

Gill, Donna

From: Gill, Donna
Sent: February-20-18 10:10 AM
To: Pagani, Raffaele; Lefebvre, Jean-Pierre
Subject: RE: SCFP Phone Call

Tracking:	Recipient	Read
	Pagani, Raffaele	Read: 20/02/2018 10:11 AM
	Lefebvre, Jean-Pierre	Read: 20/02/2018 10:11 AM

If she is a Francophone, would you mind calling her, JP? Maybe you can give us her number though instead of giving her ours.

From: Pagani, Raffaele
Sent: February-20-18 10:08 AM
To: Gill, Donna <donna.gill@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Subject: SCFP Phone Call

Hi Donna and Jean-Pierre,

I told her that she could call one of you for a further explanation.

Would it be okay if I provide her with one of your phone numbers?

Thanks very much,

raf

Raffaele Pagani

Analyste principal | Senior Analyst

CRTC | Point de service unique aux petites entreprises – Câble, télé, radio : Vos questions, nos réponses! 1-

866-781-1911

CRTC | Single Point of Contact for Small Undertakings – Cable, TV and Radio: Your Questions, Our Answers! 1-

866-781-1911

[Learn more about your CRTC](#)

[Follow us on Twitter \(@CRTCeng\)](#)

[Like us on Facebook](#)

Gill, Donna

From: Gill, Donna
Sent: March-28-18 12:45 PM
To: Craig, Michael; Foster, Peter; Carter, Sheehan; Hutton, Scott; Dionne, Valérie; Lefebvre, Jean-Pierre; Rancourt, Eric
Cc: Rancourt, Mélanie; Brault, Claude
Subject: RE: Denis Bolduc / SCFP-Québec - APP Inbox

Tracking:	Recipient	Read
	Craig, Michael	
	Foster, Peter	Read: 28/03/2018 12:55 PM
	Carter, Sheehan	
	Hutton, Scott	Read: 28/03/2018 12:53 PM
	Dionne, Valérie	Read: 28/03/2018 12:45 PM
	Lefebvre, Jean-Pierre	Read: 28/03/2018 1:10 PM
	Rancourt, Eric	
	Rancourt, Mélanie	Read: 28/03/2018 1:15 PM
	Brault, Claude	

Should we bring it to the Commission for a decision?

From: Craig, Michael
Sent: March-28-18 12:28 PM
To: Gill, Donna <donna.gill@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Carter, Sheehan <sheehan.carter@crtc.gc.ca>; Hutton, Scott <scott.hutton@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Rancourt, Eric <eric.rancourt@crtc.gc.ca>
Cc: Rancourt, Mélanie <melanie.rancourt@crtc.gc.ca>
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

Hi,

The SCFP has provided a response to Scott's letter that indicated that it would not be appropriate for us to treat their "application" to review the DMEQ at this time.

Arguing that a staff letter is not a decision of the Commission, that our choice to not publish their application upon reception is a contravention of our own Rules of Procedure, and that we have violated their right to procedural fairness, they have requested that the Commission post their application by no later than 5:00pm on 29 March 2018. Should their application not be posted, they have suggested that they will take some form of legal action against the Commission.

Michael Craig
 Manager, English and Third-language Television |
 Gestionnaire, Télévision anglaise et de tierce langue
 Conseil de la radiodiffusion et des télécommunications canadiennes | Canadian Radio-television and
 Telecommunications Commission

Les Terrasses de la Chaudière, 1 Promenade du Portage, Gatineau, Québec, J8X 4B1

michael.craig@crtc.gc.ca

Téléphone/Telephone: 819-997-9394

Télécopieur / Facsimile: 819-994-0218

Gouvernement du Canada / Government of Canada

www.crtc.gc.ca

 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)

From: Lehoux, Manon

Sent: March-28-18 11:11 AM

To: Craig, Michael <michael.craig@crtc.gc.ca>

Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

From: Oakley, Tim

Sent: March-28-18 10:17 AM

To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>

Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

Good morning Manon

This is to be sent to Michael Craig as per Manon Auger's instructions

Thank you

Have a great day

Tim

Tim Oakley

Planification et processus / Planning and Process

Conseil de la radiodiffusion et des télécommunications canadiennes

Canadian Radio-television and Telecommunications Commission

1 Promenade du Portage, Gatineau, QC K1A 0N2

tim.oakley@crtc.gc.ca

Téléphone | Telephone 819-997-9354

Télécopieur | Facsimile 819-994-0218

Gouvernement du Canada | Government of Canada

www.crtc.gc.ca

 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)

Gill, Donna

From: Gill, Donna
Sent: April-05-18 11:40 AM
To: Lefebvre, Jean-Pierre
Cc: Dionne, Valérie; Foster, Peter
Subject: DOCS-#3098438-v1-SCFP_Request_-_Memo_-_BCM_10_April
Attachments: DOCS-#3098438-v1-SCFP_Request_-_Memo_-_BCM_10_April.docx

Here are my comments, JP. I would use "the" with an acronym since you would use it if it were spelled out in full, e.g. le Conseil, the Council, etc.)

s.21(1)(b)

Conseil de la radiodiffusion et des
télécommunications canadiennesCanadian Radio-television and
Telecommunications Commission

MEMORANDUM

NOTE DE SERVICE

To
À BCM – 10 April 2018

From
De Jean-Pierre Lefebvre
994-5326

Subject
Sujet Review of the Exemption order for digital media broadcasting undertakings

Security Classification - Classification de sécurité
Protected B
Our File - Notre référence
Your File - Votre référence
Date
5 April 2018

For decision: Request by the Syndicat canadien de la fonction publique for process of its Part 1 application

The application

Initial application by SCFP

On 13 February 2018, the Commission received an application filed pursuant to Part 1 of the CRTC Rules of Practice and Procedure (the Rules of Procedure) from the Conseil provincial du secteur des communications (CPSC) of the Syndicat canadien de la fonction publique (SCFP), requesting that the Commission review the

In response to this application, on 7 March 2018, Commission staff sent a letter to the SCFP, indicating that it would be appropriate for the Commission to initiate a separate proceeding on the matter, as the relevance of maintaining or amending the had already been raised by a number of interveners, including the SCFP, as part of the public proceeding initiated by Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models* (Notice of Consultation 2017-359).

Request to process

On 26 March 2018, the SCFP sent another letter to the Commission, requesting that the Part 1 application filed on 13 February be published and that the Commission render a decision on it at the conclusion of the process.

The SCFP is of the view that:

- The response sent by staff does not constitute a Commission's decision and that, accordingly, SCFP's Part 1 application is still pending publication and decision.
- The fact that the SCFP's Part 1 application was not published contravenes the Rules of Procedure.
- Nothing in the Rules of Procedure specifies that a Part 1 application be denied based on the fact it addresses a matter already examined as part of another proceeding.
- Should the Commission fail to publish its application in a timely manner, the SCFP will undertake the appropriate legal recourses.

s.21(1)(a)

s.21(1)(b)

s.23

Analysis

[REDACTED]

Commented [GD1]:

Legal advice

[REDACTED]

Commented [GD2]:

Recommendation

Staff recommends that the Commission decide not to process SCFP's Part 1 application.

Gill, Donna

From: Gill, Donna
Sent: April-06-18 9:13 AM
To: Lefebvre, Jean-Pierre; Foster, Peter; Dionne, Valérie
Subject: RE: DOCS-#3098438-v2-SCFP_Request_-_Memo_-_BCM_10_April

Tracking:	Recipient	Read
	Lefebvre, Jean-Pierre	Read: 06/04/2018 9:14 AM
	Foster, Peter	Read: 06/04/2018 9:34 AM
	Dionne, Valérie	Read: 06/04/2018 9:20 AM

Well done, JP!

From: Lefebvre, Jean-Pierre
Sent: April-06-18 9:13 AM
To: Foster, Peter <peter.foster@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: DOCS-#3098438-v2-SCFP_Request_-_Memo_-_BCM_10_April

Thanks everyone.

We made it! The memo is now with Secretariat.

JP

From: Foster, Peter
Sent: April-05-18 3:51 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: DOCS-#3098438-v2-SCFP_Request_-_Memo_-_BCM_10_April

Hi all – I'm fine with the changes that have been made.

Thanks,
Peter

From: Lefebvre, Jean-Pierre
Sent: April-05-18 3:47 PM
To: Gill, Donna <donna.gill@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>
Subject: RE: DOCS-#3098438-v2-SCFP_Request_-_Memo_-_BCM_10_April

Sure!

JP

From: Gill, Donna
Sent: April-05-18 3:41 PM

To: Dionne, Valérie <valerie.dionne@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>

Subject: RE: DOCS-#3098438-v2-SCFP_Request_-_Memo_-_BCM_10_April

Also, Recommendation is spelled wrong in the memo. And do you think that we can remove the word '██████████' so that it would just be the "██████████". I think that works.

From: Dionne, Valérie

Sent: April-05-18 3:36 PM

To: Foster, Peter <peter.foster@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>

Subject: DOCS-#3098438-v2-SCFP_Request_-_Memo_-_BCM_10_April

I made an addition in the analysis.

Gill, Donna

From: Gill, Donna
Sent: April-11-18 1:02 PM
To: Foster, Peter; Lefebvre, Jean-Pierre; Dionne, Valérie
Subject: RE: Demande de traitement SCFP - Réponse

Tracking:	Recipient	Read
	Foster, Peter	Read: 11/04/2018 1:03 PM
	Lefebvre, Jean-Pierre	Read: 11/04/2018 1:02 PM
	Dionne, Valérie	Read: 11/04/2018 1:05 PM

Me too.

From: Foster, Peter
Sent: April-11-18 12:59 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: Demande de traitement SCFP - Réponse

Thanks JP – looks good to me.

From: Lefebvre, Jean-Pierre
Sent: April-11-18 12:52 PM
To: Gill, Donna <donna.gill@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: Demande de traitement SCFP - Réponse

Good afternoon,

Based on yesterday's discussions, I've updated the letter [REDACTED] for the Sec. Gen. signature.

Let me know if you feel it reflects the determination made by the members. I'll get it translated as soon as we're set on content.

JP

Lefebvre, Jean-Pierre

From: Craig, Michael
Sent: February-21-18 4:26 PM
To: Lefebvre, Jean-Pierre
Subject: DOCS-#3072744-v1-
Demande_SCFP_-_Réexamen_Ordonnance_médias_numériques_-_Réponse
Attachments: DOCS-#3072744-v1-
Demande_SCFP_-_Réexamen_Ordonnance_médias_numériques_-_Réponse.doc

Lets try this.



Canadian Radio-television and
Telecommunications Commission

Conseil de la radiodiffusion et des
télécommunications canadiennes

s.21(1)(b)

Ottawa, Canada
K1A 0N2

Ottawa, le XX [REDACTED] 2018

PAR COURRIEL

Nathalie Blais
Conseillère à la recherche
Syndicat canadien de la fonction publique
nblais@scfp.qc.ca

Objet: Demande de la partie 1 – Réexamen de l'Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques

J'accuse réception de la demande [REDACTED] soumise le 13 février 2018 par le Conseil provincial du secteur des communications (CPSC) du Syndicat canadien de la fonction publique (SCFP), demandant au Conseil de procéder au réexamen de l'Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques (l'Ordonnance).

Je note que les éléments soulevés par le SCFP dans la présente demande [REDACTED] sont semblables à [REDACTED] le SCFP en réponse à la [REDACTED] consultation publique, initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359, *Appel aux observations sur la demande du gouverneur en conseil de faire rapport sur les modèles de distribution de programmation de l'avenir*. Le sujet de la pertinence de maintenir ou de modifier l'Ordonnance a d'ailleurs été soulevé par divers autres intervenants participant à cette instance. [REDACTED]

[REDACTED] pas approprié pour le Conseil

Conséquemment, votre demande [REDACTED] ne sera pas traitée [REDACTED]

Je vous prie d'agréer, Madame, l'expression de mes sentiments les meilleurs.

[REDACTED] Scott Hulton

Canada

[REDACTED] Directeur Exécutif
Radiodiffusion
[REDACTED]

Lefebvre, Jean-Pierre

From: Lefebvre, Jean-Pierre
Sent: April-19-18 3:11 PM
To: Rancourt, Mélanie
Cc: Lehoux, Manon
Subject: FW: Demande de traitement SCFP - Réponse
Attachments: 3102263_-_Demande_de_traitement_SCFP_-_Réponse.DOC.DRF; 3103853
_-_SCFP_Process_request_-_Response.DOC.DRF

Salut Mélanie,

En l'absence de Manon demain, pourrais-tu svp t'occuper de faire parvenir cette lettre au bureau du SG?

Merci,

JP

From: Lefebvre, Jean-Pierre
Sent: April-19-18 3:08 PM
To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>
Subject: Demande de traitement SCFP - Réponse

Salut Manon,

Les nouvelles versions de la lettre pour le Secrétaire Général.

Merci,

JP



Canadian Radio-television and
Telecommunications Commission

Conseil de la radiodiffusion et des
télécommunications canadiennes

s.21(1)(b)

Ottawa, Canada
K1A 0N2

Ottawa, le XX [REDACTED] 2018

PAR COURRIEL

Nathalie Blais
Conseillère à la recherche
Syndicat canadien de la fonction publique
nblais@scfp.qc.ca

Objet: Demande de la partie 1 – Réexamen de l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques*

J'accuse réception de la demande [REDACTED] soumise le 13 février 2018 par le Conseil provincial du secteur des communications (CPSC) du Syndicat canadien de la fonction publique (SCFP), demandant au Conseil de procéder au réexamen de l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques* (l'*Ordonnance*).

Je note que les éléments soulevés par le SCFP dans la présente demande [REDACTED] sont semblables à [REDACTED], le SCFP en réponse à la [REDACTED] consultation publique, initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359, *Appel aux observations sur la demande du gouverneur en conseil de faire rapport sur les modèles de distribution de programmation de l'avenir*. Le sujet de la pertinence de maintenir ou de modifier l'*Ordonnance* a d'ailleurs été soulevé par divers autres intervenants participant à cette instance [REDACTED].

[REDACTED] pas approprié pour le Conseil

Conséquemment, votre demande [REDACTED]

Je vous prie d'agréer, Madame, l'expression de mes sentiments les meilleurs.

[REDACTED] Scott Hutton

Canada

s.21(1)(b)

Directeur Exécutif
Radiodiffusion

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



Ottawa, 20 April 2018

VIA E-MAIL

Denis Bolduc
President
SCFP-Québec
nblais@scfp.qc.ca

Dear Mr. Bolduc:

RE: Request for process of Part 1 application - Review of the *Exemption order for digital media broadcasting undertakings*

The Commission is in receipt of the application filed on 13 February 2018 by the Conseil provincial du secteur des communications (CPSC) of the Syndicat canadien de la fonction publique (SCFP), requesting that the Commission review the *Exemption order for digital media broadcasting undertakings* (the Order), as well as of its request for process of the aforementioned application, dated 26 March 2018.

The Commission notes that, pursuant to section 7 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules), the Commission may dispense with or vary the Rules when considerations of public interest or fairness permit. The Commission also notes that the elements raised by the CPSC in its 13 February 2018 application are similar to those mentioned by the CPSC in response to the public proceeding initiated by Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models* (the Notice).

For example, both in its 13 February 2018 application and in its intervention in response to the Notice, the CPSC references the obsolescence of the Commission's findings from *Exemption order for new media broadcasting undertakings* – Public Notice CRTC 1999-197, the time elapsed since the last review of the Order, the fact that Internet penetration rate is now higher than the penetration rates for broadcasting distribution undertakings, the migration of advertising revenues from traditional media towards the Internet, etc. Moreover, the Commission notes that some paragraphs included in the intervention filed by the CPSC in response to the Notice are completely or almost completely replicated as part of the 13 February 2018 application.

The issue of the relevance of maintaining or amending the Order has also been raised by a number of other interveners participating in the public consultation.

Furthermore, the Commission is an independent administrative tribunal that has the mandate, *inter alia*, to supervise and regulate the Canadian broadcasting system. In furtherance of its objects, the Commission has the discretion to determine the appropriate moment to undertake a review of one of its policies. Under the circumstances, the Commission considers that it is not appropriate to initiate a separate public proceeding to consider the application.

Accordingly, the Commission has determined that your application will not be posted nor receive further process.

Yours sincerely,

Claude Doucet
Secretary General

s.21(1)(b)

Lefebvre, Jean-Pierre

From: Gill, Donna
Sent: February-21-18 2:36 PM
To: Lefebvre, Jean-Pierre; Craig, Michael
Subject: RE: Réjean Beaudet, CPSC - APP Inbox

Yes, good idea.

From: Lefebvre, Jean-Pierre
Sent: February-21-18 2:25 PM
To: Gill, Donna <donna.gill@crtc.gc.ca>; Craig, Michael <michael.craig@crtc.gc.ca>
Subject: RE: Réjean Beaudet, CPSC - APP Inbox

And I guess I should probably add a [REDACTED]

[REDACTED]

JP

From: Lefebvre, Jean-Pierre
Sent: February-21-18 2:20 PM
To: Gill, Donna <donna.gill@crtc.gc.ca>; Craig, Michael <michael.craig@crtc.gc.ca>
Subject: RE: Réjean Beaudet, CPSC - APP Inbox

Yeah, I wasn't sure about that either. But you're right, it works without it anyway.

JP

From: Gill, Donna
Sent: February-21-18 2:13 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Craig, Michael <michael.craig@crtc.gc.ca>
Subject: RE: Réjean Beaudet, CPSC - APP Inbox

It works for me although [REDACTED]

From: Lefebvre, Jean-Pierre
Sent: February-21-18 2:07 PM
To: Craig, Michael <michael.craig@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: RE: Réjean Beaudet, CPSC - APP Inbox

Here's what I propose as a reply to SCFP's Part 1 application.

Please let me know if it's in line with what you had in mind before I send a copy to Peter and Valérie.

JP

PS: Left a voice mail to Nathalie Blais, but still haven't heard back from her.

From: Craig, Michael
Sent: February-20-18 4:20 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

Please see attached.

From: Craig, Michael
Sent: February-16-18 4:51 PM
To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>
Cc: Rancourt, Mélanie <melanie.rancourt@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

Hi Manon,

Can you please create a Rapids case for the attached documents? Please let me know the case number once you have.

Many thanks,

Michael Craig
819-997-9394

From: Lehoux, Manon
Sent: February-15-18 1:22 PM
To: Craig, Michael <michael.craig@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

From: Oakley, Tim
Sent: February-15-18 1:08 PM
To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>
Subject: Réjean Beaudet, CPSC - APP Inbox

Hi Manon

I am not sure for this one but my guess is Michael Craig.
Please let me know what happens with this one please.

Tim

Tim Oakley
Planification et processus / Planning and Process
Conseil de la radiodiffusion et des télécommunications canadiennes
Canadian Radio-television and Telecommunications Commission
1 Promenade du Portage, Gatineau, QC K1A 0N2
tim.oakley@crtc.gc.ca
Téléphone | Telephone 819-997-9354
Télécopieur | Facsimile 819-994-0218
Gouvernement du Canada | Government of Canada
www.crtc.gc.ca

 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)

Lefebvre, Jean-Pierre

From: Lefebvre, Jean-Pierre
Sent: February-26-18 3:00 PM
To: Rancourt, Mélanie
Subject: Demande SCFP - Réexamen Ordonnance médias numériques - Réponse
Attachments: 3072744
_ _Demande_SCFP_ _Réexamen_Ordonnance_médias_numériques_ _Réponse.DOC.DRF

Bonjour Mélanie,

Pour la signature de Scott.

Merci,

JP



Ottawa, 7 mars 2018

PAR COURRIEL

Madame Nathalie Blais
Conseillère à la recherche
Syndicat canadien de la fonction publique
nblais@scfp.qc.ca

Objet: Demande de la partie 1 – Réexamen de l'Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques

Madame,

J'accuse réception de la demande soumise le 13 février 2018 par le Conseil provincial du secteur des communications (CPSC) du Syndicat canadien de la fonction publique (SCFP), demandant au Conseil de procéder au réexamen de l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques* (l'Ordonnance).

Je note que les éléments soulevés par le SCFP dans la présente demande sont semblables à ceux évoqués par le SCFP en réponse à la consultation publique initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359, *Appel aux observations sur la demande du gouverneur en conseil de faire rapport sur les modèles de distribution de programmation de l'avenir*. Le sujet de la pertinence de maintenir ou de modifier l'Ordonnance a d'ailleurs également été soulevé par divers autres intervenants participant à cette instance.

Il ne semble donc pas approprié pour le Conseil d'initier une instance publique distincte pour considérer votre demande.

Conséquemment, votre demande ne sera pas traitée.

Veuillez agréer, Madame, l'expression de mes sentiments les meilleurs.

Scott Hutton
Directeur exécutif, Radiodiffusion

c.c. : Réjean Beaudet, CPSC (rejean.beaudet@bellnet.ca)
Gilles Charland, AQTIS (gilles.charland@aqtis.qc.ca)
FNC-CSN (fnc@fnc.quebec)
Hélène Messier, AQPM (hmessier@aqpm.ca)
Daniel Boyer, FTQ (fvigeant@ftq.qc.ca)



Ottawa, XX April 2018

BY E-MAIL

Denis Bolduc
President
SCFP-Québec
nblais@scfp.qc.ca

RE: Request for process of Part 1 application - Review of the *Exemption order for digital media broadcasting undertakings*

Mr. Bolduc,

The Commission is in receipt of the application filed on 13 February 2018 by the Conseil provincial du secteur des communications (CPSC) of the Syndicat canadien de la fonction publique (SCFP), requesting that the Commission review the *Exemption order for digital media broadcasting undertakings* (the Order), as well as of its request to process the aforementioned application, dated 26 March 2018.

The Commission notes that, pursuant to section 7 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules), the Commission may dispense with or vary the Rules when considerations of public interest or fairness permit. The Commission also notes that the elements raised by the CPSC in its 13 February 2018 application are similar to those [REDACTED] by the CPSC in response to the public proceeding initiated by Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models* (the Notice).

For example, in both its 13 February 2018 application and in its intervention in response to the Notice, the CPSC references the obsolescence of the Commission's findings from *Exemption order for new media broadcasting undertakings* – Public Notice CRTC 1999-197, the time elapsed since the last review of the Order, the fact that Internet penetration rate is now higher than penetration rate for broadcasting distribution undertakings, the migration of advertising revenues from traditional media towards the Internet, etc. Moreover, the Commission notes that [REDACTED] paragraphs included in the intervention filed by the CPSC in response to the Notice are completely or almost completely replicated in the 13 February 2018 application.

The issue of the relevance of maintaining or amending the Order has also been raised by a number of other interveners participating in the public consultation.

Furthermore, the Commission is an independent administrative tribunal that has the mandate, *inter alia*, to supervise and regulate the Canadian broadcasting system. In furtherance of its objects, the Commission has the discretion to determine the appropriate moment to undertake a

s.21(1)(b)

review of one of its policies. Under the circumstances, the Commission considers that it is not appropriate to initiate a separate public proceeding to consider the [REDACTED] application.

Accordingly, the Commission has determined that your application will not be posted nor receive further process.

Yours sincerely,

Claude Doucet
Secretary General



Ottawa, XX avril 2018

PAR COURRIEL

Monsieur Denis Bolduc
Président
SCFP-Québec
nblais@scfp.qc.ca

**Objet: Demande de traitement de la demande de la partie 1 – Réexamen de l'Ordonnance
d'exemption relative aux entreprises de radiodiffusion de médias numériques**

Monsieur,

Le Conseil accuse réception de la demande soumise le 13 février 2018 par le Conseil provincial du secteur des communications (CPSC) du Syndicat canadien de la fonction publique (SCFP), demandant au Conseil de procéder au réexamen de l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques* (l'Ordonnance), ainsi que de sa demande de traitement de la demande susmentionnée, datée du 26 mars 2018.

Le Conseil note que l'article 7 des *Règles de pratique et de procédure du Conseil de la radiodiffusion et des télécommunications canadiennes* (Règles) lui permet de suspendre ou de modifier les Règles lorsque l'intérêt public ou l'équité le permet. Le Conseil note de plus que les éléments soulevés par le CPSC dans la demande du 13 février 2018 sont semblables à ceux évoqués par le CPSC en réponse à la consultation publique initiée par l'avis de consultation de radiodiffusion CRTC 2017-359, *Appel aux observations sur la demande du gouverneur en conseil de faire rapport sur les modèles de distribution de programmation de l'avenir* (l'Avis).

Par exemple, autant dans sa demande du 13 février 2018 que dans ses commentaires suivant la consultation publique initiée par l'Avis, le CPSC fait référence à l'obsolescence des constats établis par le Conseil dans l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de nouveaux médias* – Avis Public CRTC 1999-197, au temps écoulé depuis le dernier examen de l'Ordonnance, au fait que le taux de pénétration d'Internet est maintenant supérieur au taux de pénétration des entreprises de distribution en radiodiffusion, à la migration des revenus publicitaires des médias traditionnels vers Internet, etc. Le Conseil note d'ailleurs que certains paragraphes inclus dans l'intervention soumise par le CPSC dans le cadre de l'instance initiée par l'Avis sont reproduits intégralement ou quasi-intégralement dans la demande du 13 février 2018.

Le sujet de la pertinence de maintenir ou de modifier l'Ordonnance a d'ailleurs également été soulevé par divers autres intervenants participant à cette consultation.

Par ailleurs, le Conseil est un tribunal administratif indépendant dont l'un des mandats est de surveiller et réglementer le système canadien de radiodiffusion. Dans le cadre de ce mandat, le

Conseil a la discrétion de déterminer le moment adéquat pour entreprendre une révision d'une de ses politiques. Le Conseil considère qu'il n'est pas approprié dans les circonstances d'initier une instance publique distincte pour considérer la demande du CPSC.

Conséquemment, le Conseil a décidé de ne pas afficher votre demande et celle-ci ne sera pas traitée [REDACTED]

Veuillez agréer, Monsieur, l'expression de mes sentiments les meilleurs.

Claude Doucet
Secrétaire général

Lefebvre, Jean-Pierre

From: Dionne, Valérie
Sent: April-11-18 1:35 PM
To: Lefebvre, Jean-Pierre
Subject: RE: Demande_de_traitement_SCFP_-_Réponse

Note que j'ai aussi envoyé l'ébauche à Steve Millington pour ses commentaires. Je te reviens s'il a des changements.

From: Lefebvre, Jean-Pierre
Sent: April-11-18 1:09 PM
To: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: Demande_de_traitement_SCFP_-_Réponse

Merci Valérie.

JP

From: Dionne, Valérie
Sent: April-11-18 1:04 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>
Subject: Demande_de_traitement_SCFP_-_Réponse

I've made some track changes.

Lefebvre, Jean-Pierre

From: Dionne, Valérie
Sent: April-05-18 3:36 PM
To: Foster, Peter; Gill, Donna; Lefebvre, Jean-Pierre
Subject: DOCS-#3098438-v2-SCFP_Request_-_Memo_-_BCM_10_April
Attachments: DOCS-#3098438-v2-SCFP_Request_-_Memo_-_BCM_10_April.docx

I made an addition in the analysis.

Conseil de la radiodiffusion et des
télécommunications canadiennesCanadian Radio-television and
Telecommunications Commission

MEMORANDUM

NOTE DE SERVICE

To
À

BCM – 10 April 2018

From
DeJean-Pierre Lefebvre
994-5326Subject
Sujet**Review of the Exemption order for digital media broadcasting undertakings**

Security Classification - Classification de sécurité
Protected B
Our File - Notre référence
Your File - Votre référence
Date
5 April 2018

For decision: Request by the Syndicat canadien de la fonction publique for process of its Part 1 application

The application

Initial application by SCFP

On 13 February 2018, the Commission received an application filed pursuant to Part 1 of the CRTC Rules of Practice and Procedure (the Rules of Procedure) from the Conseil provincial du secteur des communications (CPSC) of the Syndicat canadien de la fonction publique (SCFP), requesting that the Commission review the Digital Media Exemption Order¹ (the DMEO).

In response to this application, on 7 March 2018, Commission staff sent a letter to the SCFP, indicating that it would not be appropriate for the Commission to initiate a separate proceeding on the matter, as the issue of the relevance of maintaining or amending the DMEO had already been raised by a number of interveners, including the SCFP, as part of the public proceeding initiated by Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models* (Notice of Consultation 2017-359).

Request to process

On 26 March 2018, the SCFP sent another letter to the Commission, requesting that the Part 1 application filed on 13 February be published and that the Commission render a decision on it at the conclusion of the process.

The SCFP is of the view that:

- The response sent by staff does not constitute a Commission decision and that, accordingly, SCFP's Part 1 application is still pending publication and decision.
- The fact that the SCFP's Part 1 application was not published contravenes the Rules of Procedure.
- Nothing in the Rules of Procedure specifies that a Part 1 application can be denied based on the fact it addresses a matter already examined as part of another proceeding.
- Should the Commission fail to publish its application in a timely manner, the SCFP will undertake the appropriate legal recourses.

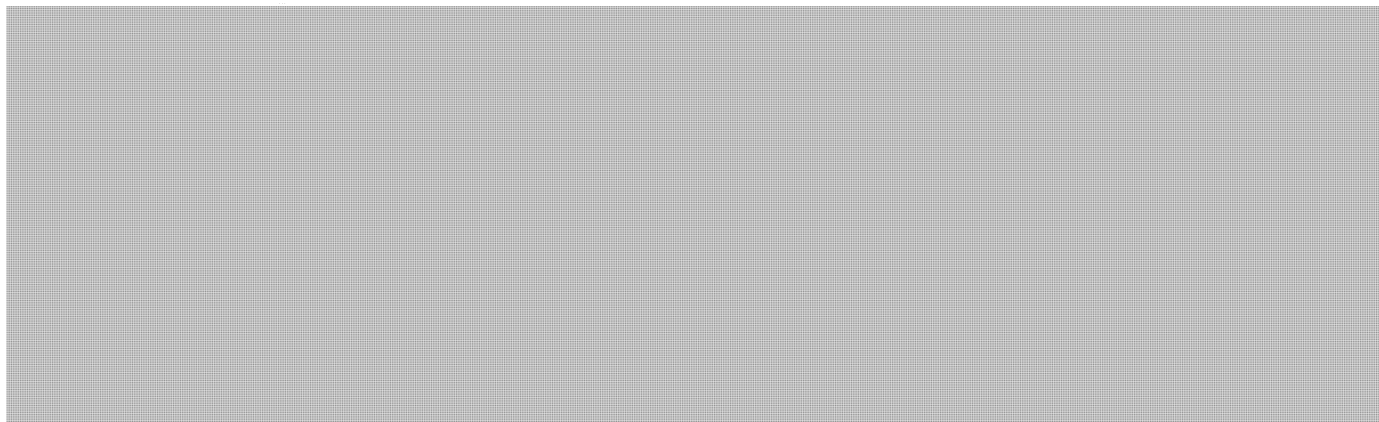
¹ Officially known as the *Exemption order for digital media broadcasting undertakings*.

s.21(1)(a)

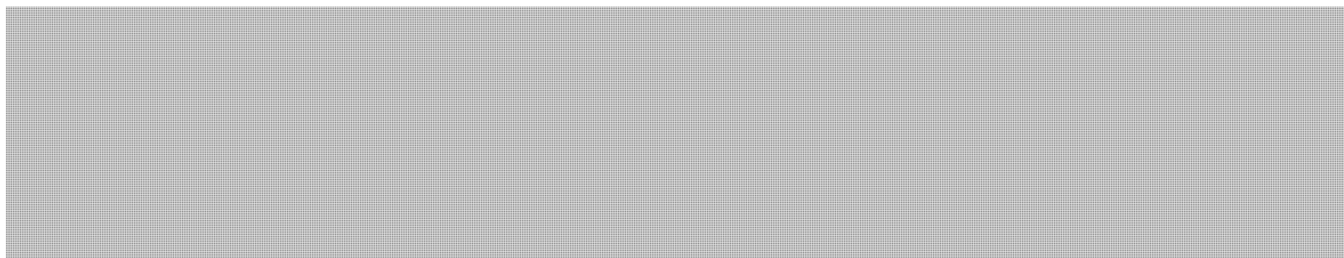
s.21(1)(b)

s.23

Analysis



Legal advice



Recommendation

Staff recommends that the Commission decide not to process SCFP's Part 1 application.

Lefebvre, Jean-Pierre

From: Dionne, Valérie
Sent: April-05-18 9:14 AM
To: Lefebvre, Jean-Pierre; Gill, Donna; Foster, Peter
Subject: SCFP_BCM_memo
Attachments: DOCS-#3097339-v1-SCFP_mandamus_BCM_memo.docx

Hello,

I have attached track changes to the SCFP BCM memo.

Val

s.21(1)(b)

Conseil de la radiodiffusion et des
télécommunications canadiennesCanadian Radio-television and
Telecommunications Commission

MEMORANDUM

NOTE DE SERVICE

To
ÀFrom
DeSubject
Sujet

Réexamen de l'Ordonnance d'exemption de radiodiffusion relative aux entreprises de radiodiffusion de médias numériques

Security Classification - Classification de sécurité
Our File - Notre référence
Your File - Votre référence
Date

Pour décision: Demande de traitement [REDACTED] du Syndicat canadien de la fonction publique de sa demande en vertu de la Partie 1 des Règles de pratique et de procédure

La demande**Demande initiale du SCFP**

Le 13 février 2018, le Conseil a reçu une demande de la partie 1 des Règles de pratique et de procédure du CRTC (les Règles) de la part du Conseil provincial du secteur des communications (CPSC) du Syndicat canadien de la fonction publique (SCFP), demandant au Conseil de procéder au réexamen de l'Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques (l'Ordonnance).

En réponse à cette demande, le 7 mars 2018, le personnel du Conseil a envoyé une lettre au SCFP, lui indiquant qu'il ne semblait pas approprié pour le Conseil d'initier une instance distincte à cet effet, puisque le sujet de la pertinence de maintenir ou de modifier l'Ordonnance avait été soulevé par divers intervenants, incluant le SCFP lui-même, dans le cadre de la consultation publique initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359, *Appel aux observations sur la demande du gouverneur en conseil de faire rapport sur les modèles de distribution de programmation de l'avenir* (l'Avis de consultation 2017-359).

Demande de traitement

Le 26 mars 2018, le SCFP a envoyé une nouvelle lettre au Conseil, lui demandant de publier la demande de la partie 1 déposée le 13 février 2018 et de rendre une décision au terme du processus.

Le SCFP est d'avis que :

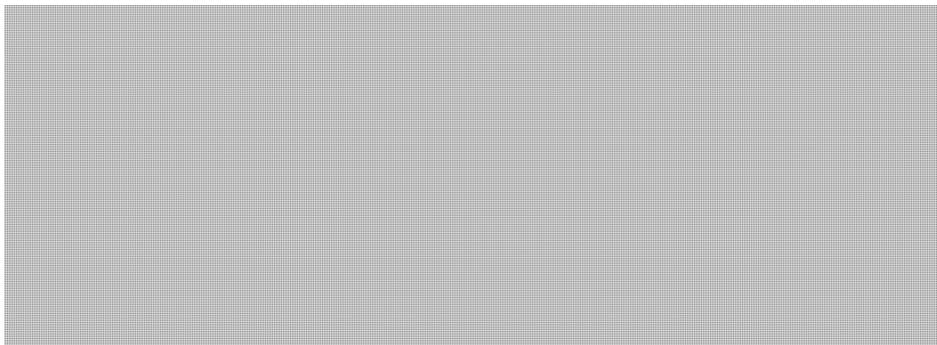
- La réponse envoyée par le personnel du Conseil ne constitue pas une décision du Conseil et que, pour cette raison, la demande de la partie 1 du SCFP est toujours en attente d'un affichage et d'une décision.
- Le fait de ne pas afficher la demande de la partie 1 du SCFP contrevient aux Règles [REDACTED]
- Il n'est prévu nulle part dans les Règles qu'une demande de la partie 1 puisse être refusée au motif qu'elle aborde une question déjà traitée dans un autre processus du Conseil.

s.21(1)(a)

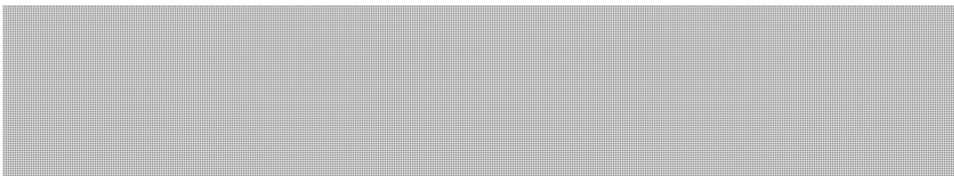
s.21(1)(b)

s.23

Analyse



Avis juridique



Formatted: Font: Italic

Formatted: Font: Italic

Recommandation

Le personnel recommande que le Conseil prenne la décision de ne pas traiter la demande de la partie 1 du SCFP.

s.21(1)(b)

Lefebvre, Jean-Pierre

From: Foster, Peter
Sent: April-04-18 1:56 PM
To: Lefebvre, Jean-Pierre
Cc: Dionne, Valérie; Gill, Donna
Subject: RE: Demande de traitement - SCFP - Memo

Me too, JP - thanks

From: Gill, Donna
Sent: April-04-18 1:34 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: Demande de traitement - SCFP - Memo

It looks good to me, JP.

From: Lefebvre, Jean-Pierre
Sent: April-04-18 11:43 AM
To: Gill, Donna <donna.gill@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: Demande de traitement - SCFP - Memo

Here's my first crack at the SCFP memo (request to review the DMEO Exemption Order).

Valérie will provide an analysis regarding [REDACTED]

Please let me know if this works for you (I did it in French so far, but I'll translate it as soon as we're set on content and tone).

Thanks,

JP

s.19(1)

s.21(1)(b)

Lefebvre, Jean-Pierre

From: Foster, Peter
Sent: April-04-18 10:17 AM
To: Rancourt, Eric
Cc: Hutton, Scott; Brault, Claude; Lefebvre, Jean-Pierre; Valladao, Patricia; Legault, Céline; Gill, Donna
Subject: RE: Denis Bolduc / SCFP-Québec - APP Inbox

Hi Eric – I didn't see anything in this morning's clippings by [REDACTED] Did his piece get published today?

From: Rancourt, Eric
Sent: April-03-18 2:22 PM
To: Foster, Peter <peter.foster@crtc.gc.ca>
Cc: Hutton, Scott <scott.hutton@crtc.gc.ca>; Brault, Claude <claudio.brault@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Valladao, Patricia <patricia.valladao@crtc.gc.ca>; Legault, Céline <Celine.Legault@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: RE: Denis Bolduc / SCFP-Québec - APP Inbox

FYI – [REDACTED] is writing a story on this for publication [REDACTED]

From: Foster, Peter
Sent: March-28-18 5:05 PM
To: Rancourt, Eric <eric.rancourt@crtc.gc.ca>
Cc: Hutton, Scott <scott.hutton@crtc.gc.ca>; Brault, Claude <claudio.brault@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Valladao, Patricia <patricia.valladao@crtc.gc.ca>; Legault, Céline <Celine.Legault@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: RE: Denis Bolduc / SCFP-Québec - APP Inbox

Hi Eric – [REDACTED]

From: Rancourt, Eric
Sent: March-28-18 1:53 PM
To: Gill, Donna <donna.gill@crtc.gc.ca>
Cc: Hutton, Scott <scott.hutton@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Brault, Claude <claudio.brault@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Valladao, Patricia <patricia.valladao@crtc.gc.ca>; Legault, Céline <Celine.Legault@crtc.gc.ca>
Subject: RE: Denis Bolduc / SCFP-Québec - APP Inbox

Thanks, Donna. Please let us know what we decide to do re: [REDACTED]

From: Gill, Donna
Sent: March-28-18 1:51 PM
To: Rancourt, Eric <eric.rancourt@crtc.gc.ca>
Cc: Hutton, Scott <scott.hutton@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Brault, Claude <claudio.brault@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

Hi Eric – Scott wanted us to give you a head's up on this but I see that you were copied. My group prepared the letter that went out so if you need our help on that just contact me.

From: Craig, Michael

Sent: March-28-18 12:28 PM

To: Gill, Donna <donna.gill@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Carter, Sheehan <sheehan.carter@crtc.gc.ca>; Hutton, Scott <scott.hutton@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Rancourt, Eric <eric.rancourt@crtc.gc.ca>

Cc: Rancourt, Mélanie <melanie.rancourt@crtc.gc.ca>

Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

Hi,

The SCFP has provided a response to Scott's letter that indicated that it would not be appropriate for us to treat their "application" to review the DMEQ at this time.

Arguing that a staff letter is not a decision of the Commission, that our choice to not publish their application upon reception is a contravention of our own Rules of Procedure, and that we have violated their right to procedural fairness, they have requested that the Commission post their application by no later than 5:00pm on 29 March 2018. Should their application not be posted, they have suggested that they will take some form of legal action against the Commission.

Michael Craig

Manager, English and Third-language Television |

Gestionnaire, Télévision anglaise et de tierce langue

Conseil de la radiodiffusion et des télécommunications canadiennes | Canadian Radio-television and Telecommunications Commission

Les Terrasses de la Chaudière, 1 Promenade du Portage, Gatineau, Québec, J8X 4B1

michael.craig@crtc.gc.ca

Téléphone/Telephone: 819-997-9394

Télécopieur / Facsimile: 819-994-0218

Gouvernement du Canada / Government of Canada

www.crtc.gc.ca

 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)

From: Lehoux, Manon

Sent: March-28-18 11:11 AM

To: Craig, Michael <michael.craig@crtc.gc.ca>

Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

From: Oakley, Tim

Sent: March-28-18 10:17 AM

To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>

Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

Good morning Manon

This is to be sent to Michael Craig as per Manon Auger's instructions

Thank you
Have a great day

Tim

Tim Oakley

Planification et processus / Planning and Process
Conseil de la radiodiffusion et des télécommunications canadiennes
Canadian Radio-television and Telecommunications Commission
1 Promenade du Portage, Gatineau, QC K1A 0N2

tim.oakley@crtc.gc.ca

Téléphone | Telephone 819-997-9354

Télécopieur | Facsimile 819-994-0218

Gouvernement du Canada | Government of Canada

www.crtc.gc.ca

 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)



Ottawa, 20 April 2018

VIA E-MAIL

Denis Bolduc
President
SCFP-Québec
nblais@scfp.qc.ca

Dear Mr. Bolduc:

RE: Request for process of Part 1 application - Review of the *Exemption order for digital media broadcasting undertakings*

The Commission is in receipt of the application filed on 13 February 2018 by the Conseil provincial du secteur des communications (CPSC) of the Syndicat canadien de la fonction publique (SCFP), requesting that the Commission review the *Exemption order for digital media broadcasting undertakings* (the Order), as well as of its request for process of the aforementioned application, dated 26 March 2018.

The Commission notes that, pursuant to section 7 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules), the Commission may dispense with or vary the Rules when considerations of public interest or fairness permit. The Commission also notes that the elements raised by the CPSC in its 13 February 2018 application are similar to those mentioned by the CPSC in response to the public proceeding initiated by Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models* (the Notice).

For example, both in its 13 February 2018 application and in its intervention in response to the Notice, the CPSC references the obsolescence of the Commission's findings from *Exemption order for new media broadcasting undertakings* – Public Notice CRTC 1999-197, the time elapsed since the last review of the Order, the fact that Internet penetration rate is now higher than the penetration rates for broadcasting distribution undertakings, the migration of advertising revenues from traditional media towards the Internet, etc. Moreover, the Commission notes that some paragraphs included in the intervention filed by the CPSC in response to the Notice are completely or almost completely replicated as part of the 13 February 2018 application.

The issue of the relevance of maintaining or amending the Order has also been raised by a number of other interveners participating in the public consultation.

Furthermore, the Commission is an independent administrative tribunal that has the mandate, *inter alia*, to supervise and regulate the Canadian broadcasting system. In furtherance of its objects, the Commission has the discretion to determine the appropriate moment to undertake a review of one of its policies. Under the circumstances, the Commission considers that it is not appropriate to initiate a separate public proceeding to consider the application.

Accordingly, the Commission has determined that your application will not be posted nor receive further process.

Yours sincerely,

Claude Doucet
Secretary General

DOCUMENT AT A GLANCE

BCM – 10 APRIL 2018

TITLE AND PURPOSE		
For decision: Request by the Syndicat canadien de la fonction publique for process of its Part 1 application		
SUMMARY		
The Syndicat canadien de la fonction publique (SCFP) is requesting that the Part 1 application it filed on 13 February, requesting a review of the Digital Media Exemption Order (DMEO), be published and that the Commission render a decision on it at the conclusion of the process. Based on the fact that the issue of maintaining or amending the DMEO has been raised in the proceeding initiated by Notice of Consultation 2017-359, staff is recommending that the Commission decide not to process SCFP's Part 1 application.		
IMPACT ANALYSIS	n/a	RELEVANT PAGE(S)
Official language minority communities or other considerations (see: DM5#2540849)	x	
Small Businesses (see: DM5 #1672887)	x	
CONTACT INFORMATION		
NAME AND TITLE: JEAN-PIERRE LEFEBVRE		
DIRECTORATE: BROADCASTING		
TELEPHONE: 819-994-5326		
TRANSLATION EXPECTED ON:		

(ENGLISH VERSION FOLLOWS)

APERÇU DU DOCUMENT

RCR – 10 AVRIL 2018

TITRE ET BUT		
Pour décision: Demande de traitement du Syndicat canadien de la fonction publique de sa demande en vertu de la Partie 1 des Règles de pratique et de procédure		
SOMMAIRE		
Le Syndicat canadien de la fonction publique demande que sa demande de la partie 1 soumise le 13 février 2018, exigeant le réexamen de l'Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques (l'Ordonnance), soit publiée et que le Conseil rende une décision au terme du processus. En vertu du fait que l'enjeu du maintien ou de la modification de l'Ordonnance a déjà été soulevé dans le cadre de l'instance initiée par l'Avis de consultation 2017-359, le personnel recommande que le Conseil décide de ne pas traiter la demande de la partie 1 du SCFP.		
ANALYSE D'IMPACT	s/o	PAGE(S) PERTINENTE(S)
Communautés de langue officielle en situation minoritaire ou autres enjeux (voir : DM5#2458093)	x	
Petites entreprises (voir : DM5 #1672880)	x	
PERSONNE-CLÉ		
NOM ET TITRE : JEAN-PIERRE LEFEBVRE DIRECTION : RADIODIFFUSION TÉLÉPHONE : 819-994-5326		
TRADUCTION PRÉVUE POUR LE :		

Conseil de la radiodiffusion et des
télécommunications canadiennesCanadian Radio-television and
Telecommunications Commission

MEMORANDUM

NOTE DE SERVICE

To
À

RCR – 10 avril 2018

From
DeJean-Pierre Lefebvre
994-5326Subject
Sujet**Réexamen de l'Ordonnance d'exemption de radiodiffusion relative aux entreprises de radiodiffusion de médias numériques**

Security Classification - Classification de sécurité
Protégé B
Our File - Notre référence
Your File - Votre référence DM# 3097061
Date 5 avril 2018

Pour décision: Demande de traitement du Syndicat canadien de la fonction publique de sa demande en vertu de la Partie 1 des Règles de pratique et de procédure

La demande***Demande initiale du SCFP***

Le 13 février 2018, le Conseil a reçu une demande de la partie 1 des Règles de pratique et de procédure du CRTC (les Règles) de la part du Conseil provincial du secteur des communications (CPSC) du Syndicat canadien de la fonction publique (SCFP), demandant au Conseil de procéder au réexamen de l'Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques (l'Ordonnance).

En réponse à cette demande, le 7 mars 2018, le personnel du Conseil a envoyé une lettre au SCFP, lui indiquant qu'il ne semblait pas approprié pour le Conseil d'initier une instance distincte à cet effet, puisque le sujet de la pertinence de maintenir ou de modifier l'Ordonnance avait été soulevé par divers intervenants, incluant le SCFP lui-même, dans le cadre de la consultation publique initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359, *Appel aux observations sur la demande du gouverneur en conseil de faire rapport sur les modèles de distribution de programmation de l'avenir* (l'Avis de consultation 2017-359).

Demande de traitement

Le 26 mars 2018, le SCFP a envoyé une nouvelle lettre au Conseil, lui demandant de publier la demande de la partie 1 déposée le 13 février 2018 et de rendre une décision au terme du processus.

Le SCFP est d'avis que :

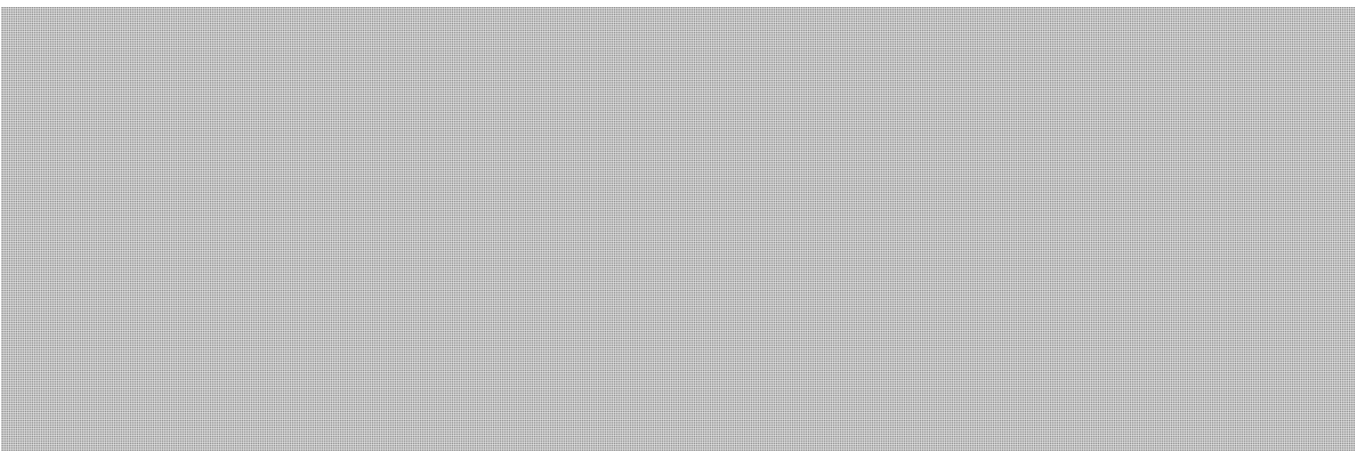
- La réponse envoyée par le personnel du Conseil ne constitue pas une décision du Conseil et que, pour cette raison, la demande de la partie 1 du SCFP est toujours en attente d'un affichage et d'une décision.
- Le fait de ne pas afficher la demande de la partie 1 du SCFP contrevient aux Règles.
- Il n'est prévu nulle part dans les Règles qu'une demande de la partie 1 puisse être refusée au motif qu'elle aborde une question déjà traitée dans un autre processus du Conseil.
- Si le Conseil ne publie pas sa demande dans un délai convenable, le SCFP prendra les recours juridiques appropriés.

s.21(1)(a)

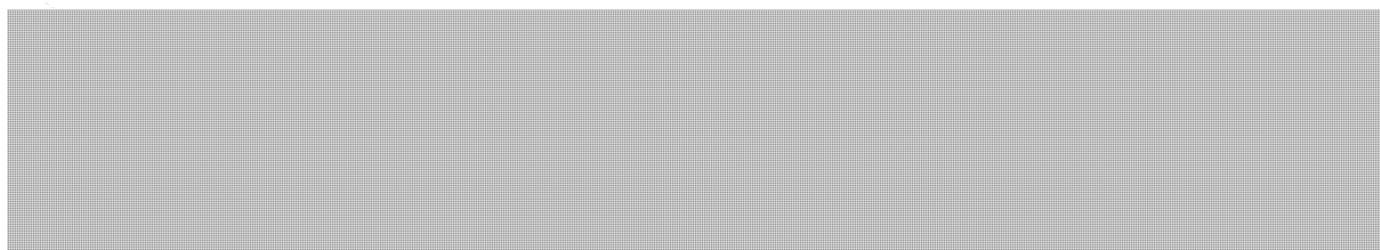
s.21(1)(b)

s.23

Analyse



Avis juridique



Recommandation

Le personnel recommande que le Conseil prenne la décision de ne pas traiter la demande de la partie 1 du SCFP.

La recommandation est basée sur le fait que la demande de la partie 1 du SCFP est une demande de renseignements personnels et que le Conseil n'a pas la responsabilité de traiter cette demande. Le personnel recommande donc que le Conseil prenne la décision de ne pas traiter la demande de la partie 1 du SCFP.

Le personnel recommande également que le Conseil prenne la décision de ne pas traiter la demande de la partie 2 du SCFP. Cette recommandation est basée sur le fait que la demande de la partie 2 du SCFP est une demande de renseignements personnels et que le Conseil n'a pas la responsabilité de traiter cette demande.

Le personnel recommande également que le Conseil prenne la décision de ne pas traiter la demande de la partie 3 du SCFP. Cette recommandation est basée sur le fait que la demande de la partie 3 du SCFP est une demande de renseignements personnels et que le Conseil n'a pas la responsabilité de traiter cette demande.

Le personnel recommande également que le Conseil prenne la décision de ne pas traiter la demande de la partie 4 du SCFP. Cette recommandation est basée sur le fait que la demande de la partie 4 du SCFP est une demande de renseignements personnels et que le Conseil n'a pas la responsabilité de traiter cette demande.

Le personnel recommande également que le Conseil prenne la décision de ne pas traiter la demande de la partie 5 du SCFP. Cette recommandation est basée sur le fait que la demande de la partie 5 du SCFP est une demande de renseignements personnels et que le Conseil n'a pas la responsabilité de traiter cette demande.

Conseil de la radiodiffusion et des
télécommunications canadiennesCanadian Radio-television and
Telecommunications Commission

MEMORANDUM

NOTE DE SERVICE

To
À

BCM – 10 April 2018

From
DeJean-Pierre Lefebvre
994-5326

Security Classification - Classification de sécurité
Protected B
Our File - Notre référence
Your File - Votre référence
Date
5 April 2018

Subject
Sujet**Review of the Exemption order for digital media broadcasting undertakings****For decision:** Request by the Syndicat canadien de la fonction publique for process of its Part 1 application**The application*****Initial application by SCFP***

On 13 February 2018, the Commission received an application filed pursuant to Part 1 of the CRTC Rules of Practice and Procedure (the Rules of Procedure) from the Conseil provincial du secteur des communications (CPSC) of the Syndicat canadien de la fonction publique (SCFP), requesting that the Commission review the Digital Media Exemption Order¹ (the DMEO).

In response to this application, on 7 March 2018, Commission staff sent a letter to the SCFP, indicating that it would not be appropriate for the Commission to initiate a separate proceeding on the matter, as the issue of the relevance of maintaining or amending the DMEO had already been raised by a number of interveners, including the SCFP, as part of the public proceeding initiated by Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models* (Notice of Consultation 2017-359).

Request to process

On 26 March 2018, the SCFP sent another letter to the Commission, requesting that the Part 1 application filed on 13 February be published and that the Commission render a decision on it at the conclusion of the process.

The SCFP is of the view that:

- The response sent by staff does not constitute a Commission decision and that, accordingly, SCFP's Part 1 application is still pending publication and decision.
- The fact that the SCFP's Part 1 application was not published contravenes the Rules of Procedure.
- Nothing in the Rules of Procedure specifies that a Part 1 application can be denied based on the fact it addresses a matter already examined as part of another proceeding.
- Should the Commission fail to publish its application in a timely manner, the SCFP will undertake the appropriate legal recourses.

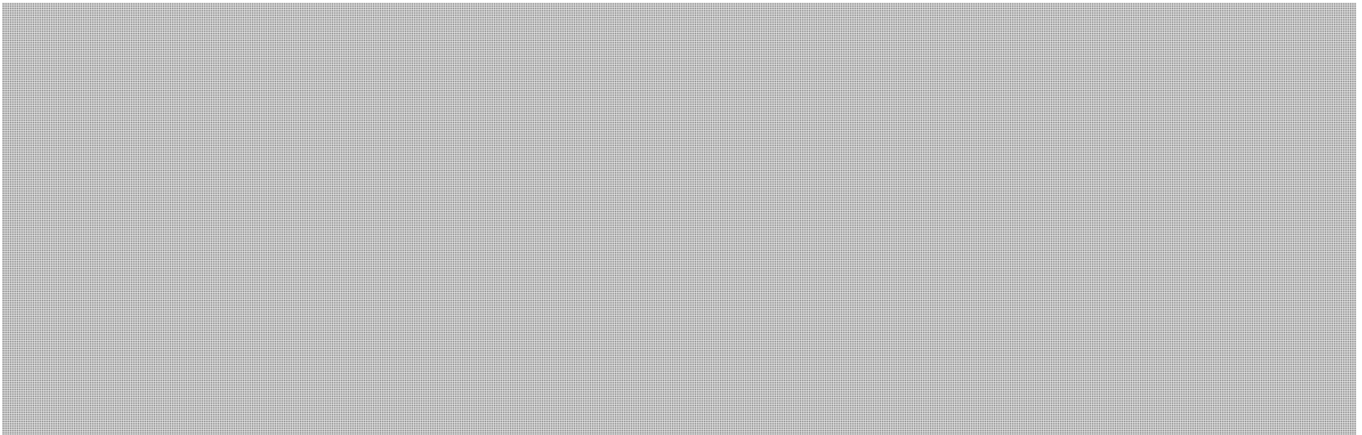
¹ Officially known as the *Exemption order for digital media broadcasting undertakings*.

s.21(1)(a)

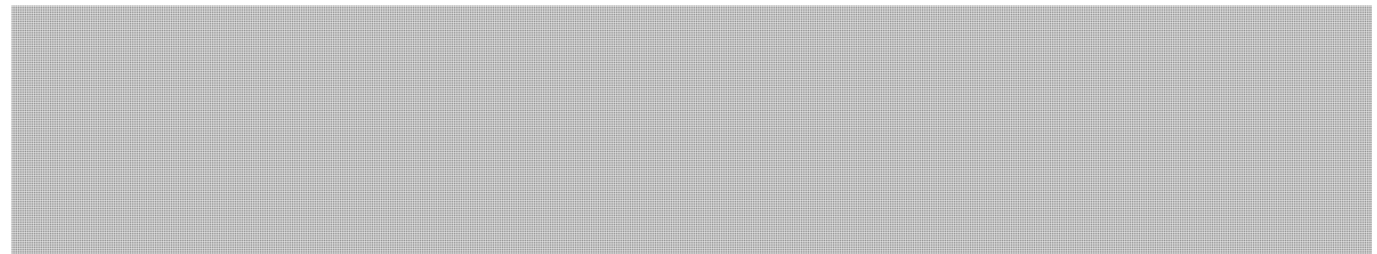
s.21(1)(b)

s.23

Analysis

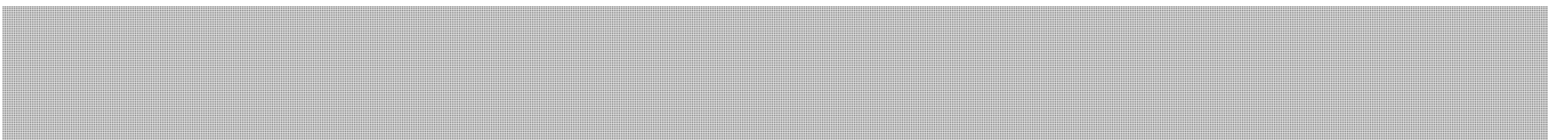


Legal advice



Recommendation

Staff recommends that the Commission decide not to process SCFP's Part 1 application.



