

January 11, 2019

The Broadcasting and Telecommunications Legislative Review Panel
c/o Innovation, Science and Economic Development Canada
235 Queen Street, 1st Floor
Ottawa, ON K1A 0H5

Dear Members of the Panel:

Submission of the Canadian Association of Public Educational Media to the Legislative Review Panel

CAPEM is the Canadian Association of Public Educational Media. We are pleased to provide our comments and recommendations to the Broadcasting and Telecommunications Legislative Review Panel in response to the Call for Comments issued on September 24, 2018.

A. Public Educational Broadcasters Are Unique Entities

1. Public educational broadcasters are unique entities: we are regulated by the CRTC as federal programming undertakings. We are mandated under provincial statute as a given province's designated public educational broadcaster. This recognizes that although broadcasting is an exclusive area of federal jurisdiction, education is a provincial head of power.
2. There are four designated public educational broadcasters:
 - o Société de télédiffusion du Québec (Télé-Québec);
 - o The Ontario Educational Communications Authority (OECA) ("TVO");
 - o Knowledge Network Corporation (KNC); and
 - o The Ontario French-language Educational Communications Authority (Groupe Média TFO)
3. The CRTC has historically carefully tailored our licence requirements to reflect our circumstances. The provincial legislation reflects each respective province's specific priorities and policies in respect of educational broadcasting. Public educational broadcasters do not receive a mandated subscriber fee.
4. The federal government has directed the CRTC to allow designated independent provincial educational broadcasting authorities to obtain broadcasting licences, and to have guaranteed access to BDU facilities in the regulated Canadian broadcasting system.

These designated publicly funded provincial educational broadcasters fill a distinct niche as “public service broadcasters.” Television and digital platforms are necessary means for the provincial public educational broadcasters to reach and remain relevant to their audience, in a world of expanding viewing choices and platforms:

- Société de télédiffusion du Québec (Télé-Québec):
 - Télé-Québec reaches more than 7 million French-speaking Quebecers over the age of 2 and 95% of Québec children aged 2 to 11 (cumulative reach).
 - Seven out of 10 Quebecers have watched documentaries broadcast by Télé-Québec in the past year.
 - Télé-Québec is the most watched youth channel by Québec children aged 2 to 11.
 - Télé-Québec offers a digital and immersive youth world: *Coucou*, *Squat*, *Mon amie Bulle*, digital educational kits and *La CLEF*, an innovative family literacy community.
 - *La Fabrique culturelle* is a platform containing 8,300 videos featuring thousands of artists across Québec, thanks to the contribution of 150 partners.
 - Télé-Québec is investing \$29.4 million in original production in 2018–2019, which triggers a production volume of \$60 million in Québec and helps maintain more than 1,000 jobs.
- TVO supports Ontario’s transformation of learning inside and outside the classroom through powerful digital learning technology, and supports citizen engagement through in-depth current affairs journalism from an Ontario perspective:
 - 10 million Ontarians watch TVO on linear television every year, including 82% of children in the 2-10-year-old age group.
 - TVO enjoyed the most documentaries watched in prime-time of any broadcaster.
 - With respect to our current affairs programming, 28% of Ontario viewers regularly watch TVO’s current affairs flagship program, *The Agenda with Steve Paikin*.
 - TVO provides educational games and tutoring online services to support foundational math skills to students from kindergarten to grade 10.
 - TVO’s online channels have achieved over 132M views and growing.
 - TVO triggers \$36 million in production budgets in Ontario per year which represents 777 jobs.

- Knowledge Network Corporation (KNC):
 - British Columbia's Knowledge Network is a viewer-supported public broadcaster exploring the world through its commercial-free television and streaming services. Knowledge Network works in partnership with independent producers in British Columbia and the rest of Canada to develop and commission children's and documentary programs that educate, inform and inspire.
 - Knowledge Kids serves our youngest viewers, where programs, games and activities encourage a love of learning. The Knowledge Kids Go apps and website have garnered 27 million video plays.
 - Knowledge is regularly the 4th most watched network in prime time in BC reaching 1.4 million viewers each week to its broadcast and streaming services.
 - As a viewer-supported public service, Knowledge Network relies on financial support from individual donors across the province. Over the last 10 years, financial contributions have almost tripled, with \$4.5 million donated in 2017–18.

