

January 20, 2025

Filed Electronically

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

Dear Mr. 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

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 and Indigenous programming.

EXECUTIVE SUMMARY

- ES.1 In a series, no other role is as **creatively foundational as the showrunner and the screenwriters** in the writing room that they manage. They are the authorial voice of the medium, and the **Canadian authorial voice** of Canadian content.
- ES.2 As such, the WGC **emphatically agrees with the Commission’s proposal that the showrunner position must be occupied by a Canadian** wherever such a role exists.
- ES.3 Central to any complete and accurate **definition** of “showrunner” is that **a showrunner is a screenwriter, and their core roles and competencies include writing**. As such, the WGC proposes the following definition of “showrunner”: **“A showrunner is a writer-producer who is the chief custodian of the creative vision of a series and whose primary responsibility is to communicate the creative vision of that series through control of both the writing process and the production process—often from the pilot episode through to the finale.”** This definition is consistent with the report for the Cultural Human Resources Council, entitled “Training Gap Analysis: Showrunners in Canadian Television,” which was the basis of the Commission’s own starting point in initially proposing a definition in Broadcasting Notice of Consultation CRTC 2018-488.
- ES.4 The fact that “showrunner” is not a credit in itself, but rather is a role, means that **the Commission must take the utmost care both in its definition and in how it administers and enforces that definition**. A showrunner role typically exists in series drama, including animation, where it is more commonly referred to as a “head writer”. Given the importance of the showrunner and the newness of its recognition in the Commission’s policy framework, it will be important that the definition be rigorously enforced and its application publicly reported.

- ES.5 At least **for the positions of showrunner and screenwriter, the definition of “Canadian” should also include that they are a resident of Canada at all relevant times**, with Canadian residency as **defined for tax purposes by the Canada Revenue Agency**. This is because the inclusion of foreign online undertakings within the regulatory framework for broadcasting, as a correct and necessary step to support the Canadian broadcasting system of today, will almost certainly change where development executives and other content commissioners for Canadian programming are located and, consequently, the talent pool from which they choose to draw. The inclusion of foreign online undertakings in the Canadian broadcasting system should not result in the unintended consequence of increasing Canada’s talent drain by incentivizing more Canadian creators to leave the country in order to get the attention of California-based development executives.
- ES.6 The **two points for “Screenwriter” should also be required to be Canadian** for a production to be certified as Canadian. Having recognized the immense importance of the showrunner to the creative identity of programming, the Commission now has an opportunity to take the next logical step, and ensure that the writing rooms that showrunners lead are themselves Canadian. In addition, the WGC supports a modified version of Recommendation #67 of the Broadcasting and Telecommunications Legislative Review Panel, namely that the Commission should set a requirement that **all key creative positions be occupied by Canadians on a reasonable and robust percentage of new Canadian dramas and long-form documentaries**.
- ES.7 The WGC **disagrees with the Commission’s “80% proposal”** because: it is unclear how this approach would incentivize more collaboration and partnerships between Canadian foreign creators or why that is necessary; it seems more likely to create more pressure to insert non-Canadian creatives into an otherwise Canadian writing room; and, it is practically unworkable and ripe for abuse, because screenwriters do not necessarily contribute equally to a production and their contributions cannot easily be expressed as a percentage, so it is possible for broadcasters, streamers, or others to game the system by ensuring that the 20% of non-Canadians do the lion’s share of the writing. The practice of points “averaging” represents significant flexibility on points already.
- ES.8 The WGC stridently and unequivocally **disagrees with the view that the current approach to programs of national interest (PNI), as it pertains to the targeted support of dramas and documentaries, is no longer needed**. Canadian dramas and documentaries—i.e. the genres included in the Commission’s current program categories 2(b), “Long-form documentaries,” and 7, “Drama and Comedy” —are absolutely, in the Commission’s words, “risky to produce and difficult to monetize,” and there is nothing about the on-demand world or the business models of foreign streamers that makes them less so in that context. Their budgets tend to be high, particularly in drama, costing millions of dollars per hour, and this is just as true for on-demand platforms as any other, because the costs are for production of the content, not how the content is distributed or consumed. The robust presence of *non*-Canadian dramas and documentaries on many major foreign streaming services should not provide any comfort or assurance that the same would be the case for *Canadian* dramas and documentaries if and when those services have a Canadian programming expenditure (CPE) obligation imposed upon them. Foreign streaming services also have lower-cost, lower-risk genres like lifestyle and reality programming. Canadian linear broadcasters already prefer spending on those genres over PNI, even as they *also* spend hundreds of millions of dollars annually on *non*-Canadian PNI genres, and foreign streamers can be expected to do the same. The WGC’s own data, appended to this submission, demonstrates that even in their strongest years, massive U.S. streamers have only ever commissioned a small fraction of the hours of programming from WGC members that

Canadian broadcasters have, and this is at great risk of continuing without PNI obligations. Elimination of the PNI policy would be an incredibly risky step for the Commission to take. The Commission made a similar bet in 1999 and lost. No evidence supporting the Commission’s preliminary view in this respect is on the public record, so such evidence should be put there, in the absence of which the safer step is to apply PNI obligations to the large streamers and Canadian broadcasting groups where such obligations are appropriate. Incentives are unlikely to be successful in obtaining the outcomes that the *Broadcasting Act* seeks because incentives only work if they are big enough to make it worth the while of the entity being incentivized, and the larger foreign online undertakings are so massive as to be able to easily eschew any incentive that the Commission could realistically offer in exchange for the ability to simply do what they want.

- ES.9 The question of how the Commission can impose **equitable requirements** that respect the different business models of the various undertakings and broadcasting groups is large, complex, and challenging one for stakeholders and the public in the absence of more data on the public record, particularly with respect to foreign online undertakings. Ultimately, however, the Commission should relate to the goal set by the government of **\$1 billion in new annual spending** on Canadian programming and work backwards from that.
- ES.10 **AI-generated material should not be considered Canadian content.** In the Notice of Consultation, the Commission is rightly focused on defining Canadian programs primarily in relation to the Canadian identity of those who occupy key creative roles and questions of financial control and intellectual property ownership by Canadians. Artificial intelligence outputs are not consistent with any of this. Current generative AI does not “think,” nor does it create like humans do, and even if it did, recognizing it as “Canadian content” would not advance any of the objectives of the *Broadcasting Act*. Prompting a generative AI is not the same as creating content, as it is fundamentally the AI technology that generates the output, not the human being inputting the prompts, so a Canadian inputting prompts does not make the outputs “Canadian content”. With respect to screenwriting, generative AI should have minimal impact, because it should be excluded as much as possible from the writing process. The WGC has already negotiated clear parameters and guardrails on the use of generative AI in its collective agreement with the Canadian Media Producers Association (CMPA), the Independent Production Agreement (IPA), which should be considered industry-standard with respect to screenwriting in the English-Canadian market.
- ES.11 The WGC **supports the objectives of equity, diversity, and inclusion.** Our 2024 Equity, Diversity and Inclusion (EDI) Report was released in October, and shows a decline in work opportunities that jeopardizes the hard-fought progress made by the WGC to establish a growing pool of diverse working writers within the industry. We have also released a guide of Best Practices for Producers Working with Diverse Screenwriters, which is intended as a tool for producers seeking to hire diverse screenwriters, build strong creative partnerships, and foster working environments that are conducive to authentic storytelling. We will review the submissions of others in this proceeding and may make additional comments in this regard.
- ES.12 The WGC agrees with the Commission’s preliminary view that cultural elements should not be included within the certification framework. The Commission should continue its approach where, if a production does not have a sufficient number of key creative positions to attain the minimum 6 points, all key creative positions of a production must be filled by Canadians. The Commission should not apply its points “averaging” practice for series to mandatory showrunner points. The realities of the English- and French-language markets remain different and unique, and it is appropriate for the

Commission to take different approaches in each market. The WGC agrees with the Commission's view that the 75% threshold should be maintained.