Lefebvre, Jean-Pierre

From: Gagnon, Jean-Sébastien
Sent: April-19-18 11:44 AM
To: Lefebvre, Jean-Pierre
Cc: Dionne, Valérie
Subject: RE: SCFP Litigation
Attachments: DOCS-#3105489-v1-3103853_-_SCFP_Process_request_-_Response.doc; DOCS-#3105554-v1-DOCS-#3102263-v3-Demande_de_traitement_SCFP_-_Réponse.doc

salut JP,

voici les 2 lettres. J'ai apporté des changements mineurs (edits) à la version anglaise.

[REDACTED]

[REDACTED]

Merci et désolé pour l'attente.

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-18-18 2:07 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Je viens d'écrire au bureau du Sec Gen pour leur dire de stopper le processus.

Aussi, je suis de retour au bureau si une rencontre est nécessaire.

JP

From: Gagnon, Jean-Sébastien
Sent: April-18-18 1:47 PM

To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Ok. Nous aurons des changements sur les lettres. Possible qu'il faille recirculer

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Envoyés : 18 avr. 2018 10:34 a.m.
À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Objet : RE: SCFP Litigation

Je fais une présentation au Bureau de la concurrence ce matin. Je serai de retour au bureau cet après-midi.

JP

From: "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Sent: Apr 18, 2018 10:32 AM
To: "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Subject: RE: SCFP Litigation

A quel # je peux te joindre ?

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Envoyés : 18 avr. 2018 9:57 a.m.
À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>; "Lehoux, Manon" <Manon.Lehoux@crtc.gc.ca>
Objet : RE: SCFP Litigation

Salut Manon,

Svp attendre avant d'envoyer la lettre du SG.

Merci,

JP

From: "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Sent: Apr 18, 2018 9:11 AM
To: "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Cc: "Dionne, Valérie" <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Salut JP

Je ne t'ai pas oublié. J'attends le feu vert de mon patron sur mes changements proposés.

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Envoyé : 16 avr. 2018 3:13 p.m.
À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc : "Dionne, Valérie" <valerie.dionne@crtc.gc.ca>
Objet : RE: SCFP Litigation

Version originale (en français) et version traduite (en anglais).

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 3:07 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Je suis à l'extérieur du bureau. Peux tu aussi m'envoyer la version anglaise ?

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Envoyé : 16 avr. 2018 3:05 p.m.
À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc : "Dionne, Valérie" <valerie.dionne@crtc.gc.ca>
Objet : RE: SCFP Litigation

Sans problème.

Serait-il possible pour toi de revoir ma traduction (surtout les termes juridiques)?

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 2:26 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Steve me dit qu'il a signé. Pourras tu, stp, m'envoyer un scan de la lettre lorsqu'elle aura été signée par le SG et envoyé?

Merci

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Envoyés : 16 avr. 2018 12:41 p.m.
À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Objet : RE: SCFP Litigation

Non, à part un petit typo que j'ai identifié en relisant (on faisait référence à l'Avis public 1999-97, mais ça aurait dû être 1999-197).

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 12:39 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Subject: RE: SCFP Litigation

Merci. Est-ce qu'il y a des changements?

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-16-18 12:36 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Subject: RE: SCFP Litigation

Well, il y a une routing slip (mais pas bleue), alors je vais la remettre à l'admin.

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 11:54 AM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Si c'est avec un blue slip, il faut le remettre à l'admin. Sinon je peux le prendre

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-16-18 11:49 AM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

J'ai le signoff de Scott.

Veux-tu que je t'amène le document pour que tu puisses le remettre à Steve directement?

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 10:46 AM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Salut JP,

La circulation est rendue où?

Merci,

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-13-18 7:59 AM
To: Foster, Peter <peter.foster@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Cc: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: FW: SCFP Litigation

Good morning Donna and Peter,

Legal made some changes to the draft letter for SCFP. Could you please let me know if you are ok with them before we send the letter to Scott H and Steve M?

Thanks,

JP

From: Gagnon, Jean-Sébastien
Sent: April-12-18 4:11 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Merci JP. Voici la version finale, pour vos commentaires.

Si vous êtes d'accord, je suggère une circulation formelle pour obtenir les sign off de Scott et Steve.

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-12-18 2:31 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Voici ce que je propose :

Le Conseil note de plus que les éléments soulevés par le CPSC dans la demande du 13 février 2018 sont semblables à ceux évoqués par le [REDACTED] en réponse à la consultation publique initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359. Par exemple, autant dans la demande du 13 février 2018 que dans [REDACTED] la consultation publique initiée par l'Avis [REDACTED] le [REDACTED] fait référence à l'obsolescence des constats établis par le Conseil dans l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de nouveaux médias – Avis Public CRTC 1999-97*, au temps écoulé depuis le dernier examen de l'Ordonnance, au fait que le taux de pénétration d'Internet est maintenant supérieur au taux de pénétration des entreprises de distribution en radiodiffusion, à la migration des revenus publicitaires des médias traditionnels vers Internet, etc. Le Conseil note d'ailleurs que certains paragraphes inclus dans l'intervention soumise par le [REDACTED] dans le cadre de l'instance initiée par [REDACTED] sont reproduits intégralement ou quasi-intégralement dans la demande du 13 février 2018.

s.21(1)(b)

Est-ce suffisant?

Et oui, la lettre doit être traduite.

JP

From: Gagnon, Jean-Sébastien
Sent: April-12-18 11:58 AM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Salut JP,

Dans le cadre de la lettre on dit ceci :

Le Conseil note de plus que les éléments soulevés par le CPSC dans la demande du 13 février 2018 sont semblables à ceux évoqués par le [REDACTED] en réponse à la consultation publique initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359

[REDACTED] Une fois que nous aurons ces détails, nous pourrions finaliser la lettre. Aussi, a-t-elle besoin d'être traduite?

merci

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Dionne, Valérie
Sent: April-12-18 11:46 AM
To: Hutton, Scott <scott.hutton@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Rancourt, Mélanie <melanie.rancourt@crtc.gc.ca>
Cc: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Subject: SCFP Litigation

Bonjour,

Dans le cadre de leur demande devant la Cour d'appel fédérale, le SCFP demande au CRTC de produire toute communication écrite interne au Conseil traitant de la Lettre de Scott datée du 7 mars 2018.

merci

Valérie Dionne

Conseillère juridique principale – Chef d'équipe, radiodiffusion, par intérim

Interim Senior Legal Counsel – Team Lead, Broadcasting

Secteur juridique | Legal Sector

Conseil de la radiodiffusion et des télécommunications canadiennes | Canadian Radio-television and

Telecommunications Commission

valerie.dionne@crtc.gc.ca | Tel: 819-639-0764

CONFIDENTIALITY NOTICE: This message contains confidential information intended only for the addressee and may be subject to solicitor-client or other legal privilege. If you have received this communication in error, please immediately notify the sender and do not retain a copy.

AVIS DE CONFIDENTIALITÉ: Ce courriel contient des renseignements confidentiels dont l'usage est réservé exclusivement à la personne à laquelle il est destiné et peut être protégé par le secret professionnel de l'avocat-client. Si vous recevez cette communication par erreur, veuillez en aviser l'auteur immédiatement et détruire l'original et toute copie. Merci.

Gouvernement du Canada | Government of Canada

www.crtc.gc.ca

 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)

[Aimez-nous sur Facebook](#) | [Like us on Facebook](#)



Ottawa, XX April 2018

BY E-MAIL

Denis Bolduc
President
SCFP-Québec
nblais@scfp.qc.ca

RE: Request for process of Part 1 application - Review of the *Exemption order for digital media broadcasting undertakings*

Mr. Bolduc,

The Commission is in receipt of the application filed on 13 February 2018 by the Conseil provincial du secteur des communications (CPSC) of the Syndicat canadien de la fonction publique (SCFP), requesting that the Commission review the *Exemption order for digital media broadcasting undertakings* (the Order), as well as of its request to process the aforementioned application, dated 26 March 2018.

The Commission notes that, pursuant to section 7 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules), the Commission may dispense with or vary the Rules when considerations of public interest or fairness permit. The Commission also notes that the elements raised by the CPSC in its 13 February 2018 application are similar to those [REDACTED] by the CPSC in response to the public proceeding initiated by Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models* (the Notice).

For example, in both its 13 February 2018 application and in its intervention in response to the Notice, the CPSC references the obsolescence of the Commission's findings from *Exemption order for new media broadcasting undertakings* – Public Notice CRTC 1999-197, the time elapsed since the last review of the Order, the fact that Internet penetration rate is now higher than penetration rate for broadcasting distribution undertakings, the migration of advertising revenues from traditional media towards the Internet, etc. Moreover, the Commission notes that [REDACTED] paragraphs included in the intervention filed by the CPSC in response to the Notice are completely or almost completely replicated in the 13 February 2018 application.

The issue of the relevance of maintaining or amending the Order has also been raised by a number of other interveners participating in the public consultation.

Furthermore, the Commission is an independent administrative tribunal that has the mandate, *inter alia*, to supervise and regulate the Canadian broadcasting system. In furtherance of its objects, the Commission has the discretion to determine the appropriate moment to undertake a

review of one of its policies. Under the circumstances, the Commission considers that it is not appropriate to initiate a separate public proceeding to consider the [REDACTED] application.

Accordingly, the Commission has determined that your application will not be posted nor receive further process.

Yours sincerely,

Claude Doucet
Secretary General



Ottawa, XX avril 2018

PAR COURRIEL

Monsieur Denis Bolduc
Président
SCFP-Québec
nblais@scfp.qc.ca

Objet: Demande de traitement de la demande de la partie 1 – Réexamen de l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques*

Monsieur,

Le Conseil accuse réception de la demande soumise le 13 février 2018 par le Conseil provincial du secteur des communications (CPSC) du Syndicat canadien de la fonction publique (SCFP), demandant au Conseil de procéder au réexamen de l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques* (l'*Ordonnance*), ainsi que de sa demande de traitement de la demande susmentionnée, datée du 26 mars 2018.

Le Conseil note que l'article 7 des *Règles de pratique et de procédure du Conseil de la radiodiffusion et des télécommunications canadiennes* (Règles) lui permet de suspendre ou de modifier les Règles lorsque l'intérêt public ou l'équité le permet. Le Conseil note de plus que les éléments soulevés par le CPSC dans la demande du 13 février 2018 sont semblables à ceux évoqués par le CPSC en réponse à la consultation publique initiée par l'avis de consultation de radiodiffusion CRTC 2017-359, *Appel aux observations sur la demande du gouverneur en conseil de faire rapport sur les modèles de distribution de programmation de l'avenir* (l'Avis).

Par exemple, autant dans sa demande du 13 février 2018 que dans ses commentaires suivant la consultation publique initiée par l'Avis, le CPSC fait référence à l'obsolescence des constats établis par le Conseil dans l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de nouveaux médias* – Avis Public CRTC 1999-197, au temps écoulé depuis le dernier examen de l'*Ordonnance*, au fait que le taux de pénétration d'Internet est maintenant supérieur au taux de pénétration des entreprises de distribution en radiodiffusion, à la migration des revenus publicitaires des médias traditionnels vers Internet, etc. Le Conseil note d'ailleurs que certains paragraphes inclus dans l'intervention soumise par le CPSC dans le cadre de l'instance initiée par l'Avis sont reproduits intégralement ou quasi-intégralement dans la demande du 13 février 2018.

Le sujet de la pertinence de maintenir ou de modifier l'*Ordonnance* a d'ailleurs également été soulevé par divers autres intervenants participant à cette consultation.

Par ailleurs, le Conseil est un tribunal administratif indépendant dont l'un des mandats est de surveiller et réglementer le système canadien de radiodiffusion. Dans le cadre de ce mandat, le

Conseil a la discrétion de déterminer le moment adéquat pour entreprendre une révision d'une de ses politiques. Le Conseil considère qu'il n'est pas approprié dans les circonstances d'initier une instance publique distincte pour considérer la demande du CPSC.

Conséquemment, le Conseil a décidé de ne pas afficher votre demande et celle-ci ne sera pas traitée [REDACTED]

Veillez agréer, Monsieur, l'expression de mes sentiments les meilleurs.

Claude Doucet
Secrétaire général

Rancourt, Eric

From: Rancourt, Eric
Sent: March-27-18 12:27 PM
To: Valladao, Patricia; Legault, Céline; Boulanger, Donald
Subject: FW: SCFP
Attachments: 20180307122347721.pdf

ATI

From: Craig, Michael
Sent: March-27-18 12:16 PM
To: Rancourt, Eric
Subject: FW: SCFP

Here's a copy of the letter as requested.

Let me know if you need anything else.

Thanks.



Conseil de la radiodiffusion et des
télécommunications canadiennes

Canadian Radio-television and
Telecommunications Commission

Ottawa, 7 mars 2018

PAR COURRIEL

Madame Nathalie Blais
Conseillère à la recherche
Syndicat canadien de la fonction publique
nblais@scfp.qc.ca

Objet: Demande de la partie 1 – Réexamen de l'Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques

Madame,

J'accuse réception de la demande soumise le 13 février 2018 par le Conseil provincial du secteur des communications (CPSC) du Syndicat canadien de la fonction publique (SCFP), demandant au Conseil de procéder au réexamen de l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques* (l'Ordonnance).

Je note que les éléments soulevés par le SCFP dans la présente demande sont semblables à ceux évoqués par le SCFP en réponse à la consultation publique initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359, *Appel aux observations sur la demande du gouverneur en conseil de faire rapport sur les modèles de distribution de programmation de l'avenir*. Le sujet de la pertinence de maintenir ou de modifier l'Ordonnance a d'ailleurs également été soulevé par divers autres intervenants participant à cette instance.

Il ne semble donc pas approprié pour le Conseil d'initier une instance publique distincte pour considérer votre demande.

Conséquemment, votre demande ne sera pas traitée.

Veuillez agréer, Madame, l'expression de mes sentiments les meilleurs.

Scott Hutton
Directeur exécutif, Radiodiffusion

c.c. : Réjean Beaudet, CPSC (rejean.beaudet@bellnet.ca)
Gilles Charland, AQTIS (gilles.charland@aqtis.qc.ca)
FNC-CSN (fnc@fnc.quebec)
Helene Messier, AQPM (hmessier@aqpm.ca)
Daniel Boyer, FTQ (fviceant@ftq.qc.ca)

s.19(1)

s.20(1)(b)

Rancourt, Eric

From: Rancourt, Eric
Sent: February-16-18 1:31 PM
To: [REDACTED] Legault, Céline; Valladao, Patricia
Subject: RE: Requête du SFCP au sujet de l'ordonnance d'exemption de Netflix

Bonjour [REDACTED]

On prend bien note de ton intérêt relatif à ce dossier et on t'avisera en temps et lieu.

Bon après-midi,
Eric

From: [REDACTED] [mailto:[REDACTED]@lapresse.ca]
Sent: February-16-18 1:08 PM
To: Legault, Céline ; Rancourt, Eric ; Valladao, Patricia
Subject: Requête du SFCP au sujet de l'ordonnance d'exemption de Netflix

Bonjour à tous,
J'espère que vous allez bien. [REDACTED] la demande du SFCP, en vertu de la Partie I, pour que le CRTC réexamine son ordonnance d'exemption pour les médias numériques (ex: Netflix). Vous pouvez me tenir au courant quand le CRTC pris sa décision à savoir s'il accède ou non à cette requête? Merci.
Salutations.
[REDACTED]

[REDACTED]
[REDACTED] *La Presse*
750, boulevard Saint-Laurent, Montréal (Québec), H2Y 2Z4
Téléphone : +1 (514) 285-7000 poste [REDACTED]
[REDACTED] @lapresse.ca | www.lapresse.ca | [twitter.com \[REDACTED\]](https://twitter.com/[REDACTED])

Rancourt, Eric

From: Rancourt, Eric
Sent: February-15-18 12:59 PM
To: Craig, Michael; Foster, Peter
Cc: Valladao, Patricia
Subject: RE: Urgent / La Presse

Thanks, Michael.

We will check with Process. Paragraph 8 makes it sound like they may have submitted a formal request separately (see underlined):

Le CPSC croit qu'il est urgent de réexaminer l'Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques 2 (ordonnance d'exemption) et dépose d'ailleurs aujourd'hui une requête en ce sens au Conseil afin qu'il lance un tel processus dans les semaines à venir.

From: Craig, Michael
Sent: February-15-18 12:52 PM
To: Foster, Peter ; Rancourt, Eric
Subject: RE: Urgent / La Presse

Hi,

They included in their submission in the Section 15 (phase 2 interventions) that we should re-examine the Exemption Order: see paragraphs 8-25: <https://services.crtc.gc.ca/pub/DocWebBroker/OpenDocument.aspx?DMID=3068531> .

You can still check with Process but I think this is likely the source of the request.

From: Foster, Peter
Sent: February-15-18 12:42 PM
To: Rancourt, Eric <eric.rancourt@crtc.gc.ca>
Cc: Craig, Michael <michael.craig@crtc.gc.ca>
Subject: Re: Urgent / La Presse

Hi Eric ~ Yes, I think it would. I wasn't aware of it, so don't know if it's reached us yet. You may want to check with Planning & Process to confirm receipt. If so, I don't see any reason not to say so.

Peter

From: Rancourt, Eric
Sent: Thursday, February 15, 2018 12:17 PM
To: Foster, Peter
Cc: Valladao, Patricia; Legault, Céline; Boulanger, Donald
Subject: FW: Urgent / La Presse

Hi Peter,

s.19(1)

s.20(1)(b)

s.21(1)(b)

Would this application come to Broadcasting?

Thanks,
Eric

From: [REDACTED] [mailto:[REDACTED]@lapresse.ca]
Sent: February-15-18 12:09 PM
To: Rancourt, Eric <eric.rancourt@crtc.gc.ca>
Subject: Urgent / La Presse

Bonjour Éric,
J'espère que tu vas bien.
J'ai 3 questions urgences pour un article sur une demande du syndicat Conseil provincial du secteur des communications (CPSC-SCFP) reçue mardi dernier par le CRTC.
1-Le syndicat CPSC-SCFP a envoyé au CRTC mardi une demande formelle pour que le CRTC mette fin à l'ordonnance d'exemption pour les entreprises de diffusion en ligne comme Netflix. Pouvez-vous confirmer la réception de cette demande?
2-Avez-vous des commentaires à formuler sur cette demande?
3-L'ordonnance d'exemption actuelle date bien de 2006 et elle a été modifiée en 2009 par la décision CRTC 2009-660 (c'est ce qui est allégué dans la requête déposée cette semaine)?
Mon heure de tombée : aujourd'hui à 15h. C'est possible de me répondre d'ici-là?
Merci.
Salutations.
[REDACTED]
La Presse

[REDACTED]
à La Presse

750, boulevard Saint-Laurent, Montréal (Québec), H2Y 2Z4
Téléphone : +1 (514) 285-7000 poste [REDACTED]
[REDACTED]@lapresse.ca | www.lapresse.ca | twitter.com/[REDACTED]

Rancourt, Eric

From: Rancourt, Eric
Sent: April-20-18 4:21 PM
To: Lefebvre, Jean-Pierre
Cc: Legault, Céline; Valladao, Patricia
Subject: Réponse à la SCFP

Bonjour Jean-Pierre,

Pam m'informe que Claude a signé la lettre aujourd'hui. Pourrais-tu stp nous donner un « heads up » quand elle sera transmise?

Comme tu le sais probablement, [REDACTED] de La Presse suit ce dossier.

Merci et bon week-end!

Eric

Eric Rancourt

Director, Sector Services, Media Relations and Outreach | Directeur, services aux secteurs, relations avec les médias et sensibilisation

Communications Sector | Secteur des Communications

Canadian Radio-television and Telecommunications Commission |

Conseil de la radiodiffusion et des télécommunications canadiennes

Telephone | Téléphone 819-997-4228

Government of Canada | Gouvernement du Canada

www.crtc.gc.ca

[Learn more about your CRTC](#) | [Apprenez-en davantage à propos de votre CRTC](#)



[Suivez-nous sur Twitter](#) | [Follow us on Twitter](#)

[Like us on Facebook](#) | [Aimez-nous sur Facebook](#)

s.21(1)(b)

Rancourt, Eric

From: Rancourt, Eric
Sent: March-28-18 12:15 PM
To: Legault, Céline; Valladao, Patricia; Boulanger, Donald
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox
Attachments: 180326 SCFP_Demande de traitement partie 1 - FINALE.pdf; NOT WEB - Confirmation-My CRTC Account-104578.html

ATI – [REDACTED]

From: Craig, Michael
Sent: March-28-18 11:58 AM
To: Rancourt, Eric
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

FYI – They did not appreciate the staff level letter we sent informing them that we would not treat the matter.

From: Lehoux, Manon
Sent: March-28-18 11:11 AM
To: Craig, Michael <michael.craig@crtc.gc.ca>
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

From: Oakley, Tim
Sent: March-28-18 10:17 AM
To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

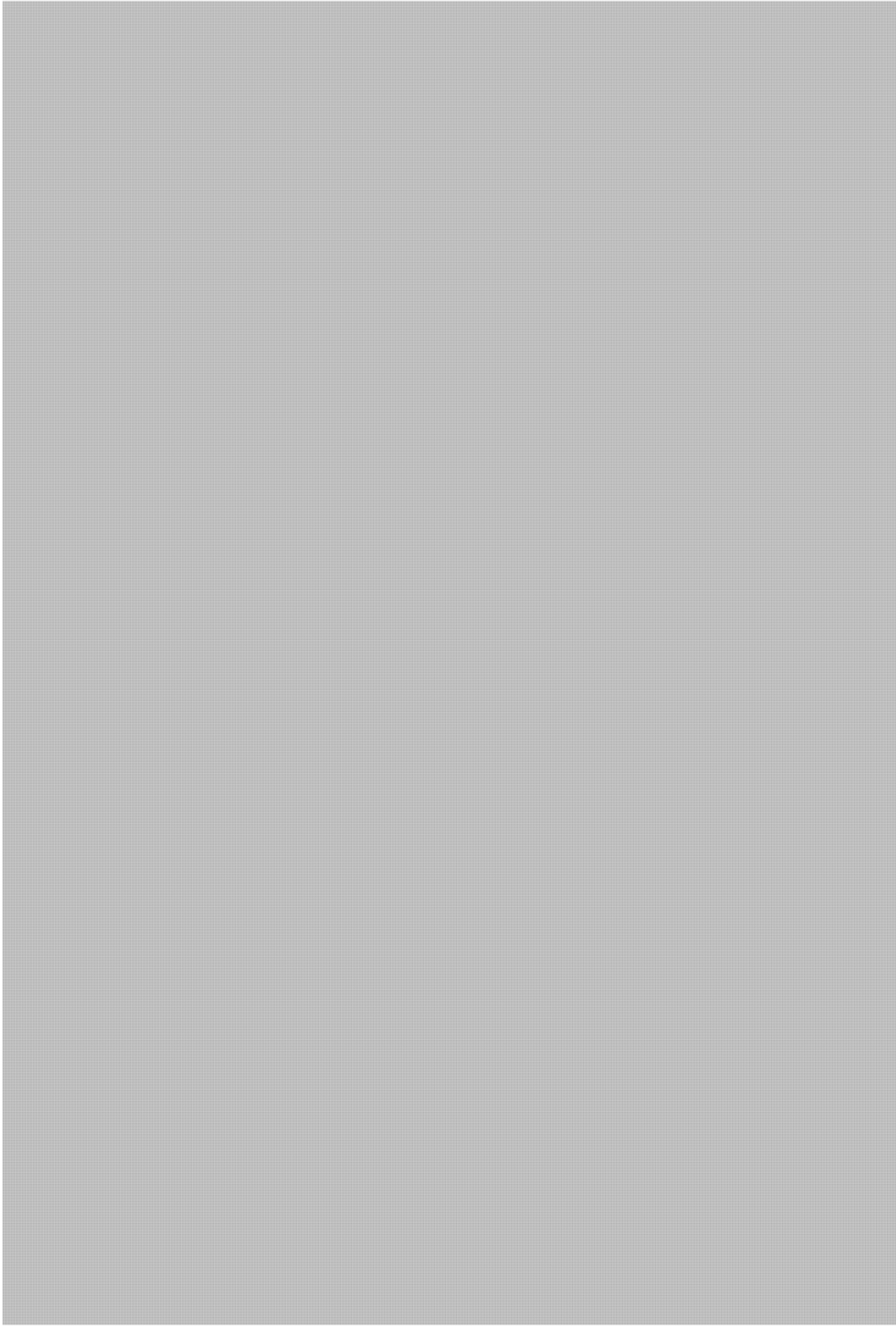
Good morning Manon
This is to be sent to Michael Craig as per Manon Auger's instructions

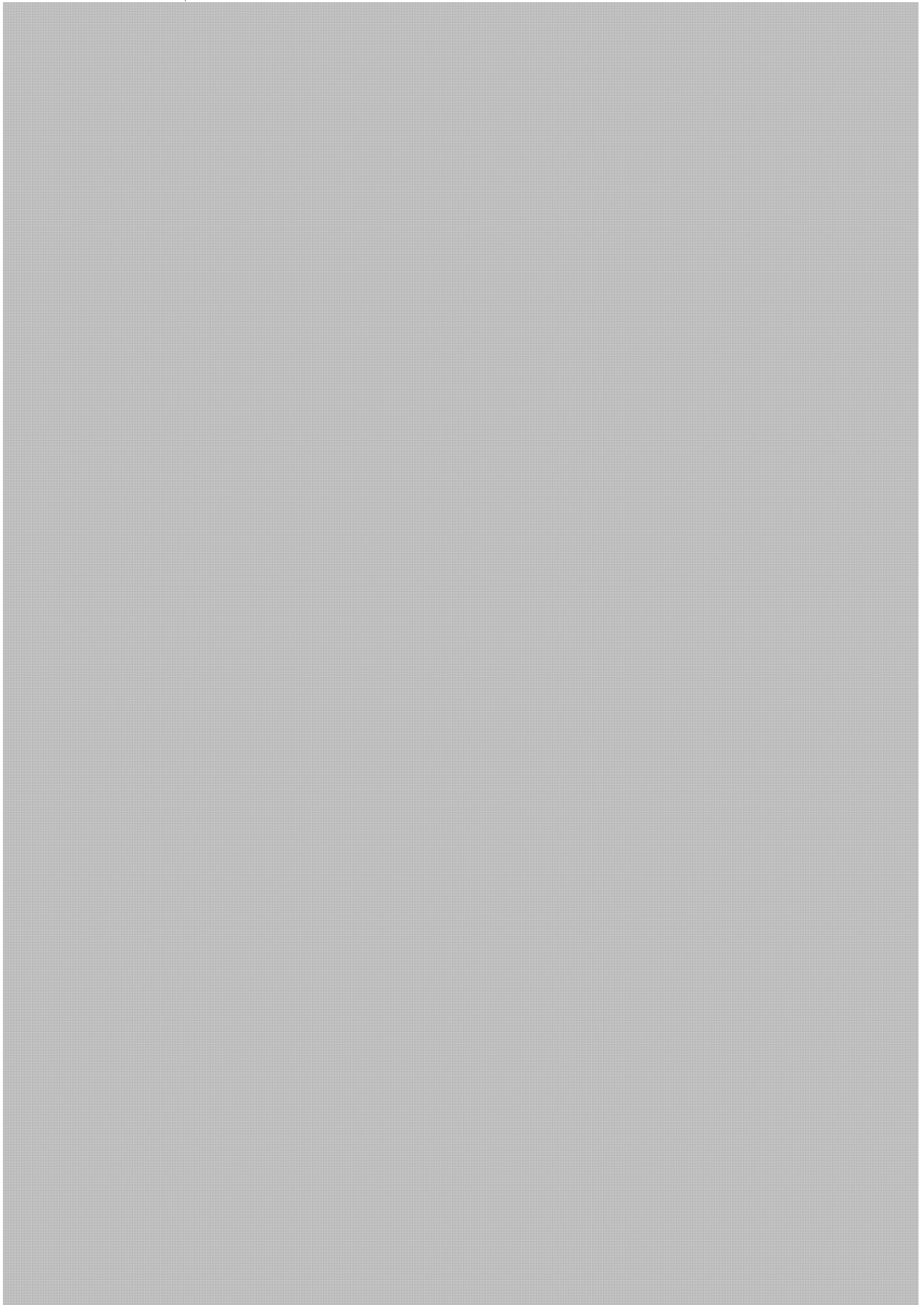
Thank you
Have a great day

Tim

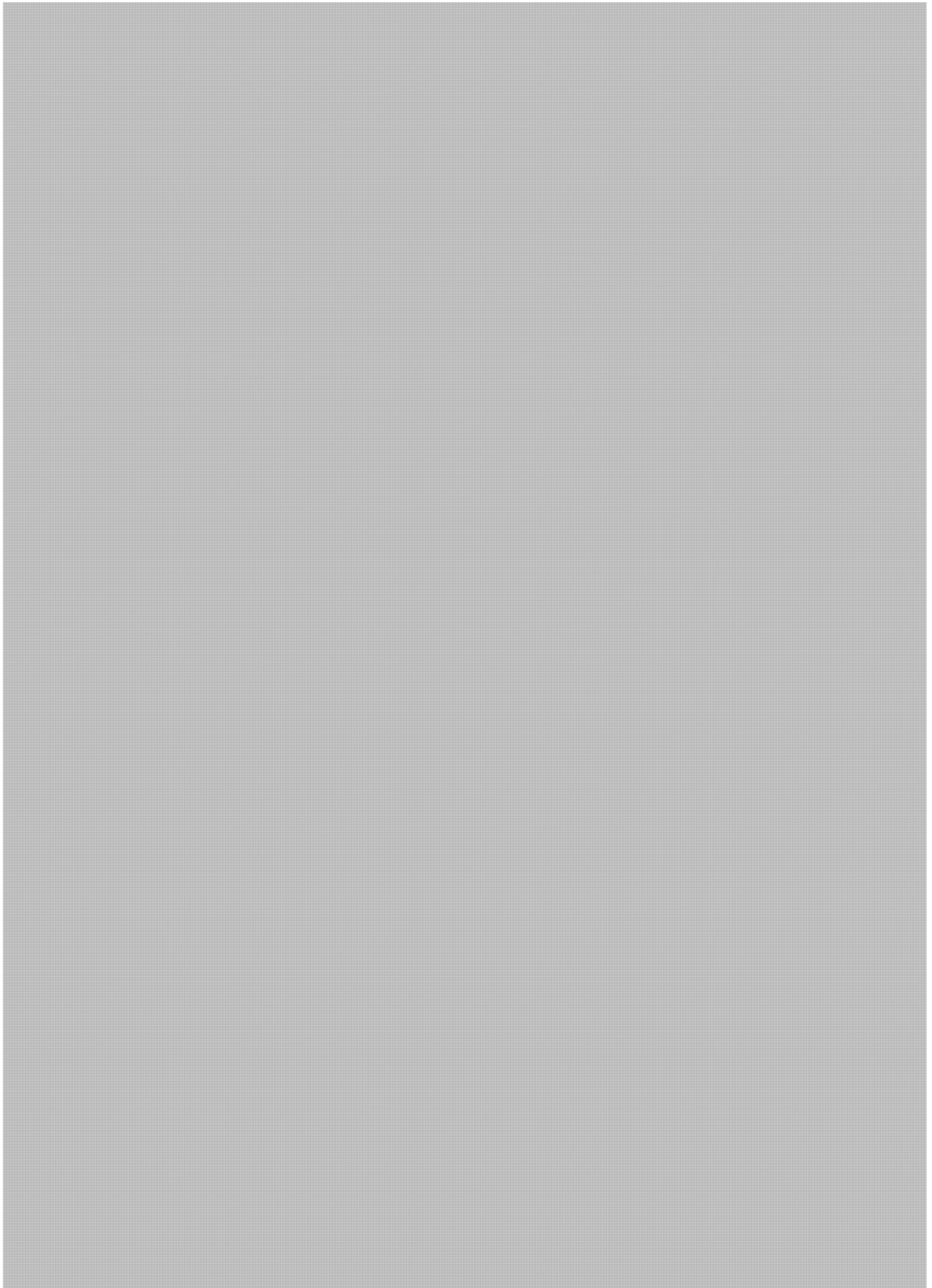
Tim Oakley
Planification et processus / Planning and Process
Conseil de la radiodiffusion et des télécommunications canadiennes
Canadian Radio-television and Telecommunications Commission
1 Promenade du Portage, Gatineau, QC K1A 0N2
tim.oakley@crtc.gc.ca
Téléphone | Telephone 819-997-9354
Télécopieur | Facsimile 819-994-0218
Gouvernement du Canada | Government of Canada
www.crtc.gc.ca

 Suivez-nous sur Twitter |  Follow us on Twitter

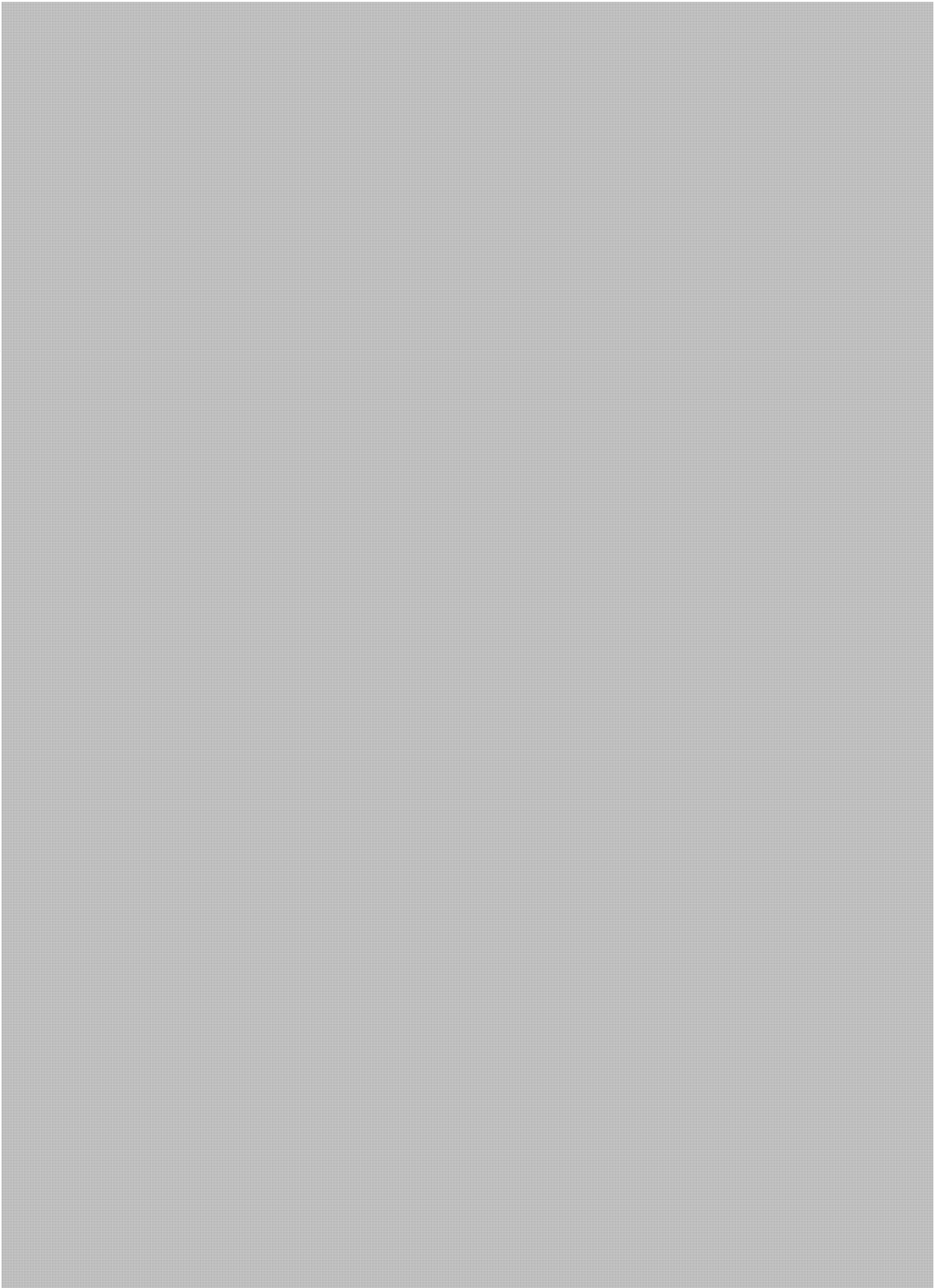




NOT PROCESSED / NON TRAITE

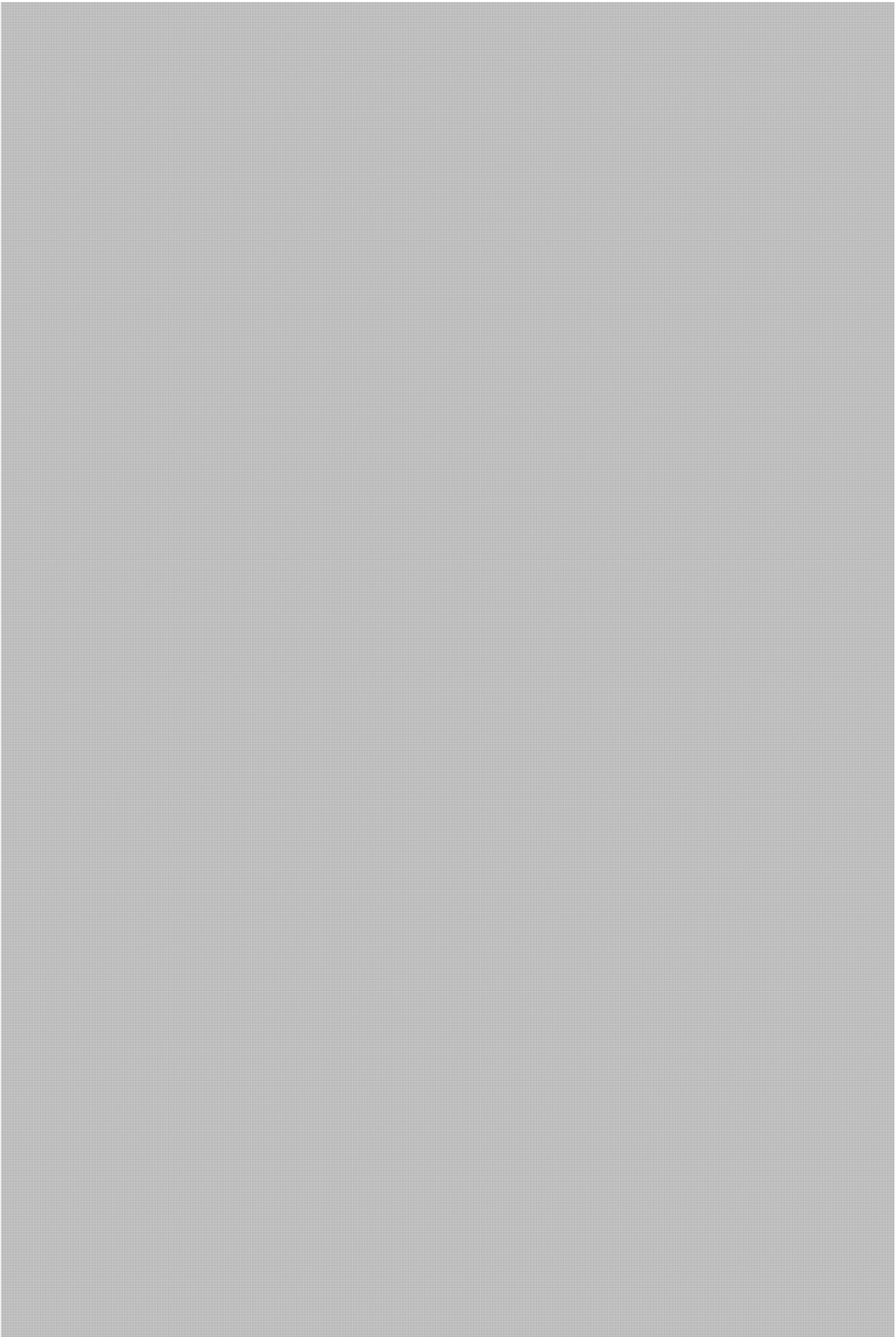


NOT PROCESSED / NON TRAITE

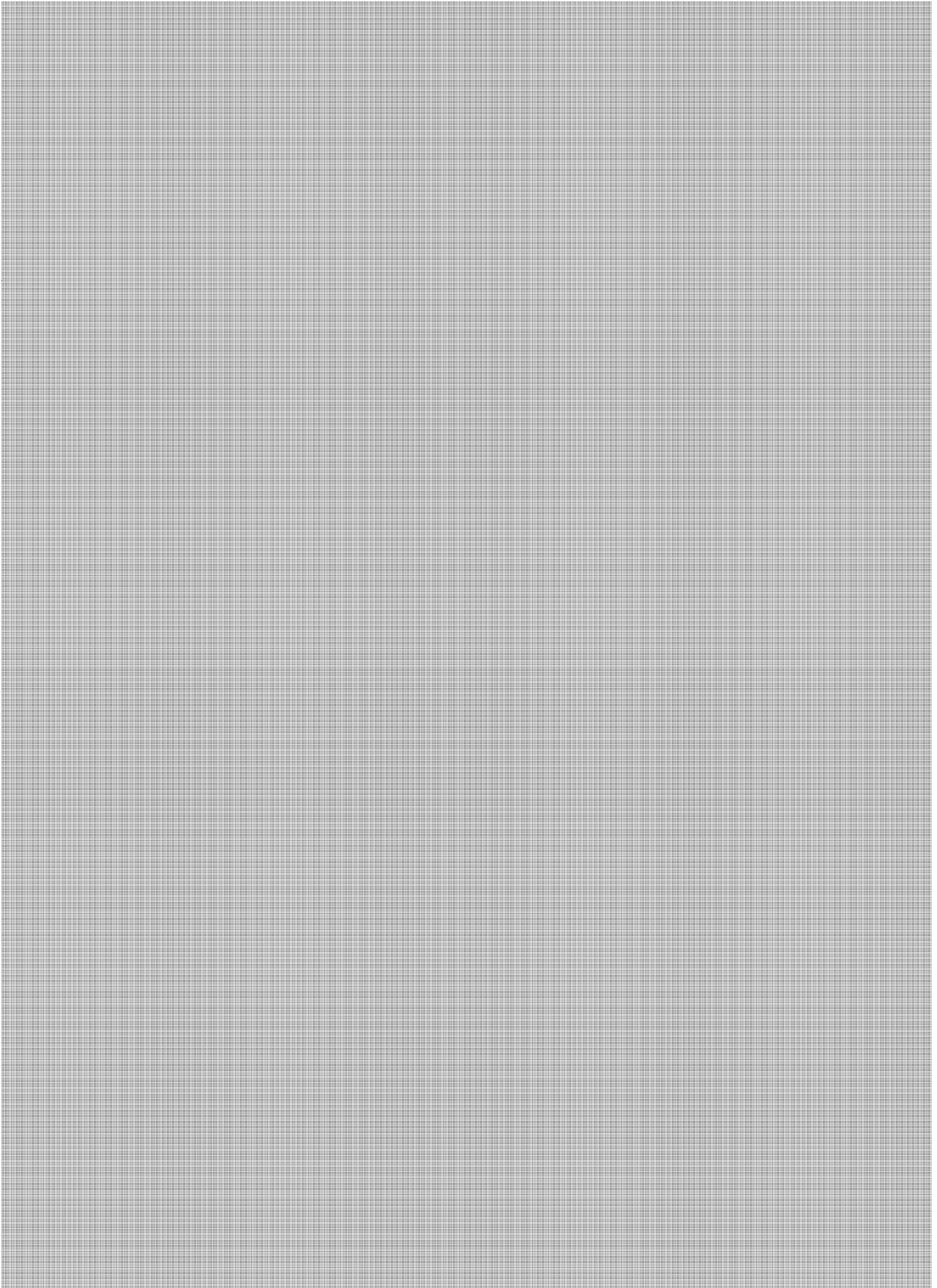


000067

NOT PROCESSED / NON TRAITE



NOT PROCESSED / NON TRAITE





Page 71

**is withheld pursuant to sections
est retenue en vertu des articles**

19(1), 20(1)(b)

**of the Access to Information Act
de la Loi sur l'accès à l'information**

Philippe, Chantal

From: Philippe, Chantal
Sent: May-29-18 1:23 PM
To: Philippe, Chantal
Subject: FW: Mandamus Court Case

From: Dionne, Valérie
Sent: May-08-18 4:24 PM
To: Simard, Caroline <Caroline.Simard@crtc.gc.ca>; Laizner, Christianne <christianne.laizner@crtc.gc.ca>
Subject: Mandamus Court Case

Bonjour Mesdames,

Bonne soirée,

Valérie Dionne

Conseillère juridique principale – Chef d'équipe, radiodiffusion, par intérim
Interim Senior Legal Counsel – Team Lead, Broadcasting
Secteur juridique | Legal Sector
Conseil de la radiodiffusion et des télécommunications canadiennes | Canadian Radio-television and
Telecommunications Commission
valerie.dionne@crtc.gc.ca | Tel: 819-639-0764

CONFIDENTIALITY NOTICE: This message contains confidential information intended only for the addressee and may be subject to solicitor-client or other legal privilege. If you have received this communication in error, please immediately notify the sender and do not retain a copy.

AVIS DE CONFIDENTIALITÉ: Ce courriel contient des renseignements confidentiels dont l'usage est réservé exclusivement à la personne à laquelle il est destiné et peut être protégé par le secret professionnel de l'avocat-client. Si vous recevez cette communication par erreur, veuillez en aviser l'auteur immédiatement et détruire l'original et toute copie. Merci.

Gouvernement du Canada | Government of Canada
www.crtc.gc.ca

 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)
 [Aimez-nous sur Facebook](#) |  [Like us on Facebook](#)

s.21(1)(b)

Dionne, Valérie

From: Dionne, Valérie
Sent: April-23-18 12:20 PM
To: Gagnon, Jean-Sébastien
Subject: RE: lettre

Ah ben ta!

From: Gagnon, Jean-Sébastien
Sent: April-23-18 12:19 PM
To: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: lettre

Oui!

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Dionne, Valérie
Sent: April-23-18 12:13 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Subject: RE: lettre

From: Gagnon, Jean-Sébastien
Sent: April-23-18 12:01 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: lettre

Où je l'ai eu ce matin.

Merci,

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-23-18 11:43 AM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Subject: RE: lettre

Salut JS,

Est-ce que qqn t'a fait parvenir une copie de la lettre?

JP

From: "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Sent: Apr 20, 2018 3:04 PM
To: "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>; "Toniolo, Pamela" <Pamela.Toniolo@crtc.gc.ca>
Subject: RE: lettre

Oui merci. Et nous en avons besoin le plus rapidement possible...

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-20-18 2:35 PM
To: Toniolo, Pamela <Pamela.Toniolo@crtc.gc.ca>

Cc: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>

Subject: RE: lettre

Salut Pam,

J'avais oublié de mentionner ceci à propos de la lettre: comme la demande du CPSC/SCFP fait l'objet d'un litige devant les tribunaux, une copie de la lettre devrait être envoyée à Jean-Sébastien Gagnon, pour qu'il puisse l'ajouter au dossier.

Merci,

JP

From: Toniolo, Pamela

Sent: April-20-18 1:43 PM

To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>

Cc: Provost, Marie-Soleil <Marie-Soleil.Provost@crtc.gc.ca>

Subject: lettre

Jean-Pierre,

Il y a quelques petits changements à apporter à la lettre avant qu'elle soit signée. Tu peux venir chercher le dossier et n'hésite pas de venir me voir si tu as des questions.

Merci,

Pam

Pamela Toniolo

Chef de Cabinet du Secrétaire général |

Chief of Staff to the Secretary General

Conseil de la radiodiffusion et des télécommunications canadiennes |

Canadian Radio-television and Telecommunications Commission

Téléphone | Telephone 819.997-4558

s.21(1)(b)

Dionne, Valérie

From: Dionne, Valérie
Sent: April-19-18 3:48 PM
To: Gagnon, Jean-Sébastien
Subject: FW: SCFP Litigation

Avais-tu répondu aux préoccupations de JP?

From: Lefebvre, Jean-Pierre
Sent: April-19-18 2:13 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

JP

From: Lefebvre, Jean-Pierre
Sent: April-19-18 1:51 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

JP

From: Gagnon, Jean-Sébastien
Sent: April-19-18 11:44 AM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

salut JP,

voici les 2 lettres. J'ai apporté des changements mineurs (edits) à la version anglaise.

Merci et désolé pour l'attente.

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-18-18 2:07 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Je viens d'écrire au bureau du Sec Gen pour leur dire de stopper le processus.

Aussi, je suis de retour au bureau si une rencontre est nécessaire.

JP

From: Gagnon, Jean-Sébastien
Sent: April-18-18 1:47 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Ok. Nous aurons des changements sur les lettres. Possible qu'il faille recirculer

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Envoyés : 18 avr. 2018 10:34 a.m.
À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Objet : RE: SCFP Litigation

Je fais une présentation au Bureau de la concurrence ce matin. Je serai de retour au bureau cet après-midi.

JP

From: "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Sent: Apr 18, 2018 10:32 AM
To: "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Subject: RE: SCFP Litigation

A quel # je peux te joindre ?

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Envoyés : 18 avr. 2018 9:57 a.m.
À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>; "Lehoux, Manon" <Manon.Lehoux@crtc.gc.ca>
Objet : RE: SCFP Litigation

Salut Manon,

Svp attendre avant d'envoyer la lettre du SG.

Merci,

JP

From: "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Sent: Apr 18, 2018 9:11 AM
To: "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Cc: "Dionne, Valérie" <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Salut JP

Je ne t'ai pas oublié. J'attends le feu vert de mon patron sur mes changements proposés.

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Envoyé : 16 avr. 2018 3:13 p.m.
À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc : "Dionne, Valérie" <valerie.dionne@crtc.gc.ca>
Objet : RE: SCFP Litigation

Version originale (en français) et version traduite (en anglais).

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 3:07 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Je suis à l'extérieur du bureau. Peux tu aussi m'envoyer la version anglaise ?

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>

Envoyé : 16 avr. 2018 3:05 p.m.

À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>

Cc : "Dionne, Valérie" <valerie.dionne@crtc.gc.ca>

Objet : RE: SCFP Litigation

Sans problème.

Serait-il possible pour toi de revoir ma traduction (surtout les termes juridiques)?

JP

From: Gagnon, Jean-Sébastien

Sent: April-16-18 2:26 PM

To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>

Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>

Subject: RE: SCFP Litigation

Steve me dit qu'il a signé. Pourras tu, stp, m'envoyer un scan de la lettre lorsqu'elle aura été signée par le SG et envoyé?

Merci

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>

Envoyés : 16 avr. 2018 12:41 p.m.

À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>

Objet : RE: SCFP Litigation

Non, à part un petit typo que j'ai identifié en relisant (on faisait référence à l'Avis public 1999-97, mais ça aurait dû être 1999-197).

JP

From: Gagnon, Jean-Sébastien

Sent: April-16-18 12:39 PM

To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>

Subject: RE: SCFP Litigation

Merci. Est-ce qu'il y a des changements?

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel

Droit des communications / Communications Law

Secteur juridique / Legal Sector

CRTC

Ottawa, Ontario K1A 0N2

Tel: 819-994-1751

Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-16-18 12:36 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Subject: RE: SCFP Litigation

Well, il y a une routing slip (mais pas bleue), alors je vais la remettre à l'admin.

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 11:54 AM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Si c'est avec un blue slip, il faut le remettre à l'admin. Sinon je peux le prendre

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-16-18 11:49 AM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

J'ai le signoff de Scott.

Veux-tu que je t'amène le document pour que tu puisses le remettre à Steve directement?

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 10:46 AM

To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Salut JP,

La circulation est rendue où?

Merci,

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-13-18 7:59 AM
To: Foster, Peter <peter.foster@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Cc: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: FW: SCFP Litigation

Good morning Donna and Peter,

Legal made some changes to the draft letter for SCFP. Could you please let me know if you are ok with them before we send the letter to Scott H and Steve M?

Thanks,

JP

From: Gagnon, Jean-Sébastien
Sent: April-12-18 4:11 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Merci JP. Voici la version finale, pour vos commentaires.

Si vous êtes d'accord, je suggère une circulation formelle pour obtenir les sign off de Scott et Steve.

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-12-18 2:31 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Voici ce que je propose :

Le Conseil note de plus que les éléments soulevés par le CPSC dans la demande du 13 février 2018 sont semblables à ceux évoqués par le [REDACTED] en réponse à la consultation publique initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359. Par exemple, autant dans la demande du 13 février 2018 que dans [REDACTED] la consultation publique initiée par l'Avis [REDACTED] le [REDACTED] fait référence à l'obsolescence des constats établis par le Conseil dans l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de nouveaux médias – Avis Public CRTC 1999-97*, au temps écoulé depuis le dernier examen de l'Ordonnance, au fait que le taux de pénétration d'Internet est maintenant supérieur au taux de pénétration des entreprises de distribution en radiodiffusion, à la migration des revenus publicitaires des médias traditionnels vers Internet, etc. Le Conseil note d'ailleurs que certains paragraphes inclus dans l'intervention soumise par le [REDACTED] dans le cadre de l'instance initiée par [REDACTED] sont reproduits intégralement ou quasi-intégralement dans la demande du 13 février 2018.

Est-ce suffisant?

Et oui, la lettre doit être traduite.

JP

From: Gagnon, Jean-Sébastien
Sent: April-12-18 11:58 AM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Salut JP,

Dans le cadre de la lettre on dit ceci :

Le Conseil note de plus que les éléments soulevés par le CPSC dans la demande du 13 février 2018 sont semblables à ceux évoqués par le [REDACTED] en réponse à la consultation publique initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359

[REDACTED] Une fois que nous aurons ces détails, nous pourrions finaliser la lettre. Aussi, a-t-elle besoin d'être traduite?

merci

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Dionne, Valérie
Sent: April-12-18 11:46 AM
To: Hutton, Scott <scott.hutton@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Rancourt, Mélanie <melanie.rancourt@crtc.gc.ca>
Cc: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Subject: SCFP Litigation

Bonjour,

Dans le cadre de leur demande devant la Cour d'appel fédérale, le SCFP demande au CRTC de produire toute communication écrite interne au Conseil traitant de la Lettre de Scott datée du 7 mars 2018.

[REDACTED]

merci

Valérie Dionne

Conseillère juridique principale – Chef d'équipe, radiodiffusion, par intérim
Interim Senior Legal Counsel – Team Lead, Broadcasting
Secteur juridique | Legal Sector
Conseil de la radiodiffusion et des télécommunications canadiennes | Canadian Radio-television and Telecommunications Commission
valerie.dionne@crtc.gc.ca | Tel: 819-639-0764

CONFIDENTIALITY NOTICE: This message contains confidential information intended only for the addressee and may be subject to solicitor-client or other legal privilege. If you have received this communication in error, please immediately notify the sender and do not retain a copy.

AVIS DE CONFIDENTIALITÉ: Ce courriel contient des renseignements confidentiels dont l'usage est réservé exclusivement à la personne à laquelle il est destiné et peut être protégé par le secret professionnel de l'avocat-client. Si vous recevez cette communication par erreur, veuillez en aviser l'auteur immédiatement et détruire l'original et toute copie. Merci.

Gouvernement du Canada | Government of Canada
www.crtc.gc.ca

 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)
[Aimez-nous sur Facebook](#) | [Like us on Facebook](#)

Dionne, Valérie

From: Dionne, Valérie
Sent: April-18-18 1:39 PM
To: Millington, Stephen; Gagnon, Jean-Sébastien
Subject: RE: SCFP Litigation

From: Millington, Stephen <stephen.millington@crtc.gc.ca>
Date: Wednesday, Apr 18, 2018, 1:36 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Since we are now editing this letter I recommend:

Splitting the second paragraph in half and starting the following paragraph with "For example, in both

In the 4th paragraph I would replace ' [REDACTED] ' with "an independent administrative tribunal"

Inset after mandate in that same paragraph "*inter alia*"

For the last sentence I would suggest "the Commission has determined that your application will not be posted nor receive further process.

Steve

From: Gagnon, Jean-Sébastien
Sent: April-18-18 11:43 AM
To: Millington, Stephen <stephen.millington@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

In light of comments you have made with respect to the management of this file, I thought you may wish To review the translated version of the letter since I have made minor edits to make it read better and ensure consistency with the French version.

In reviewing the letter, and after consulting with Me Dionne, I came to the conclusion that an adjustment To the letter might be useful [REDACTED]

I am aware that the letter was signed off. If you approve the alternative wording proposed below and included in the draft letter in my previous email, the letter will have to be signed off once more by Scott and you.

I trust this is helpful,

JS

De : "Millington, Stephen" <stephen.millington@crtc.gc.ca>

Envoyé : 18 avr. 2018 11:09 a.m.

À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>

Cc : "Dionne, Valérie" <valerie.dionne@crtc.gc.ca>; "Gauthier, Louise" <Louise.Gauthier@crtc.gc.ca>

Objet : RE: SCFP Litigation

I already signed off on the French version so how can we change the English version?

