth programming, and variety & performing arts.[9] As the Commission has said, "Drama programs[10] and documentary programs are expensive and difficult to produce, yet are central vehicles for communicating Canadian stories and values."[11] This contrasts with "certified Canadian content," which can presumably be in any genre recognized by the Commission, including sports.

13. The Commission itself has recognized in the Policy that, "the CMF is a well-established fund that plays an important role in the funding of audio-visual productions in the broadcasting system."[12] Given this, the WGC respectfully submits that the "incentive" as currently drafted is not consistent with the Commission's own findings and determinations in the Policy, as it does not recognize the incredibly significant differences between the offered alternatives. As such, the WGC proposes the following amendment to the proposed Condition of Service 1(a) as set out in the Appendix to Broadcasting Regulatory Policy CRTC 2024-121:

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[5] Para. 133.

[6] https://cmf-fmc.ca/our-programs/

[7] CMF, Core Production Guidelines, section 3.2.1. (https://cmf-fmc.ca/document/core-production-guidelines/).

[8] E.g. WGC written submission in this proceeding, Broadcasting Notice of Consultation CRTC 2023-138, paras. 31-43.

[9] CMF, Core Production Guidelines, section 3.2.2. (https://cmf-fmc.ca/document/core-production-guidelines/).

[10] Which includes drama programs targeted to children and youth.

[11] Broadcasting Regulatory Policy CRTC 2010-167, para. 71.

[12] Para. 129.

(a) not less than 2% to the Canada Media Fund. The operator may deduct certified Canadian content expenditures <u>for original production in the genres that are eligible for funding by the Canada Media Fund, and which have achieved 10/10 points (or the maximum number of points appropriate to the production), using the Canadian Audio-Visual Certification Office scale,</u> of up to 1.5% of the contribution for this initiative. Of that 1.5%, a maximum of 60% of these expenditures can be allocated to English-language productions and a maximum of 40% to French-language productions;

14. This language has been adapted, where appropriate, from the CMF guidelines themselves, so as to align the wording to the greatest degree possible.[13]

15. We submit that such a Condition of Service would better align the fundamental natures of the 2% CMF contribution and the "incentive" provided therein, and better match the applicable Condition of Service to the substantive meaning and intent of the Policy.

<u>Closing</u>

16. We thank the Commission for the opportunity to have participated in this process.

Yours very truly,

Neal McDougall
Assistant Executive Director, WGC

Cc: Victoria Shen, Executive Director, WGC
Council, WGC

[13] CMF, Core Production Guidelines, section 3.2.1. (https://cmf-fmc.ca/document/core-production-guidelines/).

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