ES.13 With respect to **data and reporting**, the Commission should prioritize public transparency and accountability in the broadcasting system, confidentiality should not be presumed, the onus for proving confidentiality should be on the broadcasting undertaking claiming it, and the standard for granting confidentiality should be high. The Commission should set out detailed reporting requirements for all broadcasting undertakings operating in Canada, regardless if they are Canadian or foreign, and whether they operate on traditional or online platforms. The Commission should require the public disclosure of the revenues and programming expenditures of all broadcasting undertakings subject to CPE requirements. This information should be as detailed as possible. The public disclosure of aggregate financial returns for owners of large broadcasting groups (the Aggregate Annual Returns) first required under Broadcasting Regulatory Policy CRTC 2009-560 serves as a useful model for reporting by all broadcasting undertakings, including online undertakings. As a general data reporting principle, reporting should correlate to how the Commission is actually regulating. All broadcasting undertakings subject to CPE requirements should also be required to file production reports annually, which should include language, region, producer information, and Canadian certification number. It should also include information on whether the spending is on new commissioned programs (sometimes referred to as, "original, first-run") or acquisitions (sometimes referred to as "library programming/content"). The production report should also include the number of key creative points a production has attained and which key creative roles were filled by Canadians. Given our concerns stated above about the application and enforcement of the new showrunner role in the points system and subject to alternative safeguards, the names of the showrunners claimed on applicable productions should also be published.

DEFINITION OF "CANADIAN PROGRAM"

Key Creative Positions

1. In the Notice of Consultation for this proceeding (the Notice), the Commission has correctly zeroed in on the key creative positions held by Canadians in the production of a "Canadian program" as a core element of its definition. As we have stated before, including in our submissions to Broadcasting Notice of Consultation CRTC 2023-138,¹ art is made by artists, and Canadian art is made by Canadian artists. In creative work, the link between creator and creation is well-recognized, from fans and arts scholars to the relationship at law between "authors" and "works" under the *Copyright Act*. No other factor is more determinative to the nature and character of a creative work than the creator(s) who created it. Creators put forward a creative vision that is an expression of themselves as individuals, while also reflecting and refracting the social, political, and cultural environment in which they were raised and inhabit. There is no better way to ensure that programs are Canadian than to ensure that those who make them are.
2. The *Broadcasting Act* sets out its objectives in the Broadcasting Policy for Canada, many of which can only effectively be realized through the contributions of Canadian creators. They include that the Canadian broadcasting system: provides, through its programming, a public service essential to the maintenance

¹ <https://www.wgc.ca/sites/default/files/resource/2023-07/Broadcasting%20Notice%20of%20Consultation%20CRTC%202023-138%20The%20Path%20Forward%20.pdf>, in particular, paras. 31-43.

and enhancement of national identity and cultural sovereignty;² should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;³ should encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity;⁴ should, through its programming and the employment opportunities arising out of its operations, serve the needs and interests of all Canadians, in all their diversity;⁵ and, that each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking.⁶

3. The Government has provided further guidance via *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework): SOR/2023-239* (the Policy Direction).⁷ In particular, the Policy Direction states:

In its regulation of the Canadian broadcasting system, the Commission is directed to ensure that the system maximizes the use of Canadian creative and other human resources in the creation, production and presentation of programming in the Canadian broadcasting system, taking into account the effects of broadcasting undertakings, including online undertakings, on economic opportunities and remuneration for Canadian creators.⁸

4. The Policy Direction further 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”.⁹
5. This emphasis on creative positions “with a high degree of creative control” is especially vital. In the context of audiovisual programming, dramatic series and animation in particular, it means screenwriting. While there are a number of creative positions involved in an audiovisual production, not all of them have the same degree of overarching creative control over the entire program. In this context, the role that has the *highest* degree of creative control is the writing role.
6. In audiovisual production—and especially in genres like drama, comedy, animation, and children’s programming—creative work starts with, and is founded upon, screenwriting. A script is, fundamentally, the production on paper. It 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. 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.

² Section 3(1)(b).

³ Section 3(1)(d)(i).

⁴ Section 3(1)(d)(ii).

⁵ Section 3(1)(d)(iii).

⁶ Section 3(1)(a.1).

⁷ <https://canadagazette.gc.ca/rp-pr/p2/2023/2023-11-22/html/sor-dors239-eng.html>

⁸ Section 9.

⁹ Section 13(b).

7. The vital role of screenwriting in defining national content has been recognized by other writers across multiple international jurisdictions. The WGC is a member of the International Affiliation of Writers Guilds (IAWG), which also includes the the Société des auteurs de radio, télévision et cinéma (SARTEC), the Writers Guild of America (WGA), East and West, La Guilde Française des Scénaristes (France), the New Zealand Writers Guild, and the Writers Guild of Great Britain, among a number of others.¹⁰ On October 3, 2023, at its Annual General Meeting in Montreal, Canada, the IAWG issued a “Statement on Canadian National Content,” in which it called on the Government of Canada and the CRTC to recognize that: 1) Canadian domestic film and television production written by Canadian screenwriters working in English and French is essential to maintaining the distinct cultural identity of Canada; 2) Canadian screenwriters are the authorial voice and foundational to the production of Canadian television, film and digital media; and, 3) “Canadian program” is content written by Canadians. This statement is appended to this submission at Appendix “A”.
8. In a series, no other role is as creatively foundational as the showrunner and the screenwriters in the writing room that they manage. They are the authorial voice of the medium, and the **Canadian authorial voice** of Canadian content.

The Showrunner must be a mandatory Canadian position

9. The WGC **emphatically agrees with the Commission’s proposal that the showrunner position must be occupied by a Canadian** wherever such a role exists.¹¹ The WGC applauds the Commission for recognizing this crucial role in the production of Canadian programming which is, above all else, a writing role.

The two points for “Screenwriter” should also be required to be Canadian

10. Vying in importance with the showrunner for creative control is the team of screenwriters that the showrunner oversees. While the showrunner leads and orchestrates the writing room, the member screenwriters of that room are integral components of it. They don’t just follow instructions from the showrunner—they provide their own ideas and input in an environment of robust creative collaboration. Equally importantly, each screenwriter is typically assigned one or more scripts to write and, in the process, translate their own particular take on the shared creative vision in dialogue, characters, story beats, and all the other core elements of a script.
11. The WGC submits that the Commission has an opportunity to take the next logical step, and ensure that these writing rooms are themselves Canadian. While requiring that the showrunner be Canadian is an essential step to protecting the identity of a production, we know from experience that content commissioners—broadcasters, streamers, distributors, and other financiers—may exert pressure on the showrunner to hire particular writers for their room, often preferring those with an international “name”. A good showrunner will resist this pressure and staff their writing room with who they think is best suited to the task. But Canadian showrunners will also benefit from the support of the Canadian regulatory system by ensuring that **screenwriter points must also be Canadian in all cases**.

¹⁰ <http://iawg.org/>

¹¹ Broadcasting Notice of Consultation CRTC 2024-288, para. 16.

Other key creative positions and “full points” productions

12. The WGC also recognizes and supports the vital role that other key creative positions have in the creation of Canadian programming. This includes directors, performers, and music composers, among others. We believe there is a crucial place in the system for productions that engage Canadians in all of the points-earning positions. As such, we support Recommendation #67 of the 2020 report of the Broadcasting and Telecommunications Legislative Review Panel, namely that, for applicable undertakings, the Commission, “should set an expectation that all key creative positions be occupied by Canadians on a reasonable percentage of [new Canadian dramas and long-form documentaries],” and, if the expectation is not met over time, the CRTC should consider converting it to a requirement.”¹² The WGC submits that this “reasonable percentage” should be robust, and proposes that the Commission go directly to making it a requirement. Section 9 of the Policy Direction, quoted above, directs the Commission to maximize the use of Canadian creative and other human resources in the creation, production and presentation of programming in the Canadian broadcasting system, and the WGC wholeheartedly supports this objective.

Showrunner and Screenwriter positions should be Canadian residents

13. As the Commission is aware, for the purposes of the points system, a “Canadian” (individual) is, “A person who is, at all relevant times, a Canadian citizen as defined in the *Citizenship Act* or a permanent resident as defined in the *Immigration and Refugee Protection Act* who has received a Permanent Residence Certificate.”¹³ This approach is consistent with that of the Canadian Film or Video Production Tax Credit (CPTC).¹⁴

14. A focus on citizenship and permanent residency has made sense for much of the history of the Canadian broadcasting system. Prior to the passage of the *Online Streaming Act*, only traditional Canadian broadcasters were effectively regulated by the *Broadcasting Act*. These broadcasters were owned and controlled by Canadians, they had their places of business in Canada, and the production resources they engaged with, including Canadian creative talent, was part of a domestic Canadian industry that was itself based largely in Canada. Broadly speaking, Canadian broadcasters employed Canadian development executives who were themselves Canadians living in Canada, to commission original Canadian programming from a production sector that was based in Canada, comprised of Canadian creative and other human resources, themselves living and working in Canada. If and when a Canadian citizen moved abroad for work, such as to the United States, they typically left Canada, became resident of that other jurisdiction, sometimes gained citizenship there, and effectively became part of that non-Canadian audiovisual industry.