Stephen Millington
Avocat général principal / Directeur exécutif par intérim
A/Senior General Counsel / Executive Director
Secteur juridique / Legal Sector
Conseil de la radiodiffusion et des télécommunications canadiennes /
Canadian Radio-television and Telecommunications Commission
CRTC, Ottawa, Ontario K1A 0N2
Tel: 819-953-0632
BB: 613-878-6789
Fax: 819-953-0589
stephen.millington@crtc.gc.ca

From: Gagnon, Jean-Sébastien

Sent: April-18-18 10:31 AM

To: Millington, Stephen <stephen.millington@crtc.gc.ca>

Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>; Gauthier, Louise <Louise.Gauthier@crtc.gc.ca>

Subject: RE: SCFP Litigation

Good morning,

Staff is waiting for our comments on the English version of the SG letter decision addressing the SCFP application. Did you have concerns with my suggested change to the letter as described below in my previous email? I have attached the amended letter to this email for your review.

Merci

De : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>

Envoyé : 17 avr. 2018 11:18 a.m.

À : "Millington, Stephen" <stephen.millington@crtc.gc.ca>

Cc : "Dionne, Valérie" <valerie.dionne@crtc.gc.ca>

Objet : FW: SCFP Litigation

Steve

Here is the draft English version of the letter should you wish To review it. I am doing so right now. In reviewing the letters I noted that the conclusions read as follows:

Conséquemment, le conseil [REDACTED] votre demande.

Accordingly, the Commission will not [REDACTED]

Conséquemment, le conseil [REDACTED] votre demande.

Accordingly, the Commission will not [REDACTED]

Or, in the alternative, this might be even clearer:

Conséquemment, le conseil [REDACTED] votre demande et celle-ci ne sera [REDACTED] pas traitée.

Accordingly, the Commission will not [REDACTED]

Thoughts ?

JS

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Envoyé : 16 avr. 2018 3:13 p.m.
À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc : "Dionne, Valérie" <valerie.dionne@crtc.gc.ca>
Objet : RE: SCFP Litigation

Version originale (en français) et version traduite (en anglais).

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 3:07 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Je suis à l'extérieur du bureau. Peux tu aussi m'envoyer la version anglaise ?

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Envoyé : 16 avr. 2018 3:05 p.m.
À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc : "Dionne, Valérie" <valerie.dionne@crtc.gc.ca>
Objet : RE: SCFP Litigation

Sans problème.

Serait-il possible pour toi de revoir ma traduction (surtout les termes juridiques)?

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 2:26 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Steve me dit qu'il a signé. Pourras tu, stp, m'envoyer un scan de la lettre lorsqu'elle aura été signée par le SG et envoyé?

Merci

De : "Lefebvre, Jean-Pierre" <jean-pierre.lefebvre@crtc.gc.ca>
Envoyés : 16 avr. 2018 12:41 p.m.
À : "Gagnon, Jean-Sébastien" <Jean-Sebastien.gagnon@crtc.gc.ca>
Objet : RE: SCFP Litigation

Non, à part un petit typo que j'ai identifié en relisant (on faisait référence à l'Avis public 1999-97, mais ça aurait dû être 1999-197).

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 12:39 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Subject: RE: SCFP Litigation

Merci. Est-ce qu'il y a des changements?

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-16-18 12:36 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Subject: RE: SCFP Litigation

Well, il y a une routing slip (mais pas bleue), alors je vais la remettre à l'admin.

s.21(1)(b)

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 11:54 AM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Si c'est avec un blue slip, il faut le remettre à l'admin. Sinon je peux le prendre

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-16-18 11:49 AM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

J'ai le signoff de Scott.

Veux-tu que je t'amène le document pour que tu puisses le remettre à Steve directement?

JP

From: Gagnon, Jean-Sébastien
Sent: April-16-18 10:46 AM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Salut JP,

La circulation est rendue où?

Merci,

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-13-18 7:59 AM
To: Foster, Peter <peter.foster@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Cc: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: FW: SCFP Litigation

Good morning Donna and Peter,

Legal made some changes to the draft letter for SCFP. Could you please let me know if you are ok with them before we send the letter to Scott H and Steve M?

Thanks,

JP

From: Gagnon, Jean-Sébastien
Sent: April-12-18 4:11 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Merci JP. Voici la version finale, pour vos commentaires.

Si vous êtes d'accord, je suggère une circulation formelle pour obtenir les sign off de Scott et Steve.

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Lefebvre, Jean-Pierre
Sent: April-12-18 2:31 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Voici ce que je propose :

Le Conseil note de plus que les éléments soulevés par le CPSC dans la demande du 13 février 2018 sont semblables à ceux évoqués par le [REDACTED] en réponse à la consultation publique initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359. Par exemple, autant dans la demande du 13 février 2018 que dans [REDACTED] la consultation publique initiée par l'Avis [REDACTED], le [REDACTED] fait référence à l'obsolescence des constats établis par le Conseil dans l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de nouveaux médias* – Avis Public CRTC 1999-97, au temps écoulé depuis le dernier examen de l'Ordonnance, au fait que le taux de pénétration d'Internet est maintenant supérieur au taux de pénétration des entreprises de distribution en radiodiffusion, à la migration des revenus publicitaires des médias traditionnels vers Internet, etc. Le Conseil note d'ailleurs que certains paragraphes inclus dans l'intervention soumise par le [REDACTED] dans le cadre de l'instance initiée par [REDACTED] sont reproduits intégralement ou quasi-intégralement dans la demande du 13 février 2018.

Est-ce suffisant?

Et oui, la lettre doit être traduite.

JP

From: Gagnon, Jean-Sébastien
Sent: April-12-18 11:58 AM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: SCFP Litigation

Salut JP,

Dans le cadre de la lettre on dit ceci :

Le Conseil note de plus que les éléments soulevés par le CPSC dans la demande du 13 février 2018 sont semblables à ceux évoqués par le [REDACTED] en réponse à la consultation publique initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359

[REDACTED] Une fois que nous aurons ces détails, nous pourrions finaliser la lettre. Aussi, a-t-elle besoin d'être traduite?

merci

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Dionne, Valérie
Sent: April-12-18 11:46 AM
To: Hutton, Scott <scott.hutton@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Rancourt, Mélanie <melanie.rancourt@crtc.gc.ca>
Cc: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>
Subject: SCFP Litigation

Bonjour,

Dans le cadre de leur demande devant la Cour d'appel fédérale, le SCFP demande au CRTC de produire toute communication écrite interne au Conseil traitant de la Lettre de Scott datée du 7 mars 2018.

merci

Valérie Dionne

Conseillère juridique principale – Chef d'équipe, radiodiffusion, par intérim
Interim Senior Legal Counsel – Team Lead, Broadcasting
Secteur juridique | Legal Sector
Conseil de la radiodiffusion et des télécommunications canadiennes | Canadian Radio-television and Telecommunications Commission
valerie.dionne@crtc.gc.ca | Tel: 819-639-0764

CONFIDENTIALITY NOTICE: This message contains confidential information intended only for the addressee and may be subject to solicitor-client or other legal privilege. If you have received this communication in error, please immediately notify the sender and do not retain a copy.

AVIS DE CONFIDENTIALITÉ: Ce courriel contient des renseignements confidentiels dont l'usage est réservé exclusivement à la personne à laquelle il est destiné et peut être protégé par le secret professionnel de l'avocat-client. Si vous recevez cette communication par erreur, veuillez en aviser l'auteur immédiatement et détruire l'original et toute copie. Merci.

Gouvernement du Canada | Government of Canada
www.crtc.gc.ca

 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)
[Aimez-nous sur Facebook](#) | [Like us on Facebook](#)

s.21(1)(b)

Dionne, Valérie

From: Dionne, Valérie
Sent: April-12-18 10:22 AM
To: Lefebvre, Jean-Pierre; Gill, Donna; Foster, Peter
Subject: RE: Demande de traitement SCFP - Réponse

[REDACTED] We'll get back to you as soon as possible.

From: Lefebvre, Jean-Pierre
Sent: April-11-18 12:52 PM
To: Gill, Donna <donna.gill@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: Demande de traitement SCFP - Réponse

Good afternoon,

Based on yesterday's discussions, I've updated the letter [REDACTED] for the Sec. Gen. signature.

Let me know if you feel it reflects the determination made by the members. I'll get it translated as soon as we're set on content.

JP

Dionne, Valérie

From: Dionne, Valérie
Sent: April-12-18 10:19 AM
To: Gagnon, Jean-Sébastien; Millington, Stephen
Subject: RE: Lettre - Demande_de_traitement_SCFP_-_Réponse

[REDACTED]
That being said, I leave it up to you two.

From: Gagnon, Jean-Sébastien
Sent: April-12-18 10:11 AM
To: Dionne, Valérie <valerie.dionne@crtc.gc.ca>; Millington, Stephen <stephen.millington@crtc.gc.ca>
Subject: RE: Lettre - Demande_de_traitement_SCFP_-_Réponse

Voici mes commentaires préliminaires. J'en aurai peut être d'autres suite à ma discussion [REDACTED]

Merci.

Me Jean-Sébastien Gagnon

Avocat général par interim/ Acting General Counsel
Droit des communications / Communications Law
Secteur juridique / Legal Sector
CRTC
Ottawa, Ontario K1A 0N2
Tel: 819-994-1751
Fax: 819-953-0589

This e-mail message may contain solicitor-client privileged and confidential information. Any unauthorized use or disclosure is prohibited. Le présent courriel contient de l'information privilégiée et confidentielle. Il est interdit de l'utiliser ou de la divulguer sans autorisation.

From: Dionne, Valérie
Sent: April-11-18 1:04 PM
To: Gagnon, Jean-Sébastien <Jean-Sebastien.gagnon@crtc.gc.ca>; Millington, Stephen <stephen.millington@crtc.gc.ca>
Subject: Lettre - Demande_de_traitement_SCFP_-_Réponse

Let me know what you think.

Dionne, Valérie

From: Dionne, Valérie
Sent: April-11-18 1:04 PM
To: Lefebvre, Jean-Pierre; Gill, Donna; Foster, Peter
Subject: Demande_de_traitement_SCFP_-_Réponse
Attachments: DOCS-#3102263-v1-Demande_de_traitement_SCFP_-_Réponse.doc

I've made some track changes.

s.21(1)(b)



Conseil de la radiodiffusion et des
télécommunications canadiennes Canadian Radio-television and
Telecommunications Commission

Ottawa, XX avril 2018

PAR COURRIEL

Monsieur Denis Bolduc
Président
SCFP-Québec
nblais@scfp.qc.ca

**Objet: Demande de traitement de la demande de la partie 1 – Réexamen de l'Ordonnance
d'exemption relative aux entreprises de radiodiffusion de médias numériques**

Monsieur,

Le Conseil accuse réception de la demande soumise le 13 février 2018 par le Conseil provincial
du secteur des communications (CPSC) du Syndicat canadien de la fonction publique (SCFP),
demandant au Conseil de procéder au réexamen de l'*Ordonnance d'exemption relative aux
entreprises de radiodiffusion de médias numériques* (l'Ordonnance), ainsi que de sa demande
de traitement de la demande susmentionnée, datée du 26 mars 2018.

Le Conseil note que [REDACTED] dans la demande du 13 février 2018
sont semblables à ceux évoqués par le [REDACTED] en réponse à la consultation publique initiée par
l'Avis de consultation de radiodiffusion CRTC 2017-359, *Appel aux observations sur la
demande du gouverneur en conseil de faire rapport sur les modèles de distribution de
programmation de l'avenir*. [REDACTED]

[REDACTED] Le Conseil [REDACTED] la
discretion [REDACTED] de déterminer le moment adéquat pour entreprendre une révision de
politique. [REDACTED]

Commented [DV1]: [REDACTED]

Conséquemment, le Conseil [REDACTED] votre demande ne sera pas traitée.

Veuillez agréer, Monsieur, l'expression de mes sentiments les meilleurs.

Claude Doucet
Secrétaire général

Canada

Dionne, Valérie

From: Dionne, Valérie
Sent: April-10-18 12:54 PM
To: Gagnon, Jean-Sébastien
Subject: FW: Demande SCFP - Réponse
Attachments: 180213 CPSC-SCFP_Demande de la partie 1_FINALE.pdf; 180213 CPSC-SCFP_Demande de la Partie 1 - Annexe 1.pdf; 3072744
_ _Demande_SCFP _ _Réexamen_Ordonnance_médias_numériques _ _Réponse.DOC.DRF

From: Lefebvre, Jean-Pierre
Sent: February-23-18 10:50 AM
To: Foster, Peter <peter.foster@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Cc: Craig, Michael <michael.craig@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: Demande SCFP - Réponse

Bonjour Valérie et Peter,

J'ai préparé la lettre ci-jointe en réponse à la demande du SCFP de réexaminer l'Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques.

SVP me laisser savoir si vous avez des questions/commentaires/suggestions.

Merci,

JP

From: Craig, Michael
Sent: February-20-18 4:20 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

Please see attached.

From: Craig, Michael
Sent: February-16-18 4:51 PM
To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>
Cc: Rancourt, Mélanie <melanie.rancourt@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

Hi Manon,

Can you please create a Rapids case for the attached documents? Please let me know the case number once you have.

Many thanks,

Michael Craig

819-997-9394

From: Lehoux, Manon
Sent: February-15-18 1:22 PM
To: Craig, Michael <michael.craig@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

From: Oakley, Tim
Sent: February-15-18 1:08 PM
To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>
Subject: Réjean Beaudet, CPSC - APP Inbox

Hi Manon

I am not sure for this one but my guess is Michael Craig.
Please let me know what happens with this one please.

Tim

Tim Oakley

Planification et processus / Planning and Process
Conseil de la radiodiffusion et des télécommunications canadiennes
Canadian Radio-television and Telecommunications Commission
1 Promenade du Portage, Gatineau, QC K1A 0N2
tim.oakley@crtc.gc.ca
Téléphone | Telephone 819-997-9354
Télécopieur | Facsimile 819-994-0218
Gouvernement du Canada | Government of Canada
www.crtc.gc.ca

 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)



Ottawa, 7 mars 2018

PAR COURRIEL

Madame Nathalie Blais
Conseillère à la recherche
Syndicat canadien de la fonction publique
nblais@scfp.qc.ca

Objet: Demande de la partie 1 – Réexamen de l'Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques

Madame,

J'accuse réception de la demande soumise le 13 février 2018 par le Conseil provincial du secteur des communications (CPSC) du Syndicat canadien de la fonction publique (SCFP), demandant au Conseil de procéder au réexamen de l'*Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques* (l'Ordonnance).

Je note que les éléments soulevés par le SCFP dans la présente demande sont semblables à ceux évoqués par le SCFP en réponse à la consultation publique initiée par l'Avis de consultation de radiodiffusion CRTC 2017-359, *Appel aux observations sur la demande du gouverneur en conseil de faire rapport sur les modèles de distribution de programmation de l'avenir*. Le sujet de la pertinence de maintenir ou de modifier l'Ordonnance a d'ailleurs également été soulevé par divers autres intervenants participant à cette instance.

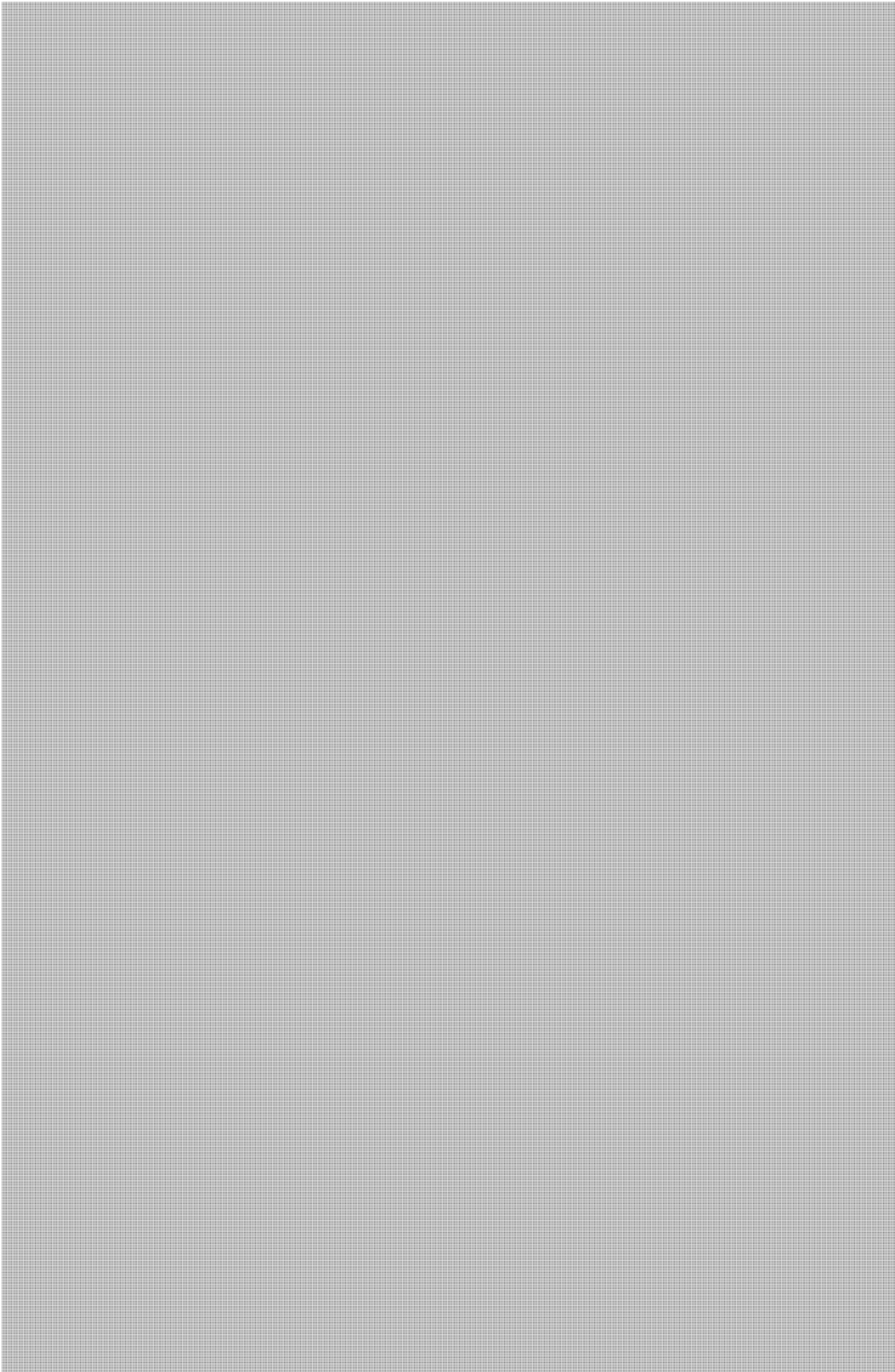
Il ne semble donc pas approprié pour le Conseil d'initier une instance publique distincte pour considérer votre demande.

Conséquemment, votre demande ne sera pas traitée.

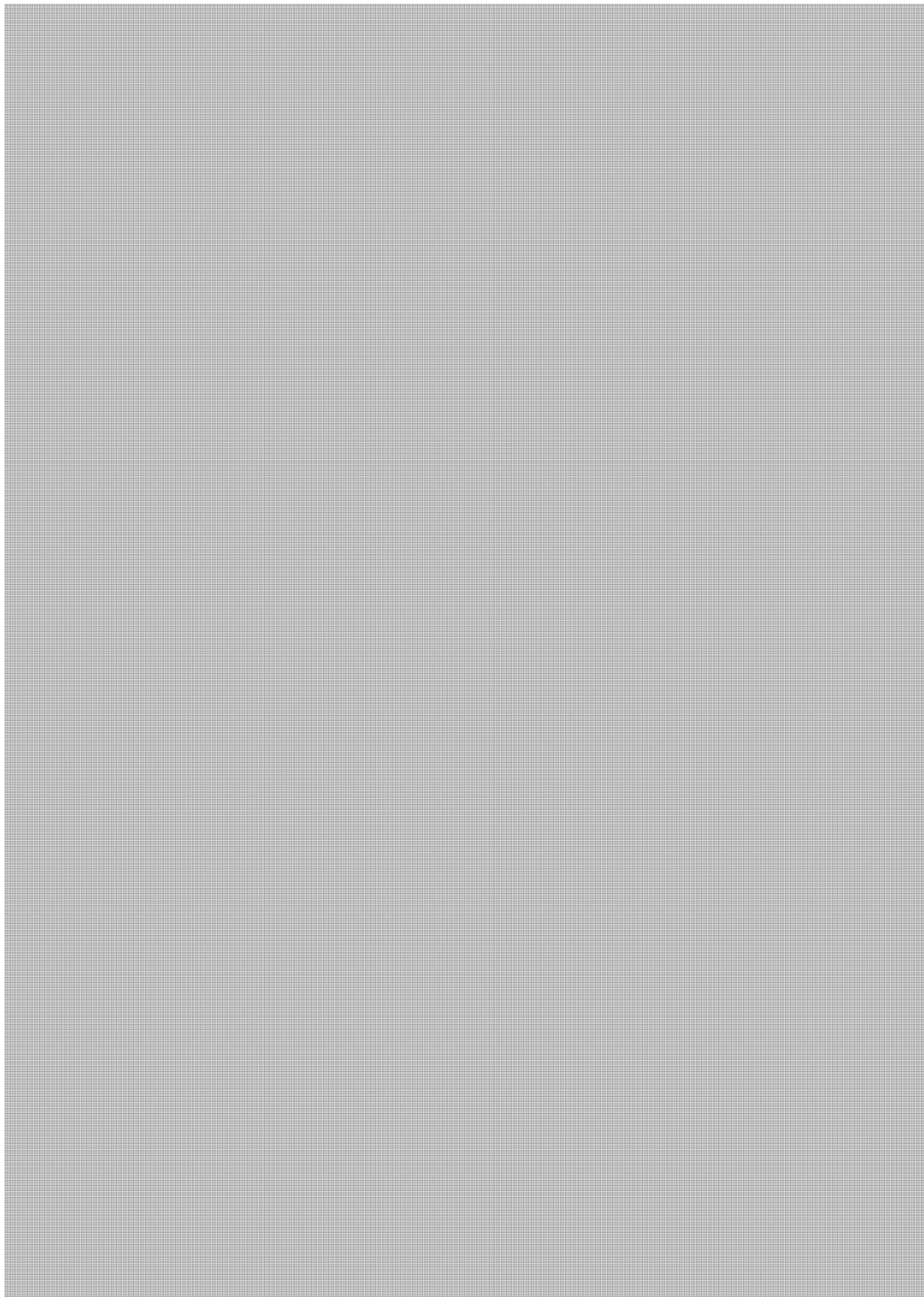
Veuillez agréer, Madame, l'expression de mes sentiments les meilleurs.

Scott Hutton
Directeur exécutif, Radiodiffusion

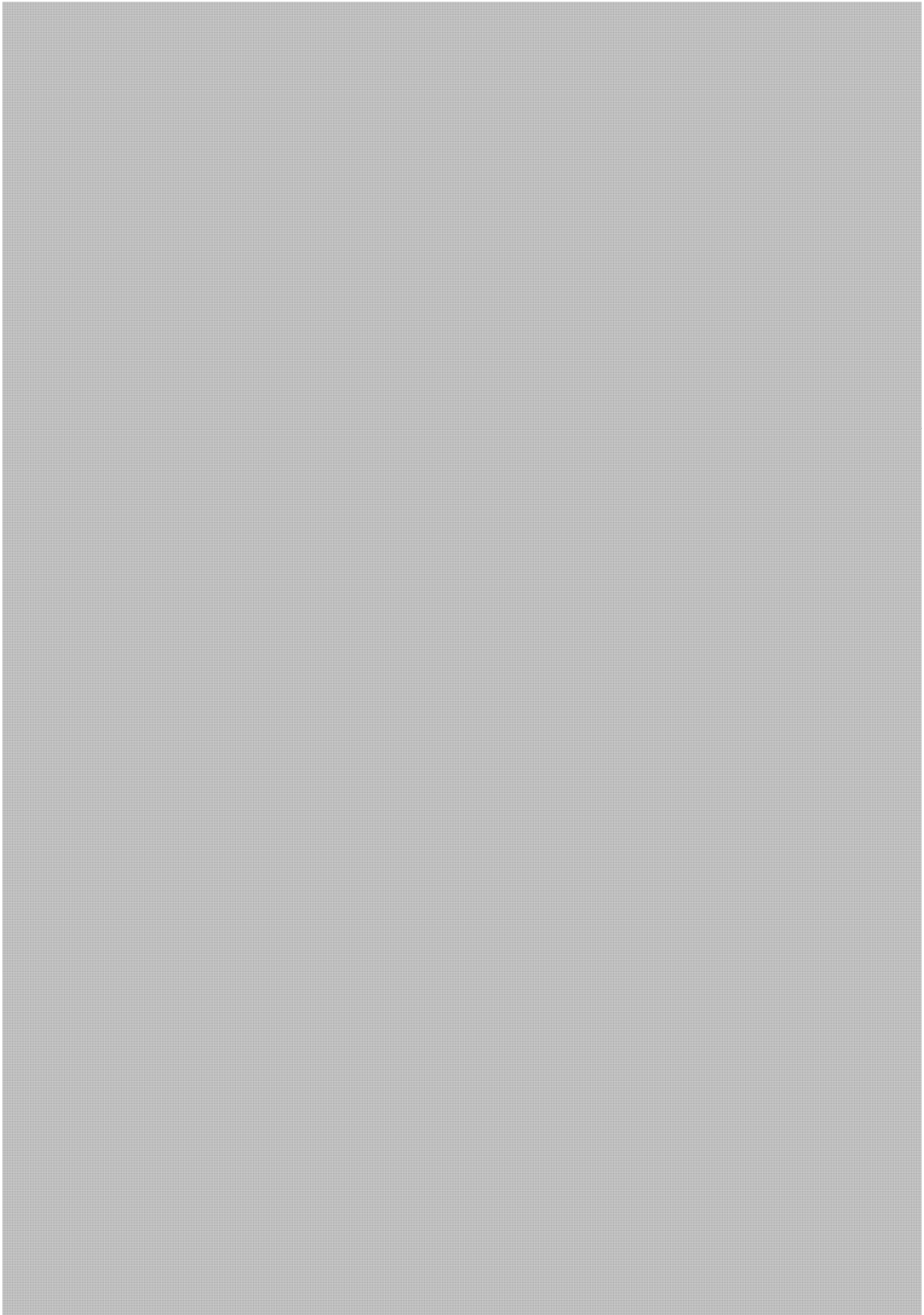
c.c. : Réjean Beaudet, CPSC ([redacted]@bellnet.ca)
Gilles Charland, AQTIS ([redacted]@aqtis.qc.ca)
[redacted] FNC-CSN (tnc@tnc.quebec)
Hélène Messier, AQPM (hmessier@aqpm.ca)
Daniel Boyer, FTQ (fvigeant@ftq.qc.ca)