- For the Ontario French-language Educational Communications Authority (Groupe Média TFO):
 - TFO is a leading producer and distributor of French-language educational content in Ontario and across Canada.
 - TFO embraced a multiplatform digital strategy many years ago. TFO operates over 20 YouTube channels, IDÉLLO, a digital learning platform serving the Ontario and Canadian educational market, and a linear television channel that is available to more than 8 million Canadian households through BDUs.
 - TFO is the most listened to of all the French television services in Ontario among kids aged 2-11.
 - A clear reflection of the success of its digital platform strategy, TFO's YouTube channels have achieved over 600 million views and growing.
 - Boukili Audio, a new application developed by TFO to help develop reading skills among kids aged 4-8, became the first French-language educational media enterprise to work with Google on a Google Assistant experience for French-speaking families in Canada.

B. Educational broadcasters fulfil the objectives of the Broadcasting Act

5. The designated publicly funded provincial educational broadcasters are a key “public element” of the Canadian broadcasting system contemplated in the Broadcasting Act; through our programming, we provide “a public service essential to the maintenance and enhancement of national identity and cultural sovereignty” (Section 3(1)(b)). As public service broadcasters, our services contribute “in an appropriate manner” (Section 3(1)(e)), providing high-quality content from a place, i.e., Canada and each service’s respective province.
6. Educational services provide high-standard programming (Section 3 (1) (g)) and also “serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada.” (Section 3 (1) (d) (i)).
7. In fact, the broadcasting policy for Canada in the Broadcasting Act expressly contemplates the role of educational services:
 - The programming provided by the Canadian broadcasting system should, among other outcomes, include educational and community programming (s.3(1)(i)(iii)); and
 - Educational programming, where provided through the facilities of an independent educational authority such as the four public educational broadcasters, “is an integral part of the Canadian broadcasting system.” (s.3(1)(j));
8. The 1968 Broadcasting Act was a response to the failure of market forces to deliver the broadcasting products and outcomes desired for Canada. So, the 1991 Broadcasting Act is not just about the use of scarce radio frequencies. At a minimum we need tools and institutions to ensure a strong Canadian presence that can compete against global media giants in our domestic market.
9. The challenge for the Panel is how to serve these objectives as we move from the linear space to an increasingly open, global and competitive digital environment. In particular, we think the Panel should consider the following key questions:
 - What do we want to build for Canada in the audio-visual space for the 21st century?
 - What are the appropriate regulatory models to ensure the continued key role of the above “educational media content” strategy?
 - What kind of content do we want our kids to watch?
 - How do we enhance the financing and discoverability of Canadian educational content?
10. We agree with the recent suggestion of the Chairperson of the CRTC that new legislation should focus on the “purpose” of the legislation rather than disparate “objectives.”

11. To properly understand the role and contribution of designated provincial educational broadcasters going forward in the 21st century, the Panel should go beyond the narrow confines of the current Broadcasting Act to identify publicly funded educational broadcasters as part of the category of “public service broadcasters:”
 - Our unique educational mandate focuses on high-quality content in programming strands that do not compete with the private sector.
 - The private for-profit model simply cannot replicate the programming provided by publicly funded educational broadcasters.

C. The programming model of designated provincial educational broadcasters requires a stable distribution market and a workable domestic rights market

12. Our focus is on the “immediate longer term,” which means that we envisage the continuing (but admittedly declining) role of BDUs in the Canadian broadcasting system. In that regard, the availability of designated provincial educational broadcasters to the vast majority of their respective audiences depends critically on priority distribution on BDUs.
13. All designated provincial educational broadcasters now enjoy priority distribution on the basic service of BDUs in the province where they operate or where designated as such by provincial governments. This requirement is independent of the mode of origination (i.e., whether an educational broadcaster is an over-the-air or “satellite-to-BDU” service) and the mode of distribution (whether the BDU is terrestrial or satellite based). Any new legislation should continue to codify priority distribution if they are to continue to contribute efficiently to the creation and presentation of Canadian programming.
14. Currently, each educational broadcaster generally acquires rights for programming for either all of Canada or a province of Canada. Various BDUs distribute our signals extra-provincially (the rights for such programming distribution arrangements are subject to the distant signal regime under the Copyright Act). The viability of the Canadian broadcasting system is based on a well-defined geographic/territorial market for rights to exhibit content, i.e. Canada or a province of Canada. The underpinning of a vibrant domestic content creation and distribution market comes down to program rights.
15. In the legacy linear world, several elements helped to achieve a domestic rights market: Examples of these tools are:
 - The (above-noted) priority distribution by BDUs;
 - Foreign ownership rules;
 - Simultaneous substitution rules; and
 - Tax measures (e.g. Section 19.1 of the Income Tax Act, which limits the deductibility of advertising expenses on foreign newspapers, periodicals and broadcasters).