15. The passage of the *Online Streaming Act*, and the consequent inclusion of foreign streamers within the regulatory framework for broadcasting, will almost certainly change this dynamic. In a post-Bill C-11 world, at least with respect to the English-language market, Canadian content commissioners will not solely be development executives working out of the Toronto offices of Bell Media Inc. or Corus Entertainment Inc. They will largely be development executives working for Netflix or Disney+ or Amazon

¹² *Canada's communications future: Time to act*, (<https://ised-isde.canada.ca/site/broadcasting-telecommunications-legislative-review/en/canadas-communications-future-time-act>), s. 3.4.3 Digital disruption of regulatory funding models, “Why should we support Canadian television drama?”.

¹³ <https://crtc.gc.ca/canrec/eng/guide1.htm>

¹⁴ Application guidelines - Canadian Film or Video Production Tax Credit (CPTC), Canadian Audio-Visual Certification Office (CAVCO), Published March 3, 2020, section 6.01. (<https://www.canada.ca/en/canadian-heritage/services/funding/cavco-tax-credits/canadian-film-video-production/application-guidelines.html>)

Prime. As such, they may not be working out of Toronto, but from offices in Hollywood, California. They will be from and of that industry. And they may be based in the U.S., be integrated into the Hollywood system, and will have every reason to seek to hire from the talent pool there, especially given the many Canadian citizens that now work very successfully as screenwriters in Los Angeles.

16. The WGC recognizes that a person doesn't stop being a Canadian simply by virtue of crossing our borders. At the same time, the *Broadcasting Act* exists to support the *domestic* Canadian broadcasting system, and the people that comprise that system, because of the failure of the Canadian market alone to support it. The Canadian broadcasting system should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.¹⁵ We submit that it should *not* result in the unintended consequence of *increasing* Canada's talent brain drain by incentivizing more Canadian creators to leave the country. If the result of the *Online Streaming Act* is to create Canadian content commissioning centres in California rather than Canada, this could have the perverse result that, for a Canadian creator to work on a Canadian show, they will have to leave Canada and move to the United States in order to get the attention of California-based development executives. The *Online Streaming Act* has rightly included foreign streamers into the Canadian broadcasting system—we now have to ensure that that inclusion does not have unintended consequences for the Canadian talent pool.
17. This is of particular risk for showrunners and screenwriters, given the unique nature of the development process. Content development is predominantly writing. Writing can be done anywhere, but the reality of our industry is that broadcaster and streaming executives who greenlight projects want to be involved and want to be close to the process. Given how foundational writing is to the audiovisual production process—as we've described above—control and oversight of this phase is closely guarded by those making the financial investments. For these reasons, it is not just possible, but probable, that a key-creatives point system that ignores Canadian residency will result in a “domestic sector” that is dominated by writing rooms based in Los Angeles, and most accessible to those who left Canada long ago or, at best, are prepared to abandon their lives and careers here to go there, even where the production is shot in Canada with Canadian-resident casts and crews.
18. As such, we propose that, at least **for the positions of showrunner and screenwriter, the definition of “Canadian” also include that they are a resident of Canada at all relevant times.**
19. We propose that Canadian residency be defined as it is for tax purposes. As stated by the Canada Revenue Agency (CRA):

The [CRA] administers film and media tax credits for the federal government and the provinces of British Columbia, Ontario and Manitoba. These tax credits are generally based on qualifying labour expenditures paid by corporations to their employees and other qualifying individuals who are residents of Canada.¹⁶
20. The CRA already has well-established rules for determining Canadian residency for these purposes. The WGC proposes the straightforward adoption of these definitions and their interpretation into Canadian residency requirements for the purposes of the key creatives points system, at least with respect to the showrunner and screenwriter roles.

¹⁵ *Broadcasting Act*, s. 3(1)(d)(i). Emphasis added.

¹⁶ <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc642/film-media-tax-credits.html>

21. If the Commission chooses not to make Canadian residency a requirement for key creative points as we've proposed, we ask that the Commission collect data on this subject, so that it and the public can understand the impact of the legislation on this point. This will allow the Commission, the WGC, and the general public, to understand if increased "brain drain" has indeed been an unintended consequence of the legislation and provide a timely opportunity to quickly reverse it. If the unintended consequences occur and the Commission cannot act quickly, the damage could be generational.

Points "averaging"

22. In the Commission's Program Certification Guide,¹⁷ under "Point System – Exceptions," for series, it states that the Commission, "may certify any episodes in a series that do not meet the six-point requirement, so long as: At least 60% of the series episodes attain 6 points or more; The episodes are broadcast or otherwise distributed at equitable times; The entire series attains an average of 6 points per episode." This could be described as points "averaging" over a season or cycle.

23. Such an approach would clearly not be appropriate with respect to mandatory points for the showrunner, since the showrunner oversees an entire season or cycle of a series, and often multiple seasons/cycles. It would be contrary to the spirit and intent of the Commission's preliminary view to allow a non-Canadian showrunner to oversee some episodes of the same show and to use some kind of "averaging" process to certify the program. Indeed, this is antithetical to the entire concept of a showrunner.

24. With respect to the "Screenwriter" points, if the Commission adopts the WGC's proposal to make these points mandatory, then the same logic would apply, and the Commission should follow the approach of the Canada Media Fund (CMF) for these points, which states, "For a series (or mini-series, as applicable), the Essential Requirements [which includes the 10-point requirement] apply to each episode of the cycle, even if all episodes are not submitted for CMF funding."¹⁸

25. Finally, the Commission makes no mention of this points "averaging" practice in the Notice, while also stating that "flexibility" is required, particularly with respect to its "80% proposal" at Q7. If the Commission chooses to retain "averaging" for non-mandatory points, then it must recognize it as an existing form of flexibility, which seriously undermines any argument that yet more flexibility is necessary.

Q1.

26. The Commission should continue its approach where, if a production does not have a sufficient number of key creative positions to attain the minimum 6 points, all key creative positions of a production must be filled by Canadians. In the event that the minimum points requirement is changed from 6 to some other number, the same approach should apply to that minimum as well. To do otherwise could incentivize productions to not engage certain roles simply to meet regulatory requirements, and/or to delegate the duties of those roles to other positions that will do the job of the role without taking the official title or credit.

¹⁷ <https://crtc.gc.ca/canrec/eng/guide1.htm>

¹⁸ Canada Media Fund, Linear Content Programs, Core Production Guidelines, 2024-2025 (<https://cmf-fmc.ca/document/core-production-guidelines/>), section 3.2.1.

Q2.

27. The WGC shares the concerns of the Screen Composers Guild of Canada (SCGC) with respect to this proposal. In particular, the WGC is concerned to see points for “key creative positions” being awarded to what is fundamentally not a key creative position but, instead, a rightsholder. A rightsholder is not a key creative position, it is simply an entity that has purchased applicable rights, and the WGC is concerned both with the Commission’s proposal and with the precedent it could set towards eroding what a key creative position fundamentally means.

Q3.

28. The Commission’s preliminary view includes a vitally important element to ensure that the creative direction and control of a Canadian program remain Canadian; namely, that where there is a showrunner, that position must be occupied by a Canadian. This is an essential component to maintaining the Canadian creative direction and control of a program, and the WGC wholeheartedly endorses it.

29. Other elements of the Commission’s preliminary view should be modified. The two points for a Canadian screenwriter should also be held by Canadians in all cases. In addition, at least for the positions of showrunner and screenwriter, the definition of “Canadian” should also include that they are a resident of Canada at all relevant times, with Canadian residency as defined by the CRA for tax purposes.

Definition of “Showrunner”

Q4.