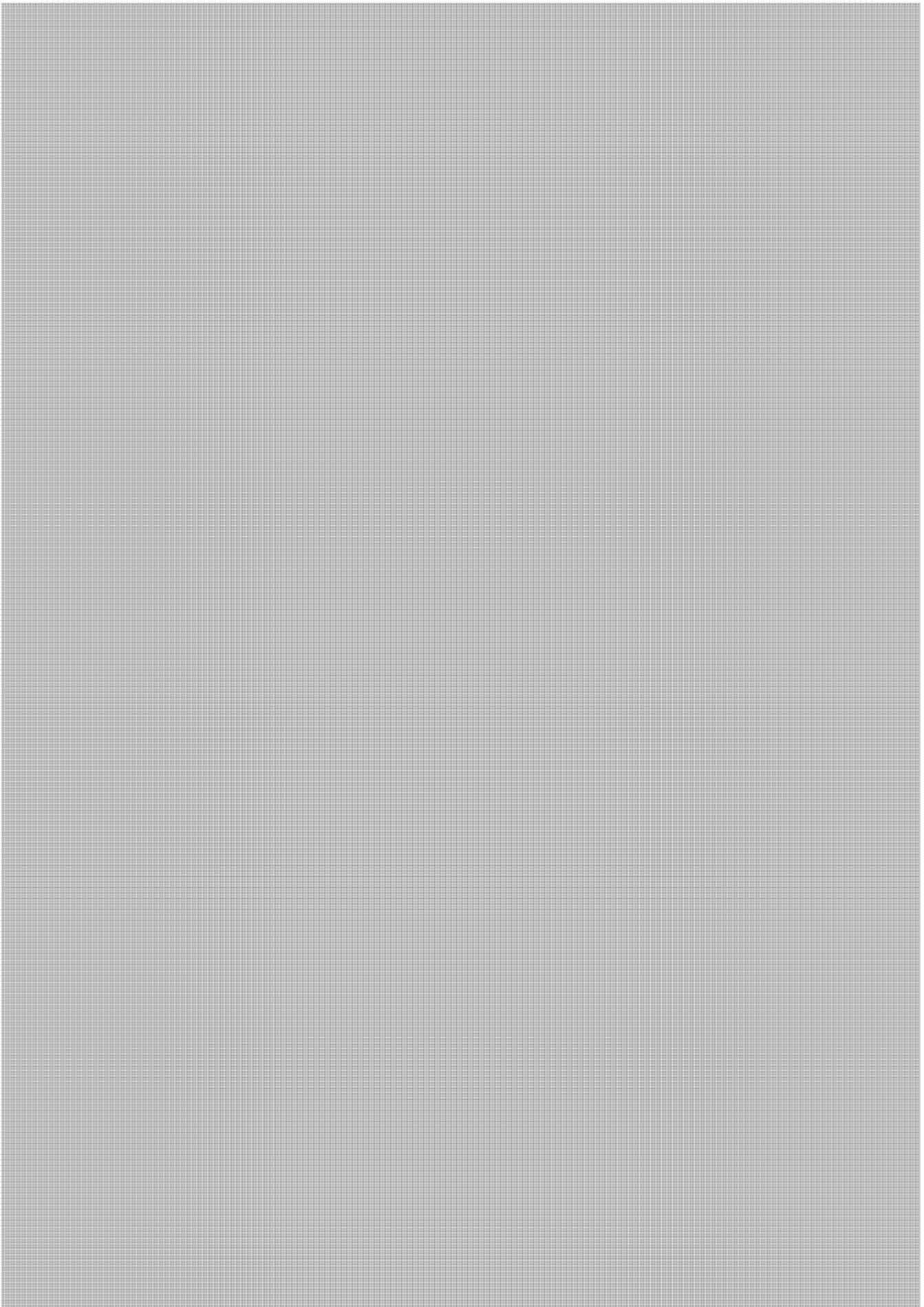
NOT PROCESSED / NON TRAITE



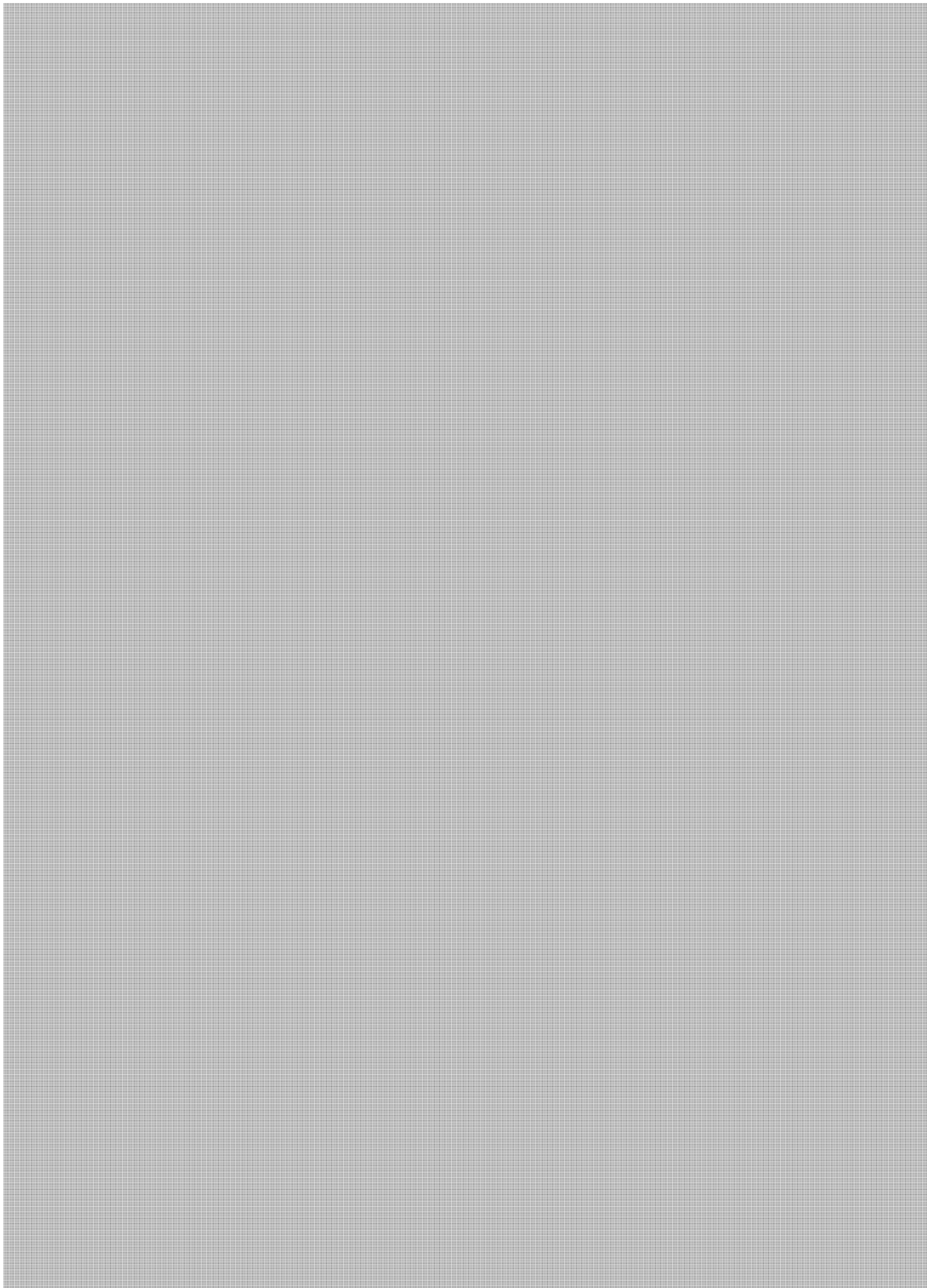
NOT PROCESSED / NON TRAITE



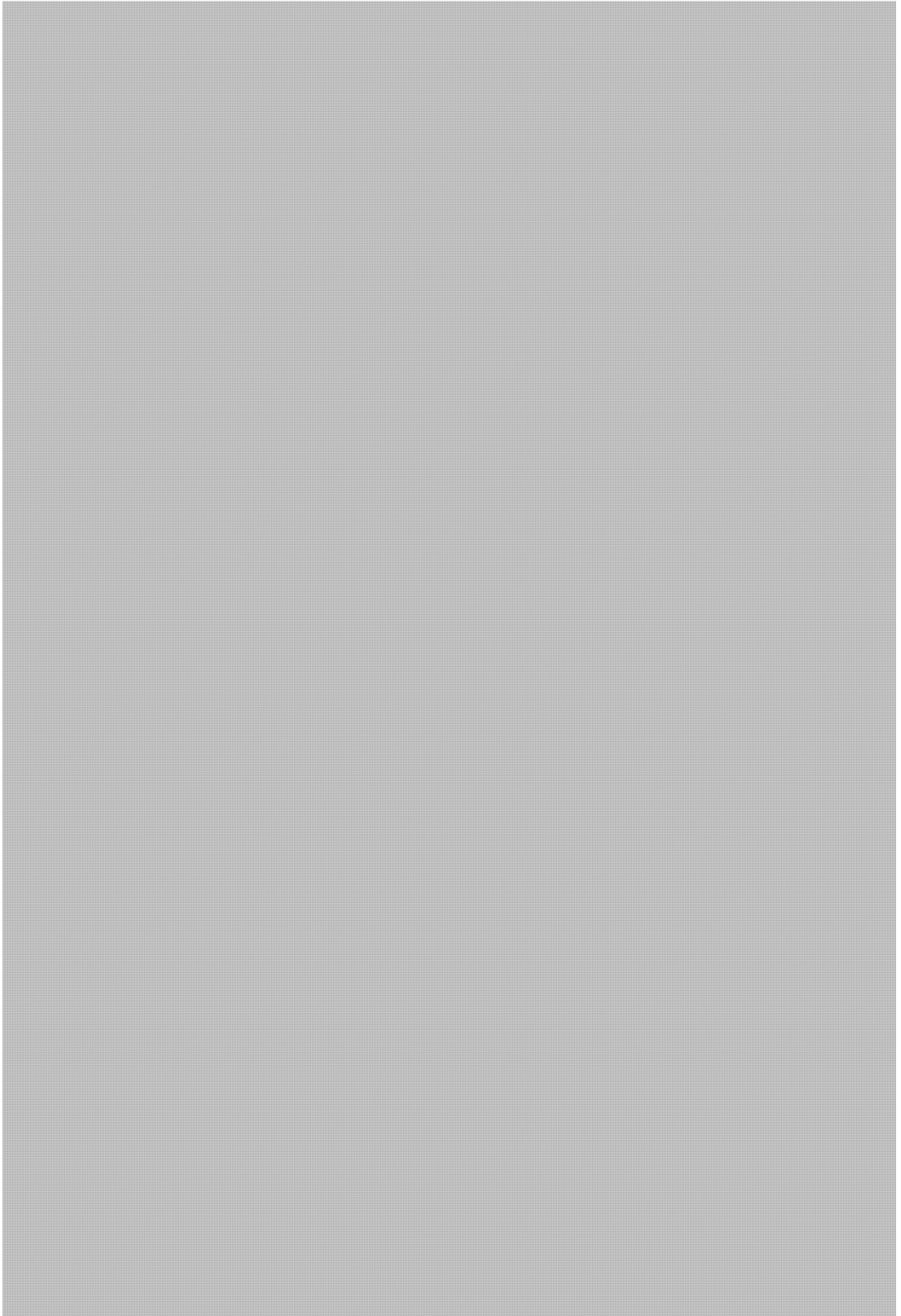
NOT PROCESSED / NON TRAITE



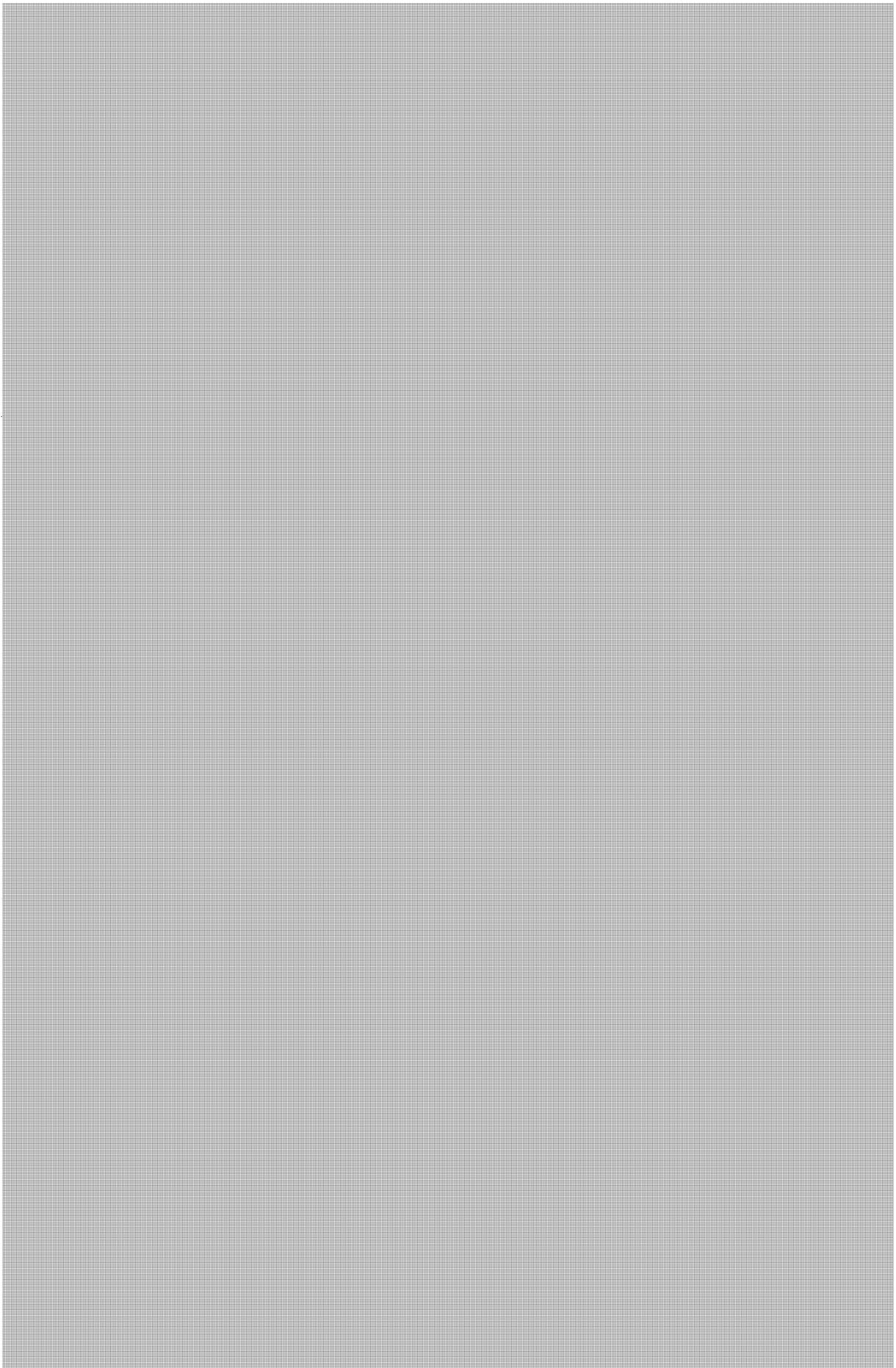
NOT PROCESSED / NON TRAITE



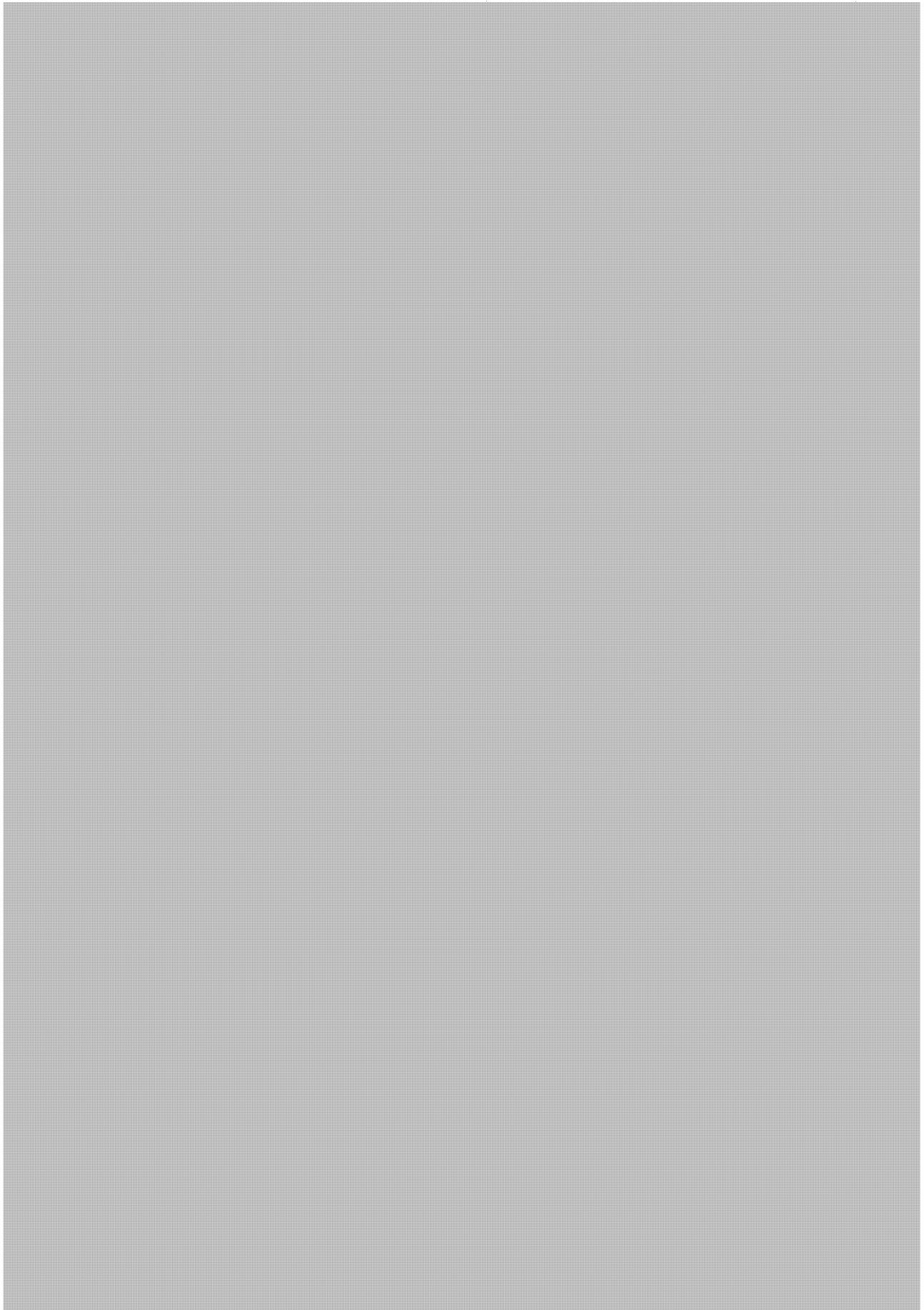
NOT PROCESSED / NON TRAITE



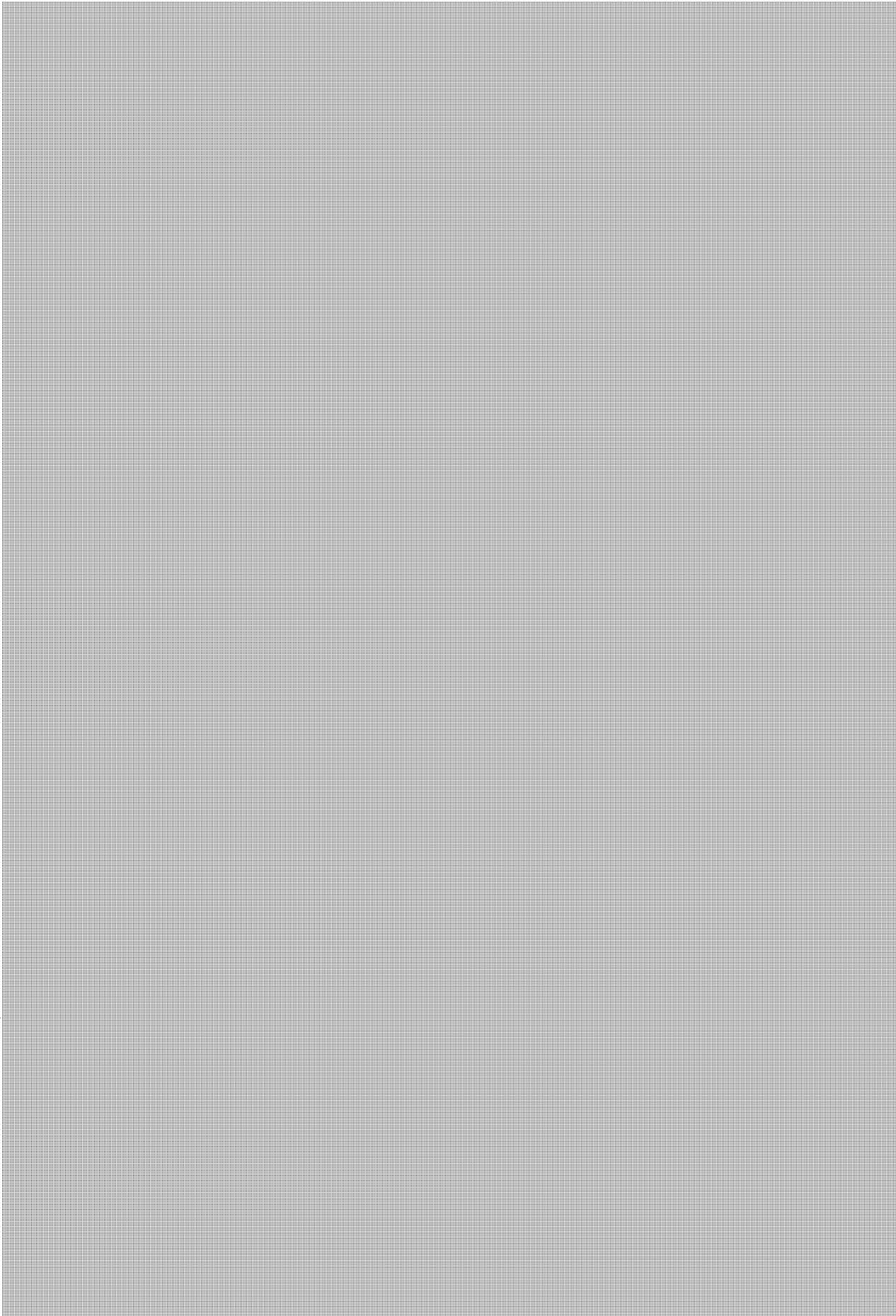
NOT PROCESSED / NON TRAITE



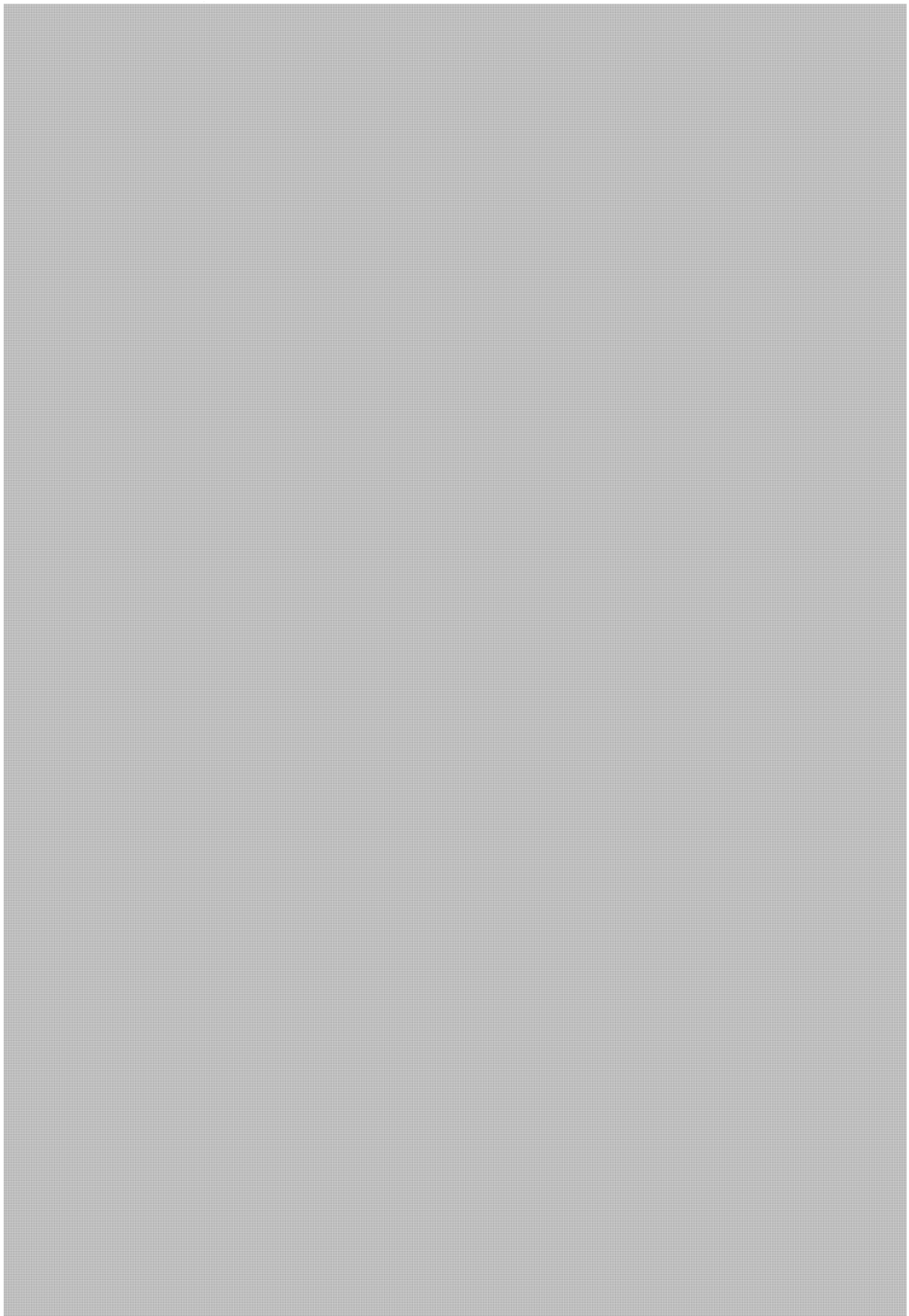
NOT PROCESSED / NON TRAITE



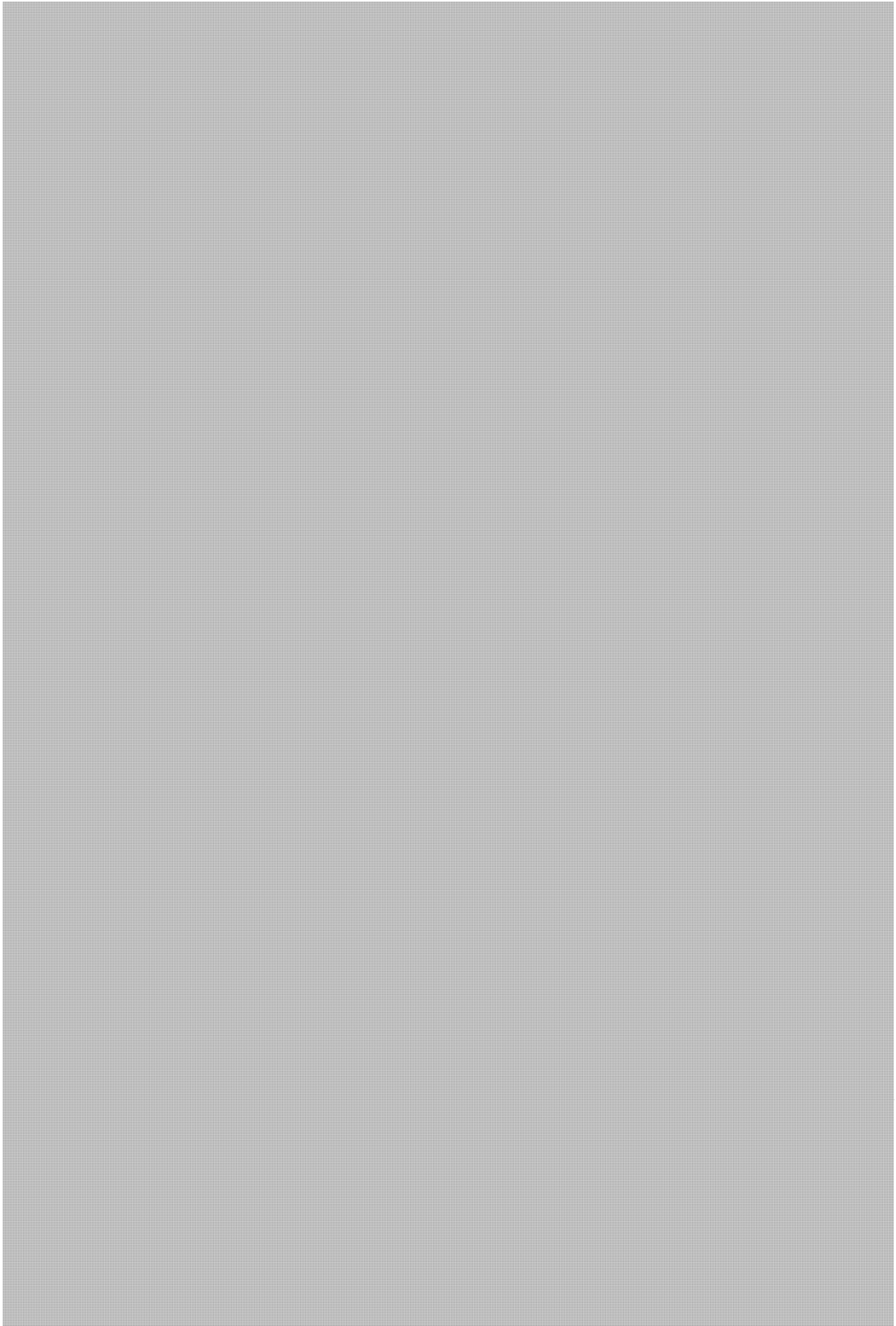
NOT PROCESSED / NON TRAITE



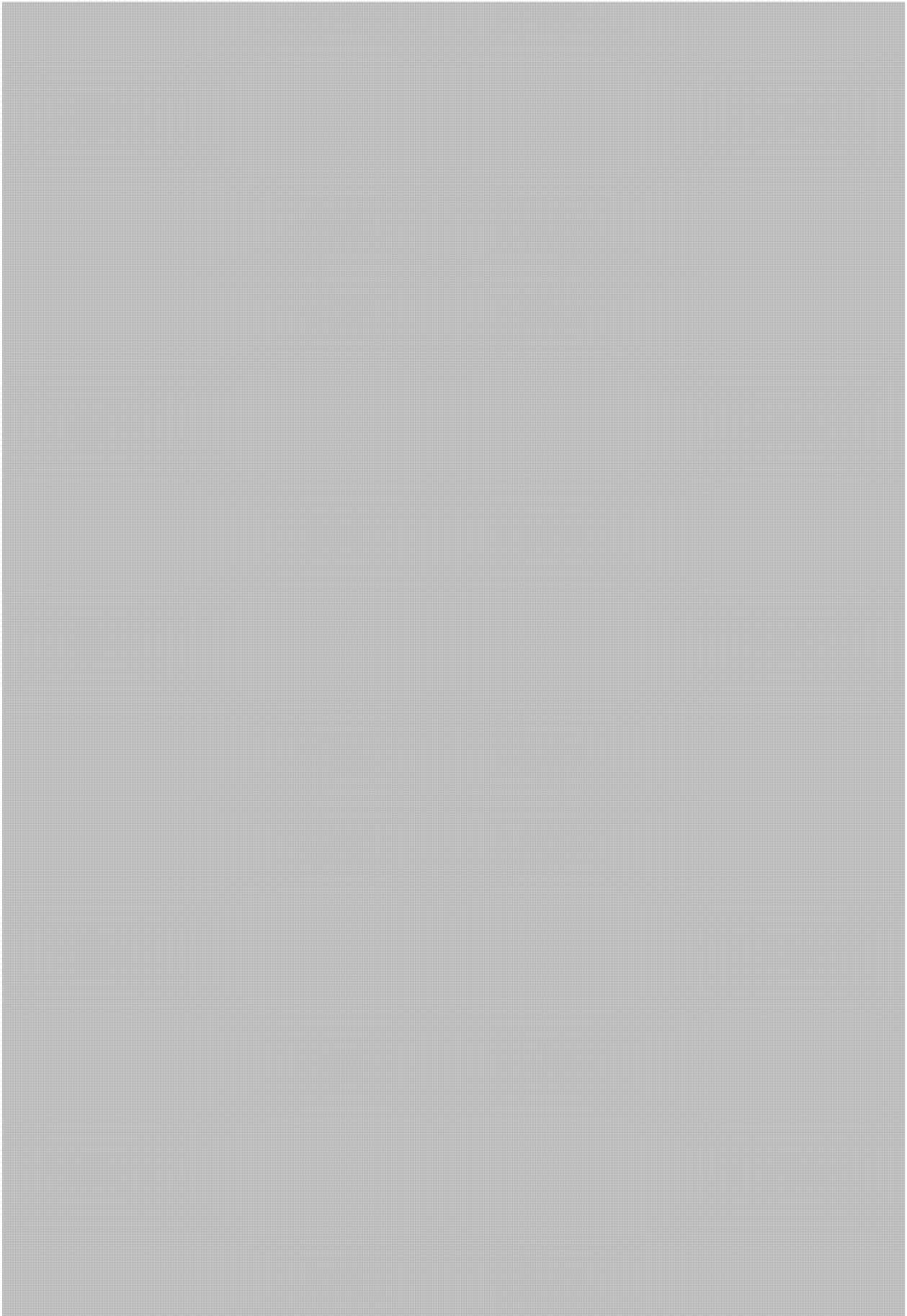
NOT PROCESSED / NON TRAITE



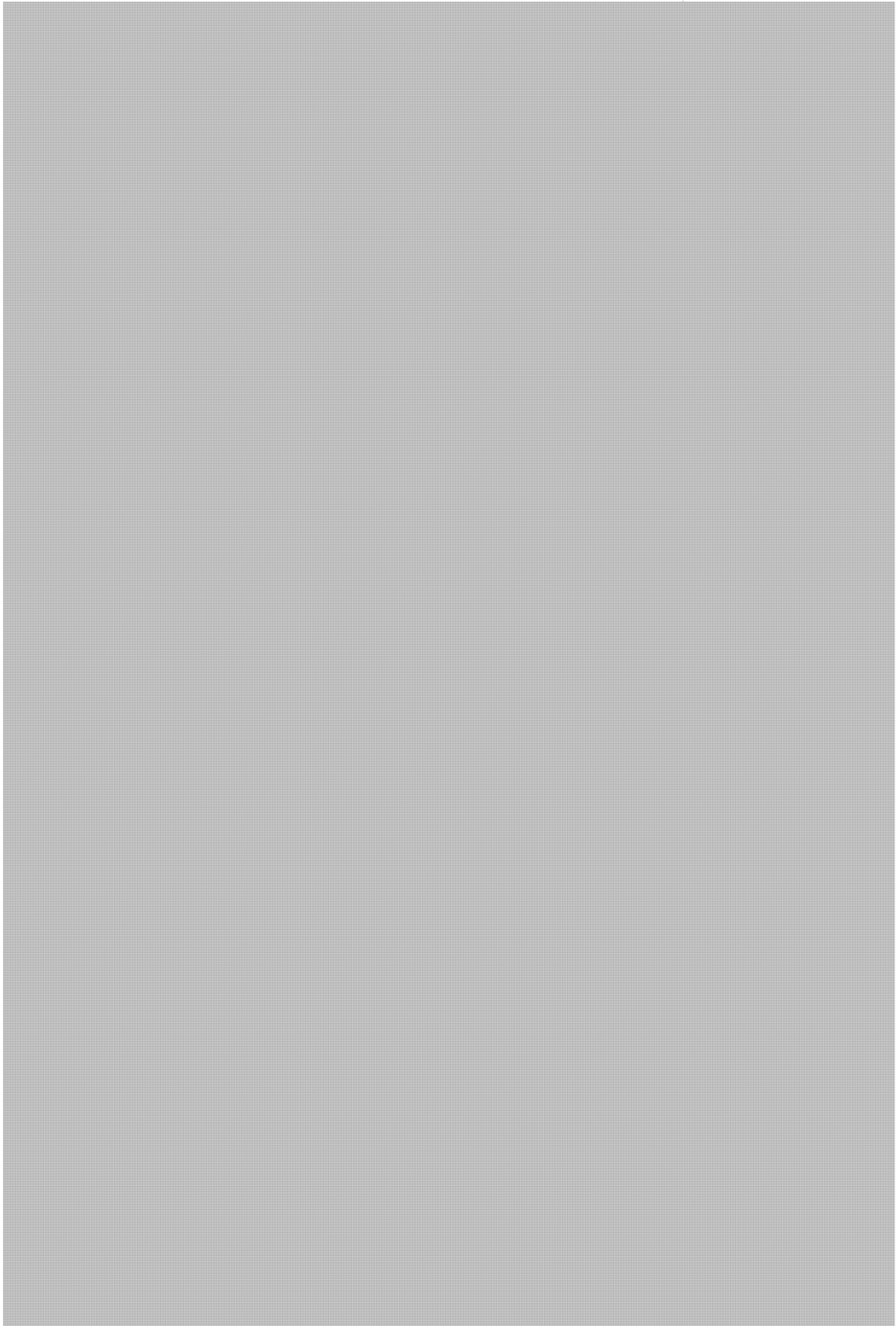
NOT PROCESSED / NON TRAITE



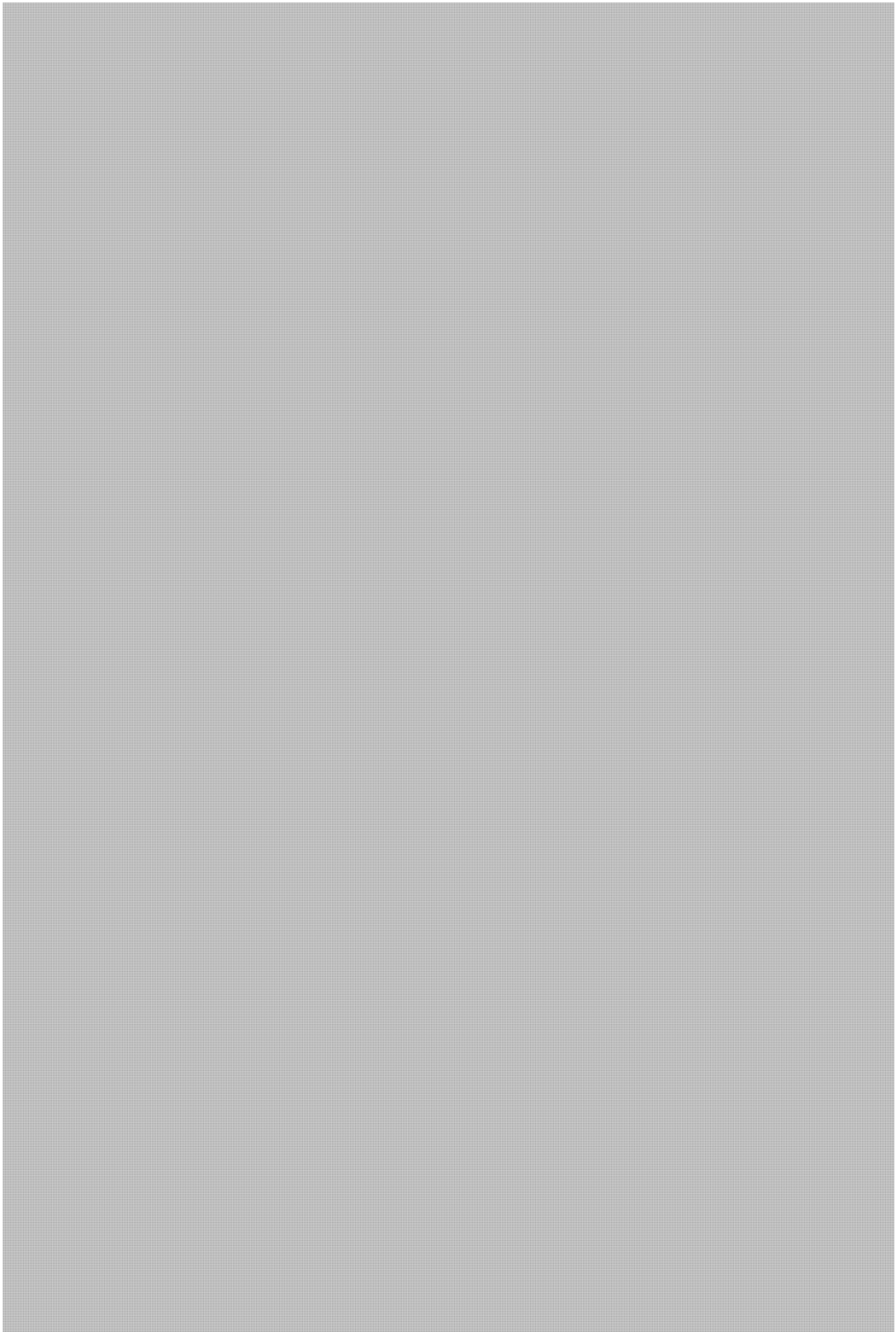
NOT PROCESSED / NON TRAITE



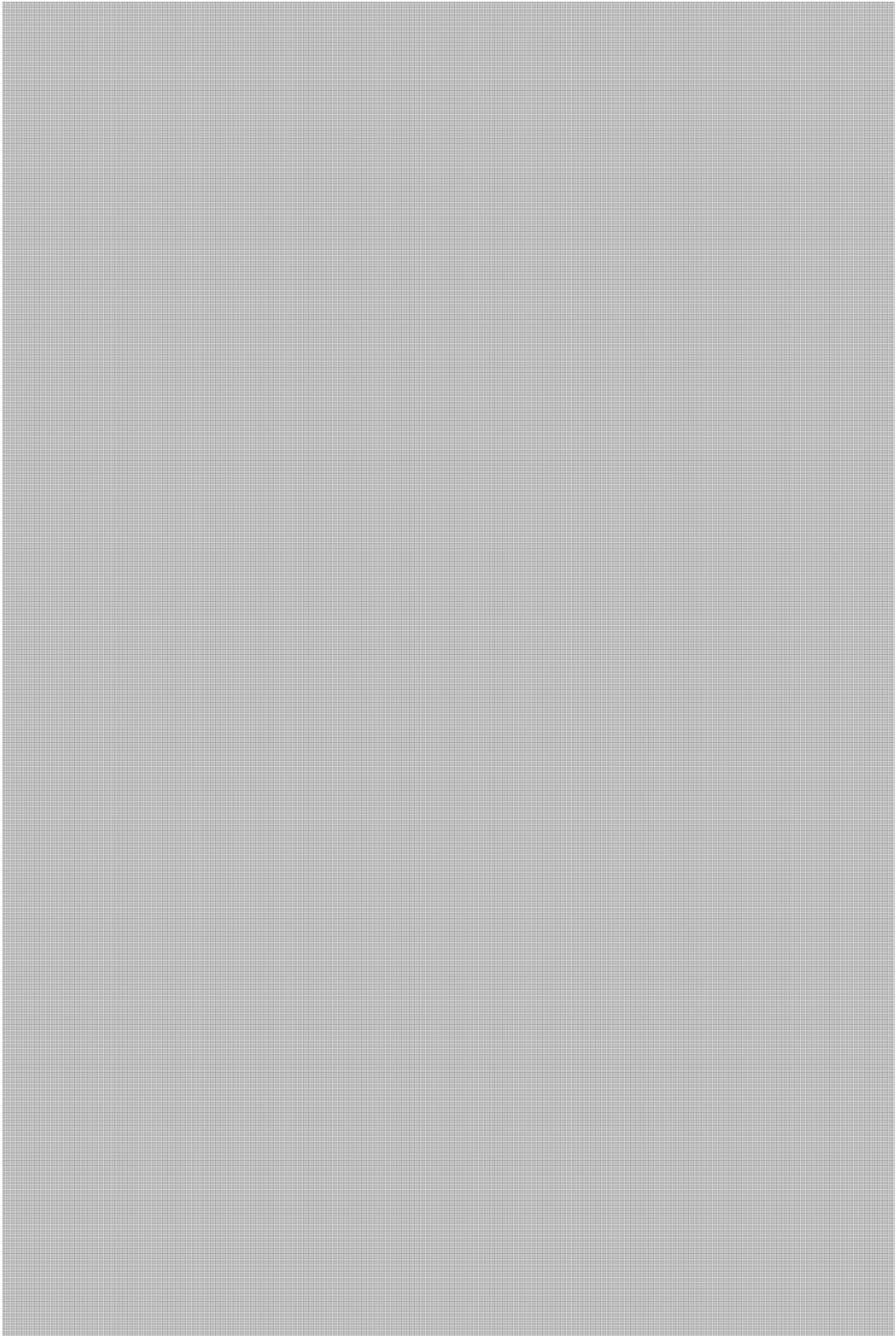
NOT PROCESSED / NON TRAITE



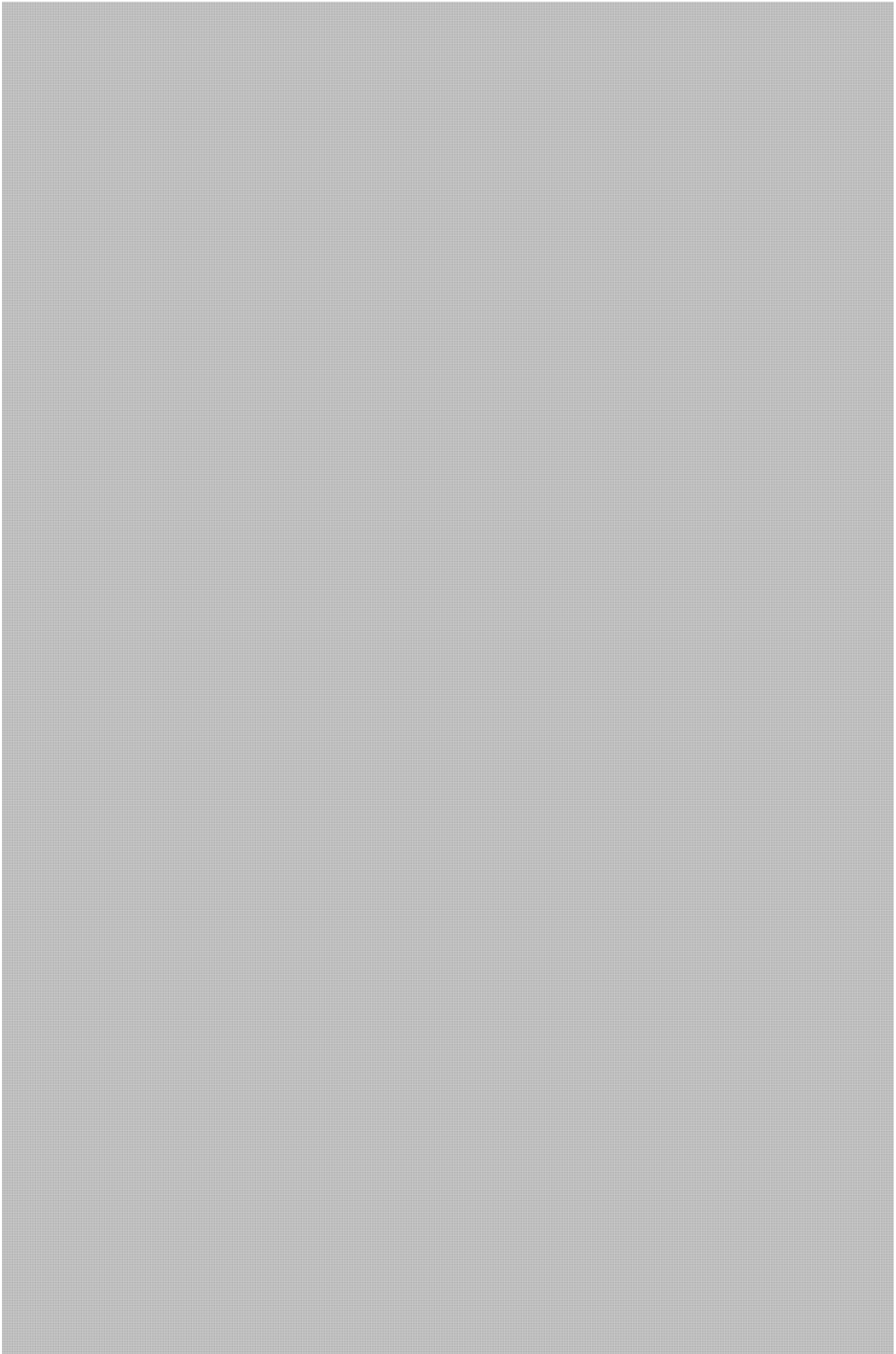
NOT PROCESSED / NON TRAITE



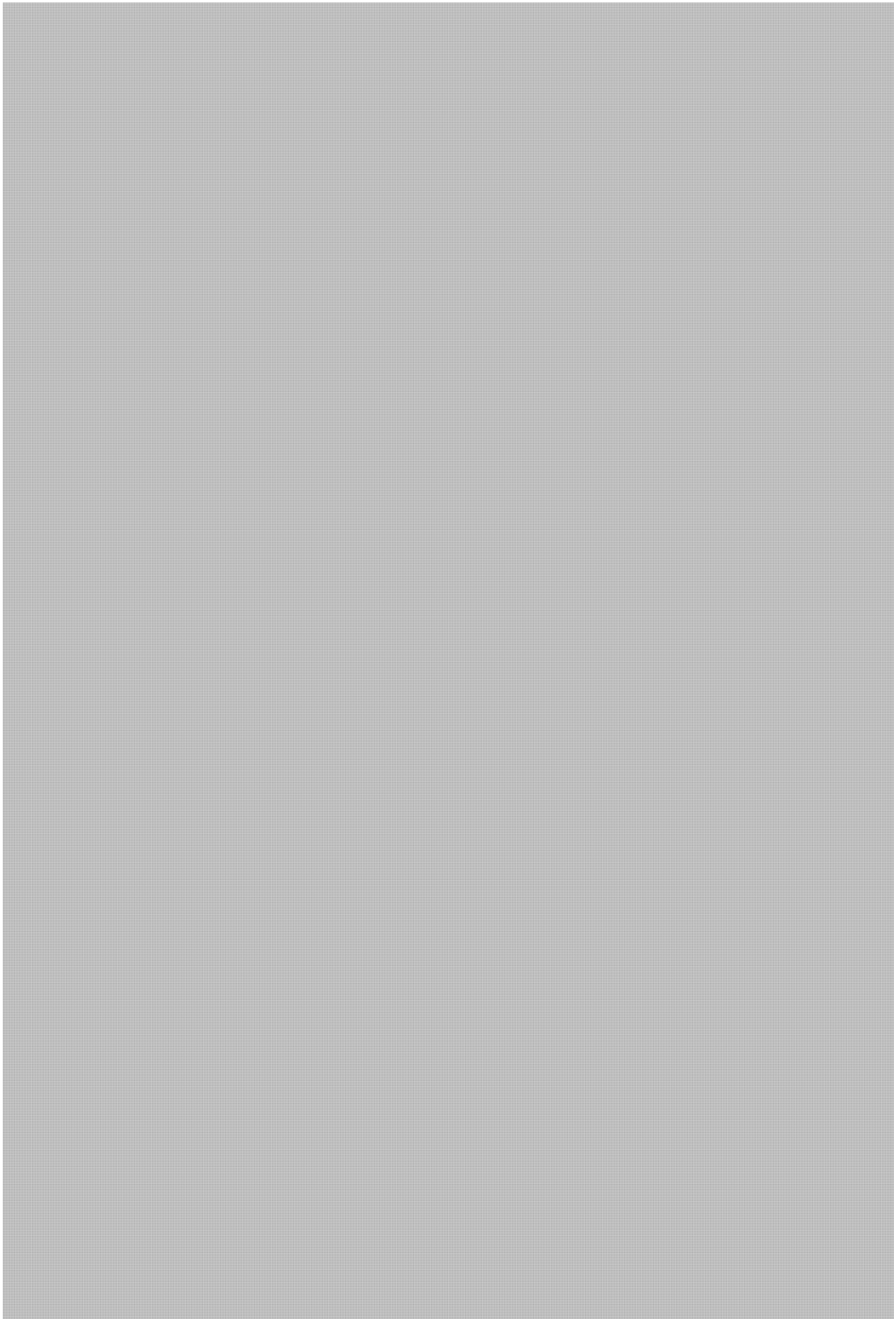
NOT PROCESSED / NON TRAITE



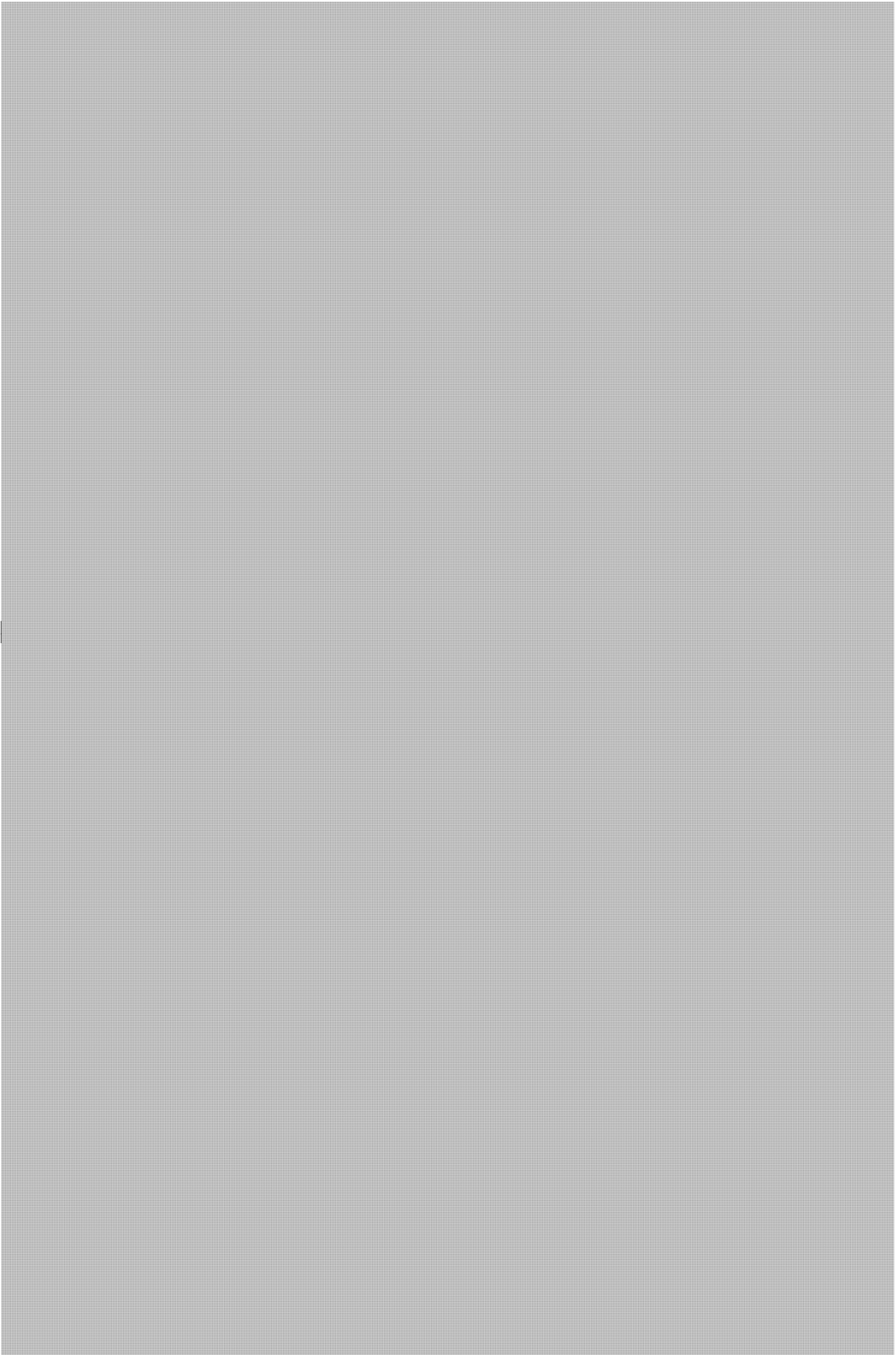
NOT PROCESSED / NON TRAITE



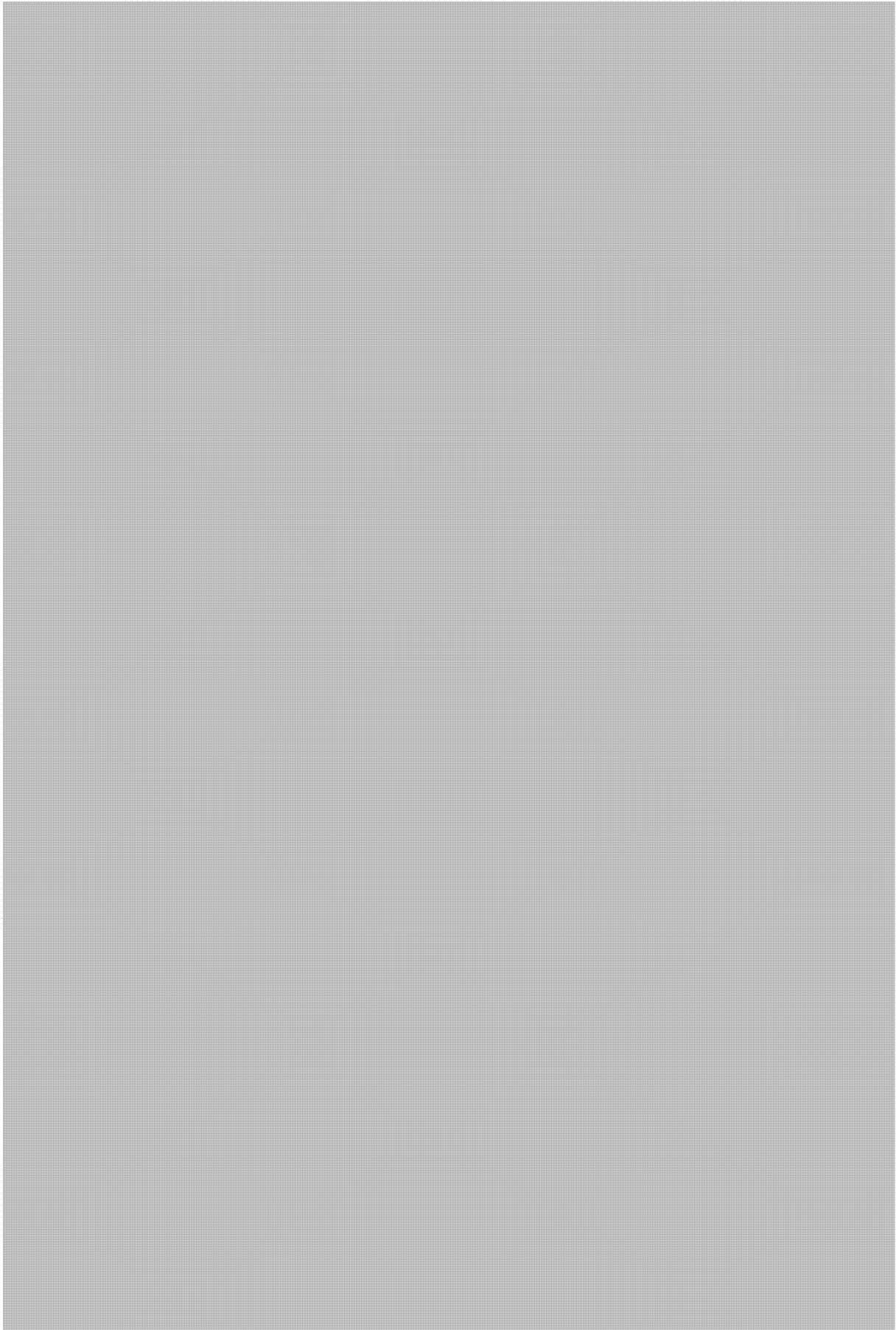
NOT PROCESSED / NON TRAITE



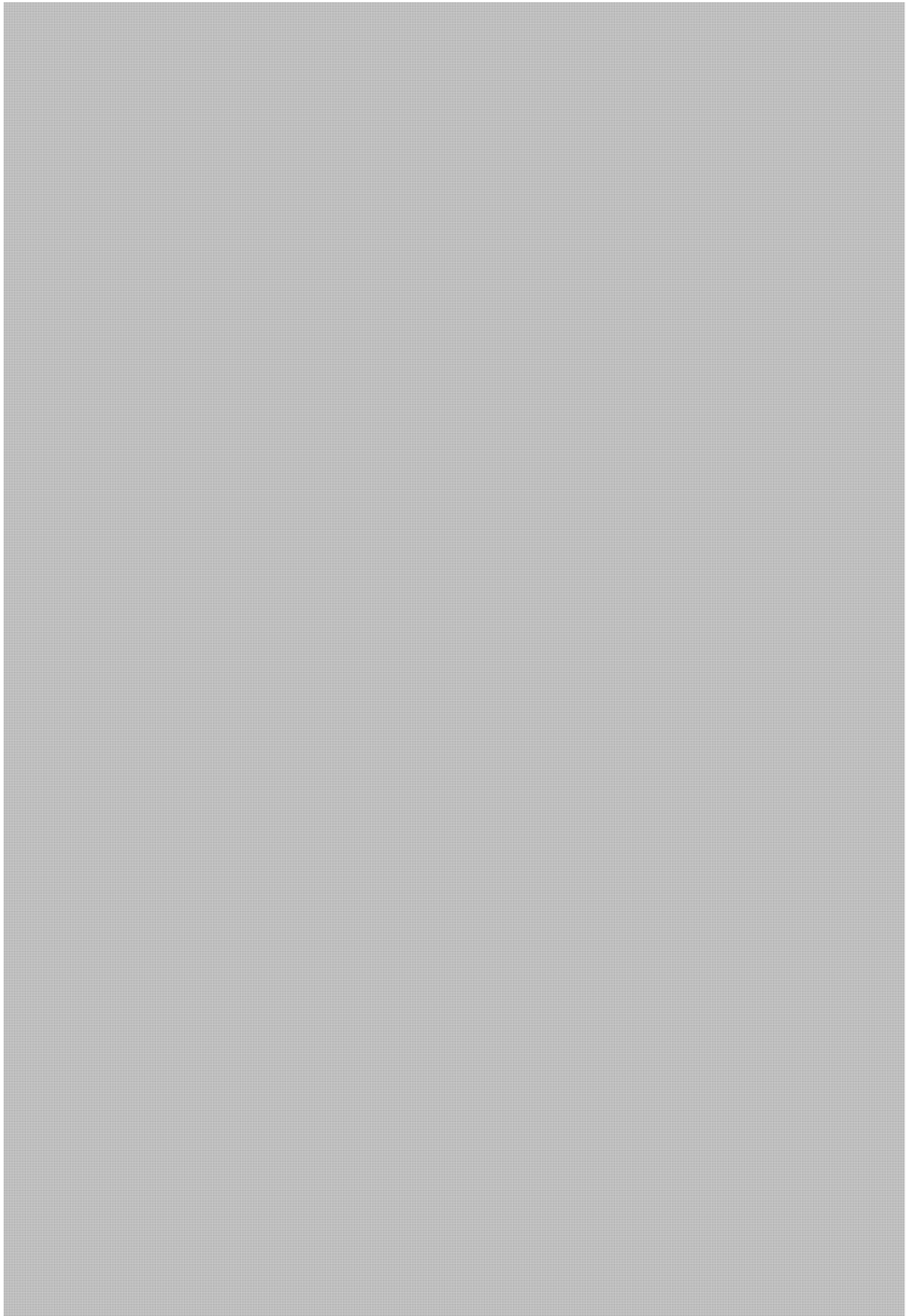
NOT PROCESSED / NON TRAITE



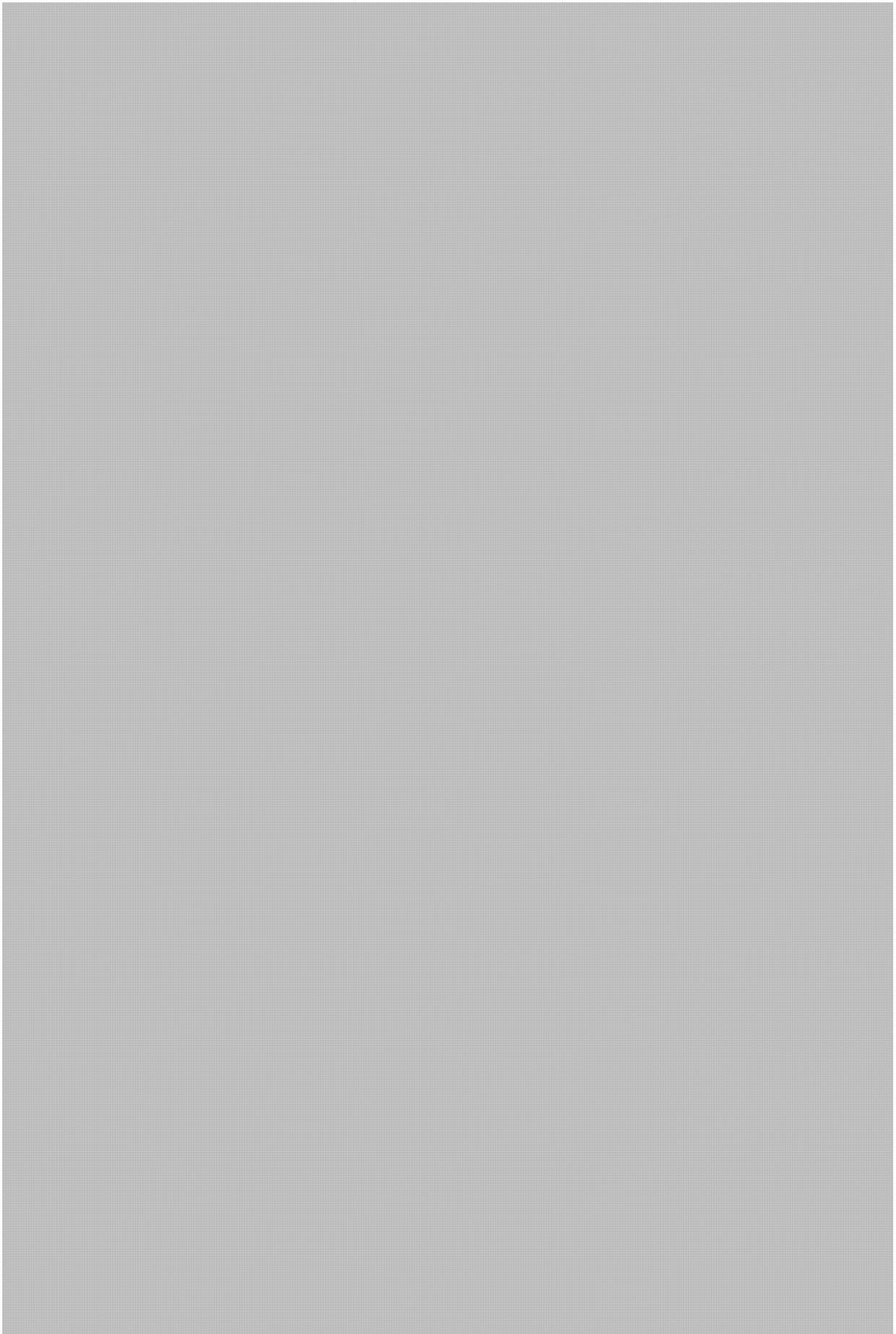
NOT PROCESSED / NON TRAITE



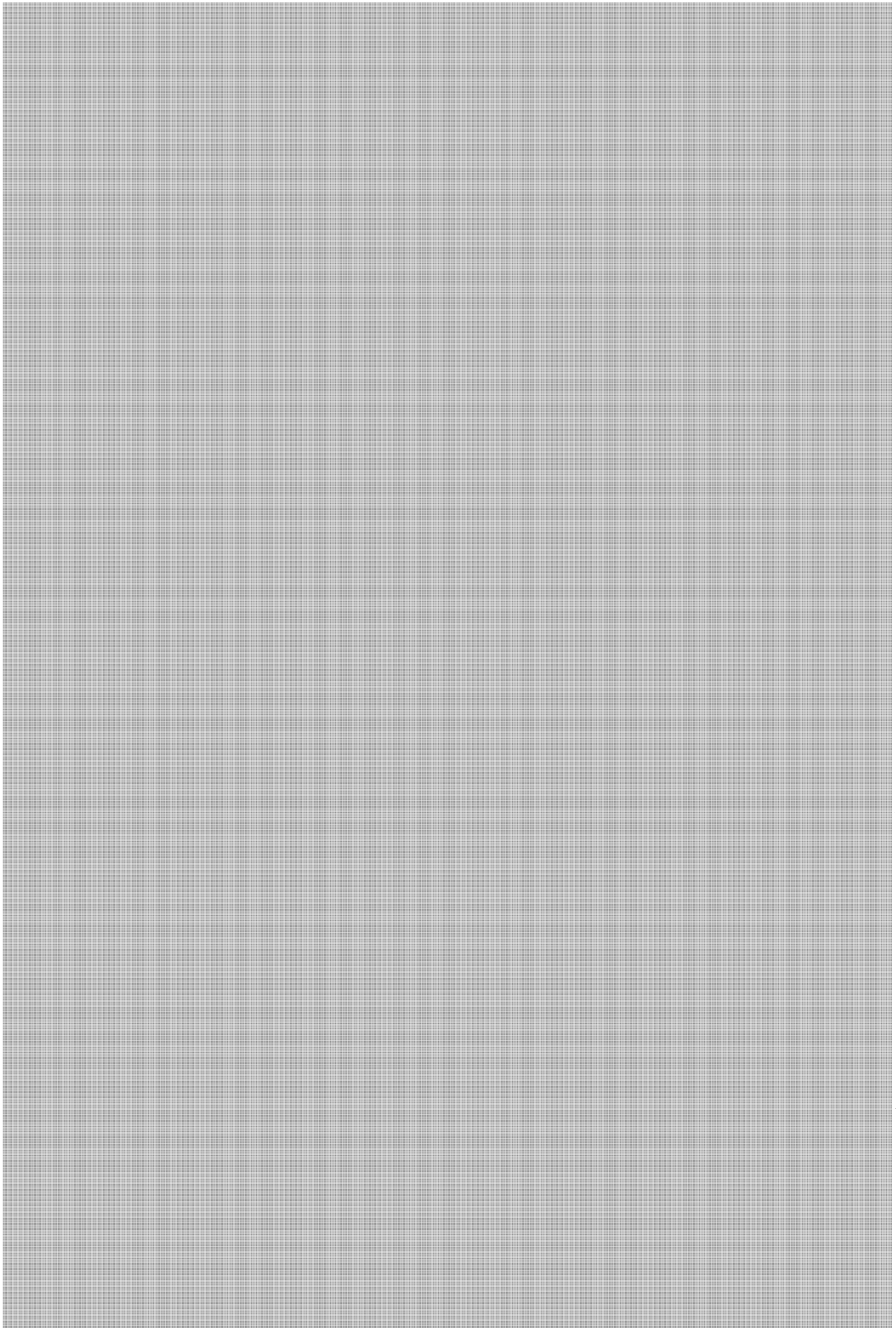
NOT PROCESSED / NON TRAITE



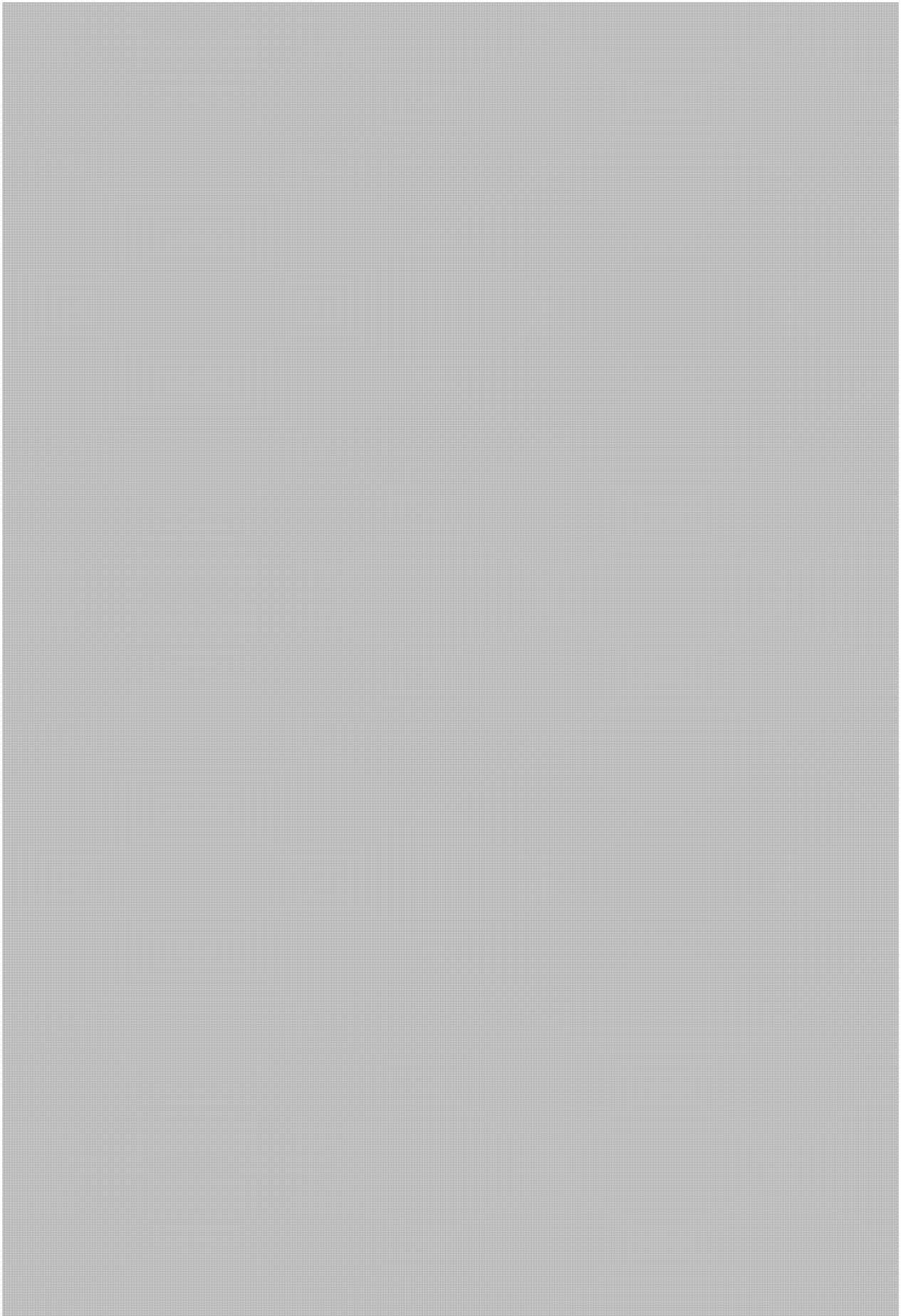
NOT PROCESSED / NON TRAITE



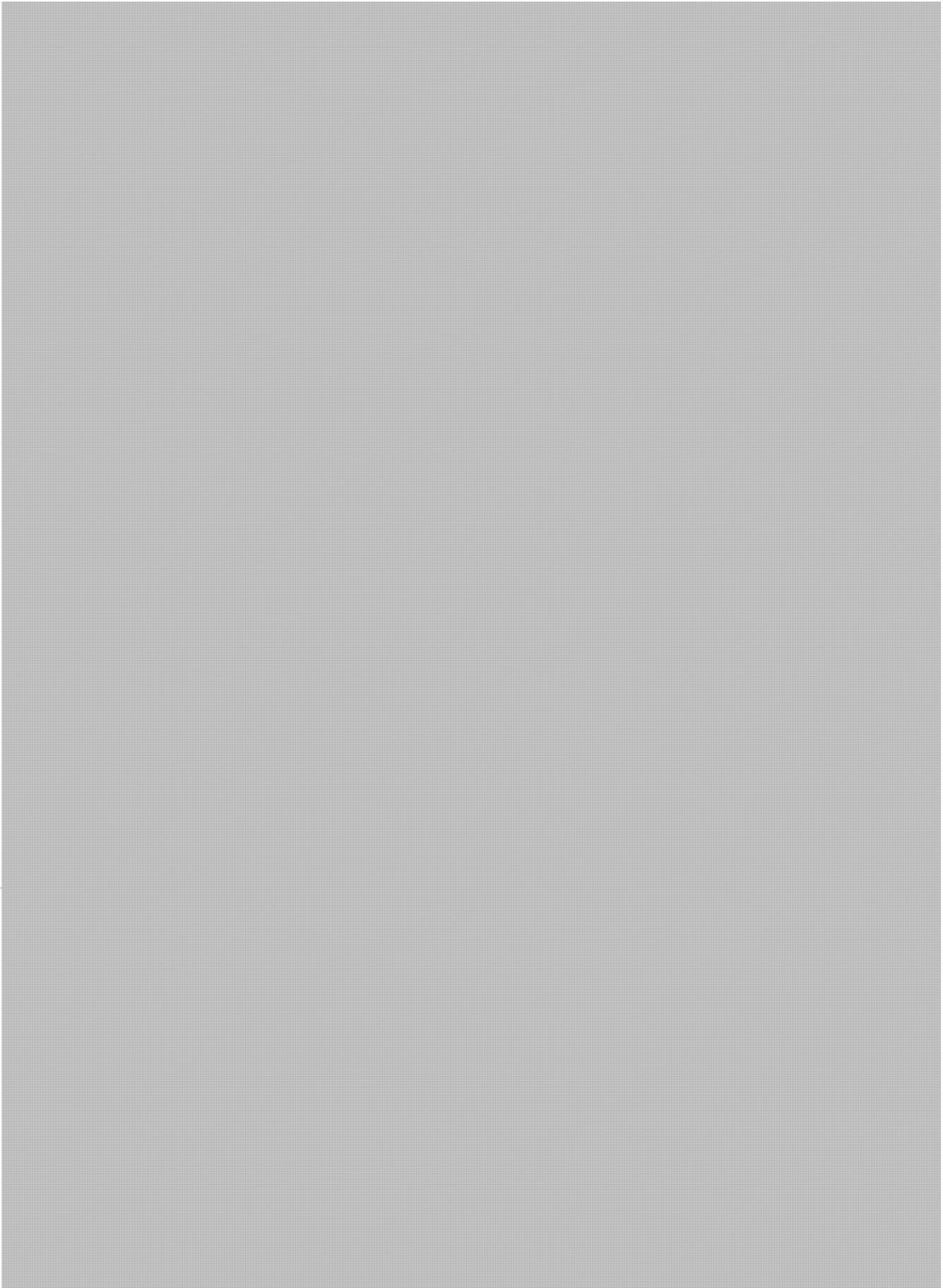
NOT PROCESSED / NON TRAITE



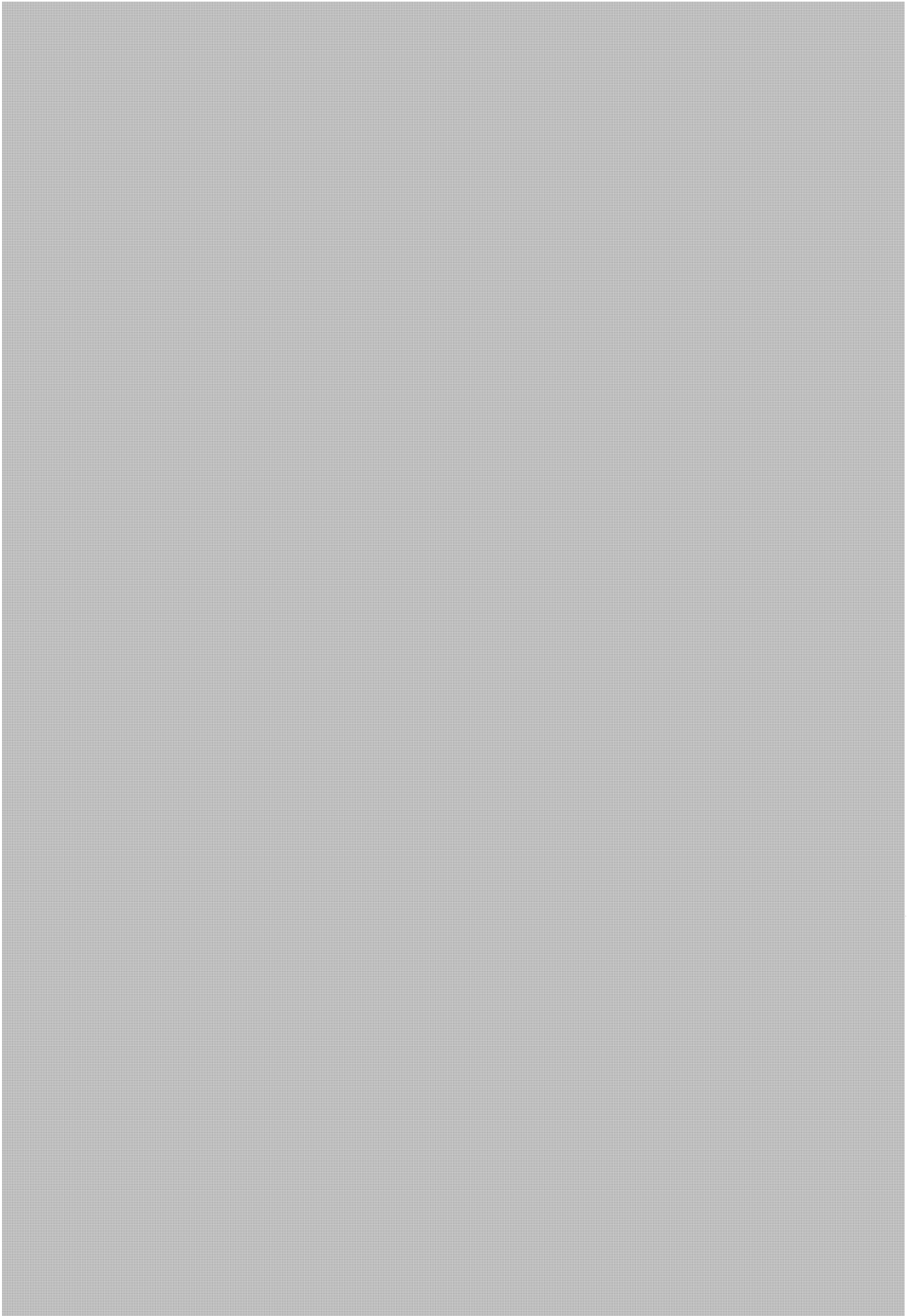
NOT PROCESSED / NON TRAITE



NOT PROCESSED / NON TRAITE



NOT PROCESSED / NON TRAITE



Transnational over-the-top video distribution as a business and policy disruptor: The case of Netflix in Canada

Emilia Zboralska
Ryerson University
emilia.zboralska@ryerson.ca

Charles H. Davis
Ryerson University
c5davis@ryerson.ca

The Journal of Media Innovations 4.1 (2017), 4-25.

DOI: <http://dx.doi.org/10.5617/jmi.v4i1.2423>

© Emilia Zboralska and Charles H. Davis, 2017

ABSTRACT

Digital disruption is often characterized as the conflict between the exponential rate of change in technology, and the slower-paced, incremental rate of change in law, economy, policy, and society writ-large (Franklin, 2012). The rapid encroachment of over-the-top (OTT) content distribution raises policy issues concerning jurisdiction, access, pricing, consolidation of ownership, and source diversity (Holt, 2014), while undermining many of the traditional policy instruments. In this paper, we analyze Netflix's strategic expansion and meteoric growth in Canada, and focus on a landmark event in Canadian broadcasting policymaking: the Canadian Radio-television and Telecommunications Commission's (CRTC) "Let's

Talk TV" hearings of 2013-2014. Through an examination of public documents, we analyze the ways Netflix is considered an opportunity, ally, or a threat by consumers, broadcasters, independent producers, and governments. We show that in a reprioritization of values, many of the principles that motivated legacy broadcasting policy are being sidelined by a consumerist approach that gives freer rein to streamed services. However, Netflix's refusal to provide the Commission with information it was ordered to produce suggests the most serious disruption is to the notion that online video distribution can or should be regulated in the public interest.

INTRODUCTION

Domestic broadcasting industries are considered vital to national cultural expression and democratic practice, and for that reason they frequently receive governmental support and protection and are regulated in the public interest. In Canada, the television broadcasting system serves as a major instrument of national policy regarding creation and distribution of domestic content, with attendant expectations concerning national cultural expression, cultural sovereignty, and democracy

Keywords

media innovation, media policy, political economy, over-the-top video distribution, broadcasting

(Armstrong, 2010; Grant & Wood, 2004; Le Goff et al., 2011; Picard et al., 2016).

The “digital shift” in the media and content industries is disruptive, introducing major transformations in consumer behaviour, business models, and competition, and requiring broadcasters to develop multi-platform, multi-product proficiencies (Doyle, 2015; Naldi, Wikström & Von Rimscha, 2014; Oliver, 2014). Disruption of core technologies “inevitably creates tension for regulatory institutions” (Downes & Mayo 2015, p. 11), raising acute policy issues concerning jurisdiction, access, pricing, consolidation of ownership, and source diversity (Holt, 2014; Simon & Bogdanowicz, 2012). Disruption causes the legacy regulatory regime to become “unstuck” in the sense that “the old [policy] instruments, like existing national mechanisms for direct support and domestic content regulations, may no longer work,” while there is lack of a “clear idea about what to replace them with” (O’Regan & Goldsmith, 2006, p. 82). Regulatory “unsticking” exposes the mixture of entitlements and responsibilities constituting the legacy regime, as well as what Freedman (2015) calls “policy silences,” pathways that are not considered or discussed publicly.

The television broadcasting sector is experiencing an unfamiliar pattern of disruption: “big bang” expansion (Downes & Nunes, 2014) of highly capitalized, rapidly scalable transnational online services which quickly develop large bases among domestic consumers, making domestic incumbents appear as slow-moving, self-serving rent-seekers (Cable, 2016). The case of Netflix in Canada demonstrates how the Canadian broadcast industry is being disrupted through “big bang” innovation in the screen media sector. The U.S.-based Netflix has been operating in Canada only since 2010, but is estimated to have attracted nearly 50% of Anglophone Canadians as subscribers (MTM, 2016). Our paper focuses on a recent landmark event in Canadian broadcasting policymaking: the Canadian Radio-television and Telecommunications Commission’s (CRTC) “Let’s Talk TV” hearings of 2013-2014. On October 24, 2013 the Canadian broadcast regulator (CRTC) announced the launch of a year-long, three-phase review of the Canadian broadcasting system. The policy process, dubbed “Let’s Talk TV” (LTT), invited stakeholders, including individual Canadians, to “shape the future” of the television system so that it “is adaptable for years to come” (CRTC Notice 2013-563). The need for

the review was framed primarily around the observation that television is “evolving at an incredibly rapid rate – and Canada’s regulatory system must change with it” (Blais, 2013b). According to the regulator, on-demand video streaming has altered Canadians’ expectations of the traditional broadcasting system, leading to a growing dissatisfaction with the status quo and a marked need to revise the current rules regulating the operation of Canadian television (CRTC 2014-190).

Although at previous Canadian television policy hearings Netflix portrayed itself as complementary to the traditional Canadian television system, its recent activity, messages to shareholders, and venture into original content show that it now has other plans. Here, we examine the entry of Netflix into a domestic broadcasting system that is already affected by a political environment favorable to transitioning away from cultural protectionism towards deregulation and free market strategies, with a recent federal governing party that chose consumer sovereignty as a plank in its 2015 election platform. Below we discuss Netflix’s activities in Canada, its encounter with the country’s media regulatory agency, and the responses it has elicited in the Canadian television industry.

Through an examination of publicly available documents, including filings to the CRTC, letters to shareholders, leaked e-mails, and other company texts and communications, we analyze the ways that Netflix is considered to represent an opportunity or a threat by the various players in the Canadian television system: consumers, broadcasters, independent producers, and governments. We show that many of the principles that motivated and shaped legacy broadcasting policy in Canada are being marginalized by a consumerist policy approach that gives much freer rein to streamed services than to legacy forms of video distribution. This places incumbent broadcasters at a relative disadvantage vis à vis the over-the-top operators (OTTs), inspiring uncharacteristic expressions of interest from incumbents in a regulatory regime they formerly portrayed as burdensome. The unscripted *dénouement* of the LTT hearings came when Netflix publicly rejected the Commission's jurisdiction over online streamed video services in Canada and refused to provide the Commission with the information it was ordered to produce. This turn of events suggests that the most serious potential disruption in broadcasting's digital transition is to policy itself, by making moot the assumption that online content distribution should

or can be regulated in the national interest. The case presented here illustrates how disruption of regulated media industries involves processes of "unsticking" of regulatory regimes, exposing policy silences and showing that transnational challengers seek rapid expansion among domestic consumers not just for purposes of revenue growth, positioning, or branding, but also to provide leverage in domestic regulatory reform.

INNOVATION, REGULATION, AND DISRUPTION

Digitization affects media industries by driving the cost of additional copies of media content to zero, enabling multiple uses and reuses of media content. It enables interactivity and extensive data collection regarding consumer behavior, provides "location agnostic" advantages to players who can leverage economies of scale and scope, and disrupts and reconfigures distribution networks. Media, IT, and telecommunication sectors that were formerly separate are becoming intermingled, leading to a new business ecosystem in which all segments compete with all other segments for access to end-users and consumers (Simon, 2012; Simon & Bogdanovich, 2012).

Although hundreds of Internet-based video services have emerged since the late 1990s, most of these services have been marginal or niche players (Cunningham & Silver, 2013), allowing domestic broadcasters and cable operators to enjoy a certain bargaining power in architecting delivery platforms (Baccarne et al., 2013; D'Arma, 2010; Evens, 2014; Meisel, 2013). However, the key architects of the emerging media ecosystem are not these niche video distributors, nor the domestic providers of fixed-line or wireless pathways to consumers, but instead providers of transnational cloud-based services, which encompass storage, processing, databases, software, networks, and platforms. According to Noam (2014), advantages of scale and scope are favouring the emergence of a small global oligopoly of cloud providers who exercise considerable market power over users and providers of hardware, software, transmission, and content inputs. Noam considers that the most likely cloud providers in the emerging online media ecosystem will be "tech companies that have morphed into media, such as Google or Apple, or ... hybrid 'tech-media' firms such as Netflix or Amazon" (p. 688). Most of the approximately 500 OTT service providers in the world in 2016 serve local markets; the top five OTT service providers (Netflix, Amazon, Hulu,

HBO, and YouTube) currently represent about half of the \$25 billion in worldwide OTT revenues (Arthofer et al., 2016).