16. These and other tools were effective in the “closed system.” However, global OTT distribution is the new watchword of the Internet. There is a distinct risk that as non-Canadian players increasingly go directly to Canadian consumers, separate Canadian rights may not be sold to Canadian broadcasters. Canadian broadcasters may have to compete directly with international players for Canadian rights, which will be more expensive and more difficult to exploit effectively.¹
17. Our services generally endeavour to acquire digital rights on all platforms, where possible. However, OTT is much more than just another “foreign channel.” It has changed the model for domestic content creation. OTT providers are now “playing in our sandbox.” It’s not just a “North Americanized” broadcasting market: the vast scale of OTT players means that smaller domestic broadcasters are now subordinate to worldwide licensing arrangements even for domestic content.
18. In the last five years alone, the budget spent on content by major OTT services has more than tripled (from \$4 billion to \$14 billion).² Moreover, foreign financing now represents the largest source of financing of English-language TV fiction (which includes children’s), ahead of tax credits and license fees. Foreign financing of English-language Canadian television production (fiction) more than doubled in the period 2012–2016 and has gone from a share of the budget of 9% to 22%.³
19. This growth in foreign financing coincides with the launch of Netflix and other OTT services. It should also be kept in mind that Canada is the third-largest market for Netflix-commissioned original productions (all English-language).
20. We believe there are no reasons why foreign online players should not contribute to Canadian programming in view of the benefits they realize from operating in Canada. Maintaining a level playing field and ensuring that all players contribute to the development of Canadian content is essential to our ability to compete for viewers’ attention.

D. The importance of continued and enhanced funding models for educational content

21. How do we ensure that Canadian broadcasters and distributors exercise creative control over programming decisions made in the domestic market? There is no doubt that the Panel will look at existing funding instruments in the system with a view to assessing their continued relevance and effectiveness. This is the only way of ensuring a strong Canadian presence on all platforms over time given the mounting competition for viewers’ attention.
22. We acknowledge that the point system used by the Commission and the Canada Media Fund (CMF) has been in place for over 30 years and has delivered significant benefits to the

¹ *Harnessing Change: The Future of Programming Distribution in Canada*, CRTC May 2018.



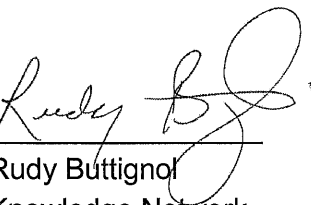

² *The Digital Media Universe in Canada: Measuring the Revenues, the Audience and the Future Prospects*, DM@X-Nordicity January 2018 (page 31).

³ DM@X-Nordicity, page 34.

system, but new and more comprehensive approaches are needed.

23. Current funding programs will remain of critical importance in support of the Canadian broadcasting system. Absent this support, domestic production of virtually all genres of programming would not be sustainable at current levels.⁴ In particular, CMF funding is a key component of the current business model for children's, documentary and drama programming for public ednets.
24. The CMF's goal should therefore not only be to fund productions with strong international potential and to become a fund dedicated solely to Canadian high-cost drama series for export. It must also allow Canadian creators, first and foremost, to meet the various expectations of Canadian audiences.
25. The CMF must also take into account the specific nature of the French-language market in its directions and decisions.
26. New approaches could include using tax credits and funding from public funds like CMF and other major private and public funds to ensure that Canadian educational players and producers are offered the opportunity and incentive to develop more educational content.
27. We must ensure that all Canadian producers of educational programming have access to dedicated and adequate financial support from the various funding programs. This is not the case right now. The CMF, the major funding organization, and the tax credit system do not offer programs designed specifically to support the creation of educational programming.
28. Public educational broadcasters make a unique contribution to the system. We must therefore ensure that they can fulfil that role, by providing them with adequate and dedicated funding support and to the producers so they can provide a steady supply of quality educational content.
29. CAPEM thanks the Broadcasting and Telecommunications Legislative Review Panel for the opportunity to provide these comments.

Sincerely,

			
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⁴ *Harnessing Change: The Future of Programming Distribution in Canada*, CRTC May 2018, Market Insight 20. Public policy is sustaining a level of domestic production the market would not naturally bear.