30. Central to any complete and accurate definition of “showrunner” is that **a showrunner is a screenwriter, and their core roles and competencies include writing**. As such, and given our comments below, the WGC proposes the following definition of “showrunner”:

“A showrunner is a writer-producer who is the chief custodian of the creative vision of a series and whose primary responsibility is to communicate the creative vision of that series through control of both the writing process and the production process—often from the pilot episode through to the finale.”

31. In Broadcasting Notice of Consultation CRTC 2018-488, the Commission sought comments on a proposed Production Report to be completed annually by large English- and French-language ownership groups. The Commission proposed to add “showrunner” to the Production Report at that time and, in seeking to define it in that context, proposed to begin with the WGC’s own Showrunner Code.¹⁹

32. The WGC supported the Commission’s use of our Showrunner Code as a starting point then, and we continue to do so now. The following comments are consistent with our views as stated in that 2018 proceeding, and we are proposing substantially the same definition of “showrunner” in this proceeding as we did in that one.

¹⁹ https://www.wgc.ca/sites/default/files/2024-06/2024_06_07%20WGC%20Showrunner%20Code_web%20version_0.pdf. The WGC has updated its Showrunner Code since 2018, but the core elements discussed here remain the same.

33. In 2018, the Commission considered as a definition an opening paragraph of a nine-paragraph description of the showrunner role, which was in turn part of a larger report for the Cultural Human Resources Council (CHRC), entitled “Training Gap Analysis: Showrunners in Canadian Television” (the CHRC Report).²⁰ Each of those paragraphs are important and useful to describe the realities of showrunning, but the fourth paragraph in particular is essential:

*Scripts are the lifeblood of drama and comedy series. Typically Showrunners are successful TV writers who have risen through the ranks, gaining the necessary skills in production. Directors and producers can also become Showrunners, of course – provided they have acquired the necessary professional writing skills, experience and credits.*²¹

34. This highlights the central importance of writing, and the requirement that showrunners also be writers. The Chart of Competencies for showrunners set out in both documents further emphasizes this. As stated in the Showrunner Code, the Showrunners’ Chart of Competencies, “identifies the combined competencies that make up the work of a Showrunner; it was compiled by a group of expert practicing Showrunners from across Canada.”²² It sets out ten professional competencies, labelled “A” through “J”, each with more detailed sub-competencies. The competencies include, “B. Write a Bible and Pilot to Secure Production Order”, “C. Assemble a Writing Team”, “E. Run a Writing Room”, and “F. Deliver Production Drafts”. The sub-competencies include, “B.2. Create characters and story arcs”, “B.5. Write the pilot”, “E.2. Break stories”, and “E.6. Write original scripts”.
35. The importance of writing is further set out in the full CHRC Report, which identified three broad core competency areas for showrunners: 1) Writing; 2) Translating writing into the visual medium of television; and, 3) Organizational management.²³ Having placed writing at the top of this list, the CHRC Report stated:

Writing is the starting point for a Showrunner and control of the writing process remains an absolute requirement for the Showrunner in pre-production, production and post-production.

All the competencies other than writing take writing time away. So the key competency is being able to write a lot of pages quickly and well: 10 pages a day, sometimes a one hour script in 2 days. Stamina is essential. (a producer and writer)

However, this doesn’t mean that the Showrunner writes every (or any) script. Delegation is essential in order to juggle writing and story editing responsibilities with other job requirements. While one Showrunner interviewed said that she would choose more time writing and less on set, another Showrunner said that he would choose not to write, delegate the writing to a good writing team, in order to get more time on set.

To become a Showrunner, you first need artistic training. Writing is foremost an artist’s trade. So, first you learn how to tell a story, and then you can learn what is a production, a set, and all of the details associated to managing a set. (a Québécois director)

²⁰ Carver, Deborah, *Training Gap Analysis – Showrunners in Canadian Television, For the Cultural Human Resources Council CHRC*, January 30, 2009, https://www.culturalhrc.ca/sites/default/files/research/CHRC_Showrunners_TGA-en.pdf.

²¹ WGC Showrunner Code, pg. 7; CHRC Report, pg. 16.

²² WGC Showrunner Code, pgs. 8-12.

²³ CHRC Report, pg. 27.

As for training, I believe the starting point is writing. You can't train producers to become Showrunners if they've never written. You'd have to determine what kind of writer profiles are conducive to showrunning, potentially drawing from the American model to integrate or adapt it to our reality. (a Québécois writer)²⁴

36. The CHRC Report notes, in discussing recruitment of showrunning talent:

As defined for the purposes of this analysis, a Showrunner is a writer. Therefore writers and story editors with significant experience in the story department are the most significant source of Showrunner talent. Directors and producers, with writing credentials, are also candidates. Many of those interviewed emphasized that the bar needs to be set very high for Showrunner candidates.²⁵

37. The CHRC Report also defines showrunner as a “writer/producer”,²⁶ which is also accurate, given the production-related duties of a showrunner, and the fact that they typically receive “Producer” or “Executive Producer” credits on a production.²⁷ While a “showrunner” is not a credit in itself, it remains very much a real and distinct role on applicable productions.

38. We would emphasize that the CHRC is an arm's length body to the federal human resources department, and the CHRC Report was provided by an independent consulting firm and based on interviews with over 40 writers, producers, directors, showrunners, broadcasters, and industry leaders from across Canada and in both official language markets.²⁸ As such, it does not merely reflect the views of the WGC or of screenwriters, but of a broad and representative cross-section of the sector.

39. For the above reasons, the WGC strongly believes that the Commission's definition of “showrunner” must be explicit that it is a writing role, held by someone who is, among other things, a writer. Both of these elements—i.e. the nature of the showrunner as a writer (among other things), and their control of the writing process (among other things) as the essential way in which they exercise their custodianship of the creative vision of the series—must be recognized. Failure to do so, in our view, would result in an incomplete and inaccurate definition, and would open the definition up to abuse, in particular to claims by others, such as producers or broadcasting/production executives, that they are showrunners, despite not being writers, nor engaging in writing, and therefore not actually possessing the core traits and competencies, nor carrying out the actual duties and roles, of a true showrunner.

40. The WGC submits that the above definition, using language taken directly from the CHRC Report, and starting as it does from the Commission's own proposal for a definition in Broadcasting Notice of Consultation CRTC 2018-488, is an accurate and complete definition of “showrunner”. A showrunner is both a writer and a producer which ultimately controls both the writing process and the creative elements of the production process. We strongly urge the Commission to adopt this definition.

41. The fact that “showrunner” is not a credit in itself, but rather is a role, means that the Commission must take the utmost care both in its definition and in how it administers and enforces that definition. The

²⁴ CHRC Report, pg. 28.

²⁵ CHRC Report, pg. 44.

²⁶ CHRC Report, pg. 8.

²⁷ CHRC Report, pg. 16.

²⁸ CHRC Report, Appendices B1 and B2.

Commission may not be able to rely on a production's credits alone, and unscrupulous producers may attempt to hijack the title for themselves, despite not being writers. Alternatively, unscrupulous individuals may argue that no showrunner exists even where one does. But a showrunner role typically exists in series drama, including animation, where it is more commonly referred to as a "head writer". As such, given the importance of the showrunner and the newness of its recognition in the Commission's policy framework, it will be important that the definition be rigorously enforced and its application publicly reported, so that stakeholders like the WGC can monitor who is being assigned the position on certified productions. The WGC will be happy to work with the Commission to ensure the integrity of this new policy.

Q5.

42. As stated above, the WGC wholeheartedly supports the Commission's preliminary view that if a production includes a showrunner, a Canadian must occupy that position.

Cultural Elements

Q6.

43. The WGC agrees with the Commission's preliminary view that cultural elements should not be included within the certification framework. We agree that "what makes something Canadian" is hard to define and that there are in fact many ways of defining what is Canadian.

44. The WGC agrees that, in principle, Canadians are entitled to expect to see Canadian cultural elements in Canadian programming, as a component of what makes it distinct from other programming and worthy of public support. The problem is that while it is easy to think of examples of obviously Canadian cultural elements, like Canadian historical figures, the true breadth of "Canadianness" goes far beyond that, and the certification process is ultimately a bureaucratic one in which individuals will have to choose what "counts" and what doesn't for regulatory purposes.