The expansion of players from the computer industry into new industries radically disrupts existing business models (Kushida, 2015). Downes & Nunes (2014) call the process of innovation in which newcomers take advantage of digital and cloud-based technologies to offer consumers massively better, cheaper and more customized experiences from the moment of market entry *big bang disruption*. Highly capitalized transnational OTT streaming video content providers have definite advantages over domestic cable, broadcasting, and satellite services, whose business model involves bundling content with distribution. OTT content providers are able to attract customers away from domestic distributors on the basis of lower cost, greater choice, greater convenience, and (thanks to their huge collections of data on viewing preferences) personalized playlists. They also enjoy deep pockets, brand recognition, and a favorable regulatory environment (Lee, 2014).

Governments regulated the first generation of television, over-the-air broadcasting, justifying their licensing requirements on the grounds of public ownership of scarce spectrum frequencies.

During television's second and third generations (multichannel satellite, cable, telecom networks, and digital television), although carriage capacity increased significantly, most governments continued to regulate domestic broadcasting systems by requiring licenses or notification for television distribution (Schweitzer et al., 2014). The fourth generation of television, video streamed over Internet broadband, provides high resolution, peer and person-to-computer interactivity, asynchronous viewing, multiplatform distribution, and user-generated peer-to-peer content (Noam, 2014), presenting significant challenges to policy regimes, their historical rationales, and regulated incumbents.

Cable (2016) emphasizes the increased incidence of "reformer startups" or fast-moving, well-capitalized newcomer firms that "operate in the face or shadow of prohibited regulatory regimes" (p. 2). These firms rapidly gain traction in the domestic market and grow large customer bases, deterring regulatory intervention and disrupting the policy regime. Policy disruptions are characterized by "a change in the material conditions of a market (either an existing one or a new one), which leads to an invalidation of existing regulatory expectations, norms, ideas and frameworks, and pressure to accommodate and eliminate this invalidation"

(Hasselbalch, 2014, p. 23). Two conditions must be met in order for a policy regime to become disrupted: 1) the innovator must move first, steering the market, and its development, and 2) the externalities arising from the innovation must be considered controversial and enter public and political debate (Hasselbalch, 2014). Three factors allow an innovator to move before the regulator: novelty (when the innovation presents something regulators have not encountered), speed (when it rapidly creates new markets), and obscurity (when it and its transactions develop and occur outside of the purview of regulators) (*ibid.*).

Downes & Mayo (2014) argue that regulatory inertia in the face of disruptive innovation in the communications sector stems from: 1) an increasing mismatch between regulations and the reality that regulated markets are now consistently driven by innovation, 2) the failure of regulatory bodies to adapt their rules when regulations made by competing or complementary bodies are altered, and 3) political forces which must navigate the institutionalized distribution of benefits created by previous policy regimes. The political dimension of regulatory decisions in the face of disruptive innovation is increasingly significant in situations where the status quo is justified in terms of abstract public

benefits (Cable, 2016). Because reformer startups offer consumers immediate benefits, regulations that negatively affect these benefits can carry significant political cost (*ibid.*).

Thus, due to their deep pockets and their exponential growth that occurs in the shadow of existing regulatory regimes, reformer startups have substantively more clout in their interactions with regulators than the less-capitalized startups of the past (Cable, 2016). Rational choice theory predicts that coalitions of opposing interest groups who decide on a common goal are more likely to succeed in steering regulatory decisions in their collective favour than groups with dissenting goals. Yet these coalitions ultimately may have divergent goals. Cable (2016) evokes regulatory economist Bruce Yandle's famous "Bootleggers and Baptists" catchphrase to refer to such a situation in which makers of illegal alcohol supported religious prohibitionists in order to drive up demand for product only they could supply. In the present case, transnational providers of online services ally with domestic consumers in support of consumer sovereignty in order to deter extension of domestic regulations.

In most jurisdictions, regulatory regimes for broadcasting have not extended their concerns about production, distribution, and exhibition of

domestic content to the digital sphere, continuing to focus their efforts on the legacy broadcasting system, and favoring market forces and consumer satisfaction as the driver of innovation, rather than other dimensions of public interest (Freedman, 2015b). On the whole, little effort has been made to secure new digital shared public spaces, which could complement, supplement, or perhaps eventually replace those shared televisual spaces historically safeguarded by legacy broadcasting policy (Freedman, 2010; 2015b). Notably, proposals to secure and cultivate shared *national* spaces in the digital realm are treated as relics of an earlier era.

CULTURAL SOVEREIGNTY AND THE DOMESTIC POLICY ENVIRONMENT

Canadian broadcasting policy has developed an uneasy mixture of economic and cultural objectives to attain a measure of cultural sovereignty in the context of Canada's small national market, which is now dominated by a handful of domestic vertically and horizontally integrated media and telecommunications conglomerates (Edwardson, 2008; Winseck, 2008). The 1991 Broadcasting Act ("the Act") is the preeminent legislation that governs

broadcasting activities in Canada. The Act provides that "Canadian broadcasting shall be effectively owned and controlled by Canadians." The Canadian broadcasting system, the Act continues, should "serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada" by encouraging "the development of Canadian expression" by "displaying Canadian talent in entertainment programming" and by "offering information and analysis concerning Canada and other countries from a Canadian point of view" (Part 1, Section 3). According to the Act, the broadcasting system should be reflective of Canada's multiculturalism, in both "its programming and ... employment opportunities" (Part 1, Section 3.1.d.iii). The Act also stipulates that each broadcasting undertaking must make "predominant use, of Canadian creative and other resources in the creation and presentation of programming" (Part 1, Section 3).

Achieving these policy objectives involves a "high-end trade off" wherein "once admitted into the market, Canadian companies are protected from competition, especially foreign competition" (Raboy & Bonin, 2008, p. 61). In return they are expected to contribute to the goals and objectives of the Broadcasting Act, including production and exhibition of unprofitable Canadian content. The

Act provides the basis for Canada's complex broadcasting "policy toolkit" (Grant & Wood, 2004), which currently consists of the maintenance of a Canadian national public broadcaster, Canadian content expenditure and scheduling requirements, foreign ownership restrictions on broadcasting entities, competition policy, and subsidies and tax incentives. The Act gives the Commission the power to exempt entities from any and all regulatory requirements if it "is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy" (Part 2, Section 9.4). Since 1999, foreign and domestic new media in Canada operate under the Digital Media Exemption Order (DMEO), and are not required to contribute to the goals ascribed to the Canadian broadcasting system.

Although some reports submitted to the 2014 "Let's Talk TV" hearings determined that over-the-top video streaming did not represent an immediate threat to Canadian incumbents, it was thought that a tipping point could be reached in three to five years. The question of how a national media regulatory agency might regulate a transnational video streaming service, and in whose interest, burst unexpectedly into the open when Netflix claimed to operate outside the jurisdiction of the Broadcast-

ing Act and declined the CRTC's request to provide information about subscribers, audiences, and the Canadian content it distributes.

NETFLIX: FRIEND OF CANADIAN CONSUMERS

Canada was the first target of Netflix's international expansion. After Netflix's 2010 entry into Canada, its popularity with Canadian consumers grew rapidly. Through its pricing, its advocacy of net neutrality, and its tolerance of Canadian customers using virtual private networks (VPNs) to tap into the company's much richer program offerings in the U.S. market, Netflix has positioned itself as more friendly to Canadian consumers than the incumbent domestic broadcasters. In typical big bang disruptor fashion (Cable, 2016; Downes & Nunes, 2014; Hasselbalch, 2014), Netflix has been able to offer greater choice, convenience, and affordability at market entry, rapidly growing its market share in the face of regulatory uncertainty.

Canadian audiences are highly attracted to imported American drama and comedy, and domestic broadcasters resist the obligation to produce and exhibit Canadian content because it is less expen-

sive and more lucrative to import content from elsewhere. Canadian broadcasters therefore generally treat Canadian content as a burden they must endure in exchange for the industrial protections they receive (Grant & Wood, 2004; Le Goff et al., 2011; Picard et al., 2015). When English-speaking Canadians watch drama or comedy on television, it is imported content four times out of five (CRTC, 2013). Meanwhile, Canadian consumers and critics lament the mediocrity of English-language Canadian television content, especially drama, which generally has underperformed among English-speaking Canadian audiences (Coutanche, Davis & Zboralska, 2015).

Of all the players in the domestic television ecosystem, it is the domestic broadcasters that have developed the most problematic reputation among consumers, who express their dissatisfaction across a multitude of fora, including interventions submitted to CRTC public consultations and through less formal channels such as online newspaper comments sections, social media, and blog posts. Frequently cited complaints include: billing errors; dissatisfaction with content and the way it is programmed (i.e. the perception that there is too much repetition in programming) and sold (i.e. the way content is bundled and organized across vari-

ous tiers); a belief that broadcasters' services are inflated in price; and a dissatisfaction with customer care. A recent study found that 51% of Canadian linear television subscribers contact their providers for customer service, and that 33% of these individuals do not have their complaints resolved by their service provider on the first call (J.D. Power, 2014).

Canadian media scholars have argued that the CRTC historically has been under regulatory capture by the private sector (Hoskins & McFadyen, 2004; Raboy, 1990; Raboy & Bonin, 2008; Skinner, 2008), or alternatively that Canadian communications policy has existed in a "vacuous netherland," marked by "the worst of all possible worlds" where "neither regulated monopoly, meaningful competition, [n]or regulatory responsibility prevail" (Winseck, 1998, p. 257). Given Canadian rules against majority foreign ownership of broadcasting and telecommunications entities, Canadians did not have many alternatives until the arrival of Internet-based streaming services such as Netflix. Netflix has committed itself to providing an excellent user experience, and has identified consumers' troubled relationships with domestic incumbents as an opportunity to exploit:

We are a relief from the complexity and frustration that embody most MVPD [multichannel video programming distributor] relationships with their customers. We strive to be extremely straightforward. There is no better example of this than our no-hassle online cancellation. Members can leave when they want and come back when they want. (Netflix, 2015a)

Although penetration rates of Internet are high in Canada, the country ranks low on key indicators related to Internet quality, value, and download speed when compared to other OECD countries (Ookla, 2015a, b, c). Netflix has publicly criticized Canadian ISPs for their cost and quality of service. In 2012, Netflix's chief content officer, Ted Sarandos, commented that "what they're charging for Internet access in Canada" is "almost a human rights violation" and that Netflix's performance in the Canadian market would be even better were it not for the "almost third-world access to the Internet" sold at bandwidth caps that are prohibitive to streaming (Tencer, 2012). Indeed, scholars have long recognized that the vertically integrated Canadian incumbents, with assets in telecommunications, content creation, traditional television distribution, and Internet distribution, have the capacity to

provide undue preference to themselves by raising Internet rates, or lowering Internet data caps, and engaging in unfair traffic management strategies, rendering the streaming of audiovisual content from third parties potentially cumbersome and unaffordable (Guindon & Dennie, 2010; Middleton, 2011; Quail, 2012; Winseck 2008). Internet pricing and quality fundamentally affect streaming behaviours (Stewart, 2015), and are thus of paramount importance to Netflix.

Net neutrality has emerged as a politically charged issue in Canada and abroad, and Netflix has conspicuously placed itself on the side of consumers in this regard. Netflix has presented itself as a champion of net neutrality, giving itself a positive aura from the perspective of advocates and consumers. Netflix's advocacy of net neutrality presents a powerful veneer of the greater good over its own economic interests. Strong net neutrality laws allow Netflix to profit from the sale of its services directly to consumers without having to make costly investments in network infrastructure. In 2015, Netflix spent 1.32 million dollars (U.S.) on its lobbying efforts, most of which were aimed at Internet-related issues (Center for Responsive Politics, 2016), and U.S. federal records indicate

that in 2012, Netflix formed a political action committee (PAC), permitting it to contribute directly to federal campaigns (Thier, 2012).

Despite the fact that Netflix and consumer interests are *currently* closely aligned, the limits of this relationship have yet to be tested. Although publicly a champion of net neutrality, Netflix has, on multiple occasions, agreed to deals in which its services become prioritized, effectively undermining its commitment to the principle, including a multi-year direct traffic access deal with Comcast in 2014 (Brandom, 2014; Gustin, 2014), and one with Australian ISPs that sees its content excluded from data caps (Netflix, 2015b). Now that it has reached its current size, Netflix has indicated that even if net neutrality rules were to weaken under the current Trump administration, its bottom line would be materially unaffected “because we are now popular enough with consumers to keep our relationships with ISPs stable” (Netflix as cited in Dunn, 2017).

Another aspect of Netflix’s consumer-friendly aura, adding weight to the Baptists and Bootleggers analogy (Cable, 2016), was Netflix’s long-time tolerance of customers who surreptitiously bypassed the rights market in their own territories. In 2015, an estimated one-third of Anglophone Canadians

used a virtual private network (VPN) to access the U.S. version of the service, bypassing the Canadian rights market completely (Kwong, 2015). Canadians were eager to access the U.S. version of the service due to its richer content catalogue at the time.

Netflix’s user contract has long contained a clause that permits it to suspend user access on the suspicion of territory circumvention (Netflix, 2014c). For years the company did not act on these provisions, although it faced increasing pressure from rights owners to do so. Indeed, Netflix’s (leaked) contract with Hollywood’s Sony Studios reveals that it is required to “use ... geolocation bypass detection technology” to identify territory circumvention services (WikiLeaks, 2015a). Leaked private e-mails between Sony executives revealed their “deep dissatisfaction” with Netflix’s inattention to the matter, and the apparent intentionality of this behaviour, noting that Netflix had the incentive to be permissive with VPN usage “since they are getting paid by subscribers in territories where Netflix does not have the rights to sell our content” and “have every motivation to continue” given that increased subscriptions lead to a higher market valuation (WikiLeaks, 2015b). Canadian rights holders also objected to Netflix’s extended tolerance of rights violations. The senior vice president

of the Canadian vertically integrated communications firm Rogers, David Purdy, allegedly remarked that VPNs should be made illegal by the Canadian government in order to maintain a distinct rights market in Canada (Tencer, 2015). Bell Media president Mary Ann Turcke equated Canadian consumers’ usage of VPNs with stealing, triggering a wave of consumer and media backlash (Dobby & Bradshaw, 2015). While Netflix was being permissive with its tolerance of VPN-masking behaviour, old-media incumbent and Hollywood studio-owned streaming service, Hulu, had long enforced a stronger, payment-based authentication system, which had largely eradicated out-of-market access to its service (Van der Sar, 2014). Netflix thus could have similarly imposed stronger geolocation restrictions if it had been so inclined at the time. The issue was therefore not primarily a technological one, as implied by Netflix when it appeared before the Commission during LTT (CPAC Digital Archives, 2014b).

Rather than enforcing stricter protocols, in 2015, Netflix CEO Reed Hastings publicly commented that he hoped Netflix would be able to “get global and have its content be the same all around the world so there’s no incentive” to use a VPN (Hopewell, 2015). Just one year later, after Net-

flix's entry into another 130 territories and Hastings' declaration that the world was "witnessing the birth of a global TV network" (Liedtke, 2016), Netflix finally began enforcing its own longstanding policies on out-of-market access (O'Neil, 2016; Slater-Robins, 2016). Increased pressure on Netflix to honour its agreements with rights holders is likely behind the change in strategy. Prior to its recent global expansion, it made economic sense for the company to tolerate surreptitious access, given that many paying users were only able to access the service through VPNs when living in areas where the company was not officially a market player (Slater-Robins, 2016). In view of Netflix's recent global expansion, the risks associated with its permissiveness (i.e. potential legal action by rights holders) now outweigh the benefits.

In summary, with respect to its public image and branding, Netflix has closely aligned itself with consumer interests such that many regard it as an emancipatory and innovative disruptor of the much-derided Canadian status quo. In the next section, we analyze "Let's Talk TV" interventions to show how OTT is perceived to disrupt the Canadian broadcasting system.

LET'S TALK TV

The CRTC's review of the Canadian broadcasting system, "Let's Talk TV," invited stakeholders, including individual Canadians, to "shape the future" of the television system so that it "meets the needs of Canadians as consumers, creators and citizens" and "is adaptable for years to come" (CRTC 2013-563). The hearings had broad scope and examined programming, distribution and access, and accessibility issues. The Commission warned that the evidence collected during the LTT process could indicate the need to "remove or adapt some ... existing regulations" and that the Commission was not "interested in satisfying anybody's sense of entitlement, based on the way things used to be" (Blais, 2013b).

The LTT process demonstrates the significant political tensions that come along with the introduction of disruptive innovation into regulated markets. By making changes to existing regimes, regulators are at once at risk of alienating voter-consumers, disturbing the complex set of institutionalized benefits and tradeoffs developed in the previous regime, and inadvertently acting as barriers to innovation with the absence or introduction of new rules. As Cable (2016) contends, however,

each regulatory process is "its own political economy, and we cannot assume that the benefits of innovation necessarily outweigh" traditional policy concerns (p. 12).

Although the CRTC is an independent body that is supposed to operate at arm's length from the government, it is not completely insulated from politics (Salter & Odartey-Wellington, 2008) and its orientation is certainly affected by the government of the day (Raboy, 1994). The chairperson is appointed by the federal government. The regulator thus brings its own conceptual lens, which defines and limits the field of potential action, and determines which issues are deemed to be salient and worthy of attention.

Freedman's (2010) concept of "policy silence" is particularly useful for examining the trajectory of LTT in order to recognize potential alternative pathways that were not given consideration. According to Freedman (2010), policy scholars must "dig a little deeper" than the visible spectrum of the policy process (p. 347). Policy silence refers to the options that are not considered, to the questions that are kept off the policy agenda ... and to the values that are seen as unrealistic or undesirable by those best able to mobilize their policy-making power. (Freedman, 2010, p. 355)

From our analysis of the major LTT documents, it seems clear that the Commission never intended to impose any regulatory requirements on Netflix or any other foreign OTTs. Notably, a question about whether foreign OTT services should be subject to domestic content requirements was absent from the 80 questions the Commission posed to stakeholders in the Notice of Consultation (CRTC 2014-190) it issued to launch the final, most formal phase of the LTT process, or in the later working document (CRTC 2014-190-3), which proposed various concrete policies for consideration. There was no question regarding what to do with foreign OTTs, and no policy options concerning the issue were put forward for consideration. Although explicit questions about the imposition of cultural obligations on OTTs never made it to the more formal documents introduced later in the LTT process, the early “Choicebook” survey, designed for participation from the general public, did feature one question on the topic. The question asked the public to side with one of two statements, made by two fictional characters, Jenny and John. John’s statement associated the imposition of Canadian content requirements on OTTs with increased costs: John “does not think online services should be required to contribute to Canadian-made program-

ming if it is going to increase the price for consumers” (CRTC, 2014b). Although Jenny’s statement did not mention costs, and expressed only a conviction that OTTs should contribute to the creation of Canadian jobs and content, the implicit suggestion that such requirements would automatically result in increased costs to consumers was reinforced by John’s statement. The survey thus made the notion of OTT contributions to domestic content unattractive to survey participants, 67% of whom agreed with John.

The Commission’s active concern throughout the policy process was the identification and removal of regulatory “barriers” that supposedly have impeded the Canadian broadcasting system in “adapting to change” (CRTC 2014-190). The Commission portrayed Netflix and other OTTs as ushers of the change, noting that Canadian consumption of video is increasingly moving from “scheduled and packaged programming services to on-demand and tailored programs” (CRTC 2014-190). According to the Commission, the rise of on-demand viewing on the Internet has changed viewers’ expectations more generally, and has led to a growing dissatisfaction with the Canadian traditional system at large (CRTC 2014-190; Blais, 2013b). Using OTTs as the exemplar, the Commission then pro-

posed the forced unbundling of cable and satellite program packaging in the linear television realm so that it more closely resembles the responsiveness and consumer choice offered by OTTs.

The Commission seems not to have intended to modify the Digital Media Exemption Order under which foreign OTTs such as Netflix operate. Instead, the Commission sought to showcase Netflix in the LTT hearings as a beacon of innovation and a model for Canadian incumbents. However, this approach backfired when Netflix refused to provide the Commission with the information needed to make the case, and the hearings concluded with Netflix’s outright rejection of the Commission’s jurisdiction over its operations in Canada.

In the following sections, we discuss the major arguments presented by the various stakeholders, including Netflix, on the topic of foreign OTTs in Canada. Most broadcast industry stakeholders (other than Netflix) perceived the Commission’s use of Netflix as exemplary of a 21st century broadcast model as deeply flawed, and argued against using this model as the basis for making wide-ranging and substantive changes to the regulation of traditional linear broadcasting.

STAKEHOLDER POSITIONS

Broadcasting regulatory proceedings such as LTT often engender stark divisions of opinion among stakeholder groups. In the case of LTT, major industry stakeholders unanimously agreed that foreign OTTs such as Netflix are having a profound and tangible impact on the Canadian broadcasting system. Most of Canada's major Anglophone broadcasters either expressly recommended that the Commission impose contribution requirements on foreign OTTs such as Netflix (Bell, 2014; CBC, 2014), or argued that if the Commission is not prepared or able to impose such requirements, it should similarly refrain from imposing them on domestic services (Corus 2014; Rogers, 2014; Shaw, 2014). Only one major (Anglophone) broadcaster (Shaw, 2014), argued against the application of regulatory requirements on foreign OTT services such as Netflix. Canada's principal trade associations and guilds representing actors, directors, writers, and independent production firms (ACTRA, 2014; CMPA, 2014; DGC 2014; WGC, 2014), and the province of Ontario (the epicentre of Canadian television production), each argued that Netflix and other foreign OTTs should be required to contribute to the creation of Canadian content.

Additionally, we found that of the 137 interventions from individual Anglophone Canadians to the Commission's final phase of the policy process that expressed a definitive statement either for or against the issue, all but *three* were in favour of extending cultural obligations to Netflix and other OTTs.

Three key arguments pertaining to foreign OTTs recurred regularly in the submissions from major industry stakeholders (broadcasters, creator groups, and governments):

1) Industry stakeholders believed that the Canadian government has created an environment that is more favourable to foreign firms than to Canadian ones: Netflix does not pay sales tax in Canada, incur expenses related to regulatory processes, or make financial contributions toward the funding of Canadian content. According to one incumbent, this amounts to a cost advantage of 19-20% (Bell, 2014). In addition, Netflix has no regulatory constraints, including no restrictions on sources of programming, no limits on advertising, no accessibility expenditures for described video or closed captioning, and does not contribute toward the infrastructure costs required for service delivery (Bell, 2014; Corus, 2014; Rogers, 2014). The bottom line is that foreign OTTs benefit financially and strategically from Canada's regulatory protections

– including Canada's net neutrality policy – and undue preference rules, but do not contribute in a reciprocal manner (CBC, 2014; MTCS, 2014).

2) Stakeholder groups pushed back against the Commission's apparent embrace of the "digital sublime" (Mosco, 2005), or belief in the unqualified transformational power of the Internet – in this case, as a new global distribution platform, and the solution to Canada's problem of having a domestic market that is too small to support the production of expensive content. In a speech to industry delegates prior to the launch of LTT, CRTC Chairman Jean-Pierre Blais remarked that new broadband-based technologies and services offer Canadian creators an "unprecedented opportunity," "extraordinary possibilities," and open "doors to niche markets unimaginable even a decade ago" (Blais, 2013a).

Stakeholders were skeptical about the value of these opportunities. One intervention representing Canada's writers summarized the concern well. The organization argued that the notion that the Internet eradicates barriers to the creation and distribution of quality content is mistaken, and leads to a conviction in neoliberal economics and deregulation, in the belief that the new "perfect markets" created by the Internet will naturally lead to the

creation of the best content, which will automatically find its ideal audience online, with the financial rewards of such content flowing to those who most deserve them. (WGC, 2014)

Other stakeholders pointed out that the low barriers to entry in the digital space lead to the erroneous belief that “one can compete in the digital interactive world with cottage industries” (Corus, 2014, para. 49). Stakeholders called attention to the difference in size: While the major Canadian broadcasters may be large players in the Canadian industry, transnational digital companies have a substantial scale advantage that Canadian companies do not (Corus, 2014). The major industry stakeholders also contended that Netflix’s business model cannot be adopted by broadcasters since they have many other obligations that Netflix does not have, including obligations to be responsive to local communities through news and information services, upgrading costs, and investments in human capital and skills retraining (Bell, 2014b; CMPA, 2014; Corus, 2014; WGC, 2014). Others pointed out the curious economics of Netflix, noting that it has built its empire with content that was produced by the legacy broadcasting and film systems, which provided the training grounds for

content producers to learn their crafts. Stakeholders were concerned that an OTT model could not provide the same training grounds for new artists since Netflix does not produce nearly the same quantity of content, in Canada, that is produced by the legacy system (Corus, 2014; WGC, 2014).

3) Finally, a recurrent argument pertaining to Netflix relates to its refusal to divulge data about its audiences, an issue frequently reported by industry observers (for example, Stilson, 2014). In their submissions, stakeholders (ACTRA, 2014; Bell, 2014a; DGC, 2014; MTCS, 2014) urged the Commission to require foreign OTTs to submit annual reports on their levels of spending on Canadian content, and their revenues in the Canadian market so industry and audience developments can be better monitored.

NETFLIX AND THE REGULATORY SHOWDOWN

Netflix’s own written intervention to the LTT process demonstrated a clear understanding of traditional Canadian broadcasting policy goals, and many of its arguments responded directly to cer-

tain key objectives codified in the Act. Among its most substantive claims, Netflix (2014) maintained that it serves “diverse communities,” unlike traditional broadcasters who, due to a reliance on advertising, focus primarily on content with mass appeal. Netflix further argued that through consumer demand and market forces alone, it has stimulated innovation in the delivery of, and access to, programming; that it grows demand for Canadian audiovisual content and expands content production sources; and that it extends the reach of the public broadcaster and Canadian content more generally by disseminating this content to global audiences.

Although Netflix did not request to present at the oral hearing, the Commission invited it to appear. During the oral component, the Commission, looking for evidence to “support the conclusions that Netflix is advocating – that Internet video providers can support the policy objectives under the Broadcasting Act ... without the need for any additional regulatory action” (CRTC, 2014c), requested information from Netflix to substantiate the claims made in its written submission. Specifically, the regulator was seeking information about the number of Netflix’s Canadian subscribers, how Canadian content performs globally, how much Canadian

content is watched by Canadians, how much of Netflix's library is Canadian, and how much Netflix spends on Canadian original content (CPAC Digital Archives, 2014b).

After several requests by the CRTC and a heated debate, Netflix refused to comply. In a letter addressed to the Commission following the hearing, Netflix stated that the Commission's orders for the information "are not applicable to Netflix under Canadian broadcasting law" (Vlessing, 2014) and that Netflix's responses are filed "voluntarily" and do not represent "an acknowledgment of or attornment to either the jurisdiction of the Commission by Netflix, or the substantive application of Canadian law (including the provisions of the Broadcasting Act) to Netflix" (Netflix, 2014d). Following Netflix's refusal to provide the requested information, the Commission struck its participation from the public record completely, removing its written submission and even the transcripts of its oral participation at the hearing from LTT documentation, thereby adding to the accumulation of policy silences.

DISRUPTION, CONSUMER SOVEREIGNTY, AND ELECTORAL POLITICS

Despite the lack of concrete (and requested) evidence from the major foreign OTT provider of professional screen programming in Canada on how it contributes to the goals of the Broadcasting Act without any formal regulatory requirements to do so, and with reasons for concern provided by other industry stakeholders regarding OTT distribution of video content, the Commission concluded that "licensing digital media broadcasting undertakings is generally not necessary to achieve the broadcasting policy objectives set out in the Act" (CRTC 2015-86). Notably, the Commission opted not to initiate a separate review of the Digital Media Exemption Order, as was suggested by some industry interveners (Bell, 2014; OMTCS, 2014; WGC, 2014) who requested a review in order to be able to derive a more complete picture of the over-the-top environment and its effects on the Canadian industry. It similarly decided not to institute annual requirements for non-Canadian broadcaster affiliated OTTs, such as Netflix, to disclose information regarding their Canadian business operations and expenditures, as was also suggested by other industry interveners in order to restore overall trans-

parency in the broadcasting system (ACTRA, 2014; Bell, 2014; DGC, 2014). This would have required the Commission to strongly assert its jurisdiction over non-Canadian broadcaster affiliated OTTs. These overlooked potential policy pathways could have been part of a larger initiative to design a cultural policy toolkit for the digital age.

Further evidence that the Commission regarded Netflix as an exemplar to be emulated by incumbents can be seen in its decision to incentivize the adoption of an open OTT model. The Commission created a new "hybrid" category of service (CRTC 2015-86) that exempts previously regulated video-on-demand platforms based in traditional delivery systems (cable, satellite, IPTV) from all Canadian content requirements and restrictions, provided that broadcasters make the same pay service available online to *all* Canadians on an OTT video-on-demand platform. In an effort to encourage incumbents to move into the online space, the Commission initially proposed that incumbent broadcasters be able to count their expenditures on Canadian content placed online as part of their required spending on Canadian programs (CRTC 2014-190-3), but ultimately decided not to implement this measure. Without any Canadian content requirements in the online space, and now linked

video-on-demand services on traditional television, the Commission's decisions assume that incumbents will voluntarily produce or acquire Canadian content for online distribution.

In its desire to align the linear environment with the more flexible OTT space, the LTT process concluded with the regulator requiring the unbundling of cable and satellite channels by December 2016 (CRTC 2015-96). While maintaining requirements that broadcasters spend a set portion of revenues on Canadian content, the Commission eliminated all requirements for exhibition of Canadian content from television except in the prime time evening hours. These changes, taken together, are expected to affect the quantity of Canadian content that is commissioned, and the range of available choices, with spending on domestic Canadian content over the next four years forecast to decline to one-third of what it is today (Nordicity & Miller, 2015). The forced unbundling of channels is expected to reduce content diversity since special interest channels that could never survive in the small Canadian marketplace on their own are currently sold in bundles with other, more successful channels. Without this bundling, the channels are unlikely to achieve the audience share necessary to thrive in the Canadian domestic market. It is in this sense that the

regulator has demonstrated a rupture from some of the public good values and goals related to cultural sovereignty that it previously sought to secure in the legacy broadcasting space. In its reprioritization of values, consumer concerns – the desire for convenience and more control, for example – have been given top billing.

It is important to mention also that the timing of the Commission's major television policy review coincided with an upcoming federal election. The party then in power, the Conservative Party, selected a consumerist platform for this election. At the start of CRTC Chairman Blais' appointment, the Minister of Heritage sent a letter to the new appointee expressing his belief that the Commission could do a better job of addressing consumer issues, by, among other things, ensuring that consumers have access to "more" and "affordable" programming choices across all distribution platforms, including the Internet (Moore, 2012). The Minister also expressed his hope that the Commission "regulate broadcasting undertakings *only to the extent necessary*" (*ibid*; emphasis added).

In the 2013 Speech from the Throne, the federal government announced (long before any LTT decisions were made by the CRTC) that in order to protect "everyday Canadians," it intended to "re-

quire channels to be unbundled" (*ibid.*). Shortly thereafter, the Commission received an Order-in-Council requiring it to submit a report about how consumer access to programming on a per-channel (unbundled) basis "can be maximized in a manner that most appropriately furthers the implementation of the broadcasting policy for Canada" (Order-in-Council 2013-1167).

There were thus clear political expectations that the Commission conduct the LTT hearings in a manner consistent with the consumerist orientation endorsed by the federal conservatives. While the LTT hearings were still ongoing, and before the Commission took any decisions, the (Conservative) Minister of Heritage publicly commented that the federal government would "not allow any moves to impose new regulations and taxes on Internet video" (Bradshaw, 2014a). Although the CRTC publicly made assurances about the fairness of the hearing (*ibid.*), the independence of the Commission from government became a topic of debate amongst industry observers and news organizations (see for example O'Brien, 2014; Winseck, 2014). During the federal election, and to much public ridicule (including several YouTube parody videos, as well as a substantial Twitter backlash), then Prime Minister Stephen Harper launched a campaign video

in which he is shown sitting in front of a television screen with the Netflix logo prominently displayed, assuring voters that only his political party could be trusted not to impose a “Netflix tax” and to “focus on the needs of Canadian consumers, and to keep your taxes low” (Harper, 2015).

Regardless of how direct an influence the federal election and the government’s stated hopes had on the CRTC, it is clear that the regulator was operating under prevailing assumptions that certain policy pathways were to be favoured over others.

CONCLUSION: REGULATE OR CHILL

According to a popular theme, digital disruption arises from a collision between exponential rates of technological change and slower-paced or incremental rates of change in law, economy, policy, and society (Franklin, 2012). Broadcasting policy, in particular, is often portrayed as being reactive and more sensitive to the welfare of incumbent broadcasters than to the welfare of citizens or consumers. The “near-glacial pace” of regulatory change in democratic systems is attributed to its intrinsic features including its public character, deliberative

nature, and inclusivity (Downes & Mayo, 2015, p. 23).

The “digital revolution,” and the “tornado” of digital disruption that accompanies it, are being framed by many as not merely unstoppable, but also as intrinsically good (Morley, 2006; Mosco, 2005). Thus, in many countries the rationale for regulatory intervention in broadcasting has shifted from spectrum scarcity to the interests of “citizen-consumers” who seek a greater range of choices from domestic broadcasters (Freedman, 2015a; Freedman, 2015b; Lunt & Livingstone, 2011).

Our examination has revealed the complexity of Netflix’s presence in Canada, and how it has been able to capture such a substantial share of the Canadian market in such a short period of time. Canada has provided ideal conditions within which Netflix can thrive, disrupt, and induce regulatory policy to become unstuck. The regulator’s commitment to a greater reliance on market forces, and its overall prioritization of consumer choice, have made Netflix’s entry and continued presence an easy one. Netflix and OTTs have furthermore provided a way for the Commission to legitimize its application of wider deregulatory measures to the Canadian linear television system. The Commis-

sion appears to have used the seeming inevitability of the changes related to technological disruption, and the unsubstantiated claim that OTTs contribute to the goals of the Broadcasting Act through market forces alone, to ease regulatory requirements. Policy silences (Freedman, 2010), notably the lack of consideration of alternative measures to deal with OTTs, have supported the hands-off approach to streaming services, and failed to consider the development of shared, non-commercial, digital public spaces.

Although Netflix received the majority of public attention due to its ostentatious rejection of the Commission’s jurisdiction, Google also ran afoul of the Commission’s requests for the company to provide evidence to substantiate claims it made during LTT about how it contributes to the goals of the Broadcasting Act (CRTC, 2014d). Unlike Netflix, Google did not publicly reject the Commission’s jurisdiction, noting “we stand by the submissions we made in this process and believe we made a positive contribution to the discussion” (Google spokesperson, as quoted in Bradshaw, 2014b). However, the result was the same – the Commission was forced to make its decisions without complete information, “based on the remaining evidence on the re-

cord" (CRTC, 2014d). The Commission then similarly struck Google's submitted documents from the LTT public record.

While the Canadian government has thus far refrained from extending sales tax and cultural obligations to the online space, other jurisdictions are exploring alternative policy pathways and attempting to assert themselves in this direction: Australia is moving forward with the extension of sales tax to foreign streaming services (Pash, 2015); the French government is considering several initiatives; and the City of Chicago recently extended its amusement tax to apply to streaming services and introduced a new cloud tax targeting leased computer-based services such as Amazon Web Services (Hinz, 2015; Pletz, 2015). The question of how successfully these measures can be implemented is unclear. From a strictly consumer standpoint, these measures are unwelcome. Chicago-based subscribers to popular OTT services have already filed a lawsuit to challenge the city's extension of the amusement tax to streaming services, arguing that the city does not have the authority to implement such an initiative (Pletz, 2015). The city has also delayed the implementation of its cloud tax more than once, allegedly due to criticism from consumers and tech businesses alike (Hinz, 2015). Netflix has stated

that, for its part, it plans to comply with Chicago's new sales tax by "adding it to the cost we charge subscribers" (Anne Marie Squeo, Netflix spokesperson, as quoted in Farivar, 2015). Netflix and other OTTs might therefore be more accepting of strictly tax-related initiatives, rather than cultural ones, since the former do not affect their spending, strategic operations, or creative and business decisions, and can be put into effect without additional costs to the companies themselves by offloading the extra charges onto subscribers. Netflix, in particular, is also in such a strong market position that consumer behaviors would likely be unaffected by an added tax, and the negative aura associated with such a move would primarily be centered on the jurisdiction that imposed the tax, rather than Netflix itself.

Some participants in the LTT hearings argued that *disruption through policy* is a greater immediate threat to the Canadian broadcasting industry than economic disruption (Miller, 2014). In countries without high levels of broadband connectivity, Netflix and other streaming services do not represent an immediate threat (Strangelove, 2015). But in countries in which the business model of incumbents emphasizes providing broadband connectivity bundled with access to licensed imported

content, the threat is more tangible, especially in countries such as Canada where the audiovisual regime is an elaborately designed mixture of entitlements and responsibilities. Netflix's public rejection of the Commission's jurisdiction adds an important new layer of complexity to domestic broadcasting's digital shift. The arrival of large, unregulated transnational video distributors makes it unclear how or whether legacy audiovisual policy goals concerning national, regional, and cultural representation can be implemented, measured, or enforced. These issues are intertwined with larger questions surrounding the future cultivation of informed citizenries and functional democracies through civic discourse and shared national experiences.

In fact, the LTT hearing can be considered to be a preview of the impending tensions in the media sector between transnational corporations and domestic governments' mandates to ensure media development in the public interest, making the idea of cultural sovereignty seem very quaint indeed. Regulated incumbents will not fail to point out the asymmetry of policy regimes that impose obligations on one set of players and not the other. When they do not provide audience, market, and expenditure data to regulators, streaming services

such as Netflix, which are both “everywhere and nowhere,” introduce policy silence in the form of strategic opacity in previously transparent sectors. The relative sovereignty of national markets is undermined, as it is no longer clear where and how people are watching domestic content.

It is urgent to reconstruct the “policy toolkit” for 21st century mediated cultural policy in a way that ensures that all relevant policy pathways are considered. Under the lead of a new Liberal government in Canada, the country has recently launched an expansive review of cultural policy, the results of which will not be known for some time. Any substantive reconstruction of the policy toolkit must involve reconsidering the predominant role attributed to legacy broadcasting in ensuring cultural expression, upgrading the responsibilities and resources attributed to public service media, and eliminating uncertainty about jurisdiction over digital space in national territory. It is crucial that such a reconstruction recognize the significant power held by “reformer” startups like Netflix, and consider novel approaches, including cooperation amongst regulatory agencies, to induce compliance of transnational players. The longer that regulatory agencies wait to act, the more difficult and turbulent the implementation of new policies will be.

The Journal of Media Innovations 4.1 (2017)

ACKNOWLEDGEMENTS

Earlier versions of this paper were presented at the International Symposium on Media Innovations in Brussels (June 2015), the Canadian Communications Association annual conference in Ottawa (June 2015), the annual conference of the International Association for Communication and Media Research (IAMCR, Montreal, August 2015), and the Technology Policy Research Conference (Arlington, Virginia, September 2015). We are grateful to Roslyn Layton (Aalborg University) for useful comments on an earlier draft. Research reported here was supported in part by a grant from the Social Sciences and Humanities Research Council (SSHRC) on “Creating Digital Opportunities,” which is gratefully acknowledged.

REFERENCES

- Alliance of Canadian Cinema, Television and Radio Artists (ACTRA). (2014). Intervention. CRTC Public process number: 2014-190.
- Armstrong, R. (2010). *Broadcasting policy in Canada*. Toronto: University of Toronto Press.
- Arthofer, F., Hardarson, A., Kon, M., Lee, E., & Rose, J. (2016). The Future of television. The impact of OTT on video production around the world. Boston Consulting Group, September.
- Baccarne, B., Evens, T., & Schuurman, D. (2013). The television struggle: an assessment of over-the-top television evolutions in a cable dominant market. *Communications & Strategies* 92: 43-61.
- Bell Canada (Bell). (2014a). Intervention. CRTC Public process number: 2014-190.
- Bell Canada (Bell). (2014b, September 10). Transcript from hearing - CRTC Public process number 2014-190. Retrieved <http://www.crtc.gc.ca/eng/transcripts/2014/tb0910.htm>
- Blais, J.P. (2013a, June 12). Speech presented at Banff World Media Festival in Banff, Alberta. Retrieved from <http://www.crtc.gc.ca/eng/com200/2013/s130612.htm>

- Blais, J.P. (2013b, October 24). Speech presented at RTA School of Media, Ryerson University, Toronto, Ontario. Retrieved from <http://www.crtc.gc.ca/eng/com200/2013/s131024a.htm>
- Bradshaw, J. (2014a, September 15). Harper backs pick-and-pay TV options. Retrieved from <http://www.theglobeandmail.com/report-on-business/harper-backs-pick-and-pay-tv/article20609744/>
- Bradshaw, J. (2014b, September 29). CRTC to strike Netflix, Google testimony from 'Let's Talk TV' record. Retrieved from <http://www.theglobeandmail.com/report-on-business/crtc-to-decide-tv-outcome-without-netflix-google-evidence/article20836870/>
- Brandom, R. (2014, February 23). Netflix is paying off Comcast for direct traffic access. Retrieved from <http://www.theverge.com/2014/2/23/5439566/the-wall-street-journal-confirms-multiyear-traffic-deal-between>
- Cable, A. J. (2016). Institutionalized Disruption: The Rise of the Reformer Startup. *Hastings Business Law Journal* 12(1): 1-14.
- Canada. (2013). Speech from the throne to open the 2nd session of the 41st Parliament of Canada. Ottawa: Govt. of Canada.
- Canada, Department of Justice. (1991, February 1). Broadcasting Act 1991, C. 11. Retrieved from <http://laws.justice.gc.ca>
- Canadian Broadcasting Corporation (CBC). (2014). Intervention. CRTC Public process number: 2014-190.
- Canadian Media Production Association (CMPA). (2014). Intervention. CRTC Public process number: 2014-190.
- Canadian Radio-television and Telecommunications Commission (CRTC). (2013, September). Communications Monitoring Report. Catalogue No. BC9-9/2013E-PDF.
- Canadian Radio-television and Telecommunications Commission (CRTC). (2014a, October). Communications Monitoring Report. Catalogue No. BC9-9/2014E-PDF.
- Canadian Radio-television and Telecommunications Commission (CRTC). (2014b, May 1). *Let's Talk TV: Choicebook, research conducted by Hill+Knowlton Strategies* (Rep.). Retrieved from http://www.crtc.gc.ca/eng/publications/reports/rp140424a.htm#h3_2
- Canadian Radio-television and Telecommunications Commission (CRTC). (2014c, September 29). *Broadcasting Commission letter addressed to Corie Wright (Netflix)*. Retrieved from <http://www.crtc.gc.ca/eng/archive/2014/lb140929.htm>
- Canadian Radio-television and Telecommunications Commission (CRTC). (2014d, September 29). *Broadcasting Commission letter addressed to Jason Kee (Google Inc.)*. Retrieved from <http://www.crtc.gc.ca/eng/archive/2014/lb140929a.htm>
- Center for Responsive Politics. (2016). Netflix Inc. Retrieved February 7, 2016, from https://www.opensecrets.org/lobby/client_reports.php?id=D000036161&year=2015
- Corus. (2014). Intervention. CRTC Public process number: 2014-190.
- Coutanche, M., Davis, C. H., & Zboralska, E. (2015). Telling our stories: Screenwriters and the production of screen-based culture in English-speaking Canada. *Canadian Journal of Communication* 40(2).
- CPAC Digital Archives. (2014a). *CRTC hearing- September 19, 2014 (AM) Part 1*. [Video file]. Retrieved May 15, 2015, from <http://www.cpac.ca/en/digital-archives/?search=CRTC+Netflix>
- CPAC Digital Archives. (2014b). *CRTC hearing- September 19, 2014 (AM) Part 2*. [Video file]. Retrieved May 15, 2015, from <http://www.cpac.ca/en/digital-archives/?search=CRTC+Netflix>
- Cunningham, S. & Silver, J. (2013). *Screen distribution and the new King Kongs of the online world*. Palgrave Macmillan.

- D'Arma, A. (2010). Content aggregation in the age of online video: An analysis of the impact of Internet distribution on the television business. *Journal of Media Business Studies* 8(3): 1-18.
- Directors Guild of Canada (DGC). (2014a). Intervention. CRTC Public process number: 2014-190.
- Dobby, C., & Bradshaw, J. (2015, June 3). Accessing U.S. Netflix is 'stealing,' new Bell Media president says. Retrieved from <http://www.theglobeandmail.com/report-on-business/bell-media-president-urges-behavioural-shift-to-prevent-stealing/article24783094/>
- Downes, L., & Mayo, J. W. (2014). Evolution of innovation and the evolution of regulation: Emerging tensions and emerging opportunities in communications. *CommLaw Conspectus* 23: 10-51.
- Downes, L., & Nunes, P. (2014). *Big Bang disruption; Strategy in the age of devastating innovation*. New York: Portfolio/Penguin.
- Doyle, G. (2015). Multi-platform media and the miracle of the loaves and fishes. *Journal of Media Business Studies* 12(1): 49-65.
- Dunn, J. (2017, January 18). Netflix says it is 'unlikely' to be affected by weaker open internet laws under Trump. Retrieved from <http://www.businessinsider.com/netflix-net-neutrality-changes-trump-unlikely-2017-1>
- Edwardson, R. (2008). *Canadian content: Culture and the quest for nationhood*. Toronto: University of Toronto Press.
- Evens, T. (2014). Clash of TV platforms: How broadcasters and distributors build platform leadership. Paper presented at the 25th European Regional Conference of the International Telecommunications Society, Brussels, June.
- Farivar, C. (2015, July 1). Chicago Netflix customers: Your bill is about to go up 9 percent. Retrieved from <http://arstechnica.com/tech-policy/2015/07/chicago-netflix-customers-your-bill-is-about-to-up-9-percent/>
- Franklin, M. (2012). Internet-enabled dissemination: managing uncertainty in the film value chain. In Iordanova, D. and Cunningham, S. (Eds.) *Digital disruption: Cinema moves on-line*. St. Andrews Film Studies, 101-116.
- Freedman, D. (2010). Media policy silences: The hidden face of communications decision making. *The International Journal of Press/Politics* 15(3): 344-361.
- Freedman, D. (2015a). Media Policy Fetishism. *Critical Studies in Media Communication* 32(2): 96-111.
- Freedman, D. (2015b). The resilience of TV and its implications for media policy. In Oakley, K., & O'Connor, J. (Eds.). *The Routledge companion to the cultural industries*. Routledge.
- Grant, P.S., & Wood, C. (2004). *Blockbusters and trade wars: Popular culture in a globalized world*. Vancouver: Douglas & McIntyre.
- Guindon, A., & Dennie, D. (2010). Net neutrality in Canada and what it means for libraries. *Partnership: The Canadian Journal of Library and Information Practice and Research* 5(1).
- Gustin, S. (2014, February 23). Comcast's traffic pact with Netflix is shrouded in secrecy. Retrieved from <http://time.com/9373/comcast-netflix-deal/>
- Harper, S. (2015). Tweet, 7:19 PM - 5 Aug., <https://twitter.com/pmharper/status/629054056678363136>.
- Hasselbalch, J. (2014). Regulating disruptive innovations: The policy disruption of electronic cigarettes. Global Reordering: Towards the Next Generation of Scholarship conference. Brussels, November 18-20.
- Hinz, G. (2015, August 7). City delays cloud tax until Jan. 1. Retrieved from <http://www.chicagobusiness.com/article/20150807/BLOGS02/150809876/city-delays-cloud-tax-until-jan-1>
- Holt, J. (2014). Regulating connected viewing: media pipelines and cloud policy. Chapter 1 in J. Holt and K. Sanson (Eds.), *Connected viewing. Selling, streaming, and sharing media in the digital era*. Routledge.

- Hopewell, L. (2015, March 19). Netflix CEO Reed Hastings on the NBN, piracy and launching in Australia. Retrieved from <http://www.gizmodo.com.au/2015/03/netflix-ceo-reed-hastings-on-the-nbn-piracy-and-launching-in-australia/>
- Hoskins, C., McFadyen, S., & Finn, A. (2004). *Media economics: Applying economics to new and traditional media*. Sage.
- J.D. Power. (2014, June 26). The Canadian television provider customer satisfaction study (Rep.). Retrieved April 26, 2014, from J.D. Power website: <http://canada.jdpower.com/press-releases/2014-canadian-television-and-Internet-service-provider-studies>
- Kushida, K. E. (2015). The politics of commoditization in global ICT industries: a political economy explanation of the rise of Apple, Google, and industry disruptors. *Journal of Industry, Competition and Trade* 15(1): 49-67.
- Kwong, M. (2015, January 07). Netflix geoblocking in Canada 'a game of whack-a-mole' Retrieved from <http://www.cbc.ca/news/business/netflix-geoblocking-in-canada-a-game-of-whack-a-mole-1.2890915>
- Lee, L.T. (2014). Going Over the Top: an economic study of the rise of OTT video services. Paper presented at the 11th World Media Economics and Management Conference (WMEC), Rio de Janeiro, June.
- Le Goff, J.P., Brunet, J., Davis, C.H., Giroux, D. & Sauvegeau, F. (2011). *La production audiovisuelle canadienne indépendante: Aides financières, diffusion et écoute*. Sainte-Foy, QC: Centre d'études sur les médias, Université Laval.
- Liedtke, M. (2016, January 06). Netflix expands into 130 more countries | Toronto Star. Retrieved February 7, 2016, from <http://www.thestar.com/business/2016/01/06/netflix-goes-global.html>
- Lunt, P. & Livingstone, S. (2011). *Media regulation: Governance and the interests of citizens and consumers*. Sage.
- Media Technology Monitor (MTM). (2016, February 4). Media technology adoption 2015: Analysis of the English-language market. (Rep.).
- Meisel, J. (2013). Reactions by broadband service providers to the growth of video streaming. *CommLaw Conspectus* 22: 267-286.
- Middleton, C. (2011). Canada's telecommunications policy environment. *Telecommunications Journal of Australia* 61(4): 69.1-69.14.
- Miller, P. (2014). *Canadian television: An environmental scan*. Report submitted to the CRTC, June.
- Ministry of Tourism, Culture and Sport (MTCS). (2014). Intervention. CRTC Public process number: 2014-190.
- Montebourg, A. (2014, July 10). Speech presented at Bercy, France. Retrieved from http://www.economie.gouv.fr/files/files/PDF/20140710_discours_A_Montebourg.pdf
- Moore, J. (2012). [Letter written June 18, 2012 to Jean Pierre Blais]. Retrieved from <http://www.thewirereport.ca/sites/thewirereport.ca/files/05letter.pdf>
- Morley, D. (2006). *Media, modernity and technology: The geography of the new*. London: Routledge.
- Mosco, V. (2004). *The digital sublime. Myth, power, and cyberspace*. Cambridge, MA: The MIT Press.
- Naldi, L., Wikström, P., & Von Rimscha, M. B. (2014). Dynamic capabilities and performance: an empirical study of audiovisual producers in Europe. *International Studies of Management & Organization* 44(4): 63-82.
- Netflix. (2014a). Intervention. CRTC Public process number: 2014-190.
- Netflix. (2014b, September 8). Netflix ISP speed index for August. Retrieved May 15, 2015, from <http://blog.netflix.com/search/label/ISP%20speed%20index>

- Netflix. (2014c, September 15). Netflix Terms of Use. Retrieved from <https://www.netflix.com/TermsOfUse>
- Netflix. (2014d). Undertaking. CRTC Public process number: 2014-190.
- Netflix. (2015a, January 20). Netflix long term view. Retrieved May 10, 2015, from <http://ir.netflix.com/long-term-view.cfm>
- Netflix. (2015b, April 15). *Q1 letter to shareholders* (Rep.). Retrieved from http://files.shareholder.com/downloads/NFLX/46343406x0x821407/DB785B50-90FE-44DA-9F5B-37DBFoDCDoE1/Q1_15_Earnings_Letter_final_tables.pdf
- Netflix. (2016, January 14). Evolving proxy detection as a global service. Retrieved February 7, 2016 from <https://media.netflix.com/en/company-blog/evolving-proxy-detection-as-a-global-service>
- Noam, E. (2014). Cloud TV: Toward the next generation of network policy debates. *Telecommunications Policy* 38(8): 684-692.
- Nordicity & Miller, P. (2015). Canadian television 2020: Technological and regulatory impacts. Retrieved February 8, 2016, from <https://www.friends.ca/files/PDF/nordicity-miller-lets-talk-tv-economic-impact-forecast.pdf>
- Nowak, P. (2012, September 18). Canada's (almost) 'third-world' Internet access - Macleans.ca. Retrieved May 15, 2015, from <http://www.macleans.ca/society/technology/canadas-almost-third-world-Internet-access/>
- O'Brien, G. (2014, September 9). Let's Talk TV: Playing politics with the Commission, Glover warns CRTC about trying to lay regs on Netflix et al., slams Liberals. Ontario hits back (update #3). Retrieved from <https://cartt.ca/article/let's-talk-tv-playing-politics-commission-glover-warns-crtc-about-trying-lay-regs-netflix-et>
- Oliver, J. (2014). Dynamic capabilities and superior firm performance in the UK media industry. *Journal of Media Business Studies* 11(2): 57-78.
- O'Neil, L. (2016, April 19). Netflix enrages Canada by actually following through with VPN crackdown plans. Retrieved from <http://www.cbc.ca/news/trending/netflix-officially-kills-vpn-access-canadians-very-mad-1.3543299>
- Ookla. (2015a, May 15). Quality index in OECD. Retrieved from <http://www.netindex.com/quality/1.8/OECD/>
- Ookla. (2015b, May 15). Value index in OECD. Retrieved from <http://www.netindex.com/value/1.8/OECD/>
- Ookla. (2015c, May 15). Download speed in OECD. Retrieved from <http://www.netindex.com/download/1.8/OECD/>
- Order-in-Council 2013-1167. Retrieved <http://www.pco-bcp.gc.ca/oic-ddc.asp?lang=eng&page=secretariats&dosearch=search+/+list&pg=98&viewattach=28427&blnDisplayFlg=1>
- O'Regan, T., & Goldsmith, B. (2006). Making cultural policy: Meeting cultural objectives in a digital environment. *Television & New Media* 7(1): 68-91.
- Pash, C. (2015, May 13). Here's how the 'Netflix tax' in the budget will work. Retrieved from <http://www.businessinsider.com.au/heres-how-the-netflix-tax-in-the-budget-will-work-2015-5>
- Pletz, J. (2015, September 10). Chicago 'Netflix tax' under fire. Retrieved from <http://www.chicagobusiness.com/article/20150910/BLOGS11/150919992/chicago-netflix-tax-under-fire>
- Picard, R.G., Davis, C.H., Papandrea, F., & Park, S. (2016). Platform proliferation and its implications for domestic content policies. *Informatics and Telematics* 33: 683-692.
- Quail, C. (2012). Television goes online: Myths and realities in the contemporary context. *Global Media Journal* 12(20).
- Raboy, M. (1990). *Missed opportunities: The story of Canada's broadcasting policy*. Montreal & Kingston: McGill-Queen's University Press.

- Raboy, M. (1995). The role of public consultation in shaping the Canadian broadcasting system. *Canadian Journal of Political Science* 28: 455-477.
- Raboy, M. & Bonin, G. A. (2008). From culture to business to culture: Shifting winds at the CRTC. In Moll, M. & L. Regan Shade (Eds.). *For sale to the highest bidder: Telecom policy in Canada*. Ottawa: Canadian Centre for Policy Alternatives, 61-69.
- Rogers Communications Inc. (Rogers). (2014). Intervention. CRTC Public process number: 2014-190.
- Salter, L., & Odartey-Wellington, F. N. L. (2008). The CRTC and broadcasting regulation in Canada. Thomson Carswell.
- Schweizer, C., Puppis, M., Künzler, M., & Studer, S. (2014). Blast from the past? A comparative analysis of broadcast licensing in the digital era. *Journal of Information Policy*, 4, 507-528.
- Shaw Communications Inc. (Shaw). (2014). Intervention. CRTC Public process number: 2014-190.
- Simon, J.P. (2012). *The dynamics of the media and content industries: A synthesis*. Seville: European Commission Joint Research Centre, Institute for Prospective Technological Studies. JRC Scientific and Policy Reports.
- Simon, J. P., & Bogdanowicz, M. (2012). *The digital shift in the media and content industries: Policy brief* (No. JRC77932). Institute for Prospective and Technological Studies, Joint Research Centre.
- Skinner, D. (2008). Broadcasting in Canada. In D. Ward and A. McNicholas (Eds.). *Television and public policy: Change and continuity in an era of liberation* (pp. 3-26). New Jersey: Lawrence Erlbaum.
- Slater-Robins, M. (2016, January 22). Netflix is following through on its promise to block people trying to access content from other countries. Retrieved February 7, 2016, from <http://uk.businessinsider.com/netflix-blocks-vpn-usage-in-australia-2016-1>
- Stewart, J.B. (2015). How Netflix keeps finding itself on the same side as regulators. *The New York Times*, 28 May.
- Stilson, J. (2014, June 29). Programmers are frustrated by a lack of Netflix metrics. Retrieved from <http://www.adweek.com/news/television/programmers-are-frustrated-lack-netflix-metrics-158645>
- Strangelove, M. (2015). *Post-TV. Piracy, cord-cutting, and the future of television*. University of Toronto Press.
- Tencer, D. (2012, September 15). Netflix Canada: Ted Sarandos says Canadians 'have almost third-world access to the Internet' Retrieved May 15, 2015, from http://www.huffingtonpost.ca/2012/09/15/netflix-canada-Internet-third-world_n_1887114.html
- Tencer, D. (2015, March 03). Rogers denies it wants ban on tech to access U.S. Netflix. Retrieved from http://www.huffingtonpost.ca/2015/03/03/rogers-ban-vpn_n_6787222.html
- Thier, D. (2012, April 8). Netflix gets a Political Action Committee: FLIXPAC. Retrieved February 7, 2016, from <http://www.forbes.com/sites/davidthier/2012/04/08/netflix-gets-a-political-action-committee-flixpac/#6f05214317ce>
- Van der Sar, E. (2014, April 25). Hulu blocks VPN users over piracy concerns. Retrieved from <http://torrentfreak.com/hulu-blocks-vpn-users-over-piracy-concerns-140425/>
- Vlessing, E. (2014, September 23). Netflix offers peek at biz as standoff continues with CRTC. Retrieved from <http://playbackonline.ca/2014/09/23/as-crtc-netflix-stand-off-continues-u-s-streamer-offers-sneak-peek-at-business/#ixzz3aEnPGkFk>
- WikiLeaks. (2015a). *Omnibus amendment to subscription video-on-demand license agreements*. Retrieved from <https://wikileaks.org/sony/docs/>

Dionne, Valérie

From: Dionne, Valérie
Sent: April-10-18 12:53 PM
To: Gagnon, Jean-Sébastien
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox
Attachments: 180326 SCFP_Demande de traitement partie 1 - FINALE.pdf; NOT WEB - Confirmation-My CRTC Account-104578.html

From: Lefebvre, Jean-Pierre
Sent: April-04-18 9:41 AM
To: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

Salut Valérie,

Serait-il possible de se rencontrer à propos de la lettre du SCFP?