45. It would be easy to label a biopic of Tommy Douglas as having visibly Canadian elements. More difficult would be programs that deal with contemporary life from a subtly Canadian perspective. For example, the Canadian television drama series *Flashpoint* (2008-2012) has sometimes been described as a "generic" cop show, the Canadian identity of which was not apparent, or present at all. But talk to the screenwriters on the show, and they point out an important feature of the series: It is about police trying *not* to use their guns to solve problems. In contrast to American popular culture that so often elevates the use of firearms as the ultimate symbol of justice, this Canadian police series did the opposite, prioritizing communication and de-escalation to solve crises. This was subtly but powerfully Canadian.

46. The result of attempting to include cultural elements in the Commission's certification framework, however well-meaning, would almost certainly result in the need to codify a standard set of such elements to allow the certification process to be administered efficiently. This would risk token symbols of Canadian identity, like maple leaves and hockey sticks, replacing deeper explorations of Canadian culture. It would also seem to render impossible entire genres of Canadian content, like fantasy and science fiction which, by definition, may not take place in a universe in which Canada even exists.

47. It is far better to focus on Canadian creators, to allow them to envision what being Canadian really means. Artists have always played a role, not just in reflecting society to itself, but defining that society in the process. It should continue in the context of Canadian audiovisual certification.

Creative Control

Q7.

48. In our view, it is unclear how this approach would incentivize more collaboration and partnerships between Canadian and foreign creators. It seems more likely to create more pressure from content commissioners and financiers to insert non-Canadian creatives into an otherwise Canadian writing room for uncertain motives. To the extent that Canadian screenwriters are driving the creative process, they do not commonly seek more collaboration or partnerships with foreign creators as a goal or principle in itself. It is also unclear why such collaboration and partnerships are in need of being incentivized. Canadians are already outnumbered on the international stage by foreign creators, as a simple statistical reality. Canadian screenwriters are not typically in want of non-Canadian collaborators as a goal or principle in itself.
49. In addition, the WGC believes that the Commission's proposal that the points be assigned to positions of director and screenwriter/scriptwriter/storyboard supervisor if at least 80% of the people occupying a particular position are Canadian (the "80% proposal") is not feasible with respect to screenwriters and would be ripe for abuse. This is because the percentage of people occupying screenwriter positions is not the same as the percentage of work done by those people.
50. Screenwriters do not necessarily contribute equally to a production and their contributions cannot easily be expressed as a percentage. WGC screenwriters are contracted either on a weekly basis as a "story editor" while working in a writing room, or on a "writer" contract when they are engaged to draft script material. In short, one writer in a room of ten writers does not necessarily contribute 10% of the work to the project. Different writers have different levels of experience, different strengths, and different specialities. Some writers are assigned more drafts to write and some fewer. It is entirely possible for one writer in a room of ten to write half the drafts and contribute most of the ideas ultimately used on the show. This may be as another, possibly more junior writer, cuts their teeth on one script and helps punch up some dialogue.
51. This also makes it possible for broadcasters, streamers, or others to game the system, by ensuring that the 20% of non-Canadians do the lion's share of the work. The requirement for a Canadian showrunner may help mitigate this possibility, but broadcasters, streamers, or others in positions of power can still put an enormous amount of pressure on the showrunner.
52. The Commission's "80% proposal" appears to be premised on the assumption that "proportion-of-writers" = "proportion-of-work-and-creative-influence." This premise is untrue. The WGC understands the Commission's efforts to seek new ways to increase flexibility while maintaining overall Canadian creative control, but this proposal will not work as intended. If the Commission chooses to retain it, the points "averaging" practice described above already provides significant flexibility in this regard.

Q8.

53. No. In our view, cultural specificity is a better selling point for the exportability and discoverability of Canadian programming, domestically and abroad. We do not believe we need non-Canadian collaborators in order to export or discover our stories.

Q9.

54. It is unclear to us how this approach would affect cultural relevance, reflectiveness for Canadians, and creative input and control. It would depend on the details of the “collaboration”. The primary impact we see is a reduction in writing work and job opportunities for Canadian screenwriters, which does not benefit the Canadian industry or Canadian screenwriting talent pool as a whole.

Q10.

55. As stated above, the WGC believes that points for Canadian screenwriters must be a mandatory requirement in all cases. That being the case, we understand the Commission’s question here to be whether it should: a) retain the rule that the director **or** screenwriter/ scriptwriter/storyboard supervisor position must be filled by a Canadian for a production to be eligible for certification; or, b) eliminate this rule, resulting in the possibility that **both** the director and the screenwriter/scriptwriter/storyboard supervisor positions could be filled by **non-Canadians**, provided that the minimum 9 points out of 15 are obtained (including two points for a Canadian showrunner).

56. Given this understanding, the WGC feels very strongly that, if the Commission does not adopt the WGC’s recommendation to make the writing points mandatory, it absolutely should retain the “director-or-screenwriter” rule. This is particularly vital if the Commission chooses to go ahead with its “80% proposal”, despite our concerns as noted above.

EXPENDITURES ON CANADIAN PROGRAMMING

57. In the Notice, the Commission states its preliminary view that, “in an ‘on-demand’ system driven by online undertakings whose business models are based on the programs that underscore the current definition of [programs of national interest (PNI)], such as drama and documentaries, the current approach to PNI is no longer needed.”²⁹ **The WGC stridently and unequivocally disagrees with this view.**

58. In its written submissions to Broadcasting Notice of Consultation CRTC 2023-138, the WGC discussed at some length how the achievement of the objectives of the *Broadcasting Act* are fundamentally tied to support for specific genres of programming, which we reiterate.³⁰

59. The entirety of the Commission’s rationale to eliminate the PNI policy appears to be in the above-quoted sentence. The Commission’s logic appears to be that because many streaming services currently include a large proportion of (non-Canadian) dramas and documentaries, that any Canadian programming expenditure (CPE) requirements imposed on those services will naturally result in (Canadian) dramas and documentaries, simply by virtue of their “business model”. If so, we submit that there is simply no evidence for this view, and plenty of evidence to the contrary.

60. Canadian dramas and documentaries—i.e. the genres included in the Commission’s current program categories 2(b), “Long-form documentaries,” and 7, “Drama and Comedy”³¹—are absolutely, in the Commission’s words, “risky to produce and difficult to monetize,” and there is nothing about the on-demand world or the business models of foreign streamers that makes them less so in that context. For

²⁹ Para. 46.

³⁰ <https://www.wgc.ca/sites/default/files/resource/2023-07/Broadcasting%20Notice%20of%20Consultation%20CRTC%202023-138%20The%20Path%20Forward%20.pdf>, paras. 47-54.

³¹ <https://crtc.gc.ca/eng/archive/2010/2010-808.htm>

one thing, their budgets tend to be high, particularly in drama, costing millions of dollars per hour, and this is just as true for on-demand platforms as any other, because the costs are for *production* of the content, not how the content is distributed or consumed. The average budget per hour for Canadian English-language fiction in 2023-2024 was \$1.65 million, a 10% increase from just the year before and part of a long-term trend of increasing costs.³² This compares with just \$430,000 for lifestyle and human interest programming, almost a quarter of the cost.³³ Major global series can cost tens of millions of dollars per hour.

61. It is these high costs that create the riskiness of this type of programming, and it is the creative difficulty of ensuring large enough viewership that makes them difficult to monetize. The economics of a hit-driven business model remains the same, whether the content is available on-demand or not. Global streamers, Hollywood studios, and American broadcasters alike seek to mitigate these risks by, among other things, attaching “names” to their productions—known and established stars and other key creatives that drive audiences. Most of the names they look to attach are international names—i.e. not Canadian. And in seeking content with broad appeal, they generally do *not* focus on small markets like Canada’s.
62. It is *Canadian* dramas and documentaries that are at risk in the Canadian broadcasting system, not *international* dramas and documentaries, so the Commission cannot look to the non-Canadian PNI genres on streaming services now and infer that Canadian PNI genres will fare the same. They won’t. Foreign streaming services also have lower-cost, lower-risk genres like lifestyle and reality programming. Canadian broadcasters already prefer spending on those genres over PNI—hence their fight, tooth-and-nail, to reduce or remove their own PNI obligations, in applications that have been included on the public record of this very proceeding—and foreign streamers can be expected to do the same.
63. Indeed, the Commission’s preliminary view seems to imply that traditional Canadian broadcasters somehow don’t have non-Canadian PNI genres on their services, because such “risky to produce and difficult to monetize” content is not consistent with their “linear business model.” Of course, we know very well that the services of Bell Media Inc., Corus Entertainment Inc., and Rogers Media Inc. are packed with foreign dramas, on which they spend hundreds of millions of dollars a year to acquire. These are not “anti-drama” services or groups—they are “anti-*Canadian*-drama” services and groups. Because *Canadian* drama is what’s risky and expensive. Nothing about the on-demand market changes that. The relevance and importance of supporting PNI genres in an on-demand world was recognized as recently as the 2020 report of the Broadcasting and Telecommunications Legislative Review Panel.³⁴ This expert panel understood that, despite the changes brought by digital disruption, key genres still needed regulatory support, online or not.
64. Elimination of the PNI policy would be an incredibly risky step for the Commission to take. English-language PNI spending by the Bell, Rogers, and Corus English-language designated broadcastings groups was \$200 million in 2023.³⁵ This represents thousands of jobs, and many hours of culturally relevant programming that the Commission itself has recognized as, “central vehicles for communicating

³² *Profile 2024*, Canadian Media Producers Association, Ex. 3-10 (https://cmpa.ca/wp-content/uploads/2024/12/Profile-2024-Eng-Final_Dec-20.pdf).