Merci,

JP

From: Gill, Donna
Sent: March-28-18 1:51 PM
To: Rancourt, Eric <eric.rancourt@crtc.gc.ca>
Cc: Hutton, Scott <scott.hutton@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Brault, Claude <claud.brault@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

Hi Eric – Scott wanted us to give you a head's up on this but I see that you were copied. My group prepared the letter that went out so if you need our help on that just contact me.

From: Craig, Michael
Sent: March-28-18 12:28 PM
To: Gill, Donna <donna.gill@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Carter, Sheehan <sheehan.carter@crtc.gc.ca>; Hutton, Scott <scott.hutton@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Rancourt, Eric <eric.rancourt@crtc.gc.ca>
Cc: Rancourt, Mélanie <melanie.rancourt@crtc.gc.ca>
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

Hi,

The SCFP has provided a response to Scott's letter that indicated that it would not be appropriate for us to treat their "application" to review the DMEQ at this time.

Arguing that a staff letter is not a decision of the Commission, that our choice to not publish their application upon reception is a contravention of our own Rules of Procedure, and that we have violated their right to procedural fairness, they have requested that the Commission post their application by no later than 5:00pm on 29 March 2018. Should their application not be posted, they have suggested that they will take some form of legal action against the Commission.

Michael Craig
Manager, English and Third-language Television |
Gestionnaire, Télévision anglaise et de tierce langue
Conseil de la radiodiffusion et des télécommunications canadiennes | Canadian Radio-television and
Telecommunications Commission
Les Terrasses de la Chaudière, 1 Promenade du Portage, Gatineau, Québec, J8X 4B1
michael.craig@crtc.gc.ca
Téléphone/Telephone: 819-997-9394
Télécopieur / Facsimile: 819-994-0218
Gouvernement du Canada / Government of Canada
www.crtc.gc.ca
 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)

From: Lehoux, Manon
Sent: March-28-18 11:11 AM
To: Craig, Michael <michael.craig@crtc.gc.ca>
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

From: Oakley, Tim
Sent: March-28-18 10:17 AM
To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

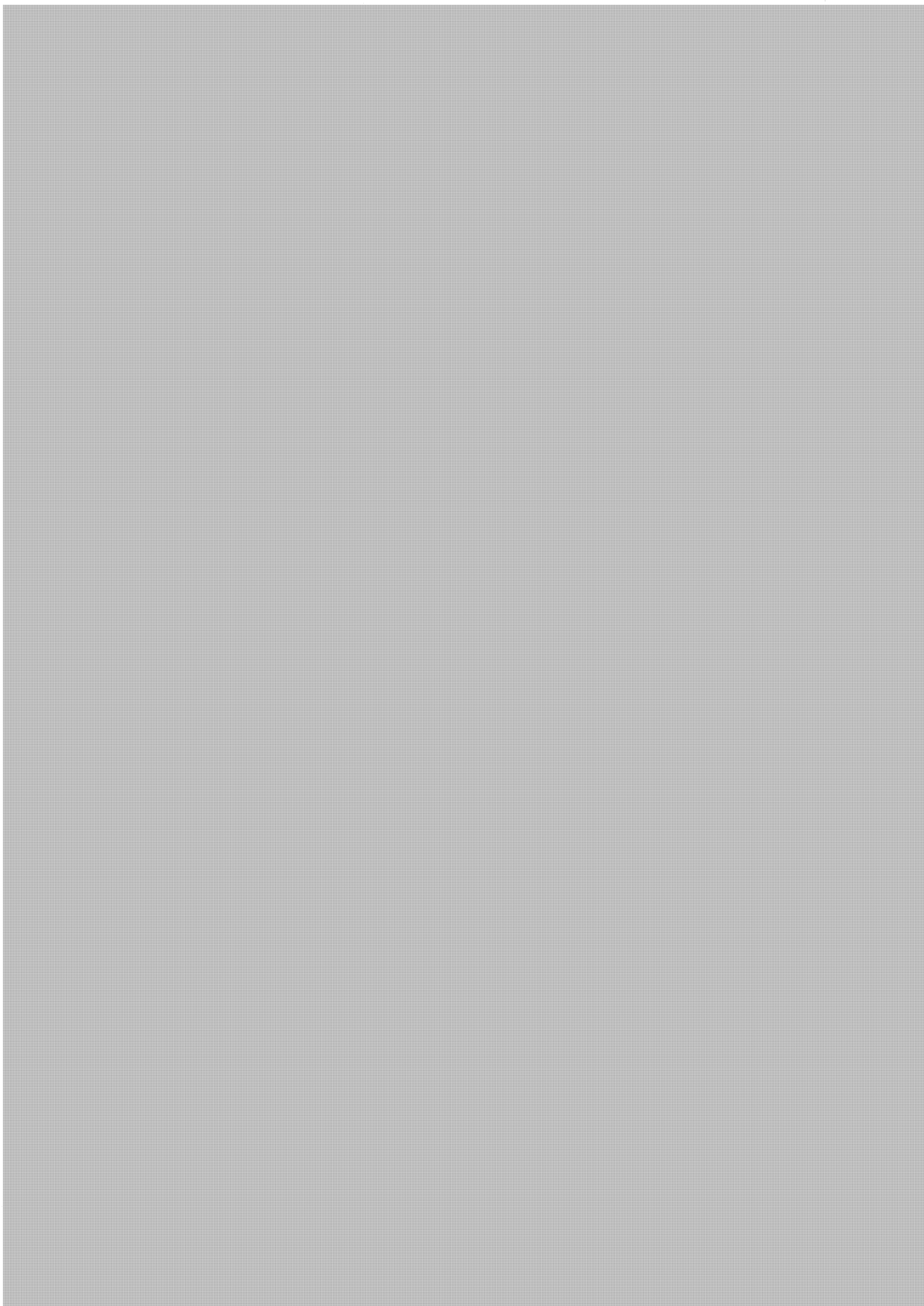
Good morning Manon
This is to be sent to Michael Craig as per Manon Auger's instructions

Thank you
Have a great day

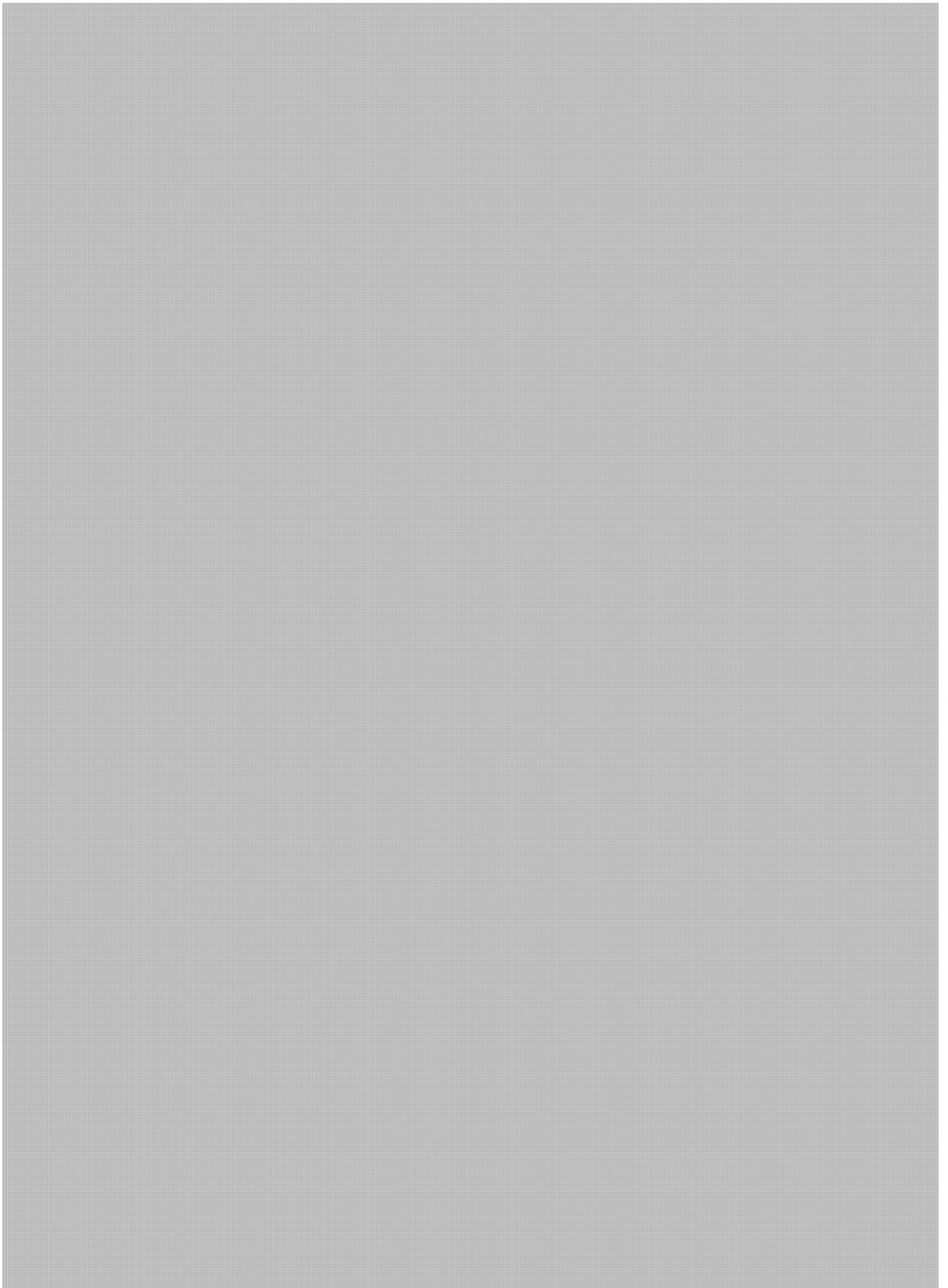
Tim

Tim Oakley
Planification et processus / Planning and Process
Conseil de la radiodiffusion et des télécommunications canadiennes
Canadian Radio-television and Telecommunications Commission
1 Promenade du Portage, Gatineau, QC K1A 0N2
tim.oakley@crtc.gc.ca
Téléphone | Telephone 819-997-9354
Télécopieur | Facsimile 819-994-0218
Gouvernement du Canada | Government of Canada
www.crtc.gc.ca
 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)

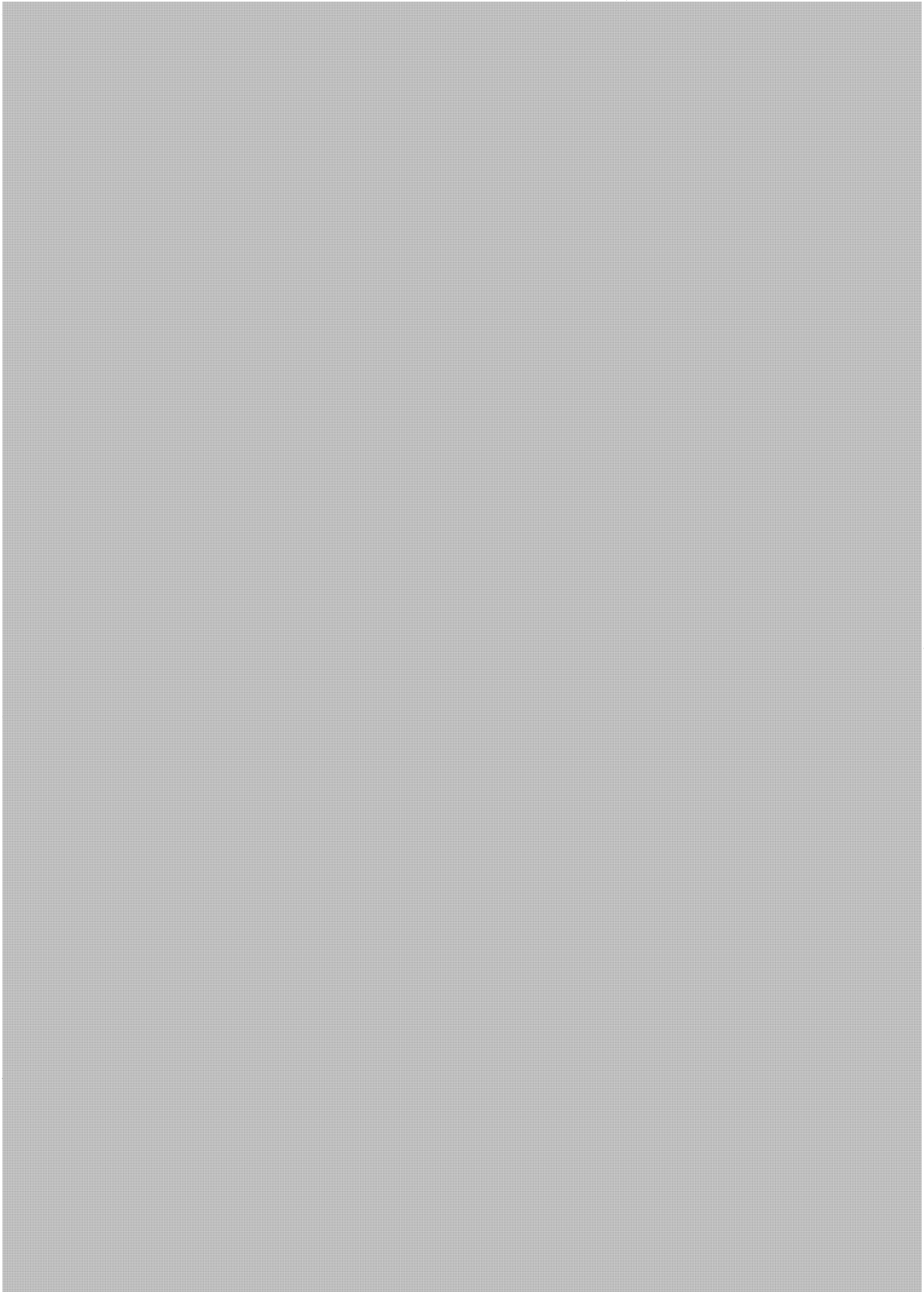
NOT PROCESSED / NON TRAITE



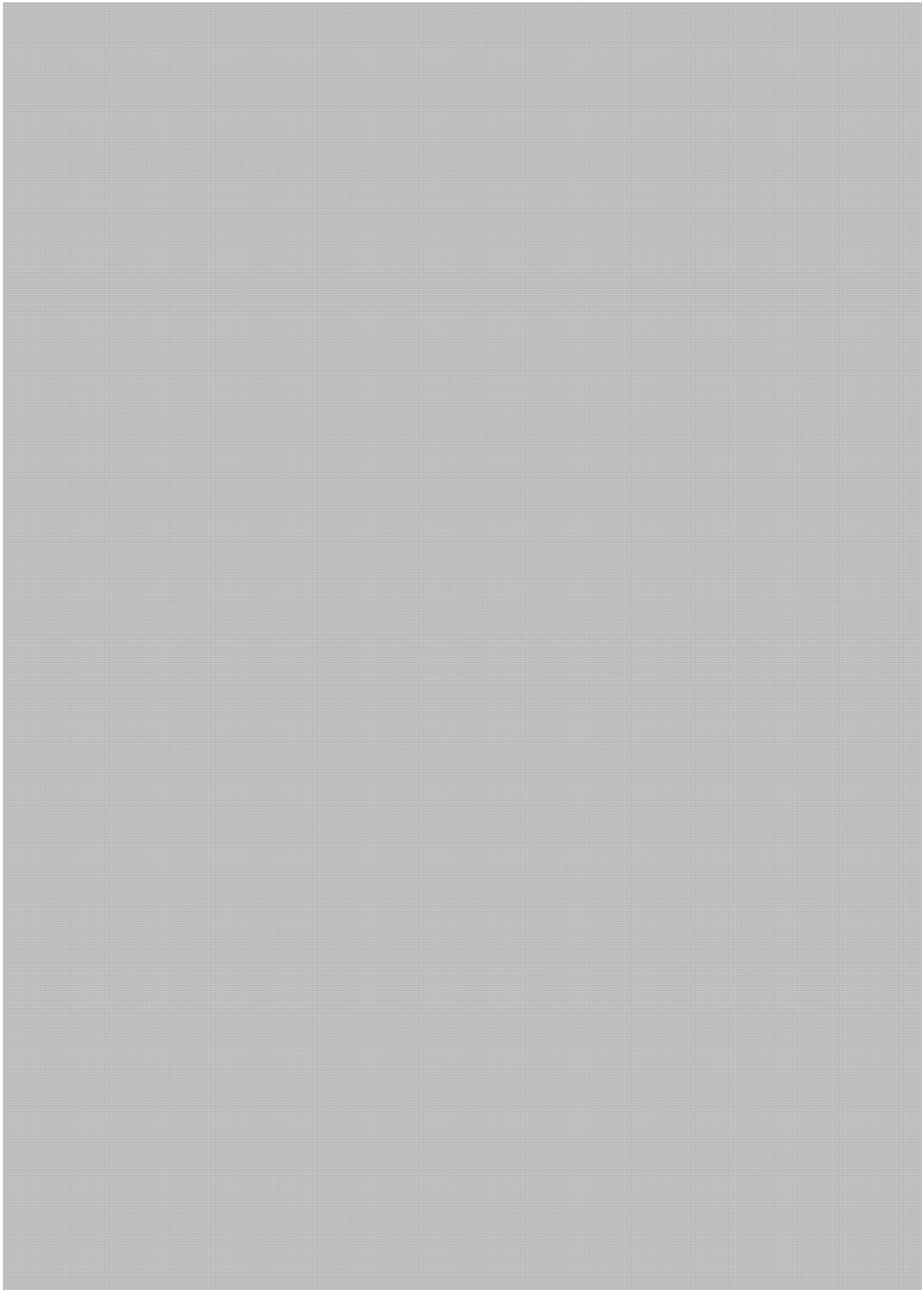
NOT PROCESSED / NON TRAITE



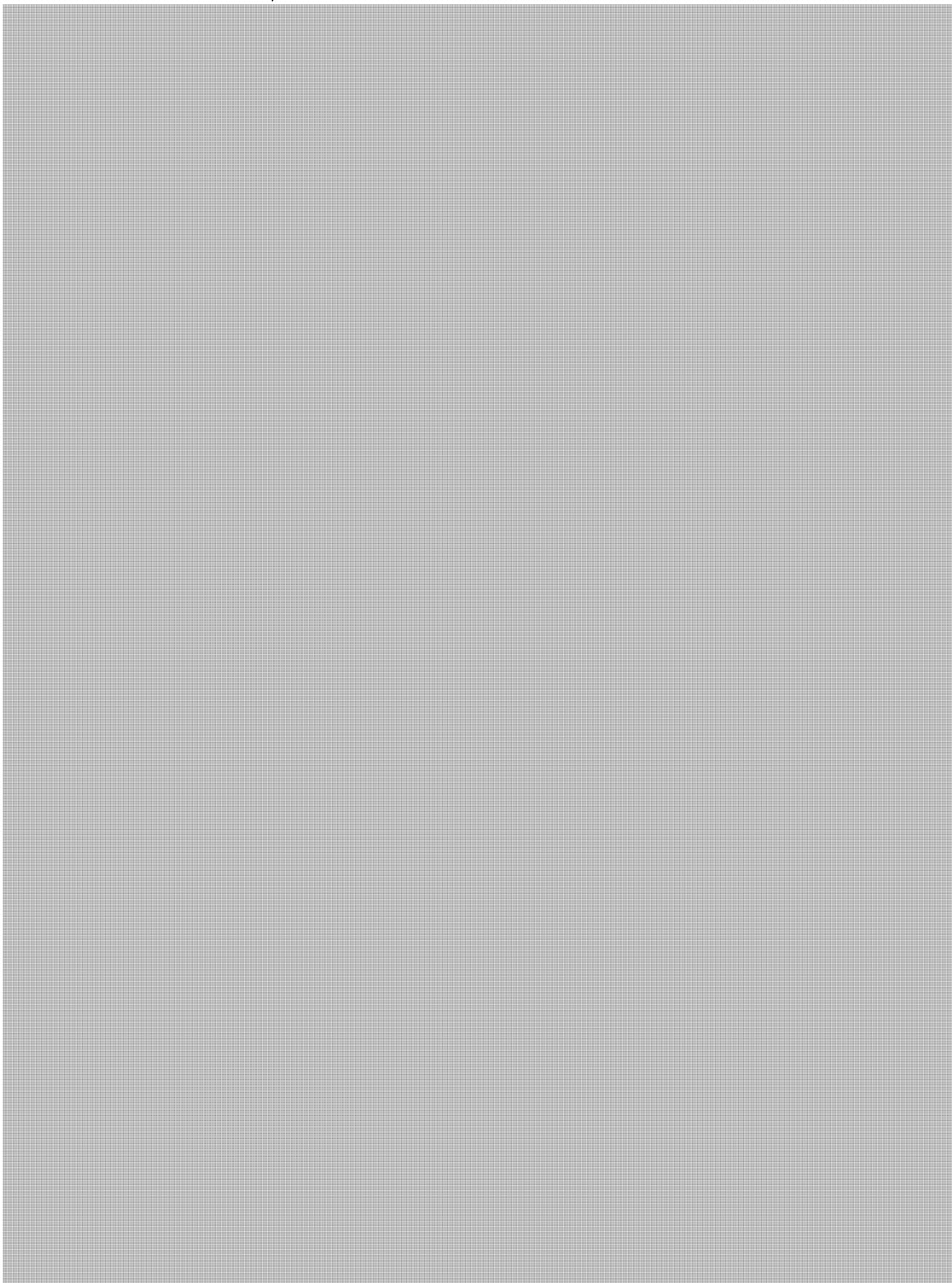
NOT PROCESSED / NON TRAITE



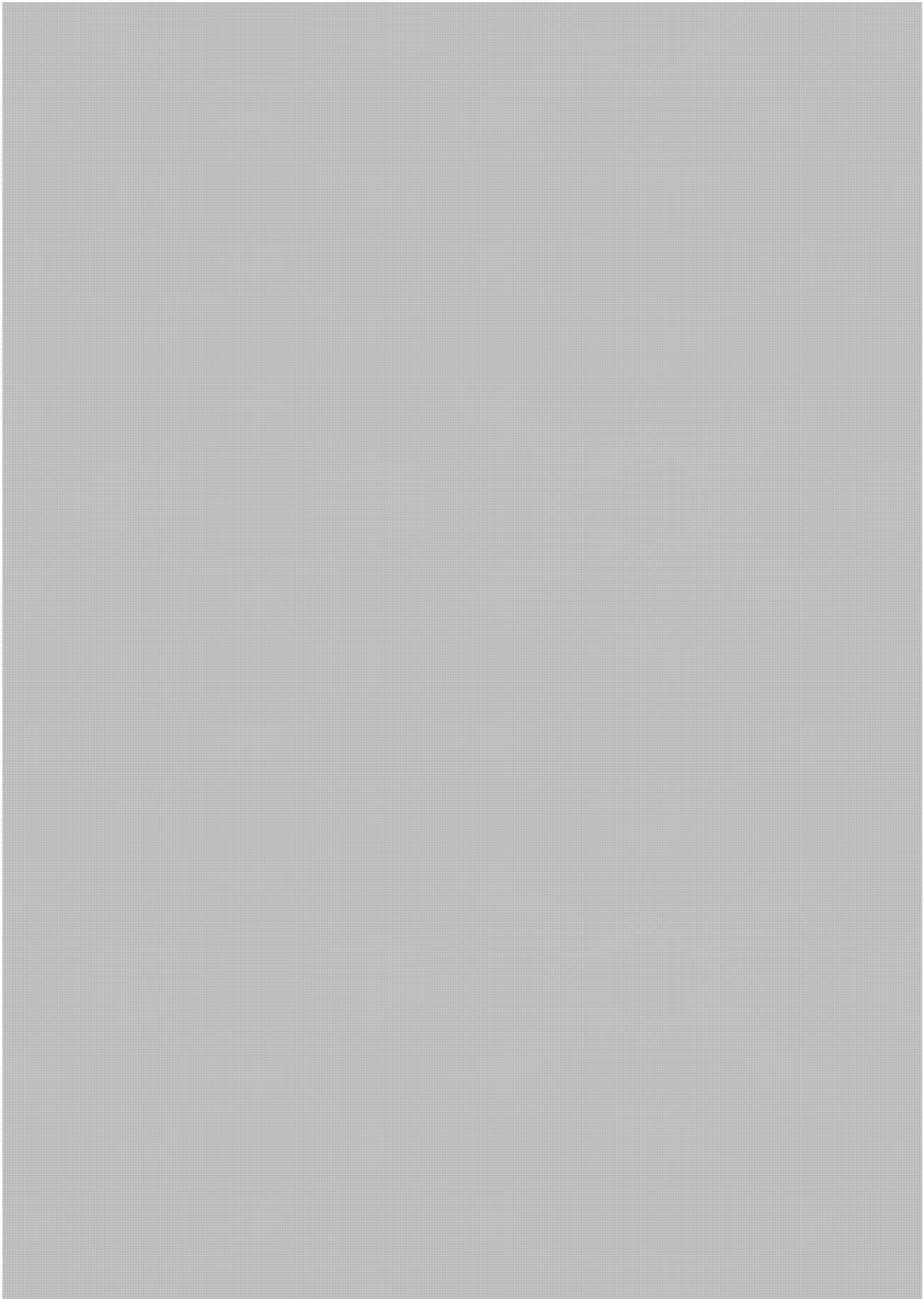
NOT PROCESSED / NON TRAITE



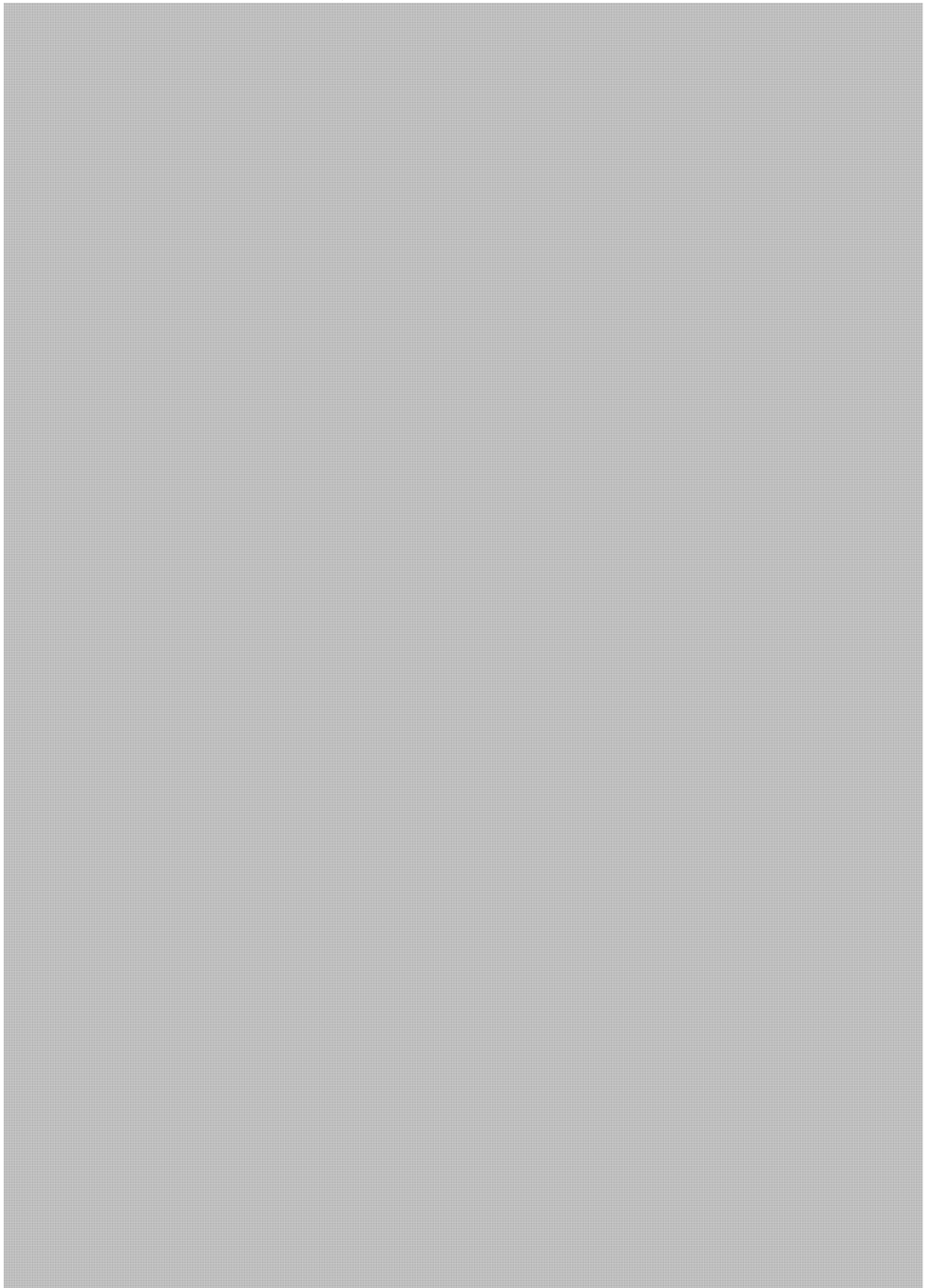
NOT PROCESSED / NON TRAITE



NOT PROCESSED / NON TRAITE



NOT PROCESSED / NON TRAITE



Page 156

**is withheld pursuant to sections
est retenue en vertu des articles**

19(1), 20(1)(b)

**of the Access to Information Act
de la Loi sur l'accès à l'information**

Dionne, Valérie

From: Dionne, Valérie
Sent: April-09-18 9:12 AM
To: Millington, Stephen (stephen.millington@crtc.gc.ca)
Cc: Frenette, Rachelle
Subject: BCM memo re SCPC
Attachments: DOCS-#3099831-v1-Item_3_Memo_BCM_2018_04_10.docx

Here is the memo being presented tomorrow at BCM regarding the application by SCPC to reopen the Digital media exemption order.

Conseil de la radiodiffusion et des
télécommunications canadiennesCanadian Radio-television and
Telecommunications Commission

MEMORANDUM

NOTE DE SERVICE

To
À

BCM – 10 April 2018

From
DeJean-Pierre Lefebvre
994-5326Subject
Sujet**Review of the Exemption order for digital media broadcasting undertakings**

Security Classification - Classification de sécurité
Protected B
Our File - Notre référence
Your File - Votre référence
Date
5 April 2018

For decision: Request by the Syndicat canadien de la fonction publique for process of its Part 1 application**The application*****Initial application by SCFP***

On 13 February 2018, the Commission received an application filed pursuant to Part 1 of the CRTC Rules of Practice and Procedure (the Rules of Procedure) from the Conseil provincial du secteur des communications (CPSC) of the Syndicat canadien de la fonction publique (SCFP), requesting that the Commission review the Digital Media Exemption Order¹ (the DMEO).

In response to this application, on 7 March 2018, Commission staff sent a letter to the SCFP, indicating that it would not be appropriate for the Commission to initiate a separate proceeding on the matter, as the issue of the relevance of maintaining or amending the DMEO had already been raised by a number of interveners, including the SCFP, as part of the public proceeding initiated by Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models* (Notice of Consultation 2017-359).

Request to process

On 26 March 2018, the SCFP sent another letter to the Commission, requesting that the Part 1 application filed on 13 February be published and that the Commission render a decision on it at the conclusion of the process.

The SCFP is of the view that:

- The response sent by staff does not constitute a Commission decision and that, accordingly, SCFP's Part 1 application is still pending publication and decision.
- The fact that the SCFP's Part 1 application was not published contravenes the Rules of Procedure.
- Nothing in the Rules of Procedure specifies that a Part 1 application can be denied based on the fact it addresses a matter already examined as part of another proceeding.
- Should the Commission fail to publish its application in a timely manner, the SCFP will undertake the appropriate legal recourses.

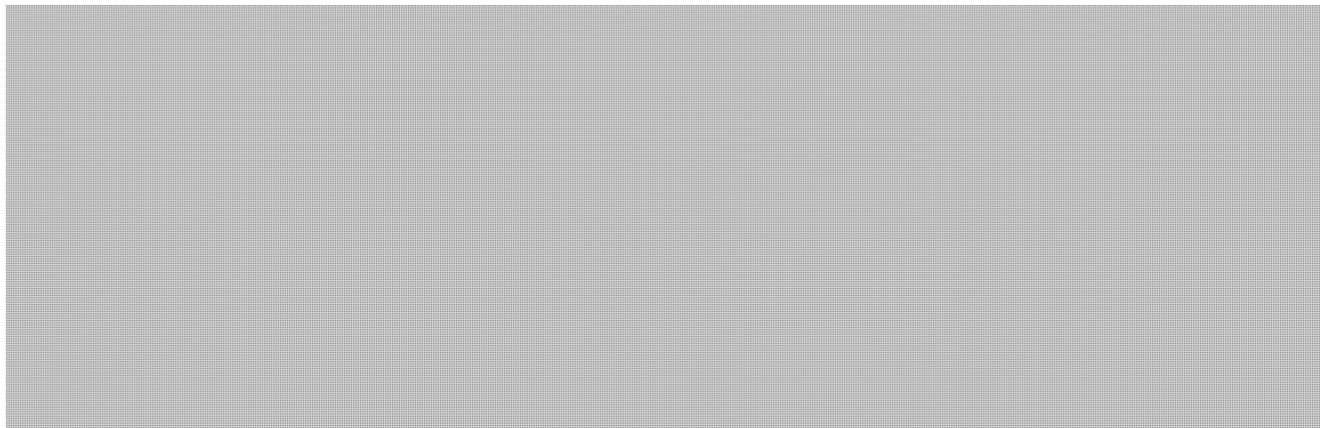
¹ Officially known as the *Exemption order for digital media broadcasting undertakings*.

s.21(1)(a)

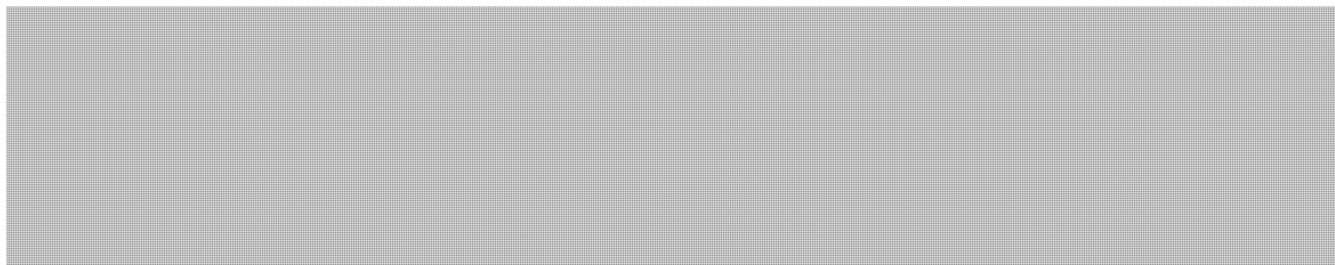
s.21(1)(b)

s.23

Analysis

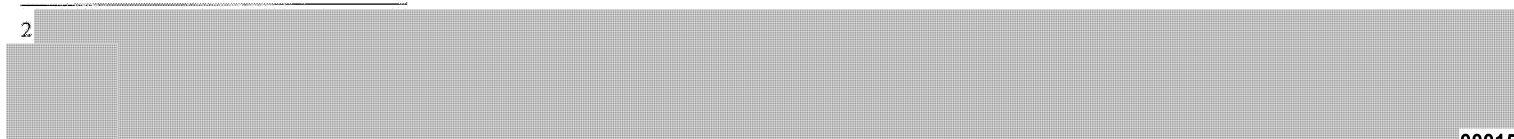


Legal advice



Recommendation

Staff recommends that the Commission decide not to process SCFP's Part 1 application.



Dionne, Valérie

From: Dionne, Valérie
Sent: April-05-18 3:36 PM
To: Foster, Peter; Gill, Donna; Lefebvre, Jean-Pierre
Subject: DOCS-#3098438-v2-SCFP_Request_-_Memo_-_BCM_10_April
Attachments: DOCS-#3098438-v2-SCFP_Request_-_Memo_-_BCM_10_April.docx

I made an addition in the analysis.

Conseil de la radiodiffusion et des
télécommunications canadiennesCanadian Radio-television and
Telecommunications Commission

MEMORANDUM

NOTE DE SERVICE

To BCM – 10 April 2018

À

From Jean-Pierre Lefebvre
De 994-5326Subject **Review of the Exemption order for digital media broadcasting undertakings**
Sujet

Security Classification - Classification de sécurité
Protected B
Our File - Notre référence
Your File - Votre référence
Date
5 April 2018

For decision: Request by the Syndicat canadien de la fonction publique for process of its Part 1 application

The application

Initial application by SCFP

On 13 February 2018, the Commission received an application filed pursuant to Part 1 of the CRTC Rules of Practice and Procedure (the Rules of Procedure) from the Conseil provincial du secteur des communications (CPSC) of the Syndicat canadien de la fonction publique (SCFP), requesting that the Commission review the Digital Media Exemption Order¹ (the DMEO).

In response to this application, on 7 March 2018, Commission staff sent a letter to the SCFP, indicating that it would not be appropriate for the Commission to initiate a separate proceeding on the matter, as the issue of the relevance of maintaining or amending the DMEO had already been raised by a number of interveners, including the SCFP, as part of the public proceeding initiated by Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models* (Notice of Consultation 2017-359).

Request to process

On 26 March 2018, the SCFP sent another letter to the Commission, requesting that the Part 1 application filed on 13 February be published and that the Commission render a decision on it at the conclusion of the process.

The SCFP is of the view that:

- The response sent by staff does not constitute a Commission decision and that, accordingly, SCFP's Part 1 application is still pending publication and decision.
- The fact that the SCFP's Part 1 application was not published contravenes the Rules of Procedure.
- Nothing in the Rules of Procedure specifies that a Part 1 application can be denied based on the fact it addresses a matter already examined as part of another proceeding.
- Should the Commission fail to publish its application in a timely manner, the SCFP will undertake the appropriate legal recourses.

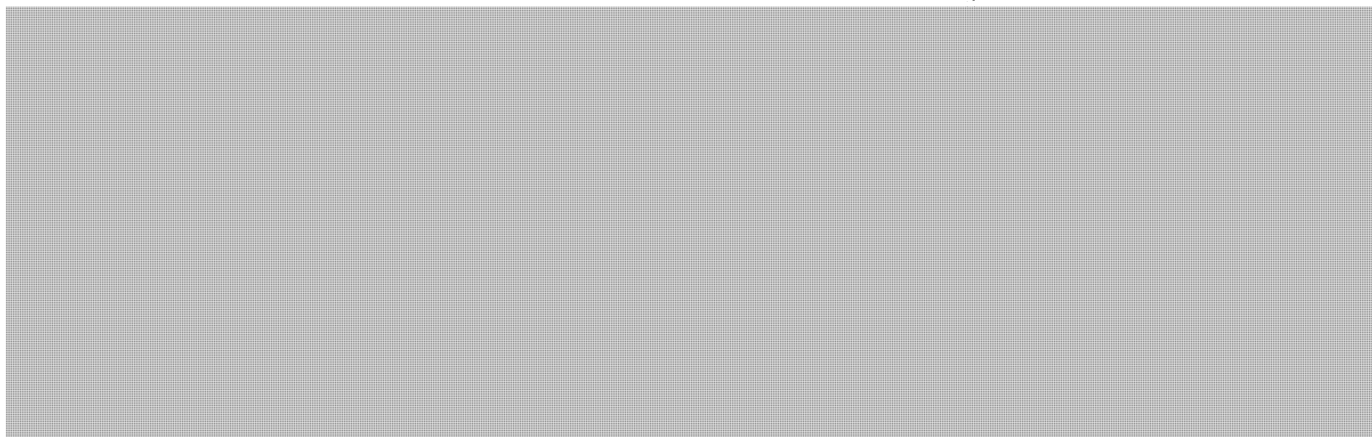
¹ Officially known as the *Exemption order for digital media broadcasting undertakings*.

s.21(1)(a)

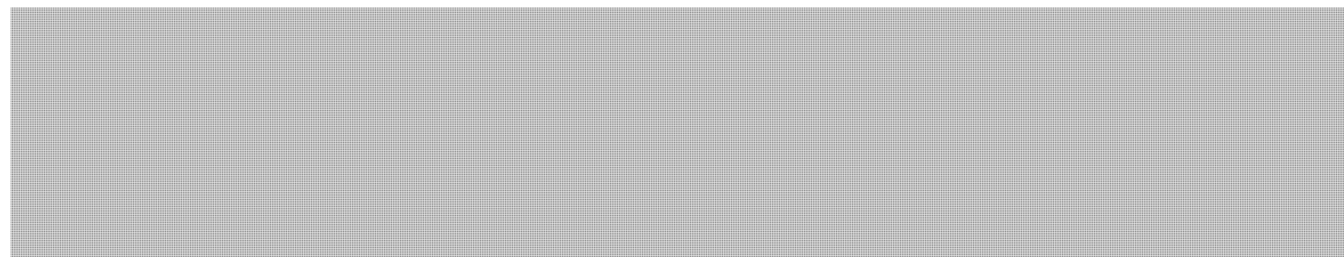
s.21(1)(b)

s.23

Analysis



Legal advice



Recommendation

Staff recommends that the Commission decide not to process SCFP's Part 1 application.

Dionne, Valérie

From: Dionne, Valérie
Sent: April-05-18 3:08 PM
To: Lefebvre, Jean-Pierre
Subject: RE: DOCS-#3098438-v1-SCFP_Request_-_Memo_-_BCM_10_April

ok

From: Lefebvre, Jean-Pierre
Sent: April-05-18 3:07 PM
To: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: DOCS-#3098438-v1-SCFP_Request_-_Memo_-_BCM_10_April

Merci.

Peter a suggéré quelques changements au memo, je t'envoie une version révisée sous peu.

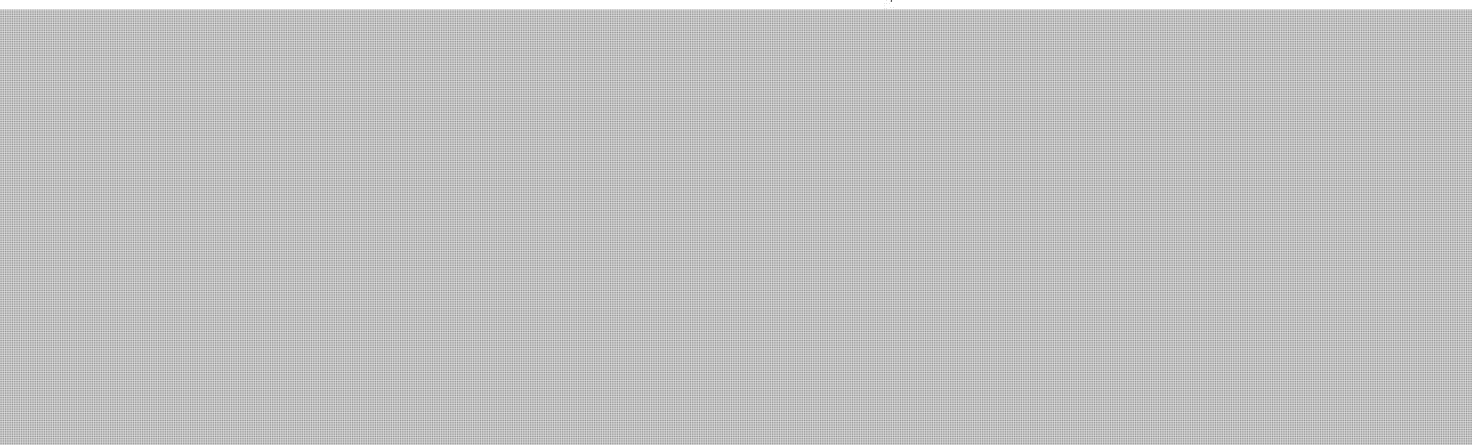
JP

From: Dionne, Valérie
Sent: April-05-18 3:06 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Subject: RE: DOCS-#3098438-v1-SCFP_Request_-_Memo_-_BCM_10_April

C'est exactement ça.

From: Lefebvre, Jean-Pierre
Sent: April-05-18 2:57 PM
To: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: RE: DOCS-#3098438-v1-SCFP_Request_-_Memo_-_BCM_10_April

Merci Valérie.



Jean-Pierre Lefebvre
Politique de réglementation en matière de distribution | Distribution Policy
Gestionnaire, Conformité de la distribution | Manager, Distribution Compliance

Conseil de la radiodiffusion et des télécommunications canadiennes | Canadian Radio-television and Telecommunications Commission

jean-pierre.lefebvre@crtc.gc.ca

Téléphone | Telephone 819-994-5326

Gouvernement du Canada | Government of Canada

www.crtc.gc.ca



Suivez-nous sur Twitter |



Follow us on Twitter

From: Dionne, Valérie

Sent: April-05-18 12:09 PM

To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>

Subject: DOCS-#3098438-v1-SCFP_Request_-_Memo_-_BCM_10_April

Track changes in the English. Thanks folks

Dionne, Valérie

From: Dionne, Valérie
Sent: April-05-18 12:09 PM
To: Lefebvre, Jean-Pierre; Gill, Donna; Foster, Peter
Subject: DOCS-#3098438-v1-SCFP_Request_-_Memo_-_BCM_10_April
Attachments: DOCS-#3098438-v1-SCFP_Request_-_Memo_-_BCM_10_April.docx

Track changes in the English. Thanks folks

s.21(1)(b)

Conseil de la radiodiffusion et des
télécommunications canadiennesCanadian Radio-television and
Telecommunications Commission

MEMORANDUM

NOTE DE SERVICE

To
A

BCM – 10 April 2018

From
DeJean-Pierre Lefebvre
994-5326Subject
Sujet

Review of the Exemption order for digital media broadcasting undertakings

Security Classification - Classification de sécurité
Protected B
Our File - Notre référence
Your File - Votre référence
Date
5 April 2018

For decision: Request by the Syndicat canadien de la fonction publique for process of its Part 1 application

The application*Initial application by SCFP*

On 13 February 2018, the Commission received an application filed pursuant to Part 1 of the CRTC Rules of Practice and Procedure (the Rules of Procedure) from the Conseil provincial du secteur des communications (CPSC) of the Syndicat canadien de la fonction publique (SCFP), requesting that the Commission review the

In response to this application, on 7 March 2018, Commission staff sent a letter to the SCFP, indicating that it would be appropriate for the Commission to initiate a separate proceeding on the matter, as the relevance of maintaining or amending the had already been raised by a number of interveners, including the SCFP, as part of the public proceeding initiated by Broadcasting Notice of Consultation CRTC 2017-359, *Call for comments on the Governor in Council's request for a report on future programming distribution models* (Notice of Consultation 2017-359).

Request to process

On 26 March 2018, the SCFP sent another letter to the Commission, requesting that the Part 1 application filed on 13 February be published and that the Commission render a decision on it at the conclusion of the process.

The SCFP is of the view that:

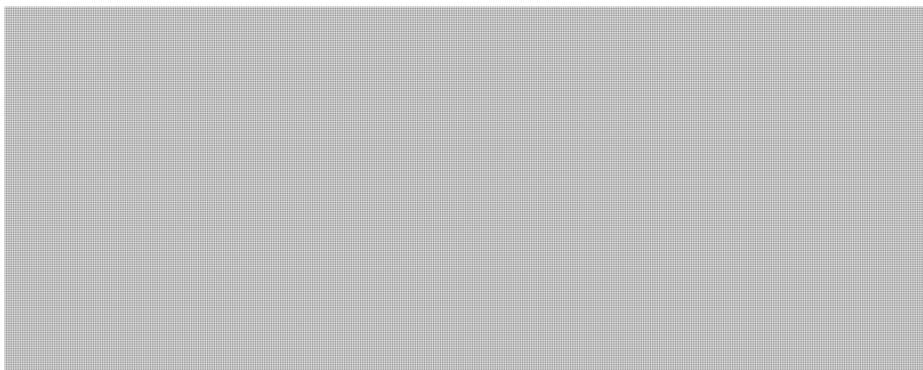
- The response sent by staff does not constitute a Commission's decision and that, accordingly, SCFP's Part 1 application is still pending publication and decision.
- The fact that the SCFP's Part 1 application was not published contravenes the Rules of Procedure.
- Nothing in the Rules of Procedure specifies that a Part 1 application be denied based on the fact it addresses a matter already examined as part of another proceeding.
- Should the Commission fail to publish its application in a timely manner, the SCFP will undertake the appropriate legal recourses.

s.21(1)(a)

s.21(1)(b)

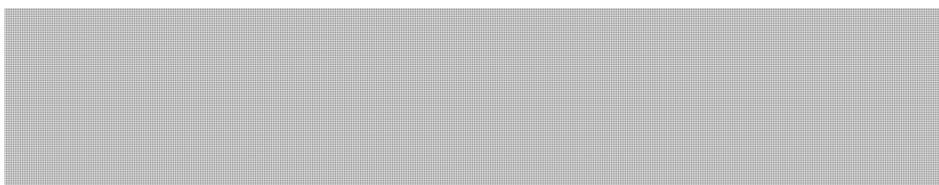
s.23

Analysis



Commented [GD1]:

Legal advice



Formatted: Font: Italic

Formatted: Font: Italic

Commented [GD2]:

Recommendation

Staff recommends that the Commission decide not to process SCFP's Part 1 application.

Dionne, Valérie

From: Dionne, Valérie
Sent: April-04-18 9:48 AM
To: Lefebvre, Jean-Pierre
Subject: RE: Denis Bolduc / SCFP-Québec - APP Inbox

Oui certainement. Je suis disponible

From: Lefebvre, Jean-Pierre
Sent: April-04-18 9:41 AM
To: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

Salut Valérie,

Serait-il possible de se rencontrer à propos de la lettre du SCFP?

Merci,

JP

From: Gill, Donna
Sent: March-28-18 1:51 PM
To: Rancourt, Eric <eric.rancourt@crtc.gc.ca>
Cc: Hutton, Scott <scott.hutton@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Brault, Claude <claud.brault@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

Hi Eric – Scott wanted us to give you a head's up on this but I see that you were copied. My group prepared the letter that went out so if you need our help on that just contact me.

From: Craig, Michael
Sent: March-28-18 12:28 PM
To: Gill, Donna <donna.gill@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Carter, Sheehan <sheehan.carter@crtc.gc.ca>; Hutton, Scott <scott.hutton@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Rancourt, Eric <eric.rancourt@crtc.gc.ca>
Cc: Rancourt, Mélanie <melanie.rancourt@crtc.gc.ca>
Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

Hi,

The SCFP has provided a response to Scott's letter that indicated that it would not be appropriate for us to treat their "application" to review the DMEQ at this time.

Arguing that a staff letter is not a decision of the Commission, that our choice to not publish their application upon reception is a contravention of our own Rules of Procedure, and that we have violated their right to procedural fairness, they have requested that the Commission post their application by no later than 5:00pm on 29 March 2018. Should

their application not be posted, they have suggested that they will take some form of legal action against the Commission.

Michael Craig

Manager, English and Third-language Television |

Gestionnaire, Télévision anglaise et de tierce langue

Conseil de la radiodiffusion et des télécommunications canadiennes | Canadian Radio-television and Telecommunications Commission

Les Terrasses de la Chaudière, 1 Promenade du Portage, Gatineau, Québec, J8X 4B1

michael.craig@crtc.gc.ca

Téléphone/Telephone: 819-997-9394

Télécopieur / Facsimile: 819-994-0218

Gouvernement du Canada / Government of Canada

www.crtc.gc.ca

 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)

From: Lehoux, Manon

Sent: March-28-18 11:11 AM

To: Craig, Michael <michael.craig@crtc.gc.ca>

Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

From: Oakley, Tim

Sent: March-28-18 10:17 AM

To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>

Subject: FW: Denis Bolduc / SCFP-Québec - APP Inbox

Good morning Manon

This is to be sent to Michael Craig as per Manon Auger's instructions

Thank you

Have a great day

Tim

Tim Oakley

Planification et processus / Planning and Process

Conseil de la radiodiffusion et des télécommunications canadiennes

Canadian Radio-television and Telecommunications Commission

1 Promenade du Portage, Gatineau, QC K1A 0N2

tim.oakley@crtc.gc.ca

Téléphone | Telephone 819-997-9354

Télécopieur | Facsimile 819-994-0218

Gouvernement du Canada | Government of Canada

www.crtc.gc.ca

 [Suivez-nous sur Twitter](#) |  [Follow us on Twitter](#)

Dionne, Valérie

From: Lefebvre, Jean-Pierre
Sent: February-26-18 12:54 PM
To: Dionne, Valérie
Cc: Foster, Peter
Subject: RE: Demande SCFP - Réponse

Parfait, merci!

JP

From: Dionne, Valérie
Sent: February-26-18 12:37 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Cc: Foster, Peter <peter.foster@crtc.gc.ca>
Subject: RE: Demande SCFP - Réponse

Non. Tel quel c'est correct.

From: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>
Date: Monday, Feb 26, 2018, 12:23 PM
To: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Cc: Foster, Peter <peter.foster@crtc.gc.ca>
Subject: RE: Demande SCFP - Réponse

Salut Valérie,

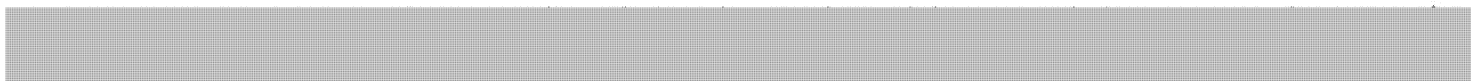


Merci,

JP

From: Dionne, Valérie
Sent: February-26-18 9:34 AM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>
Cc: Craig, Michael <michael.craig@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: RE: Demande SCFP - Réponse

C'est bien Jean-Pierre, je n'ai pas de changement à apporter à l'ébauche.



From: Lefebvre, Jean-Pierre
Sent: February-23-18 10:50 AM
To: Foster, Peter <peter.foster@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Cc: Craig, Michael <michael.craig@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: Demande SCFP - Réponse

Bonjour Valérie et Peter,

J'ai préparé la lettre ci-jointe en réponse à la demande du SCFP de réexaminer l'Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques.

SVP me laisser savoir si vous avez des questions/commentaires/suggestions.

Merci,

JP

From: Craig, Michael
Sent: February-20-18 4:20 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

Please see attached.

From: Craig, Michael
Sent: February-16-18 4:51 PM
To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>
Cc: Rancourt, Mélanie <mélanie.rancourt@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

Hi Manon,

Can you please create a Rapids case for the attached documents? Please let me know the case number once you have.

Many thanks,

Michael Craig
819-997-9394

From: Lehoux, Manon
Sent: February-15-18 1:22 PM
To: Craig, Michael <michael.craig@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

From: Oakley, Tim
Sent: February-15-18 1:08 PM
To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>
Subject: Réjean Beaudet, CPSC - APP Inbox

Hi Manon

I am not sure for this one but my guess is Michael Craig.
Please let me know what happens with this one please.

Tim

Tim Oakley

Planification et processus / Planning and Process

Conseil de la radiodiffusion et des télécommunications canadiennes

Canadian Radio-television and Telecommunications Commission

1 Promenade du Portage, Gatineau, QC K1A 0N2

tim.oakley@crtc.gc.ca

Téléphone | Telephone 819-997-9354

Télécopieur | Facsimile 819-994-0218

Gouvernement du Canada | Government of Canada

www.crtc.gc.ca



[Suivez-nous sur Twitter](#)



[Follow us on Twitter](#)

Dionne, Valérie

From: Dionne, Valérie
Sent: February-26-18 11:42 AM
To: Frenette, Rachelle
Subject: RE: Demande SCFP - Réponse

Oui! Bon reflexe Rachelle!

From: Frenette, Rachelle
Sent: February-26-18 11:41 AM
To: Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Subject: FW: Demande SCFP - Réponse

Oufff...une chance qu'on a demandé.

From: Dionne, Valérie
Sent: February-26-18 11:19 AM
To: Foster, Peter <peter.foster@crtc.gc.ca>; Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Carter, Sheehan <sheehan.carter@crtc.gc.ca>
Cc: Craig, Michael <michael.craig@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>; Frenette, Rachelle <rachelle.frenette@crtc.gc.ca>
Subject: RE: Demande SCFP - Réponse

Great. Thanks Peter

From: Foster, Peter
Sent: February-26-18 11:07 AM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>; Carter, Sheehan <sheehan.carter@crtc.gc.ca>
Cc: Craig, Michael <michael.craig@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: RE: Demande SCFP - Réponse

From: Lefebvre, Jean-Pierre
Sent: February-26-18 9:36 AM
To: Dionne, Valérie <valerie.dionne@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>; Carter, Sheehan <sheehan.carter@crtc.gc.ca>
Cc: Craig, Michael <michael.craig@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: RE: Demande SCFP - Réponse

Merci Valérie,

Mike (ou Peter):

JP

From: Dionne, Valérie
Sent: February-26-18 9:34 AM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Foster, Peter <peter.foster@crtc.gc.ca>
Cc: Craig, Michael <michael.craig@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: RE: Demande SCFP - Réponse

C'est bien Jean-Pierre, je n'ai pas de changement à apporter à l'ébauche.