³³ *Ibid.*

³⁴ *Canada’s communications future: Time to act*, (<https://ised-isde.canada.ca/site/broadcasting-telecommunications-legislative-review/en/canadas-communications-future-time-act>), s. 3.4.1 Digital disruption of regulatory funding models, “Why should we support Canadian television drama?”.

³⁵ *Profile 2024*, Canadian Media Producers Association, Ex. 9-5ai (https://cmpa.ca/wp-content/uploads/2024/12/Profile-2024-Eng-Final_Dec-20.pdf).

Canadian stories and values.”³⁶ Based on the evidence in the Notice, the Commission appears ready to bet that streamers will support it anyway based on nothing more than faith. The Commission made a similar bet in 1999 and lost,³⁷ as drama programming plummeted³⁸ and the sector experienced a “lost decade” that the group-based licensing policy was an attempt to recover from. Given the gargantuan risk this represents now, the WGC submits that the Commission must put the evidence on the record of this proceeding that it is relying upon, if any, in taking this step.

65. In the absence of such evidence, the safer step—the step that actually does the job of ensuring that the objectives of the *Broadcasting Act* are realized—is to apply PNI obligations to the large streamers and Canadian broadcasting groups where such obligations are appropriate. This would provide a minimum spending floor as a safeguard. If such broadcasting undertakings are sure to invest in this type of programming anyway, then they lose nothing by way of a requirement to do what they would already do. Because if the Commission is wrong, the devastation in the sector could be catastrophic.

Q18.

66. As stated above, the Commission’s view regarding PNI does not align with business models, because: it appears to take the abundance of non-Canadian drama and documentary on global streaming platforms as an indicator for what those services would do for Canadian drama and documentary, which is unsubstantiated; it appears to assume that Canadian broadcasters object to PNI obligations because they “are not in the business of those genres” at the same time that those broadcasters invest hundreds of millions of dollars in *foreign* PNI genres; it suggests that there is something about an “on-demand” system driven by online undertakings whose business models are based on...drama and documentaries” that makes Canadian drama and documentaries less risky; and, it presumes that business models can’t or won’t change over time. To be blunt, if these are indeed the Commission’s assumptions, they are wrong.

Q19.

67. No, the Commission’s proposed changes to the definition of “Canadian program” will not, by themselves, ensure continued financial support for Canadian programs previously supported through the Commission’s approach to PNI. The Commission must include regulatory obligations to support Canadian dramas and documentaries.

68. There is frankly nothing that will *ensure* successful international export of Canadian programs. The best shot at doing so will be maximizing investment in Canadian talent and giving Canadian creators the opportunity to do what they do best.

Q20.

69. CPE requirements for traditional Canadian broadcasters and foreign online undertakings should be similar and equitable. They should be based on the full and complete implementation of the objectives of the *Broadcasting Act*, and not on the mere preferences of the undertakings, according to claimed “business models”.

³⁶ Broadcasting Regulatory Policy CRTC 2010-167, para. 71.

³⁷ Public Notice CRTC 1999-97, *Building on Success - A Policy Framework for Canadian Television*.

³⁸ *Review of the Regulatory Framework for Broadcasting Services in Canada, Final Report*, August 31, 2007, Laurence J.E. Dunbar and Christian Leblanc.

70. The question of how the Commission can impose equitable requirements that respect the different business models of the various undertakings and broadcasting groups is a large, complex, and challenging one for stakeholders and the public in the absence of more data on the public record, particularly with respect to foreign online undertakings. Ultimately, however, the Commission should relate to the goal set by the government of \$1 billion in new annual spending on Canadian programming³⁹ and work backwards from that.

Q21.

71. The types of expenditures that would fulfill the needs in the broadcasting system relating to Canadian programming would include targeted minimum spending requirements on drama and documentary—i.e. programming from categories 2(b) and 7. The amount of these expenditures should grow in proportion to the growth of the regulated broadcasting system as result of the inclusion of online undertakings through the *Online Streaming Act*.

Q22.

72. The realities of the English- and French-language markets remain different and unique, and it is appropriate for the Commission to take different approaches in each market.

Q23.

73. The WGC supports the objectives of equity, diversity, and inclusion, and organizations representing equity-deserving communities. We recognize the vital importance of indigenous organizations and support the advancement of indigenous sovereignty and rights. Our 2024 Equity, Diversity and Inclusion (EDI) Report was released in October, and shows a decline in work opportunities that jeopardizes the hard-fought progress made by the WGC to establish a growing pool of diverse working writers within the industry.⁴⁰ We have also released a guide of Best Practices for Producers Working with Diverse Screenwriters, which is intended as a tool for producers seeking to hire diverse screenwriters, build strong creative partnerships, and foster working environments that are conducive to authentic storytelling.⁴¹ The WGC will review the submissions of others and may make additional comments.

Q24.

74. As described above, Canadian drama and documentary should be viewed as risky and expensive to produce and difficult to monetize but exceptionally important to the achievement of the objectives of the Act. This programming is not already supported by the various business models in the Canadian broadcasting system. As mentioned in the Notice, traditional Canadian broadcasters clearly do not want to commission such programming, as evidenced by their multiple applications to reduce or remove their existing PNI obligations.

³⁹ <https://globalnews.ca/news/8901527/canadian-programming-will-see-at-least-1-b-a-year-from-online-streaming-bill-minister/>. See the WGC's further comments on this in our initial written submission to Broadcasting Notice of Consultation CRTC 2023-138, 11 July 2023, paras. 17-19 (https://www.wgc.ca/sites/default/files/resource/2023-07/Broadcasting%20Notice%20of%20Consultation%20CRTC%202023-138_The%20Path%20Forward%20.pdf).

⁴⁰ https://www.wgc.ca/sites/default/files/2024-10/WGC_diversity%20report-Oct%202024.pdf

⁴¹ https://www.wgc.ca/sites/default/files/2024-10/WGC_BestPracticesGuide-Oct%202024.pdf

75. As for foreign online undertakings, they have *not* stepped up to commission a significant or meaningful level of Canadian programming involving members of the WGC. Appendix “B” to this submission sets out the total hours of programming commissioned under the WGC’s jurisdiction by the traditional private Canadian large English-language broadcast groups, the Canadian Broadcasting Corporation (CBC), and the U.S.-based streaming services.⁴² As you can see, last year the streaming services commissioned just 10.5 hours of programming engaging WGC members, compared to 130.75 hours by traditional private Canadian large English-language broadcast groups, and 284.17 hours commissioned by the large traditional private Canadian English-language broadcast groups and CBC combined. These 10.5 hours was a mere 3.6% of the combined hours of the private English groups, the CBC, and the U.S. streamers. Even in their strongest years, these massive U.S. streamers have only ever commissioned a small fraction of the hours of programming that Canadian broadcasters have.

76. To be clear, working with WGC members under the WGC’s jurisdiction does not engage foreign online undertakings’ publicly stated concerns about intellectual property (IP) ownership. Accessing the CPTC may require Canadian IP ownership, but working with WGC members does not. IP ownership, sometimes claimed by streamers as a barrier—or *the* barrier—to their enthusiastic entry into the Canadian system and engagement of Canadian creators⁴³ is not a factor in these numbers. This data clearly displays their lackluster performance in PNI genres of Canadian programming to date. Without a PNI-like obligation to spend on drama and documentaries going forward, we can expect similar results.