From: Lefebvre, Jean-Pierre
Sent: February-23-18 10:50 AM
To: Foster, Peter <peter.foster@crtc.gc.ca>; Dionne, Valérie <valerie.dionne@crtc.gc.ca>
Cc: Craig, Michael <michael.craig@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: Demande SCFP - Réponse

Bonjour Valérie et Peter,

J'ai préparé la lettre ci-jointe en réponse à la demande du SCFP de réexaminer l'Ordonnance d'exemption relative aux entreprises de radiodiffusion de médias numériques.

SVP me laisser savoir si vous avez des questions/commentaires/suggestions.

Merci,

JP

From: Craig, Michael
Sent: February-20-18 4:20 PM
To: Lefebvre, Jean-Pierre <jean-pierre.lefebvre@crtc.gc.ca>; Gill, Donna <donna.gill@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

Please see attached.

From: Craig, Michael
Sent: February-16-18 4:51 PM
To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>
Cc: Rancourt, Mélanie <melanie.rancourt@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

Hi Manon,

Can you please create a Rapids case for the attached documents? Please let me know the case number once you have.

Many thanks,

Michael Craig

819-997-9394

From: Lehoux, Manon
Sent: February-15-18 1:22 PM
To: Craig, Michael <michael.craig@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

From: Oakley, Tim
Sent: February-15-18 1:08 PM
To: Lehoux, Manon <Manon.Lehoux@crtc.gc.ca>
Subject: Réjean Beaudet, CPSC - APP Inbox

Hi Manon

I am not sure for this one but my guess is Michael Craig.
Please let me know what happens with this one please.

Tim

Tim Oakley

Planification et processus / Planning and Process
Conseil de la radiodiffusion et des télécommunications canadiennes
Canadian Radio-television and Telecommunications Commission
1 Promenade du Portage, Gatineau, QC K1A 0N2
tim.oakley@crtc.gc.ca
Téléphone | Telephone 819-997-9354
Télécopieur | Facsimile 819-994-0218
Gouvernement du Canada | Government of Canada
www.crtc.gc.ca



Suivez-nous sur Twitter |



Follow us on Twitter

Provost, Marie-Soleil

From: Hutton, Scott
Sent: February-15-18 2:50 PM
To: Scott, Ian; Hanley, Amy
Subject: FW: Réjean Beaudet, CPSC - APP Inbox
Attachments: 180213 CPSC-SCFP_Demande de la partie 1_FINALE.pdf; 180213 CPSC-SCFP_Demande de la Partie 1 - Annexe 1.pdf; NOT WEB - Confirmation-My CRTC Account-103962.html

FYI - A part 1 asking to review the digital media exemption order. It mirrors their comments in the s.15 process. We have hit the pause button on publishing this application.

S

Scott Hutton

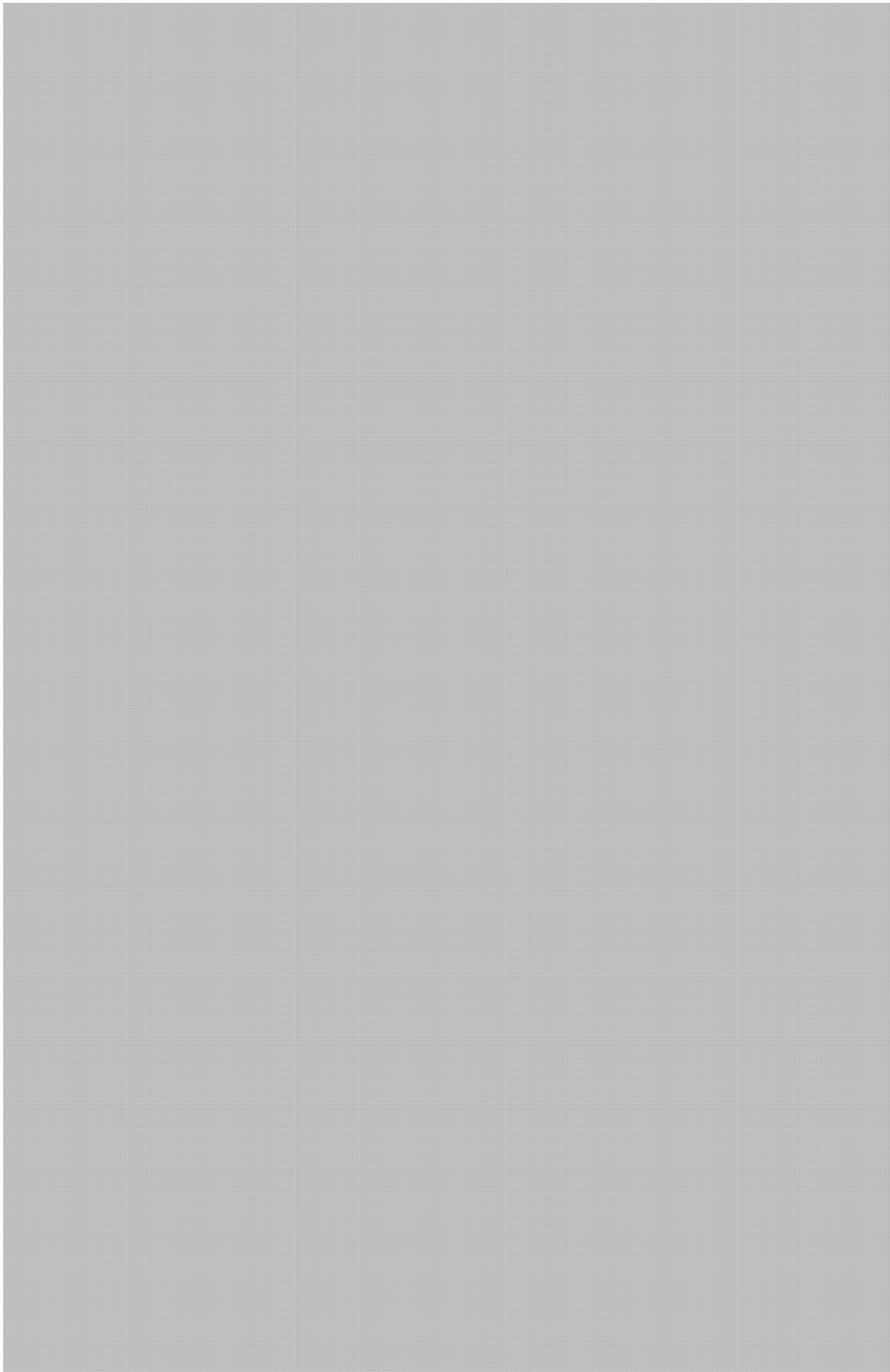
Directeur exécutif, Radiodiffusion / Executive Director, Broadcasting
Conseil de la radiodiffusion et des télécommunications canadiennes | Canadian Radio-television and Telecommunications Commission
Ottawa, ON K1A 0N2
Scott.Hutton@crtc.gc.ca
Téléphone | Telephone 819-997-4573
Télécopieur | Facsimile 819-994-0218
Gouvernement du Canada | Government of Canada
www.crtc.gc.ca

From: Craig, Michael
Sent: 15 février 2018 2:20
To: Foster, Peter <peter.foster@crtc.gc.ca>; Rancourt, Eric <eric.rancourt@crtc.gc.ca>; Hutton, Scott <scott.hutton@crtc.gc.ca>
Subject: FW: Réjean Beaudet, CPSC - APP Inbox

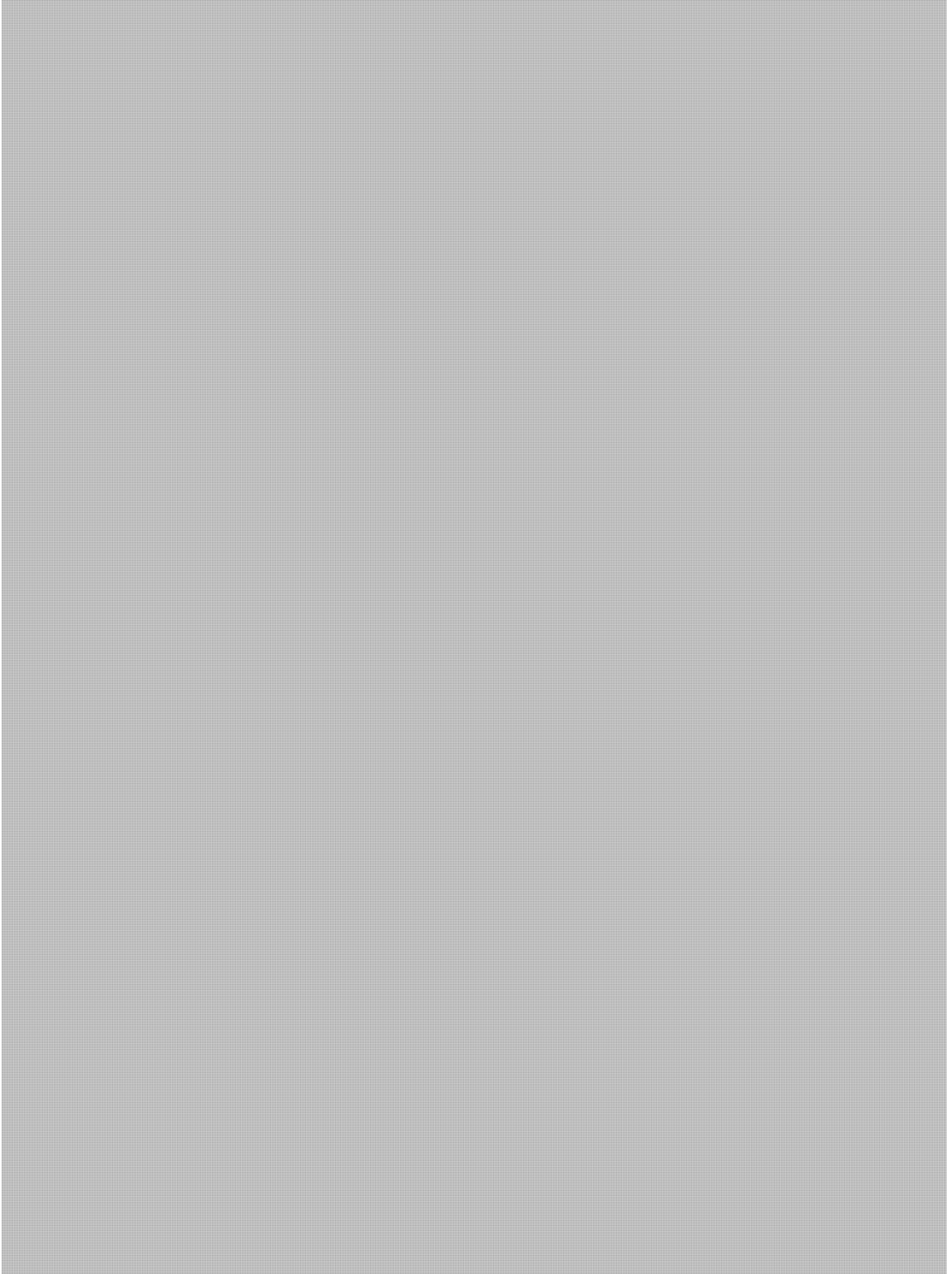
Hi,

I just received the formal SCFP application. Please see attached.