Q26.

77. The WGC firmly believes that incentives, like CPE credits, are unlikely to be successful in obtaining the outcomes that the *Broadcasting Act* seeks. This is fundamentally because incentives only work if they are big enough to make it worth the while of the entity being incentivized, and the larger foreign online undertaking are so massive as to be able to easily eschew any incentive that the Commission could realistically offer in exchange for the ability to simply do what they want. Such is the power of being massive, billion-dollar companies with global market dominance. We spoke at greater length on the insufficiency of incentives in our initial written submission to Broadcasting Notice of Consultation CRTC 2023-138,⁴⁴ and at the public hearing in that proceeding,⁴⁵ and we continue to stand by those comments.

DATA-RELATED ISSUES, INCLUDING REPORTING AND PERFORMANCE MEASUREMENT

Q27.

78. Yes, the Commission should set out detailed reporting requirements for all broadcasting undertakings operating in Canada, regardless if they are Canadian or foreign, and whether they operate on traditional or

⁴² Due to the terms of the Independent Production Agreement (IPA) between the WGC and the Canadian Media Producers Association, the WGC does not have complete data on aggregate budget numbers for all production under our jurisdiction. As such, we do not have a complete picture of total “production volume” as measured in aggregate budgets. As a result, hours of programming is the best metric currently available to us.

⁴³ E.g. David Fares, Vice President, Global Public Policy for The Walt Disney Company, Public Hearing in Broadcasting Notice of Consultation CRTC 2023-138, 20 November 2023, Transcript para. 687: “I mentioned those three examples because they are three stories that tell a unique Canadian perspective and authentic story but they don’t count as Canadian content today under the Act because Walt Disney Company would own the IP.” (<https://crtc.gc.ca/eng/transcripts/2023/tb1120.htm>)

⁴⁴ https://www.wgc.ca/sites/default/files/resource/2023-07/Broadcasting%20Notice%20of%20Consultation%20CRTC%202023-138_The%20Path%20Forward%20.pdf, Paras. 95-98.

⁴⁵ Hearing Transcript (<https://crtc.gc.ca/eng/transcripts/2023/tb1206.htm>), paras. 10146-10150.

online platforms. It is absolutely essential that the Commission collect and publicly disclose accurate and reliable data for the benefit of the Commission and the Canadian public.

Q28. and Q29.

79. Yes, the Commission should require the public disclosure of the revenues and programming expenditures of all broadcasting undertakings subject to CPE requirements. This information should be as detailed as possible. At a minimum, it must be broken down by language and by program categories and sub-categories. While reporting by individual broadcasting/online service is ideal, reporting by ownership group (provided that's how the Commission intends to regulate, i.e., a group-based approach) would be sufficient.
80. In this regard, the public disclosure of aggregate financial returns for owners of large broadcasting groups (the Aggregate Annual Returns) first required under Broadcasting Regulatory Policy CRTC 2009-560 serves as a useful model for reporting by all broadcasting undertakings, including online undertakings, going forward. We strongly urge the Commission to require all broadcasting undertakings subject to CPE requirements, including online undertakings, to file public Aggregate Annual Returns consistent with current reporting applicable to the large traditional broadcasting groups.
81. The issue of reporting by language is particularly important. By combining English- and French-language PNI spending data as the Commission currently does, the published data becomes significantly skewed and misleading. For example, in 2023, while the Quebec market made up 22% of total national private conventional TV revenue, it accounted for 55% of all conventional TV PNI spending.⁴⁶ The Act clearly directs the Commission to consider the conditions of the English and French markets.⁴⁷ The ability of the public to participate in regulatory proceedings in this regard requires public reporting that reflects this distinction. Breaking out data by language is absolutely essential to the integrity and relevance of the data in all Commission data reporting.
82. As a general data reporting principle, reporting should correlate to how the Commission is actually regulating. If the Commission regulates by individual undertaking (e.g., imposes a CPE requirement by individual undertaking), then detailed reporting should be done by individual undertaking. If the Commission imposes a CPE requirement by ownership group (or a designated group with select services included in that group, as it does now with the large television broadcast groups), reporting by ownership or designated group may be sufficient.
83. In our view, the Commission has not always followed this principle. For example, the Commission has begun reporting as part of its Communications Market Reports (CMR) Open Data releases the revenues of audiovisual online undertakings collected from its Annual Digital Media Survey. One problem with this data is that revenue is not broken down by language, rendering it almost completely useless given that the Canadian audiovisual content market consists of two distinct language-markets with very unique operating characteristics. Another problem is that the revenue number does not correlate to how the Commission currently regulates audiovisual undertakings. In Broadcasting Order 2024-194, the Commission required online undertakings earning \$25 million or more in annual contributions revenues either alone or as part of an ownership group and that are not affiliated with a Canadian broadcaster to contribute 5% of their annual contributions revenues to certain funds. By reporting all audiovisual online

⁴⁶ Conventional Television Statistical and Financial Summaries, 2019-2023, published by the CRTC.

⁴⁷ *Broadcasting Act*, s. 3(1)(c).

revenues (which is necessary) only, and not also revenues by audiovisual online undertakings that earn \$25 million or more in annual contributions revenues, the Canadian public does not have access to the base revenues that apply to the base contributions regime and, presumably, any CPE requirements that may apply in the future to that subset of audiovisual online undertakings.

Q30.

84. The production report should include language, region, producer information, and Canadian certification number. It should also include information on whether the spending is on new commissioned programs (sometimes referred to as, "original, first-run") or acquisitions (sometimes referred to as "library programming/content").
85. The production report should also include the number of key creative points it has attained and which key creative roles were filled by Canadians. Given our concerns stated above about the application and enforcement of the new showrunner role in the points system, and subject to alternative safeguards, we submit that the names of the showrunners claimed on applicable productions should also be published. And, if the Commission rejects the WGC's proposal that "Canadian" for the purposes of key creative points must include residency in Canada, then the production report should also include the Canadian residency status for each key creative role in the points system. Finally, the production report should include script and concept development spending.

Q33. and Q34.

86. The WGC recommends working with organizations representing these groups, as well as funders like the Canada Media Fund, which have already done significant work on tracking this information.

Q35.

87. No. The Commission should prioritize public transparency and accountability in the broadcasting system, confidentiality should not be presumed, the onus for proving confidentiality should be on the broadcasting undertaking claiming it, and the standard for granting confidentiality should be high.

Q36.

88. As stated above, requiring broadcasting and online undertakings to file public Aggregate Annual Returns consistent with what is filed today by large television ownership groups is the best way to measure expenditures on Canadian programming under the new regulatory framework. In the WGC's view, the new framework can only be deemed a success if spending on Canadian programming increases considerably. In this regard, we reiterate the goal set by the government of \$1 billion in new annual spending on Canadian programming.

Q37.

89. As stated above, the WGC does not recommend that the Commission eliminate PNI expenditure obligations. If it chooses to do so anyway, it will be all the more important that the Commission track which programming categories CPE is being directed to, including sub-categories. The Commission will need to be prepared to act quickly to reverse its decision if a significant drop in PNI expenditures occurs.

Q38.

90. Data collection as described above will help the Commission measure whether it is meeting these goals.

ARTIFICIAL INTELLIGENCE

Q40.

91. No, in the WGC's view, AI-generated material cannot and should not be considered Canadian content.

92. In the Notice, the Commission is rightly focused on defining Canadian programs primarily in relation to the Canadian identity of those who occupy key creative roles and questions of financial control and intellectual property ownership by Canadians. Canadian identity in this sense refers to Canadian citizenship, permanent residency and, in the WGC's view, should include actual Canadian residency.

93. Artificial intelligence outputs are not consistent with any of this. Machines do not have citizenship. They do not live and reside in Canada, nor any other national jurisdiction, because they do not "live" or "reside". They are not natural persons. They are not human beings.

94. Current generative AI does not "think," nor does it create like humans do. According to AI scientist Yann LeCun, current large language models (LLMs) are trained on text data that would take 20,000 years for a human to read, "and they still don't understand that if A is the same as B, then B is the same as A."⁴⁸ Humans don't produce language by making statistical calculations on what words tend to be associated with what other words. Human beings have intentionality. As creators, they express their own thoughts, emotions, and experiences, and reflect upon the world they exist in. If they are Canadian, those thoughts and reflections are made in the context of living in and/or being from Canada. That is their special Canadian perspective. None of this applies to generative AI.

95. Even in a world in which technology theoretically transcends these current limitations, AI-generated material still cannot and should not be considered Canadian content. For one thing, nothing about doing so would advance any of the objectives of the Broadcasting Policy for Canada in the *Broadcasting Act*. The cultural, political, social and economic fabric of Canada⁴⁹ is something that humans form part of and relate to. The Act refers to making use of "Canadian creative and other human resources," in the creation, production and presentation of programming.⁵⁰ The Policy Direction also speaks to "Canadian human resources."⁵¹ The Act states that the Canadian broadcasting system should, "through its programming and the employment opportunities arising out of its operations, serve the needs and interests of all Canadians," including the full diversity of the Canadian population.⁵² The Act is suffused throughout with references to, and objectives that only make sense in relation to, human beings. The Act exists to confer benefits upon Canadians, not machines or those who own them.

96. The mere use of generative AI by Canadians does not transform AI outputs into "Canadian content" either. Prompting a generative AI is not the same as creating content. It is fundamentally and overwhelmingly the AI technology that generates the output, not the human being inputting the prompts. In creative work, it is

⁴⁸ <https://www.cnbc.com/2023/12/03/meta-ai-chief-yann-lecun-skeptical-about-agi-quantum-computing.html>

⁴⁹ Section 3(1)(d)(i).

⁵⁰ Sections 3(1)(f), 3(1)(f.1), and 5(2)(a.2).

⁵¹ Section 9.

⁵² Section 3(1)(d)(iii).

the expression that is everything. It is not the idea—including an “idea” in the form of one or more prompts—but the execution that makes creation, creation. The alternative would be akin to crediting the Sistine Chapel ceiling to Pope Julius II, because he commissioned its painting, rather than Michelangelo, who actually envisioned and painted it.

Q.41.

97. With respect to screenwriting, the WGC submits that generative AI should have minimal impact, because it should be excluded as much as possible from the writing process. The WGC has already negotiated clear parameters and guardrails on the use of generative AI in its collective agreement with the Canadian Media Producers Association (CMPA), the Independent Production Agreement (IPA),⁵³ which should be considered industry-standard with respect to screenwriting in the English-Canadian market. Under the current IPA, the parties agreed on a definition for generative artificial intelligence (GAI), and that all references to Writers, Story Editors and Story Consultants in the IPA are human persons. If producers provide writers with materials generated by AI, they must disclose that it is AI generated and contract under the IPA. Materials generated by AI are treated as Source Material (i.e. a novel or news article), and cannot reduce a Writer’s compensation or credit. Writers warrant that their work is not generated in whole or in part by AI. A Letter of Understanding was obtained consistent with other industry labour agreements maintaining our position that producers do not have the right to use members’ work to train AI. And the current IPA introduced new procedural protections if producers attempt to contract for the use of writers’ materials to train AI, based on the principle of informed and conspicuous consent.

OTHER CRITERIA AND ISSUES RELATING TO CERTIFICATION

Production costs

Q43.

98. The WGC agrees with the Commission’s view that the 75% threshold should be maintained.

Foreign courtesy credits and affidavits

Q47.

99. The WGC currently has no view on the Commission’s specific proposals to simplify the courtesy credit process at this time. We do wish to highlight, however, the inherent potential for abuse of any courtesy credit system, given the complex reality of influence and control-in-fact on a production. In this context, we note that the CPTC Guidelines, bizarrely, allow for a non-Canadian showrunner if they provide an affidavit (Form 01F13), “declaring that any work performed is done under the direction and control, and with the full knowledge, of the Canadian producer.”⁵⁴ It is a testament to how outdated this CPTC rule is, that while the Commission correctly identifies showrunners as a required Canadian element to, “help ensure that the creative direction and control of a Canadian program remain Canadian,” CAVCO still permits the role to be affidavit-ed into the hands of a non-Canadian. The result, for the CPTC, is that people can hold positions of real control while claiming that they actually don’t. This is the kind of scenario we should be dismantling at CAVCO, and preventing in the first place at the Commission.

⁵³ https://www.wgc.ca/sites/default/files/2025-01/2024%20IPA%20Final%20WGC_CMPA.pdf

⁵⁴ CPTC Guidelines, s. 6.13, Non-Canadian Showrunners.

CONCLUSION AND REQUEST TO APPEAR AT THE HEARING

100. We thank the Commission for the opportunity to participate in this proceeding. We request to appear at the public hearing, and prefer to do so at the main location for the public hearing in Gatineau.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Neal McDougall', written in a cursive style.

Neal McDougall
Assistant Executive Director, WGC

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

Appendix “A”



STATEMENT ON CANADIAN NATIONAL CONTENT

**October 3, 2023
MONTREAL, QUEBEC**

WHEREAS the International Affiliation of Writers Guilds (IAWG) adopted The Writers Charter (the Charter) on June 4th, 1986 at the Annual Conference of the International Affiliation of Writers Guilds held in Canada, and the Charter was later adopted as the Preamble to the Affiliation Agreement on June 3rd, 1987;

WHEREAS the Charter recognizes, “The writer is a primary creator of works of imagination, entertainment and enlightenment; a significant initiator of cultural, social and economic processes. These are of basic importance in all societies.”;

WHEREAS the Charter commits the IAWG to take all necessary steps, “To encourage and maintain the distinct cultural identities of each country”;

WHEREAS the IAWG is once again holding its Annual Conference in Canada;

WHEREAS Canada has passed into law Bill C-11, the *Online Streaming Act* (the Act), the implementation of which is now before the Canadian Radio-television and Telecommunications Commission (CRTC), and which is expected to include the consideration of the definition of “Canadian program”;

AND WHEREAS broadcasting undertakings under the Act, including global streamers and domestic broadcasters, are seeking to minimize their requirements to invest in Canadian domestic film and television programming, and to reduce the importance and inclusion of Canadian screenwriters and other key creatives in the definition of “Canadian program”;

The IAWG stands in solidarity with Canadian screenwriters represented by the Writers Guild of Canada (WGC) and Société des auteurs de radio, télévision et cinéma (SARTEC) in their fight to maintain and grow a robust domestic Canadian film and television industry with Canadian screenwriters at its core.

/2

The IAWG calls on the Government of Canada and the CRTC to recognize that:

1. Canadian domestic film and television production written by Canadian screenwriters working in English and French is essential to maintaining the distinct cultural identity of Canada; and
2. Canadian screenwriters are the authorial voice and foundational to the production of Canadian television, film and digital media; and
3. "Canadian program" is content written by Canadians.

MOTION

To support the statement on Canadian National Content
WGC (Neal McDougall)/SARTEC (Luc Theriault)

CARRIED

Members: La Guilde Française des Scénaristes (La Guilde); New Zealand Writers Guild (NZWG); Screenwriters Association, India (SWA); Screenwriters Guild of Israel (SGI); Sindicato de Guionistas de España (ALMA); Société des auteurs de radio, télévision et cinéma (SARTEC); Verband Deutscher Drehbuchautoren (VDD); Writers Guild of America, East (WGAE); Writers Guild of America, West (WGAW); Writers Guild of Canada (WGC); Writers Guild of Great Britain (WGGB); Writers Guild of Ireland (WGI); Writers' Guild of South Africa (WGSA)

c/o Writers Guild of America, West • 7000 West 3rd St. • Los Angeles, CA 90048

Appendix "B"

Hours of WGC Scripted Production by Major Broadcaster Groups 2014-2024

Prepared by WGC, January 6, 2024

	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Canadian Large English Broadcast Groups*	539.17	300.08	321.38	255.25	217.55	164.33	81.00	170.00	231.75	160.75	130.75
CBC	176.25	174.5	222.83	216.93	180.50	217.05	133.38	155.50	179.72	168.50	153.42
U.S. Streaming Services	12.50	9.00	24.50	49.50	119.65	49.85	77.98	53.50	79.25	35.17	10.50

*Bell Media Inc., Corus Entertainment Inc., and Rogers Media Inc. combined

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