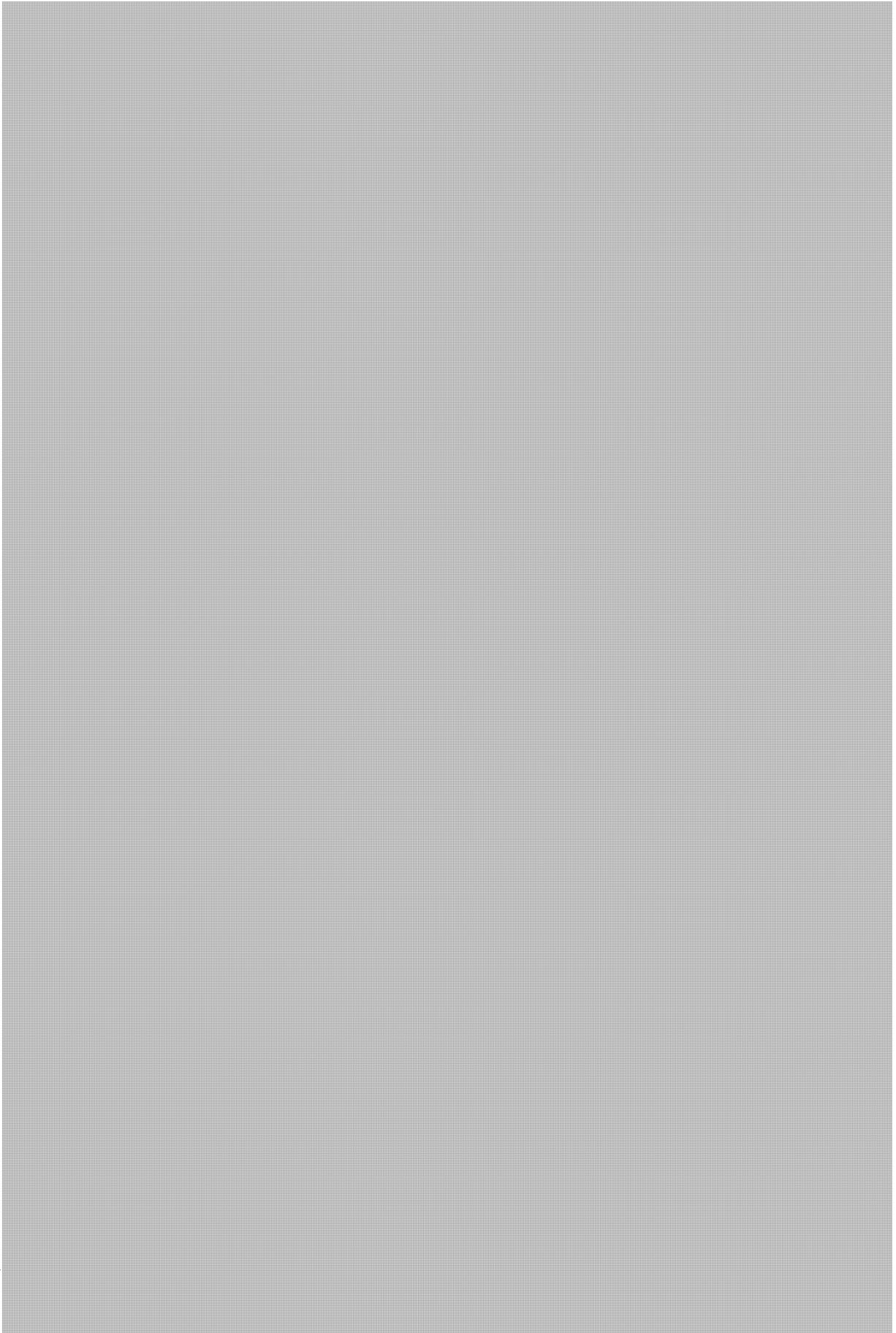
NOT PROCESSED / NON TRAITE



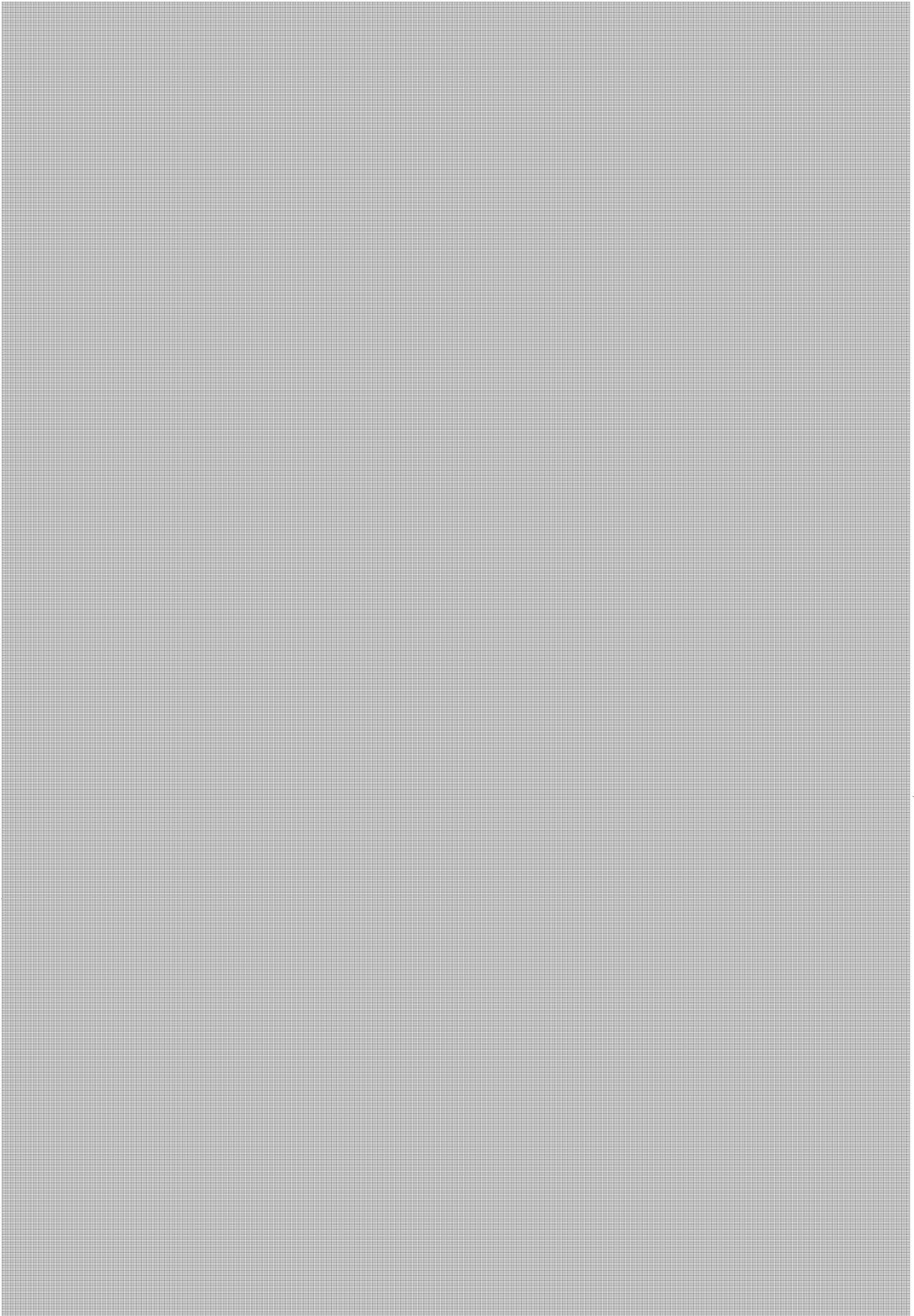
NOT PROCESSED / NON TRAITE



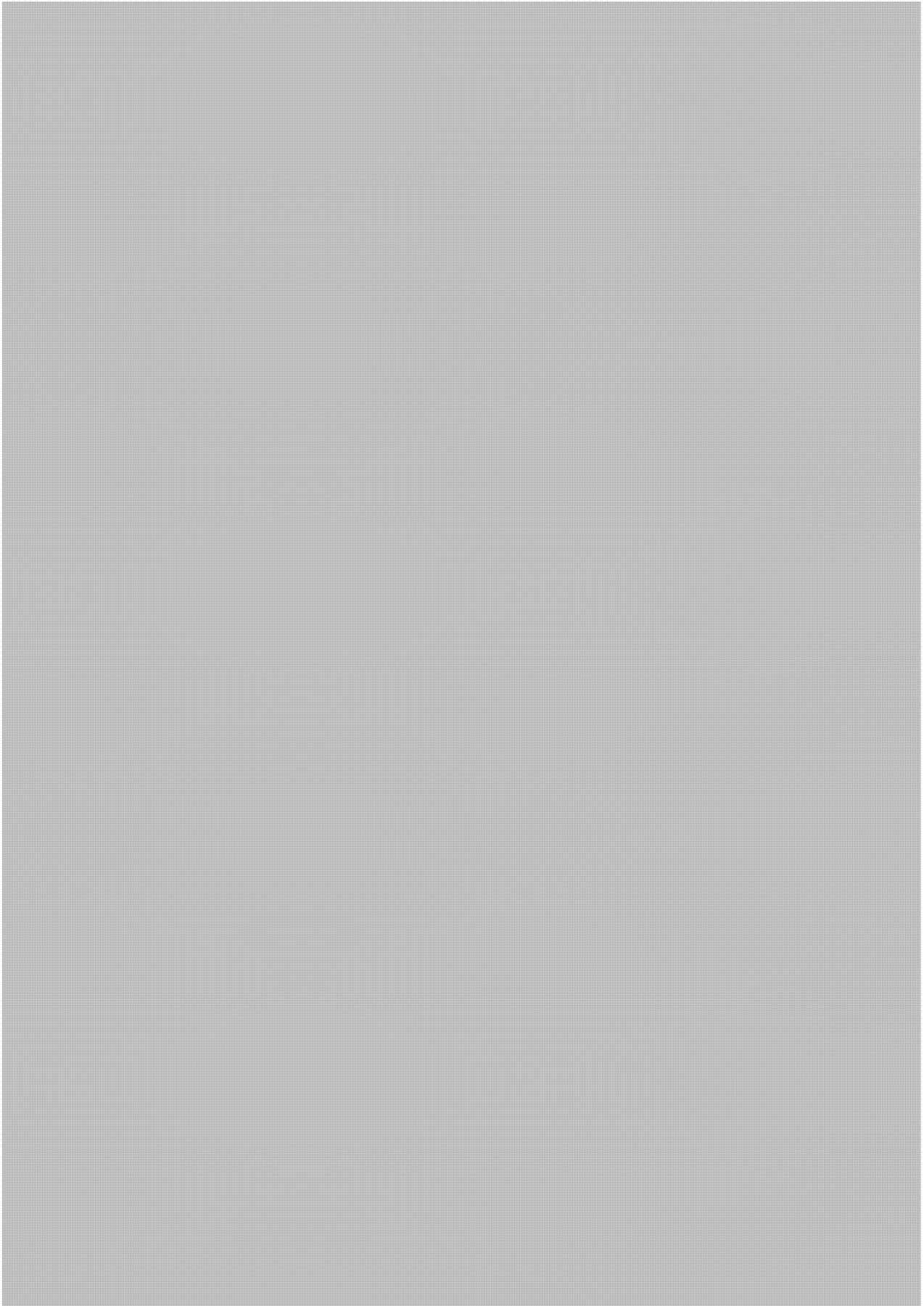
NOT PROCESSED / NON TRAITE



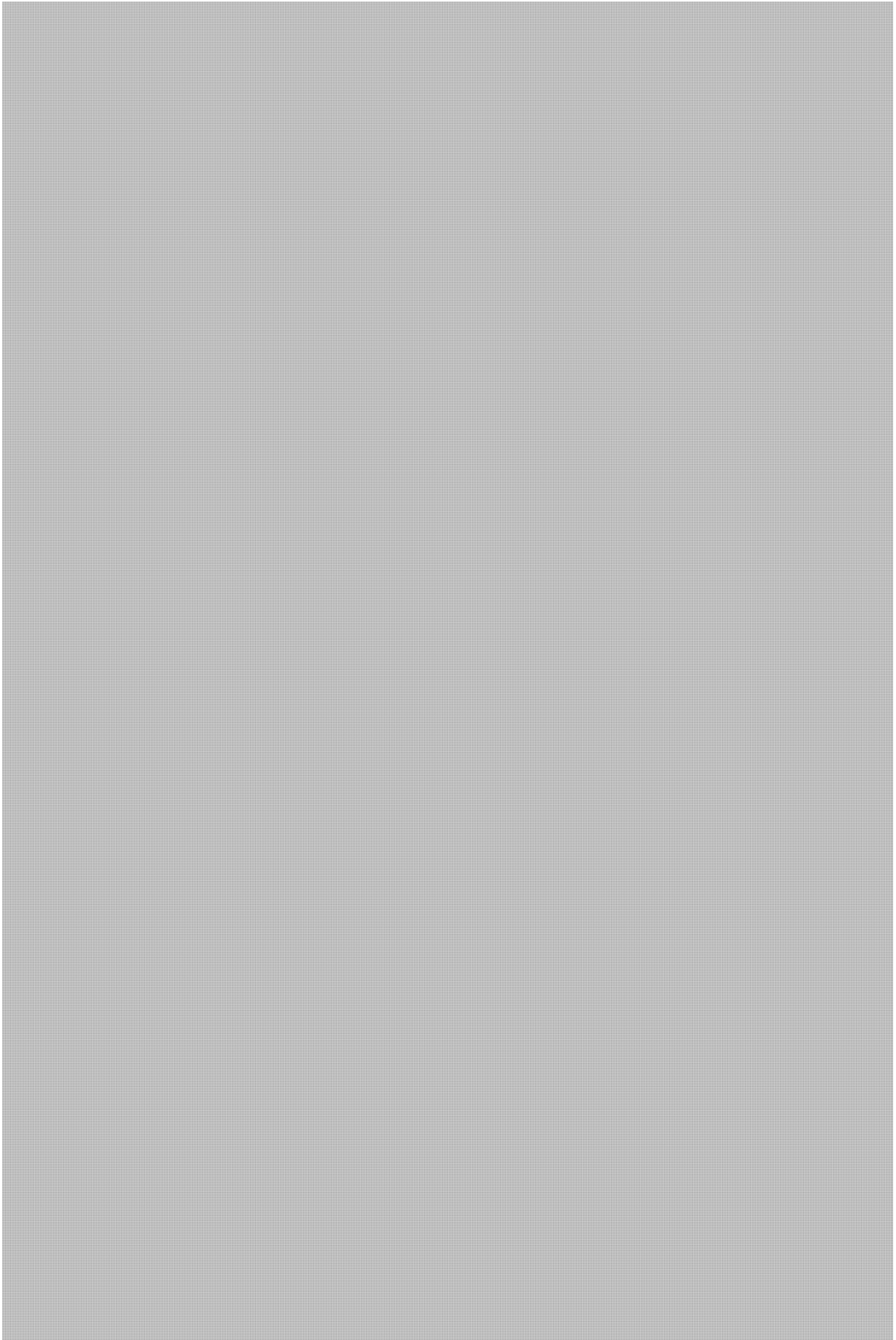
NOT PROCESSED / NON TRAITE



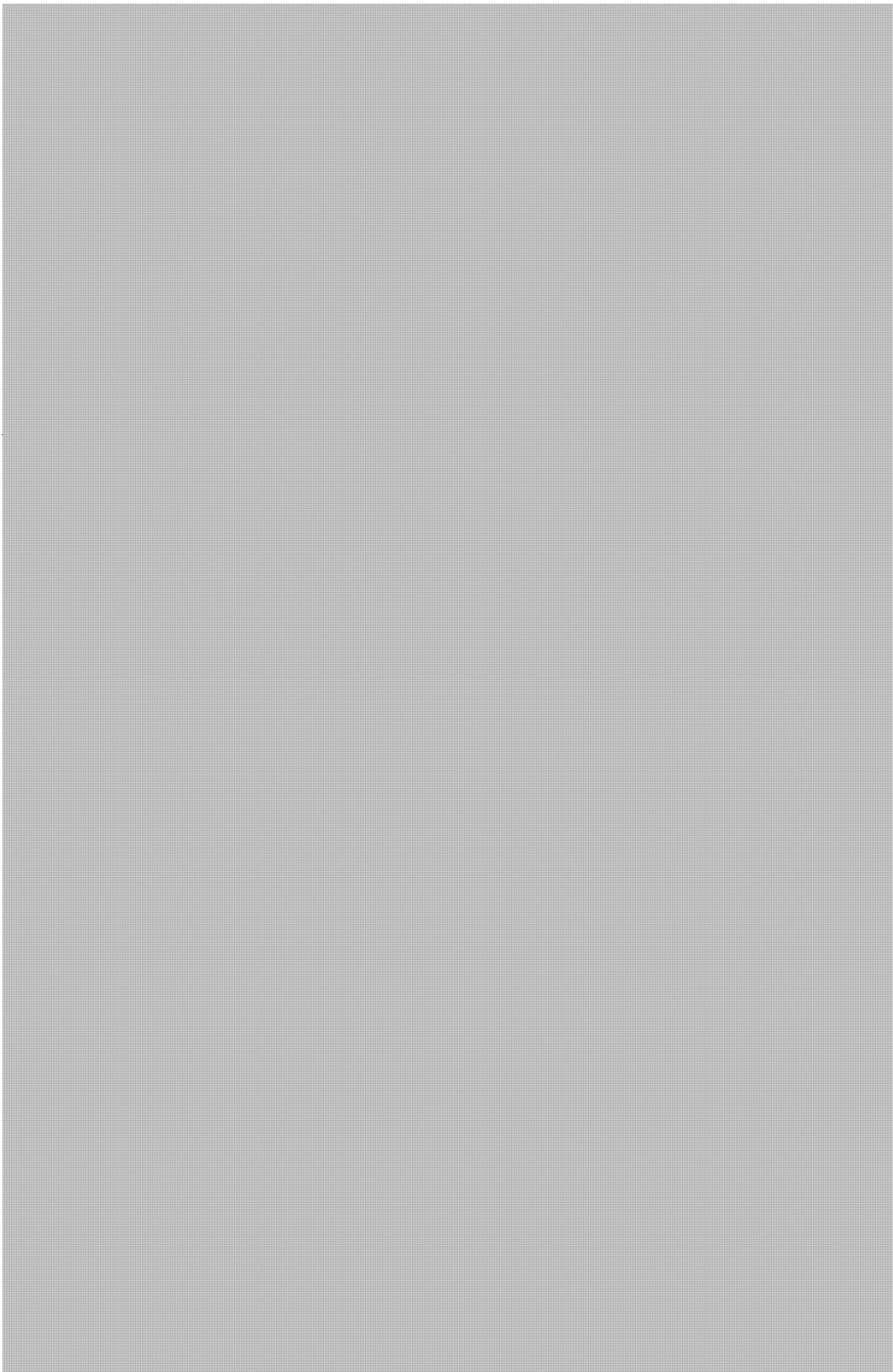
NOT PROCESSED / NON TRAITE



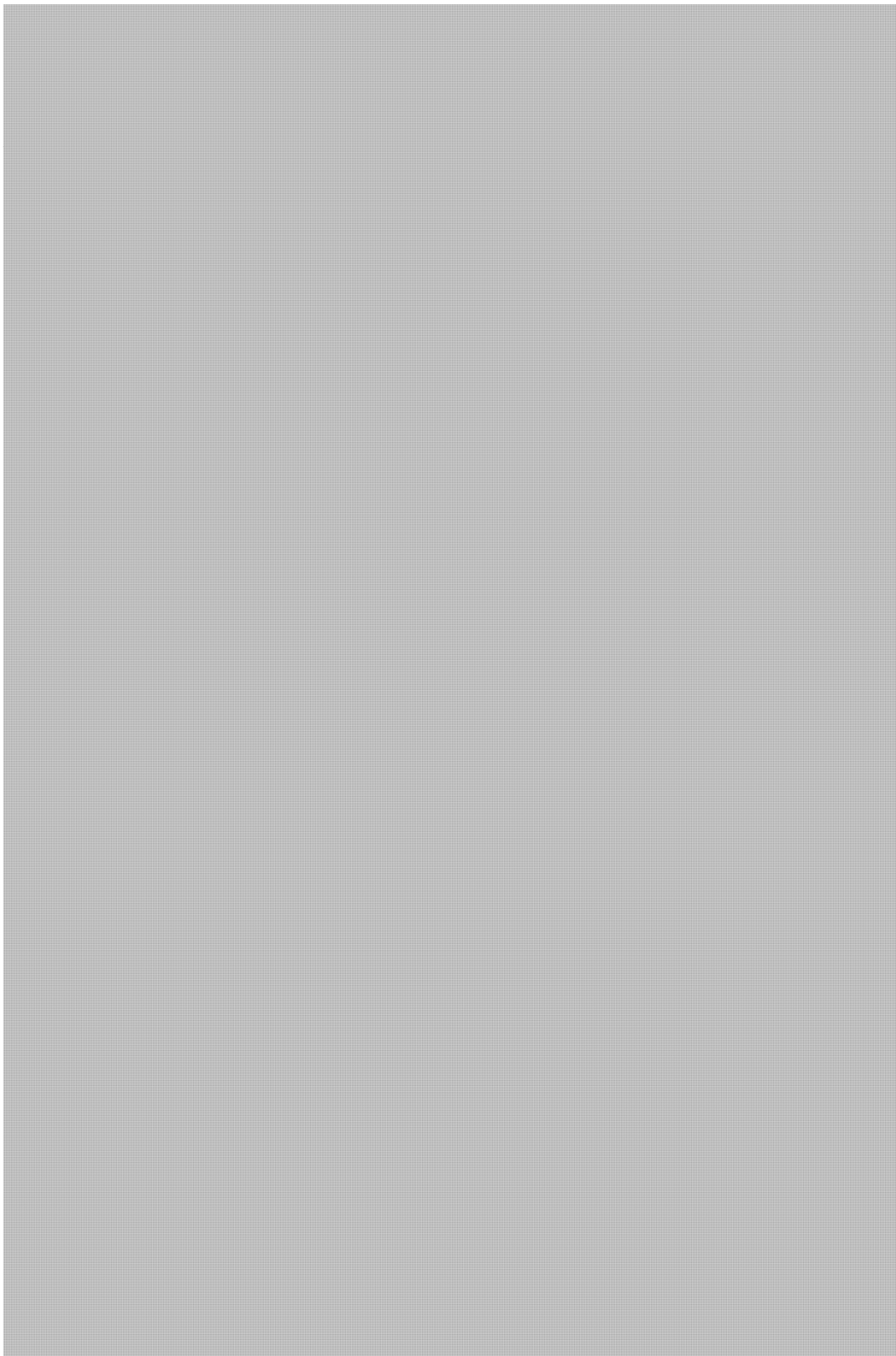
NOT PROCESSED / NON TRAITE



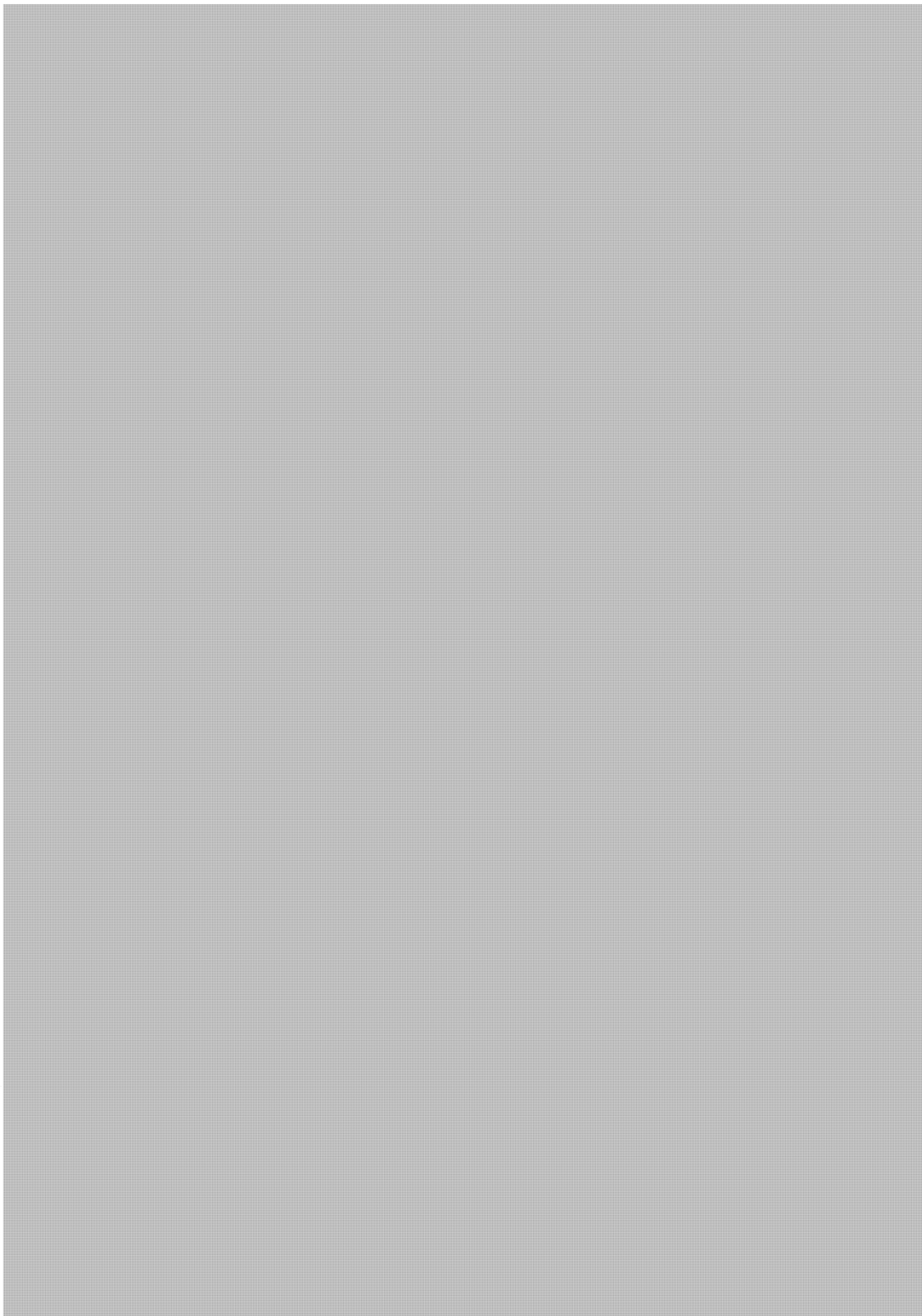
NOT PROCESSED / NON TRAITE



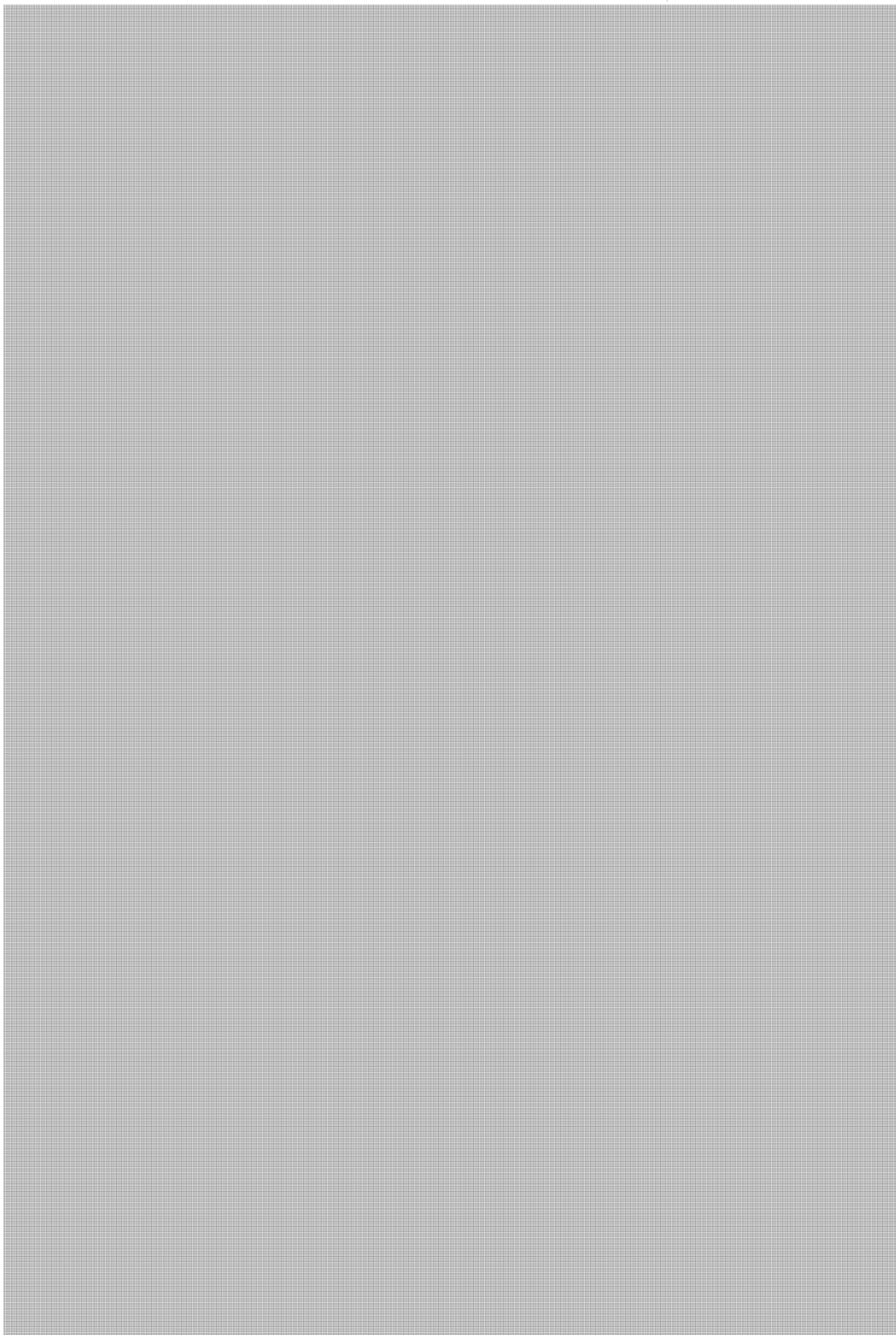
NOT PROCESSED / NON TRAITE



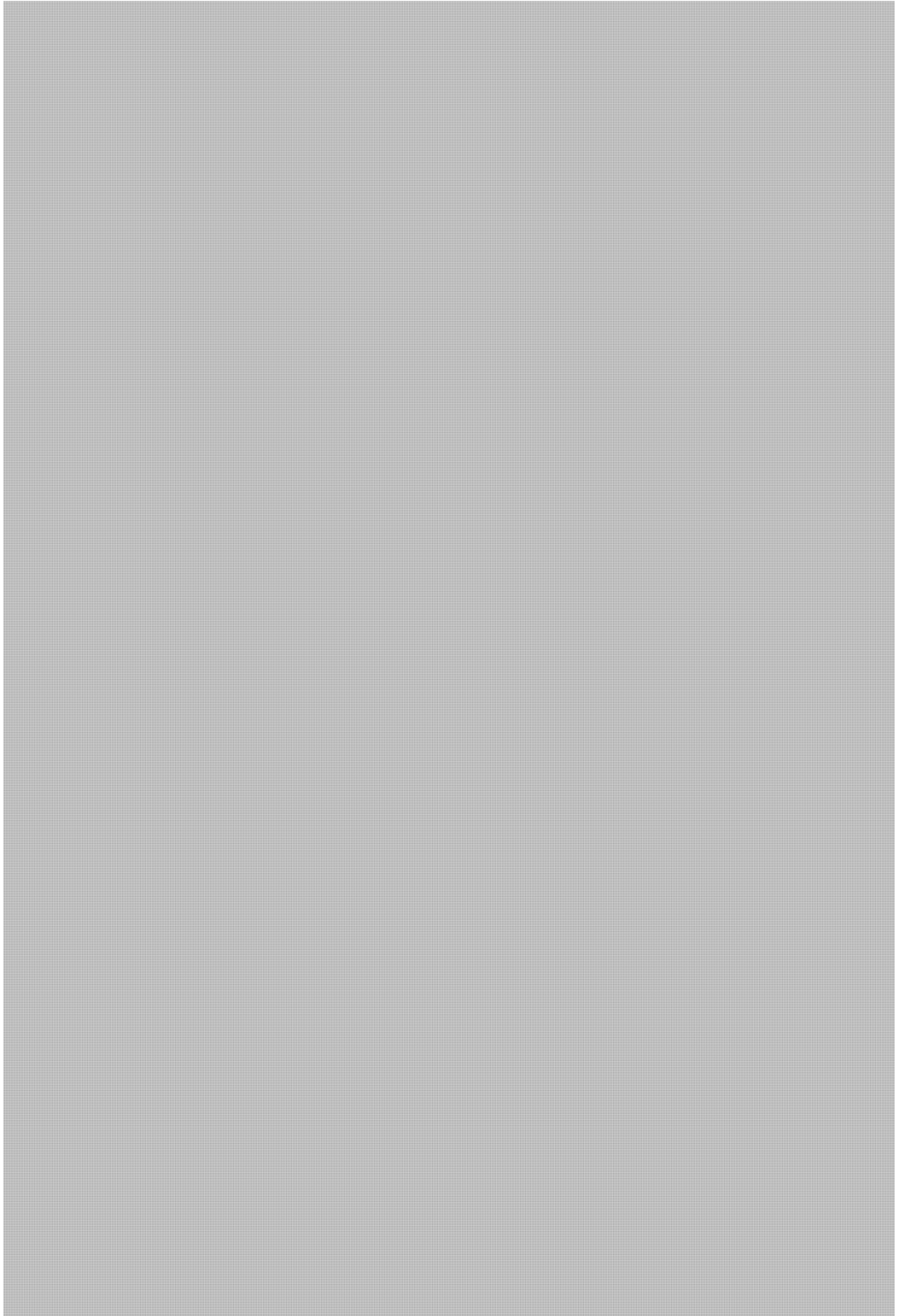
NOT PROCESSED / NON TRAITE



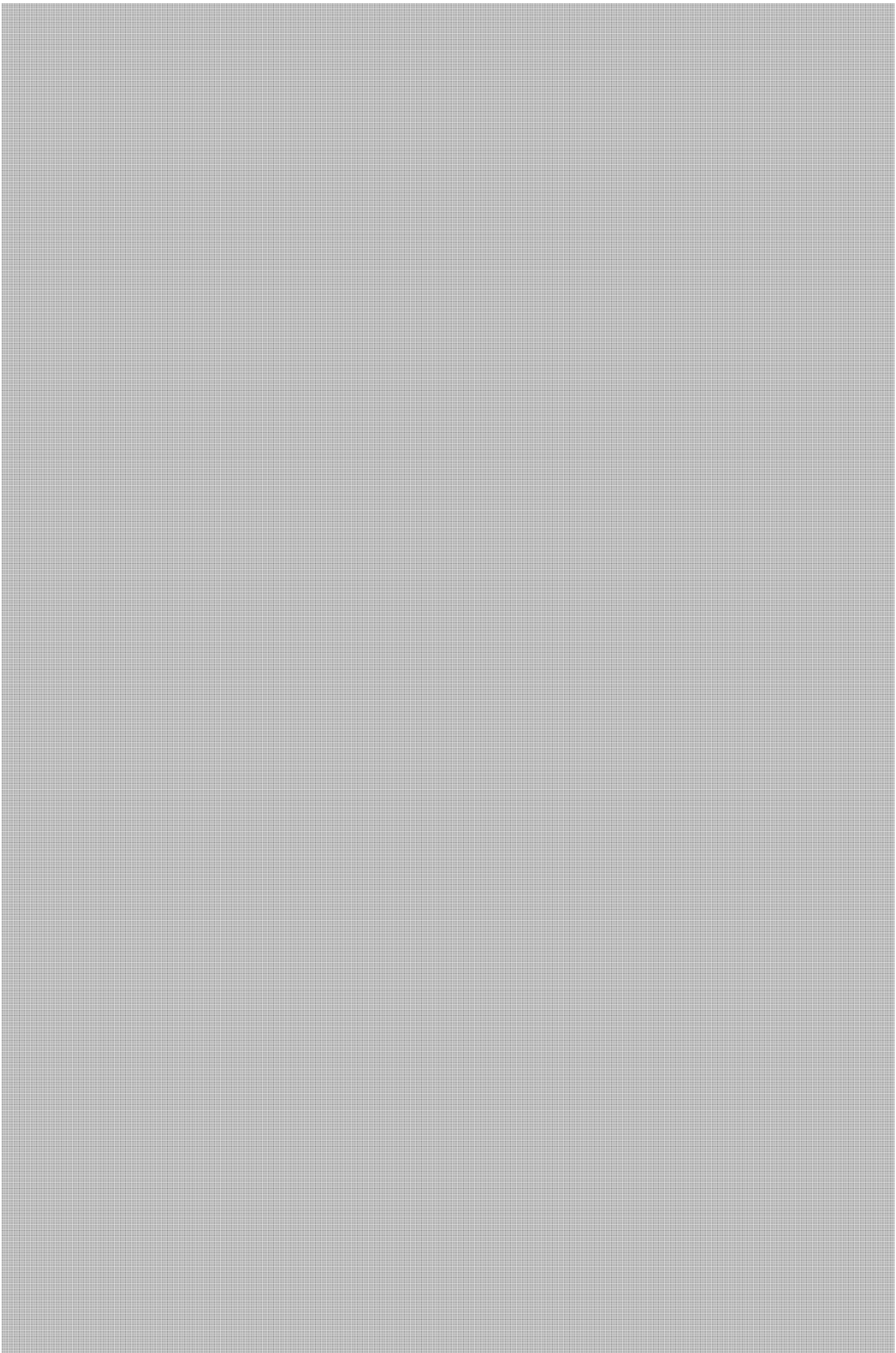
NOT PROCESSED / NON TRAITE



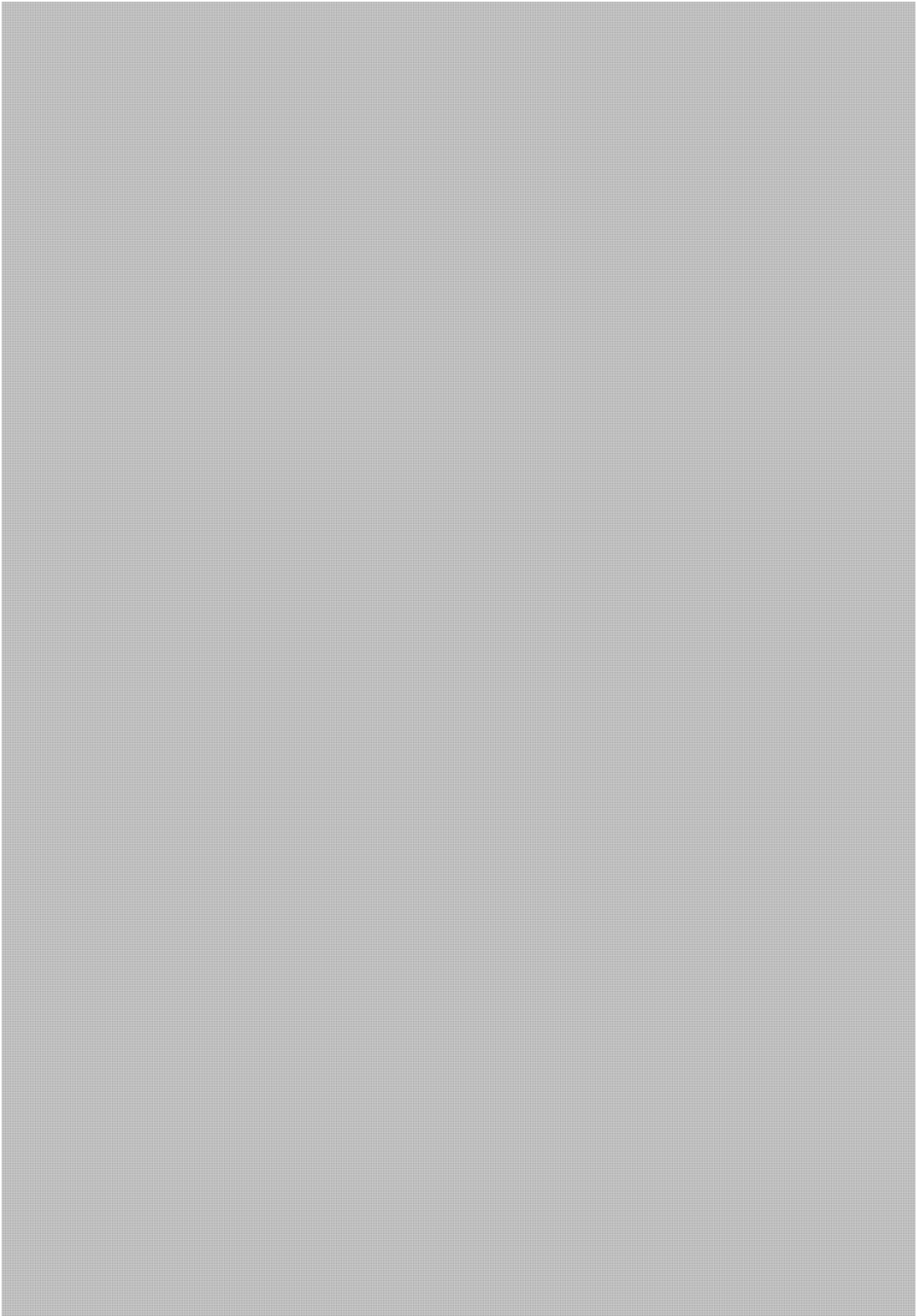
NOT PROCESSED / NON TRAITE



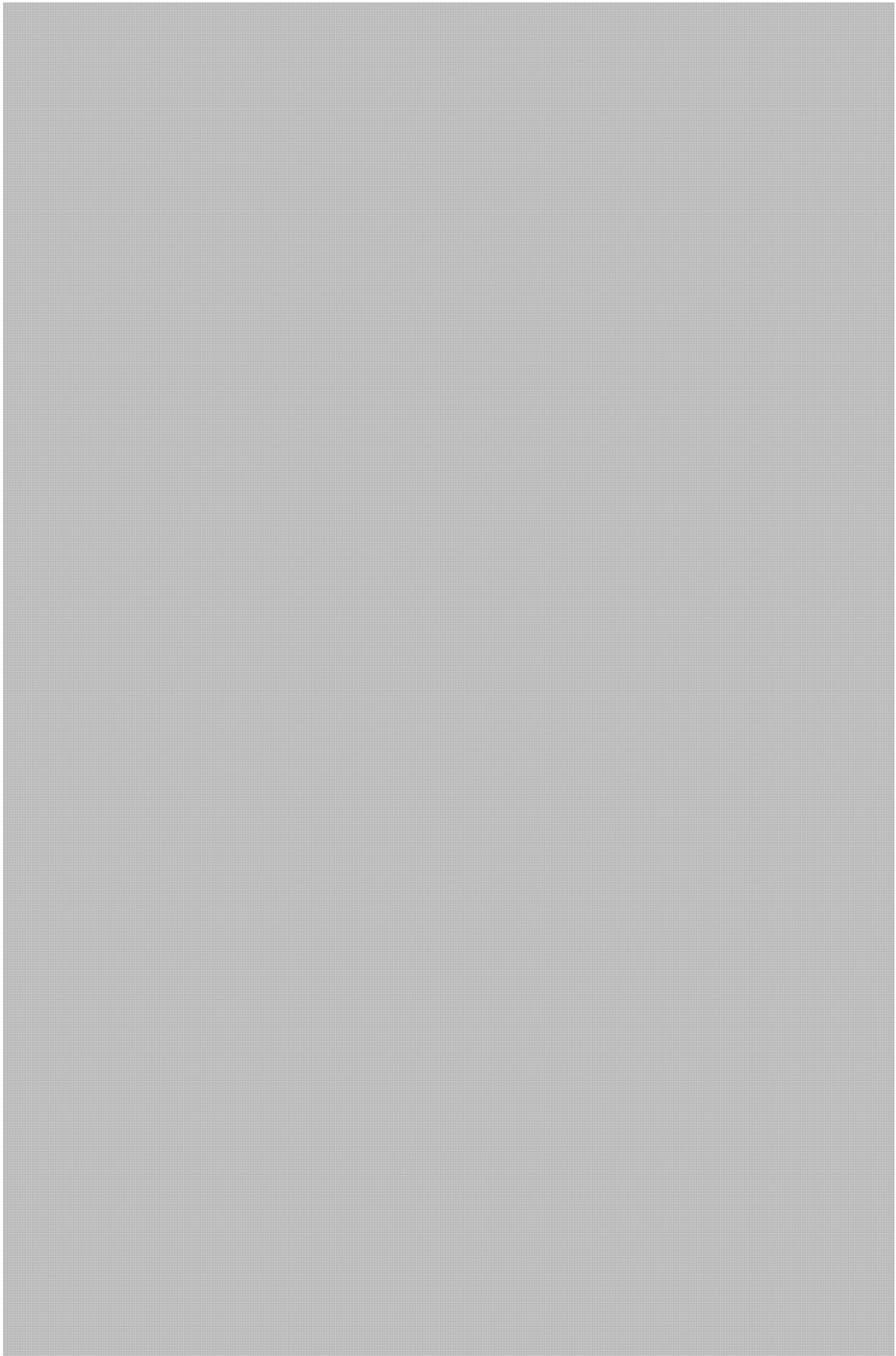
NOT PROCESSED / NON TRAITE



NOT PROCESSED / NON TRAITE

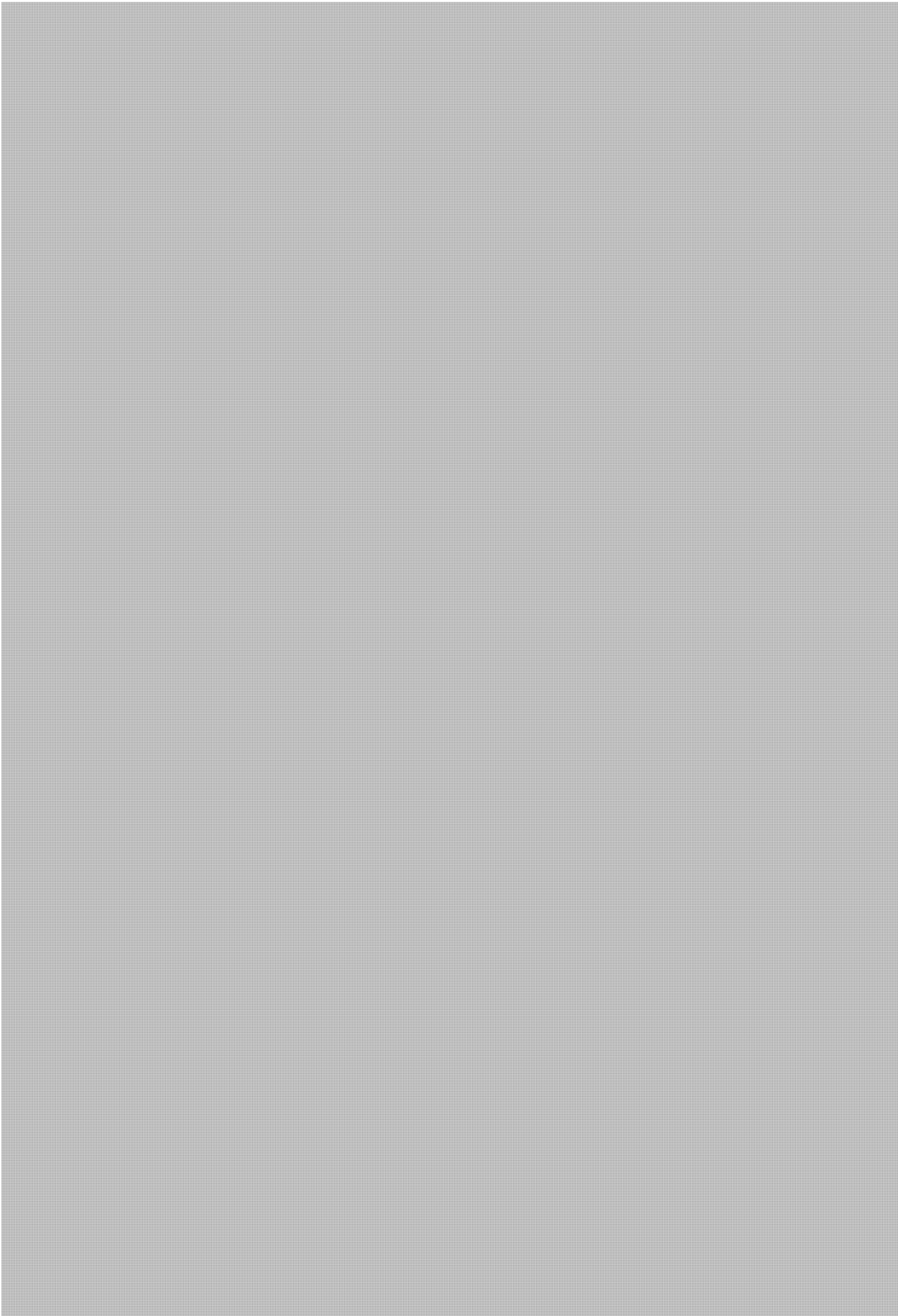


NOT PROCESSED / NON TRAITE

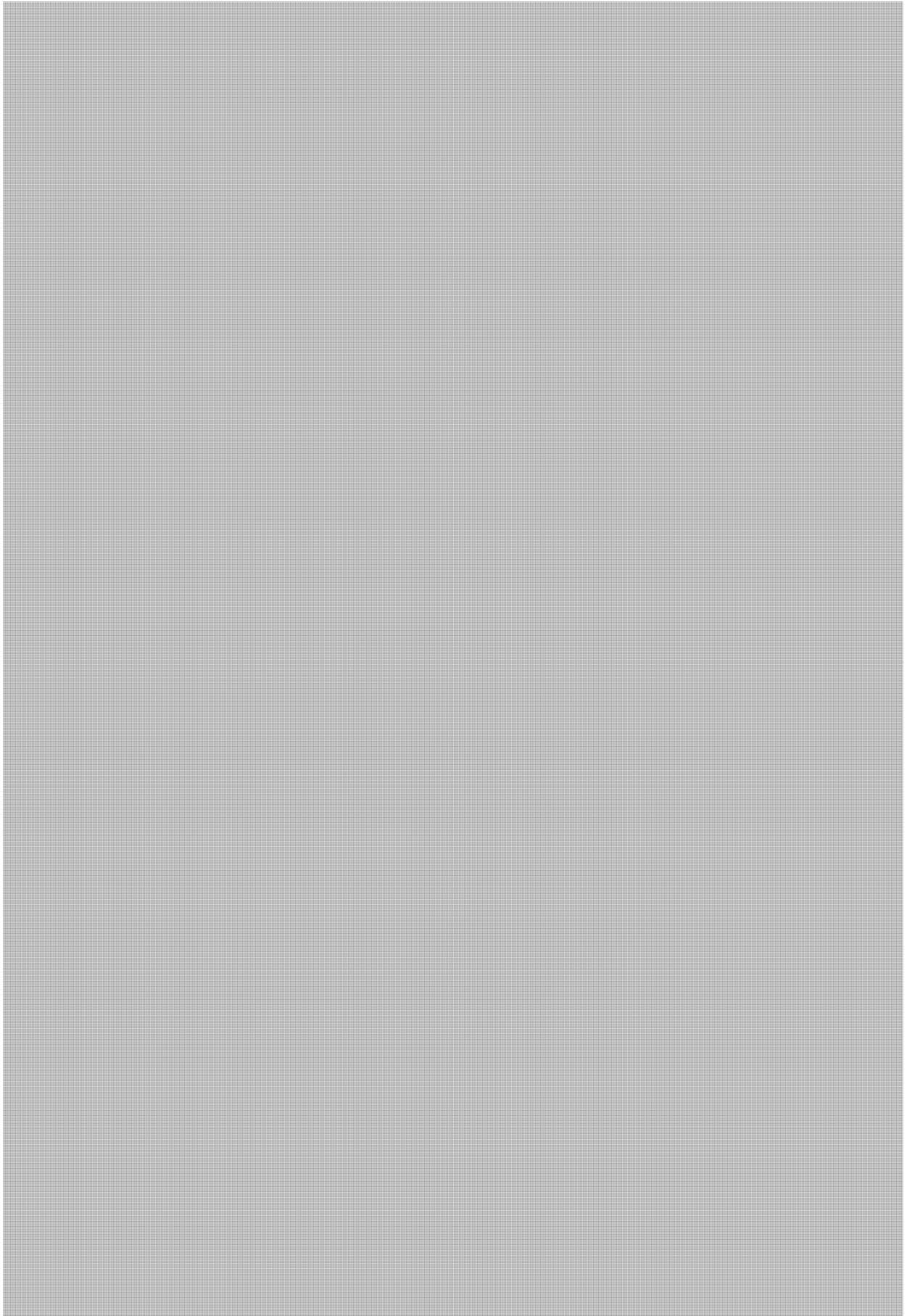


000190

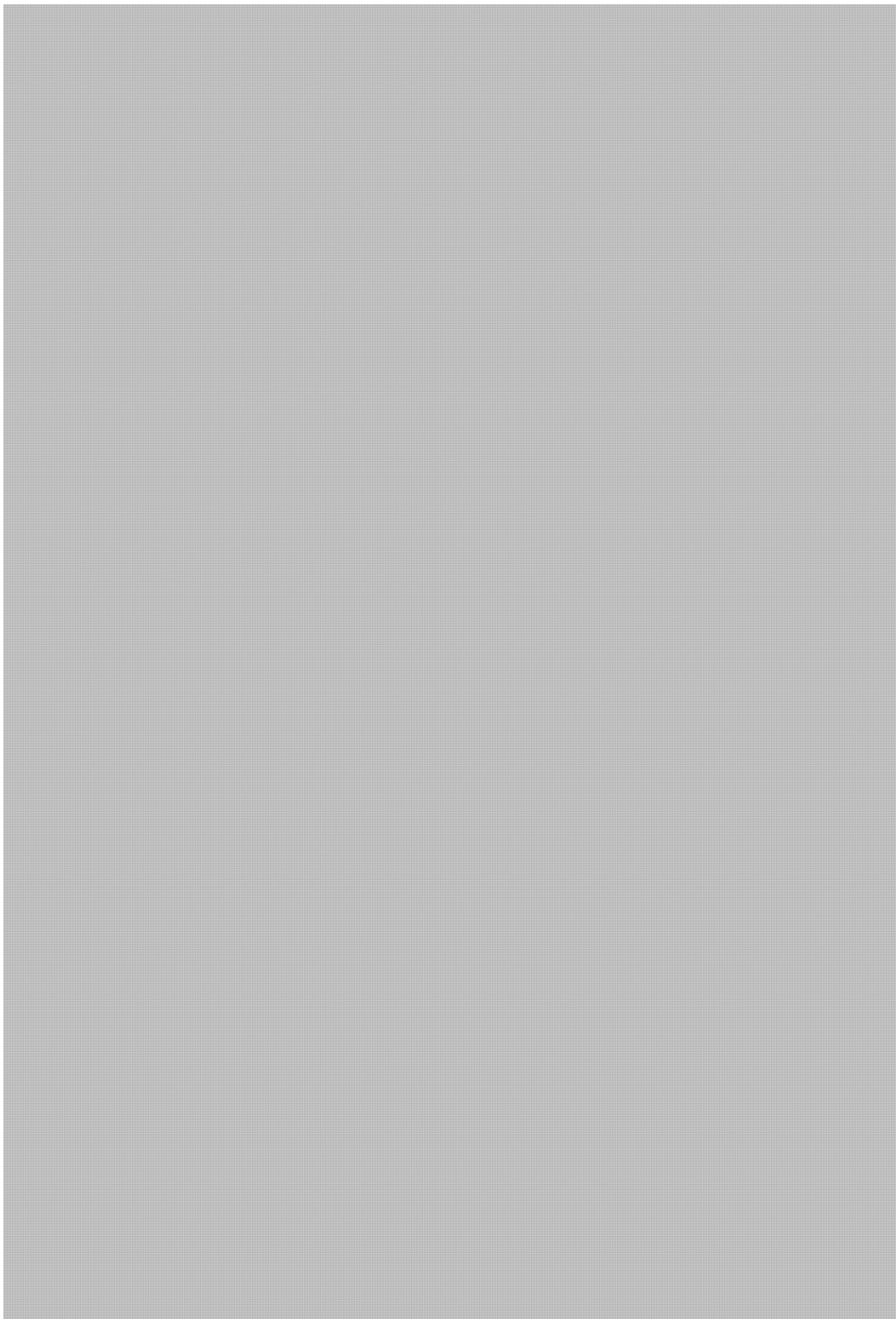
NOT PROCESSED / NON TRAITE



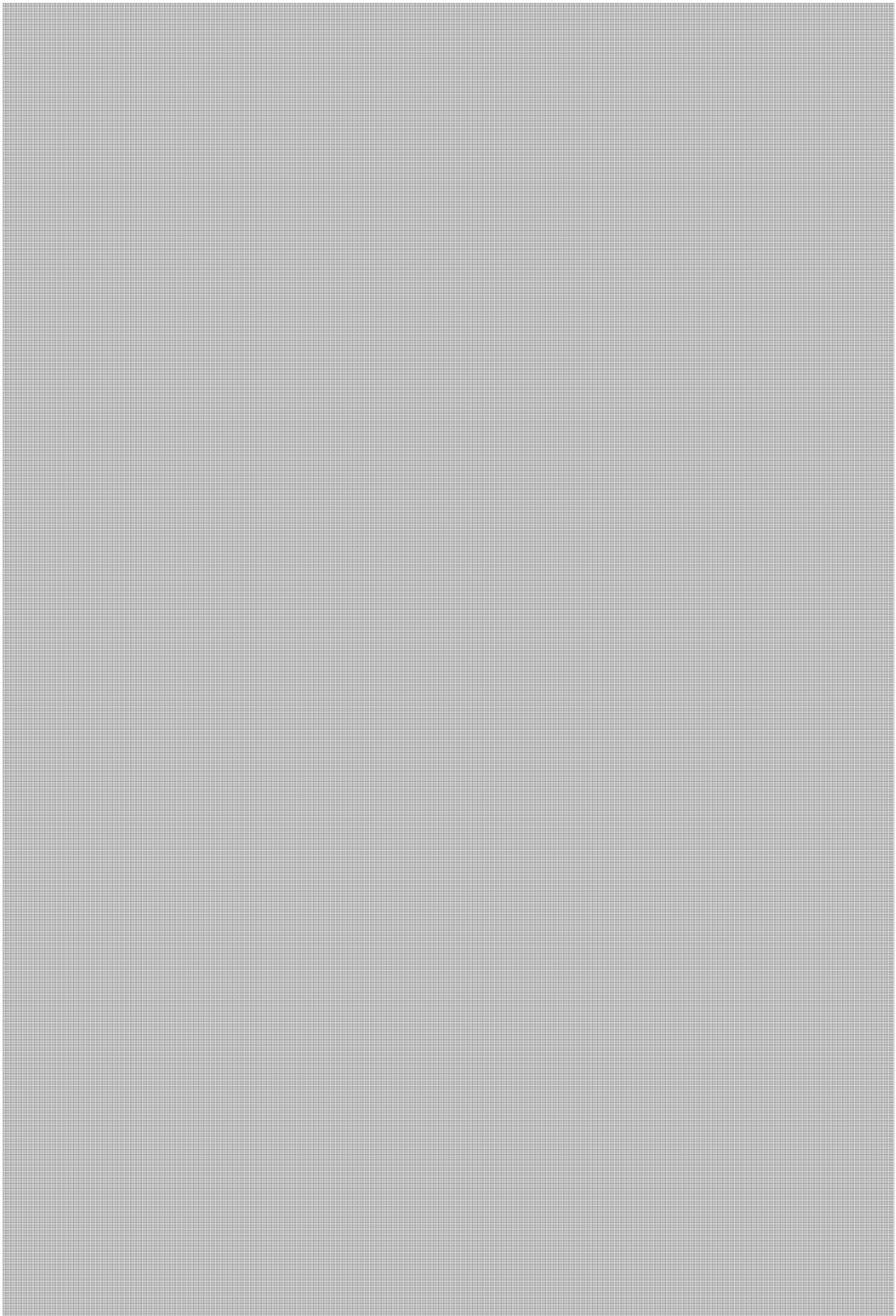
NOT PROCESSED / NON TRAITE



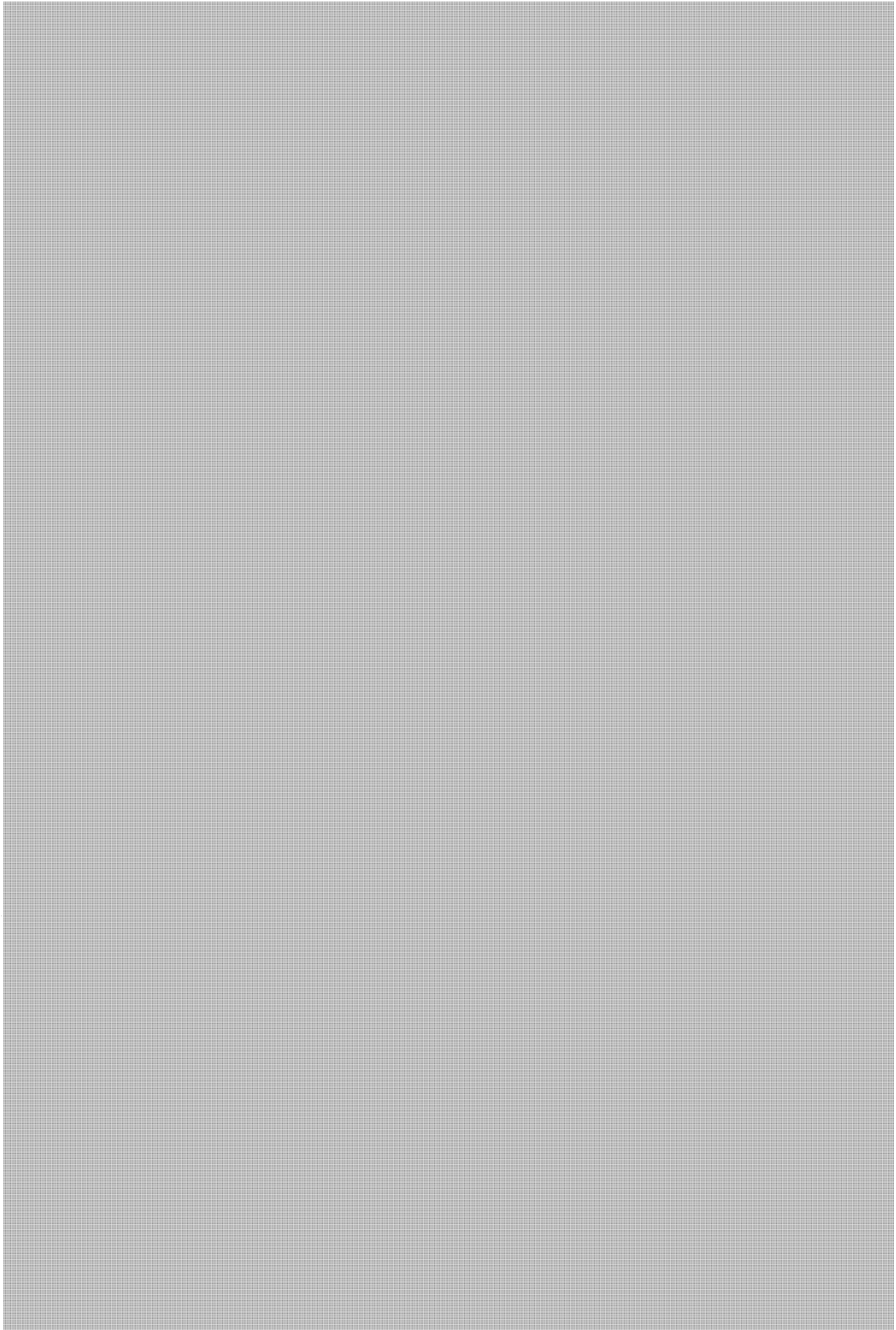
NOT PROCESSED / NON TRAITE



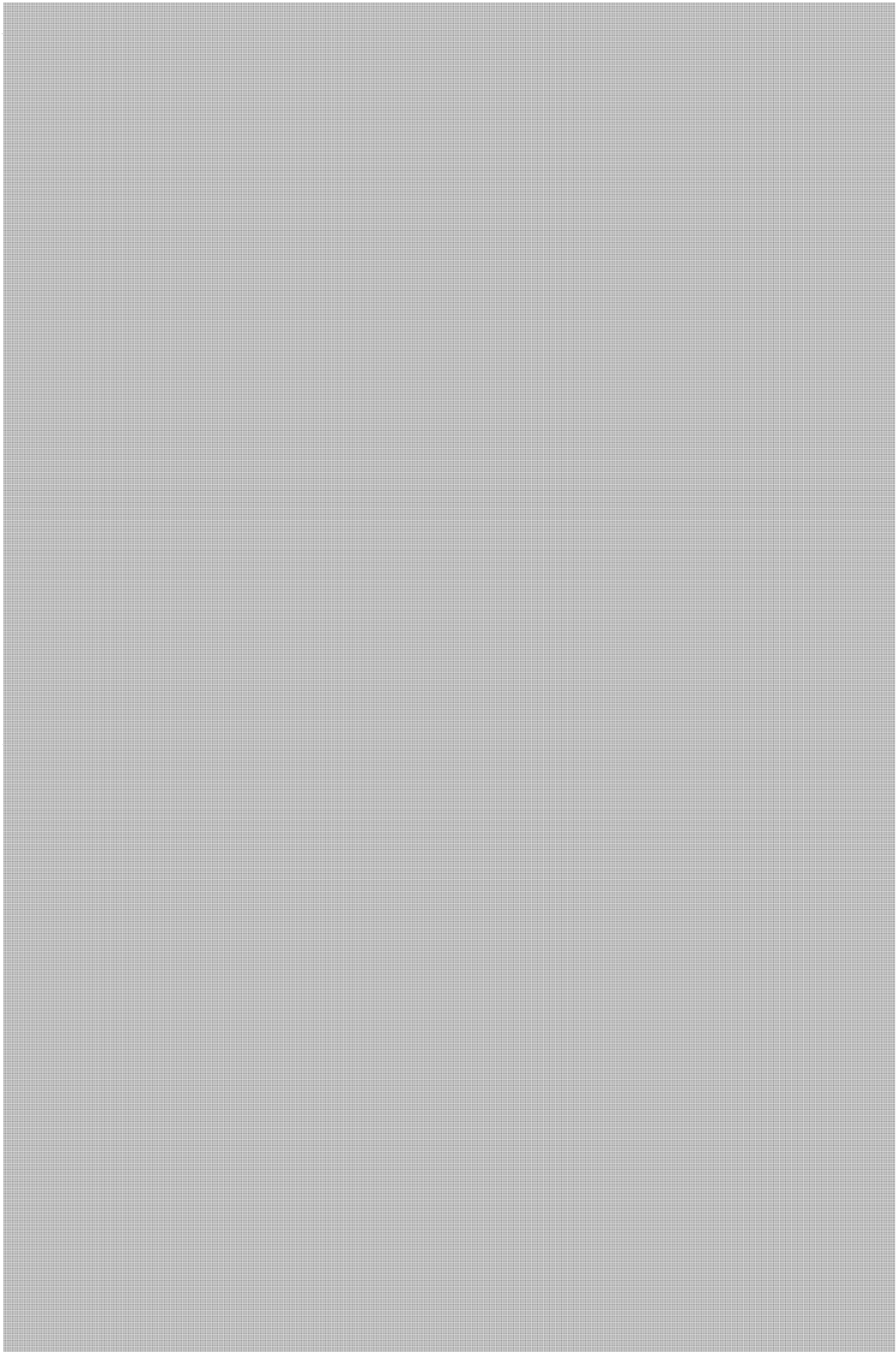
NOT PROCESSED / NON TRAITE



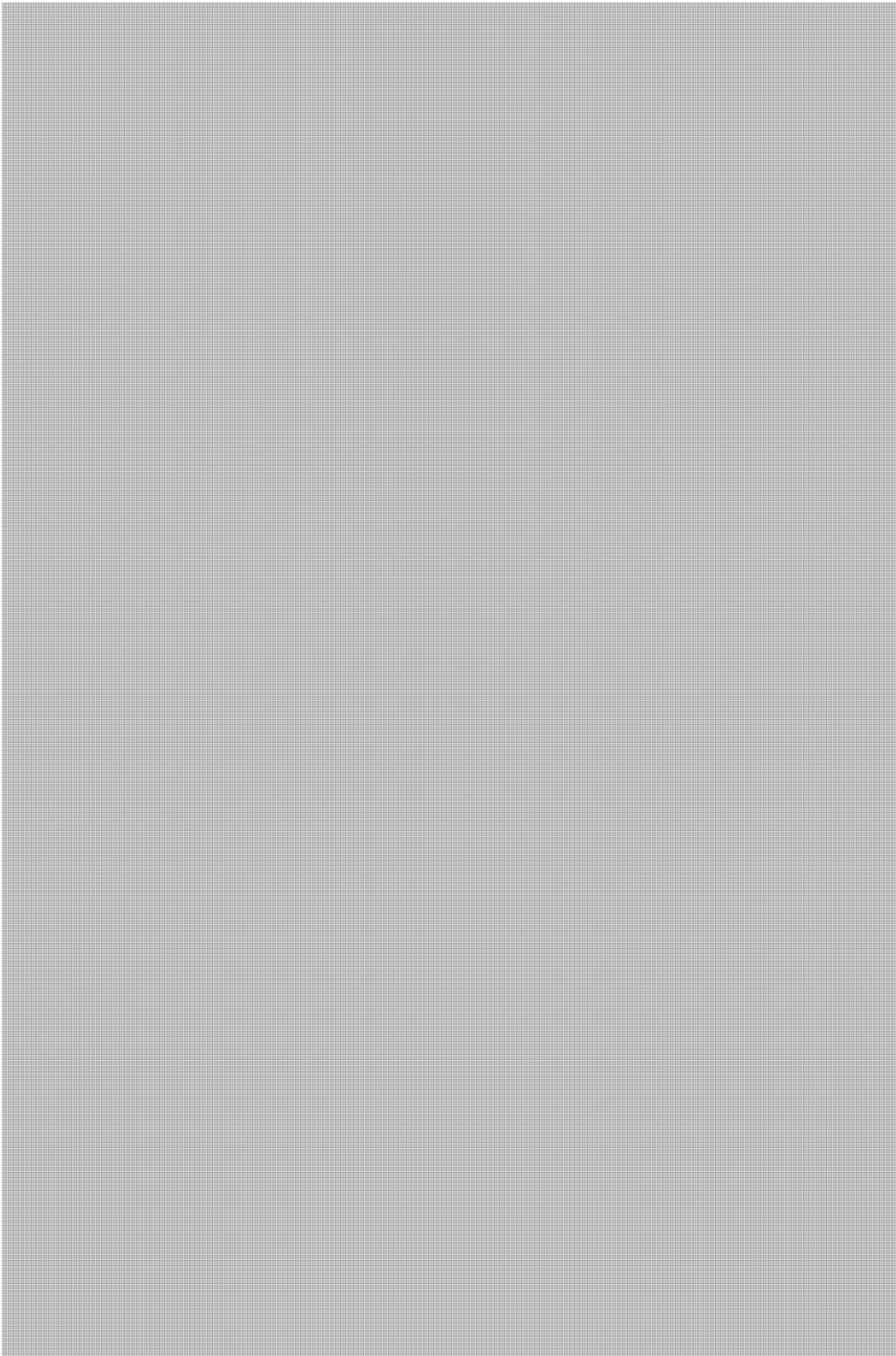
NOT PROCESSED / NON TRAITE



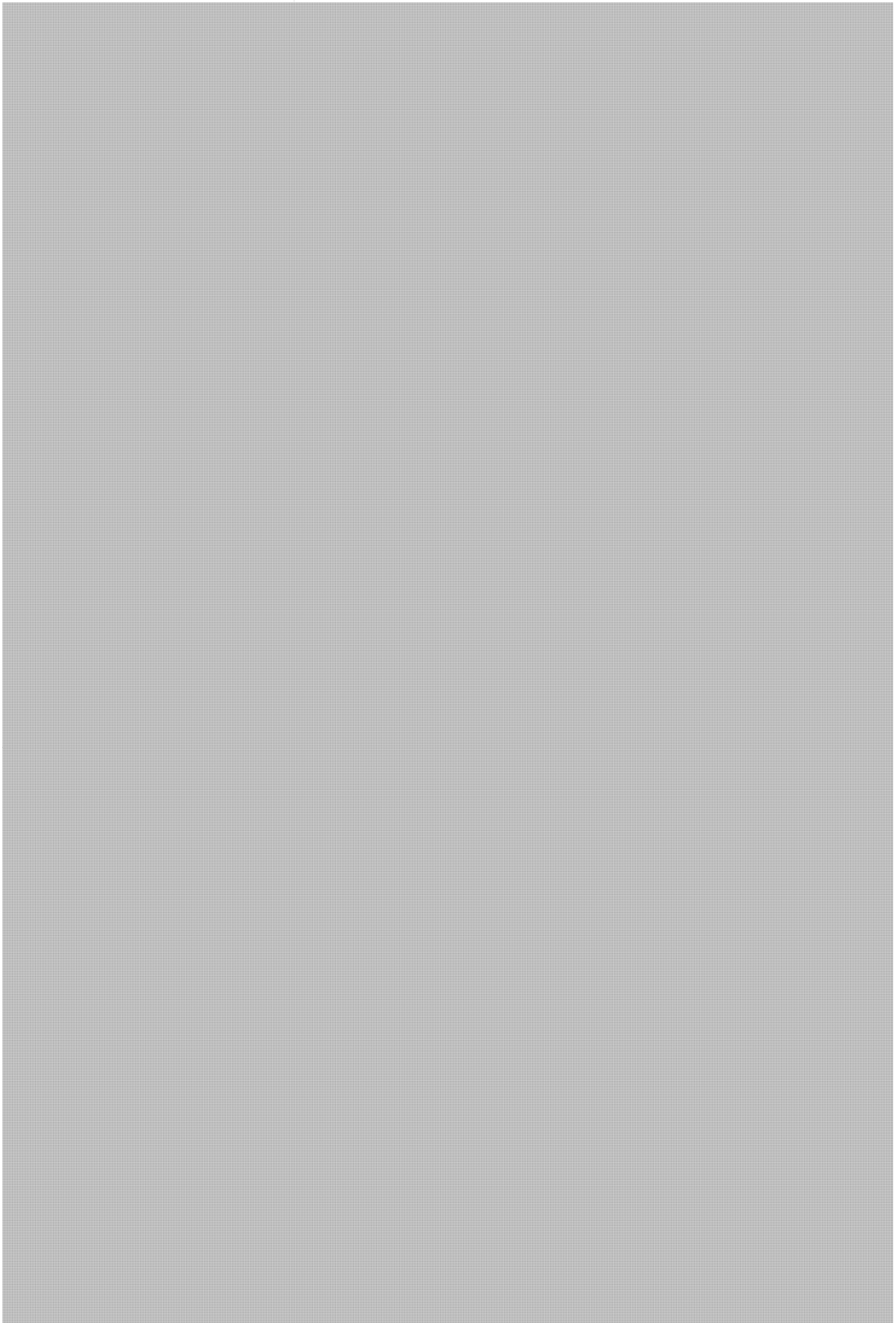
NOT PROCESSED / NON TRAITE



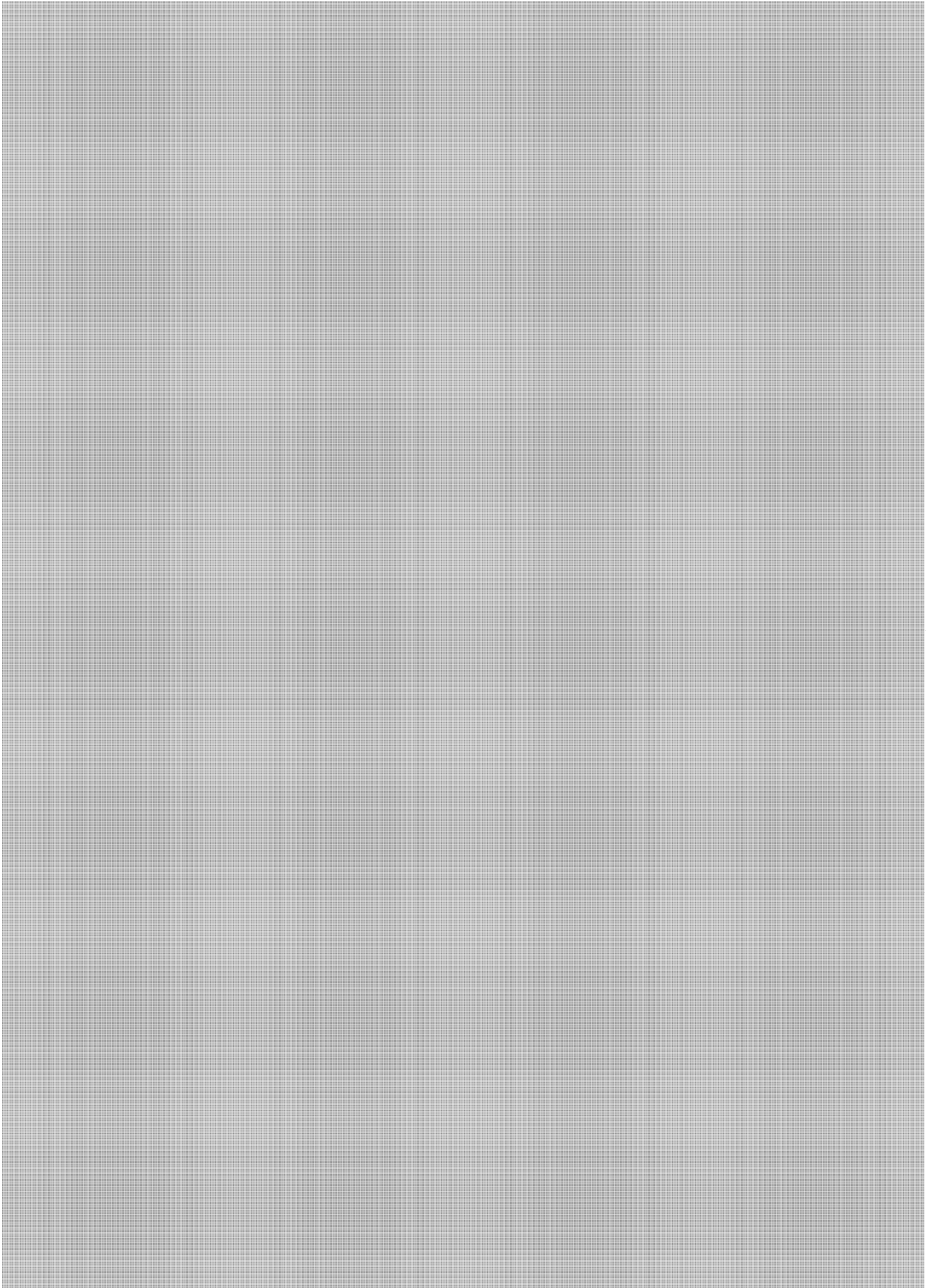
NOT PROCESSED / NON TRAITE



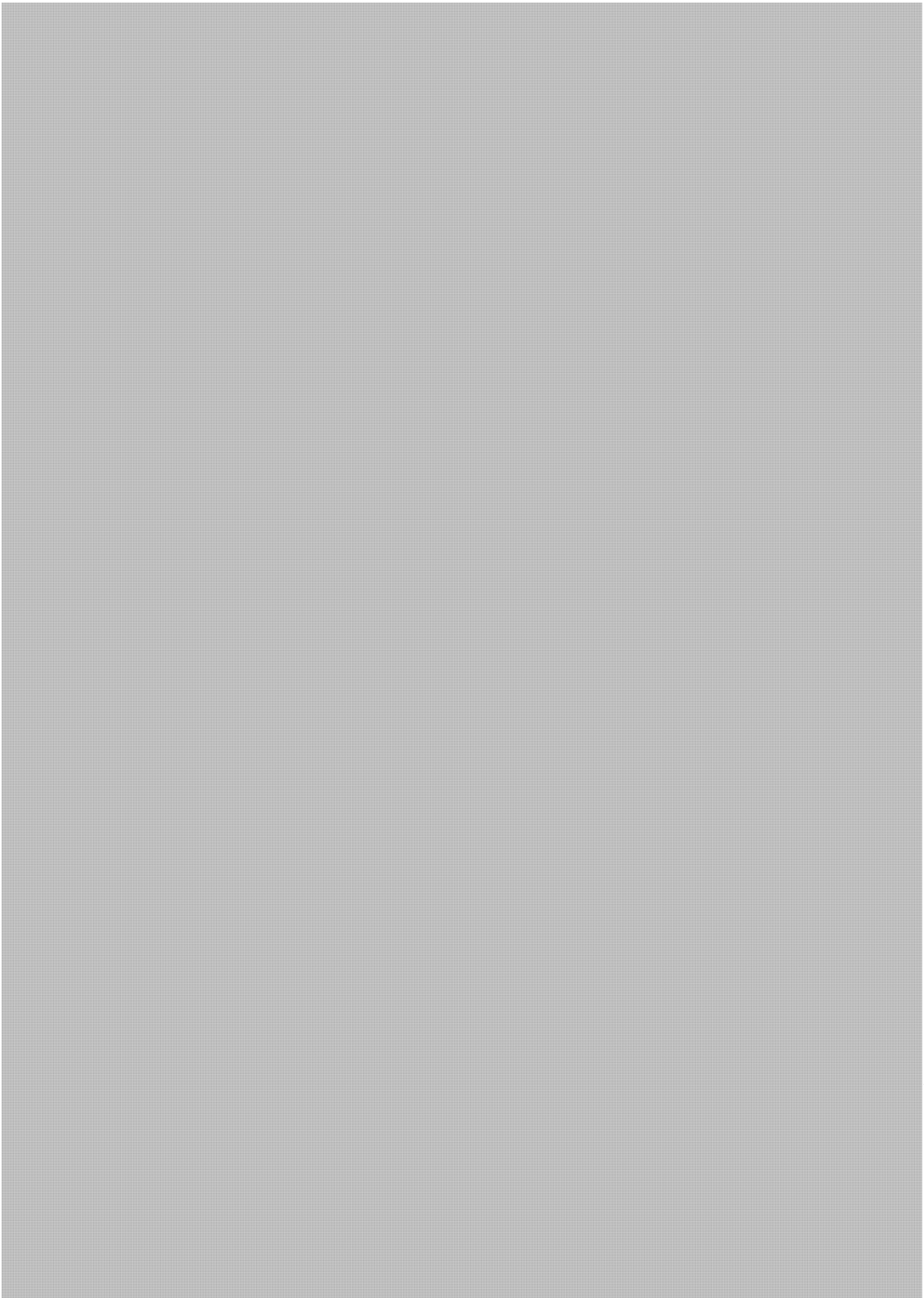
NOT PROCESSED / NON TRAITE



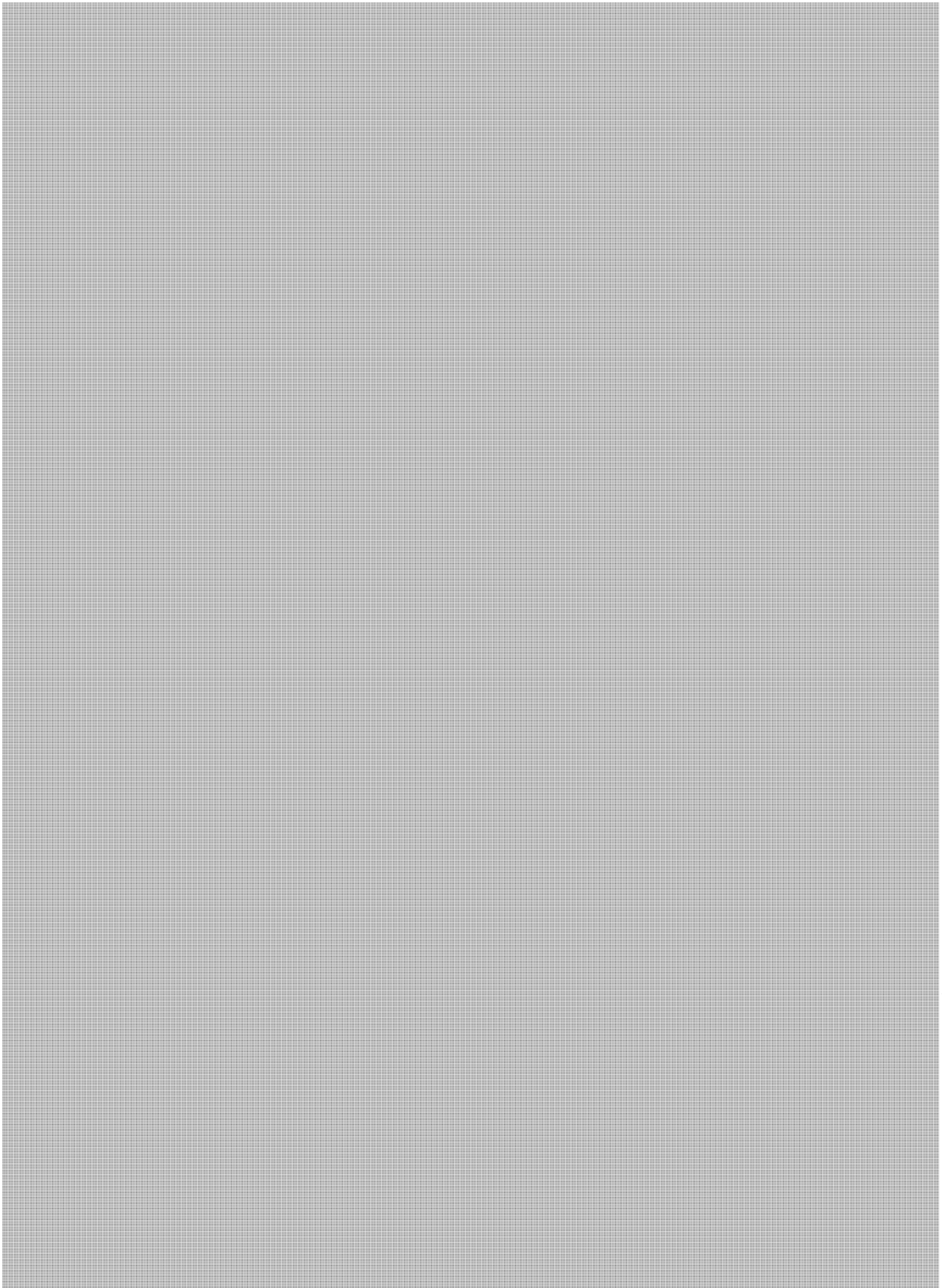
NOT PROCESSED / NON TRAITE



NOT PROCESSED / NON TRAITE



NOT PROCESSED / NON TRAITE



Transnational over-the-top video distribution as a business and policy disruptor: The case of Netflix in Canada

Emilia Zboralska
Ryerson University
emilia.zboralska@ryerson.ca

Charles H. Davis
Ryerson University
c5davis@ryerson.ca

ABSTRACT

Digital disruption is often characterized as the conflict between the exponential rate of change in technology, and the slower-paced, incremental rate of change in law, economy, policy, and society writ-large (Franklin, 2012). The rapid encroachment of over-the-top (OTT) content distribution raises policy issues concerning jurisdiction, access, pricing, consolidation of ownership, and source diversity (Holt, 2014), while undermining many of the traditional policy instruments. In this paper, we analyze Netflix's strategic expansion and meteoric growth in Canada, and focus on a landmark event in Canadian broadcasting policymaking: the Canadian Radio-television and Telecommunications Commission's (CRTC) "Let's

Talk TV" hearings of 2013-2014. Through an examination of public documents, we analyze the ways Netflix is considered an opportunity, ally, or a threat by consumers, broadcasters, independent producers, and governments. We show that in a reprioritization of values, many of the principles that motivated legacy broadcasting policy are being sidelined by a consumerist approach that gives freer rein to streamed services. However, Netflix's refusal to provide the Commission with information it was ordered to produce suggests the most serious disruption is to the notion that online video distribution can or should be regulated in the public interest.

The Journal of Media Innovations 4.1 (2017), 4-25.

DOI: <http://dx.doi.org/10.5617/jmi.v4i1.2423>

© Emilia Zboralska and Charles H. Davis, 2017

INTRODUCTION

Domestic broadcasting industries are considered vital to national cultural expression and democratic practice, and for that reason they frequently receive governmental support and protection and are regulated in the public interest. In Canada, the television broadcasting system serves as a major instrument of national policy regarding creation and distribution of domestic content, with attendant expectations concerning national cultural expression, cultural sovereignty, and democracy

Keywords

media innovation, media policy, political economy, over-the-top video distribution, broadcasting

(Armstrong, 2010; Grant & Wood, 2004; Le Goff et al., 2011; Picard et al., 2016).

The “digital shift” in the media and content industries is disruptive, introducing major transformations in consumer behaviour, business models, and competition, and requiring broadcasters to develop multi-platform, multi-product proficiencies (Doyle, 2015; Naldi, Wikström & Von Rimscha, 2014; Oliver, 2014). Disruption of core technologies “inevitably creates tension for regulatory institutions” (Downes & Mayo 2015, p. 11), raising acute policy issues concerning jurisdiction, access, pricing, consolidation of ownership, and source diversity (Holt, 2014; Simon & Bogdanowicz, 2012). Disruption causes the legacy regulatory regime to become “unstuck” in the sense that “the old [policy] instruments, like existing national mechanisms for direct support and domestic content regulations, may no longer work,” while there is lack of a “clear idea about what to replace them with” (O’Regan & Goldsmith, 2006, p. 82). Regulatory “unsticking” exposes the mixture of entitlements and responsibilities constituting the legacy regime, as well as what Freedman (2015) calls “policy silences,” pathways that are not considered or discussed publicly.

The television broadcasting sector is experiencing an unfamiliar pattern of disruption: “big bang” expansion (Downes & Nunes, 2014) of highly capitalized, rapidly scalable transnational online services which quickly develop large bases among domestic consumers, making domestic incumbents appear as slow-moving, self-serving rent-seekers (Cable, 2016). The case of Netflix in Canada demonstrates how the Canadian broadcast industry is being disrupted through “big bang” innovation in the screen media sector. The U.S.-based Netflix has been operating in Canada only since 2010, but is estimated to have attracted nearly 50% of Anglophone Canadians as subscribers (MTM, 2016). Our paper focuses on a recent landmark event in Canadian broadcasting policymaking: the Canadian Radio-television and Telecommunications Commission’s (CRTC) “Let’s Talk TV” hearings of 2013-2014. On October 24, 2013 the Canadian broadcast regulator (CRTC) announced the launch of a year-long, three-phase review of the Canadian broadcasting system. The policy process, dubbed “Let’s Talk TV” (LTT), invited stakeholders, including individual Canadians, to “shape the future” of the television system so that it “is adaptable for years to come” (CRTC Notice 2013-563). The need for

the review was framed primarily around the observation that television is “evolving at an incredibly rapid rate – and Canada’s regulatory system must change with it” (Blais, 2013b). According to the regulator, on-demand video streaming has altered Canadians’ expectations of the traditional broadcasting system, leading to a growing dissatisfaction with the status quo and a marked need to revise the current rules regulating the operation of Canadian television (CRTC 2014-190).

Although at previous Canadian television policy hearings Netflix portrayed itself as complementary to the traditional Canadian television system, its recent activity, messages to shareholders, and venture into original content show that it now has other plans. Here, we examine the entry of Netflix into a domestic broadcasting system that is already affected by a political environment favorable to transitioning away from cultural protectionism towards deregulation and free market strategies, with a recent federal governing party that chose consumer sovereignty as a plank in its 2015 election platform. Below we discuss Netflix’s activities in Canada, its encounter with the country’s media regulatory agency, and the responses it has elicited in the Canadian television industry.

Through an examination of publicly available documents, including filings to the CRTC, letters to shareholders, leaked e-mails, and other company texts and communications, we analyze the ways that Netflix is considered to represent an opportunity or a threat by the various players in the Canadian television system: consumers, broadcasters, independent producers, and governments. We show that many of the principles that motivated and shaped legacy broadcasting policy in Canada are being marginalized by a consumerist policy approach that gives much freer rein to streamed services than to legacy forms of video distribution. This places incumbent broadcasters at a relative disadvantage vis à vis the over-the-top operators (OTTs), inspiring uncharacteristic expressions of interest from incumbents in a regulatory regime they formerly portrayed as burdensome. The unscripted *dénouement* of the LTT hearings came when Netflix publicly rejected the Commission's jurisdiction over online streamed video services in Canada and refused to provide the Commission with the information it was ordered to produce. This turn of events suggests that the most serious potential disruption in broadcasting's digital transition is to policy itself, by making moot the assumption that online content distribution should

or can be regulated in the national interest. The case presented here illustrates how disruption of regulated media industries involves processes of "unsticking" of regulatory regimes, exposing policy silences and showing that transnational challengers seek rapid expansion among domestic consumers not just for purposes of revenue growth, positioning, or branding, but also to provide leverage in domestic regulatory reform.

INNOVATION, REGULATION, AND DISRUPTION

Digitization affects media industries by driving the cost of additional copies of media content to zero, enabling multiple uses and reuses of media content. It enables interactivity and extensive data collection regarding consumer behavior, provides "location agnostic" advantages to players who can leverage economies of scale and scope, and disrupts and reconfigures distribution networks. Media, IT, and telecommunication sectors that were formerly separate are becoming intermingled, leading to a new business ecosystem in which all segments compete with all other segments for access to end-users and consumers (Simon, 2012; Simon & Bogdanovich, 2012).

Although hundreds of Internet-based video services have emerged since the late 1990s, most of these services have been marginal or niche players (Cunningham & Silver, 2013), allowing domestic broadcasters and cable operators to enjoy a certain bargaining power in architecting delivery platforms (Baccarne et al., 2013; D'Arma, 2010; Evens, 2014; Meisel, 2013). However, the key architects of the emerging media ecosystem are not these niche video distributors, nor the domestic providers of fixed-line or wireless pathways to consumers, but instead providers of transnational cloud-based services, which encompass storage, processing, databases, software, networks, and platforms. According to Noam (2014), advantages of scale and scope are favouring the emergence of a small global oligopoly of cloud providers who exercise considerable market power over users and providers of hardware, software, transmission, and content inputs. Noam considers that the most likely cloud providers in the emerging online media ecosystem will be "tech companies that have morphed into media, such as Google or Apple, or ... hybrid 'tech-media' firms such as Netflix or Amazon" (p. 688). Most of the approximately 500 OTT service providers in the world in 2016 serve local markets; the top five OTT service providers (Netflix, Amazon, Hulu,

HBO, and YouTube) currently represent about half of the \$25 billion in worldwide OTT revenues (Arthofer et al., 2016).

The expansion of players from the computer industry into new industries radically disrupts existing business models (Kushida, 2015). Downes & Nunes (2014) call the process of innovation in which newcomers take advantage of digital and cloud-based technologies to offer consumers massively better, cheaper and more customized experiences from the moment of market entry *big bang disruption*. Highly capitalized transnational OTT streaming video content providers have definite advantages over domestic cable, broadcasting, and satellite services, whose business model involves bundling content with distribution. OTT content providers are able to attract customers away from domestic distributors on the basis of lower cost, greater choice, greater convenience, and (thanks to their huge collections of data on viewing preferences) personalized playlists. They also enjoy deep pockets, brand recognition, and a favorable regulatory environment (Lee, 2014).

Governments regulated the first generation of television, over-the-air broadcasting, justifying their licensing requirements on the grounds of public ownership of scarce spectrum frequencies.

During television's second and third generations (multichannel satellite, cable, telecom networks, and digital television), although carriage capacity increased significantly, most governments continued to regulate domestic broadcasting systems by requiring licenses or notification for television distribution (Schweitzer et al., 2014). The fourth generation of television, video streamed over Internet broadband, provides high resolution, peer and person-to-computer interactivity, asynchronous viewing, multiplatform distribution, and user-generated peer-to-peer content (Noam, 2014), presenting significant challenges to policy regimes, their historical rationales, and regulated incumbents.

Cable (2016) emphasizes the increased incidence of "reformer startups" or fast-moving, well-capitalized newcomer firms that "operate in the face or shadow of prohibited regulatory regimes" (p. 2). These firms rapidly gain traction in the domestic market and grow large customer bases, deterring regulatory intervention and disrupting the policy regime. Policy disruptions are characterized by "a change in the material conditions of a market (either an existing one or a new one), which leads to an invalidation of existing regulatory expectations, norms, ideas and frameworks, and pressure to accommodate and eliminate this invalidation"

(Hasselbalch, 2014, p. 23). Two conditions must be met in order for a policy regime to become disrupted: 1) the innovator must move first, steering the market, and its development, and 2) the externalities arising from the innovation must be considered controversial and enter public and political debate (Hasselbalch, 2014). Three factors allow an innovator to move before the regulator: novelty (when the innovation presents something regulators have not encountered), speed (when it rapidly creates new markets), and obscurity (when it and its transactions develop and occur outside of the purview of regulators) (*ibid.*).

Downes & Mayo (2014) argue that regulatory inertia in the face of disruptive innovation in the communications sector stems from: 1) an increasing mismatch between regulations and the reality that regulated markets are now consistently driven by innovation, 2) the failure of regulatory bodies to adapt their rules when regulations made by competing or complementary bodies are altered, and 3) political forces which must navigate the institutionalized distribution of benefits created by previous policy regimes. The political dimension of regulatory decisions in the face of disruptive innovation is increasingly significant in situations where the status quo is justified in terms of abstract public

benefits (Cable, 2016). Because reformer startups offer consumers immediate benefits, regulations that negatively affect these benefits can carry significant political cost (*ibid.*).

Thus, due to their deep pockets and their exponential growth that occurs in the shadow of existing regulatory regimes, reformer startups have substantively more clout in their interactions with regulators than the less-capitalized startups of the past (Cable, 2016). Rational choice theory predicts that coalitions of opposing interest groups who decide on a common goal are more likely to succeed in steering regulatory decisions in their collective favour than groups with dissenting goals. Yet these coalitions ultimately may have divergent goals. Cable (2016) evokes regulatory economist Bruce Yandle's famous "Bootleggers and Baptists" catchphrase to refer to such a situation in which makers of illegal alcohol supported religious prohibitionists in order to drive up demand for product only they could supply. In the present case, transnational providers of online services ally with domestic consumers in support of consumer sovereignty in order to deter extension of domestic regulations.

In most jurisdictions, regulatory regimes for broadcasting have not extended their concerns about production, distribution, and exhibition of

domestic content to the digital sphere, continuing to focus their efforts on the legacy broadcasting system, and favoring market forces and consumer satisfaction as the driver of innovation, rather than other dimensions of public interest (Freedman, 2015b). On the whole, little effort has been made to secure new digital shared public spaces, which could complement, supplement, or perhaps eventually replace those shared televisual spaces historically safeguarded by legacy broadcasting policy (Freedman, 2010; 2015b). Notably, proposals to secure and cultivate shared *national* spaces in the digital realm are treated as relics of an earlier era.

CULTURAL SOVEREIGNTY AND THE DOMESTIC POLICY ENVIRONMENT

Canadian broadcasting policy has developed an uneasy mixture of economic and cultural objectives to attain a measure of cultural sovereignty in the context of Canada's small national market, which is now dominated by a handful of domestic vertically and horizontally integrated media and telecommunications conglomerates (Edwardson, 2008; Winseck, 2008). The 1991 Broadcasting Act ("the Act") is the preeminent legislation that governs

broadcasting activities in Canada. The Act provides that "Canadian broadcasting shall be effectively owned and controlled by Canadians." The Canadian broadcasting system, the Act continues, should "serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada" by encouraging "the development of Canadian expression" by "displaying Canadian talent in entertainment programming" and by "offering information and analysis concerning Canada and other countries from a Canadian point of view" (Part 1, Section 3). According to the Act, the broadcasting system should be reflective of Canada's multiculturalism, in both "its programming and ... employment opportunities" (Part 1, Section 3.1.d.iii). The Act also stipulates that each broadcasting undertaking must make "predominant use, of Canadian creative and other resources in the creation and presentation of programming" (Part 1, Section 3).

Achieving these policy objectives involves a "high-end trade off" wherein "once admitted into the market, Canadian companies are protected from competition, especially foreign competition" (Raboy & Bonin, 2008, p. 61). In return they are expected to contribute to the goals and objectives of the Broadcasting Act, including production and exhibition of unprofitable Canadian content. The

Act provides the basis for Canada's complex broadcasting "policy toolkit" (Grant & Wood, 2004), which currently consists of the maintenance of a Canadian national public broadcaster, Canadian content expenditure and scheduling requirements, foreign ownership restrictions on broadcasting entities, competition policy, and subsidies and tax incentives. The Act gives the Commission the power to exempt entities from any and all regulatory requirements if it "is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy" (Part 2, Section 9.4). Since 1999, foreign and domestic new media in Canada operate under the Digital Media Exemption Order (DMEO), and are not required to contribute to the goals ascribed to the Canadian broadcasting system.

Although some reports submitted to the 2014 "Let's Talk TV" hearings determined that over-the-top video streaming did not represent an immediate threat to Canadian incumbents, it was thought that a tipping point could be reached in three to five years. The question of how a national media regulatory agency might regulate a transnational video streaming service, and in whose interest, burst unexpectedly into the open when Netflix claimed to operate outside the jurisdiction of the Broadcast-

ing Act and declined the CRTC's request to provide information about subscribers, audiences, and the Canadian content it distributes.

NETFLIX: FRIEND OF CANADIAN CONSUMERS

Canada was the first target of Netflix's international expansion. After Netflix's 2010 entry into Canada, its popularity with Canadian consumers grew rapidly. Through its pricing, its advocacy of net neutrality, and its tolerance of Canadian customers using virtual private networks (VPNs) to tap into the company's much richer program offerings in the U.S. market, Netflix has positioned itself as more friendly to Canadian consumers than the incumbent domestic broadcasters. In typical big bang disruptor fashion (Cable, 2016; Downes & Nunes, 2014; Hasselbalch, 2014), Netflix has been able to offer greater choice, convenience, and affordability at market entry, rapidly growing its market share in the face of regulatory uncertainty.

Canadian audiences are highly attracted to imported American drama and comedy, and domestic broadcasters resist the obligation to produce and exhibit Canadian content because it is less expen-

sive and more lucrative to import content from elsewhere. Canadian broadcasters therefore generally treat Canadian content as a burden they must endure in exchange for the industrial protections they receive (Grant & Wood, 2004; Le Goff et al., 2011; Picard et al., 2015). When English-speaking Canadians watch drama or comedy on television, it is imported content four times out of five (CRTC, 2013). Meanwhile, Canadian consumers and critics lament the mediocrity of English-language Canadian television content, especially drama, which generally has underperformed among English-speaking Canadian audiences (Coutanche, Davis & Zboralska, 2015).

Of all the players in the domestic television ecosystem, it is the domestic broadcasters that have developed the most problematic reputation among consumers, who express their dissatisfaction across a multitude of fora, including interventions submitted to CRTC public consultations and through less formal channels such as online newspaper comments sections, social media, and blog posts. Frequently cited complaints include: billing errors; dissatisfaction with content and the way it is programmed (i.e. the perception that there is too much repetition in programming) and sold (i.e. the way content is bundled and organized across vari-

ous tiers); a belief that broadcasters' services are inflated in price; and a dissatisfaction with customer care. A recent study found that 51% of Canadian linear television subscribers contact their providers for customer service, and that 33% of these individuals do not have their complaints resolved by their service provider on the first call (J.D. Power, 2014).

Canadian media scholars have argued that the CRTC historically has been under regulatory capture by the private sector (Hoskins & McFadyen, 2004; Raboy, 1990; Raboy & Bonin, 2008; Skinner, 2008), or alternatively that Canadian communications policy has existed in a "vacuous netherland," marked by "the worst of all possible worlds" where "neither regulated monopoly, meaningful competition, [n]or regulatory responsibility prevail" (Winseck, 1998, p. 257). Given Canadian rules against majority foreign ownership of broadcasting and telecommunications entities, Canadians did not have many alternatives until the arrival of Internet-based streaming services such as Netflix. Netflix has committed itself to providing an excellent user experience, and has identified consumers' troubled relationships with domestic incumbents as an opportunity to exploit:

We are a relief from the complexity and frustration that embody most MVPD [multichannel video programming distributor] relationships with their customers. We strive to be extremely straightforward. There is no better example of this than our no-hassle online cancellation. Members can leave when they want and come back when they want. (Netflix, 2015a)

Although penetration rates of Internet are high in Canada, the country ranks low on key indicators related to Internet quality, value, and download speed when compared to other OECD countries (Ookla, 2015a, b, c). Netflix has publicly criticized Canadian ISPs for their cost and quality of service. In 2012, Netflix's chief content officer, Ted Sarandos, commented that "what they're charging for Internet access in Canada" is "almost a human rights violation" and that Netflix's performance in the Canadian market would be even better were it not for the "almost third-world access to the Internet" sold at bandwidth caps that are prohibitive to streaming (Tencer, 2012). Indeed, scholars have long recognized that the vertically integrated Canadian incumbents, with assets in telecommunications, content creation, traditional television distribution, and Internet distribution, have the capacity to

provide undue preference to themselves by raising Internet rates, or lowering Internet data caps, and engaging in unfair traffic management strategies, rendering the streaming of audiovisual content from third parties potentially cumbersome and unaffordable (Guindon & Dennie, 2010; Middleton, 2011; Quail, 2012; Winseck 2008). Internet pricing and quality fundamentally affect streaming behaviours (Stewart, 2015), and are thus of paramount importance to Netflix.

Net neutrality has emerged as a politically charged issue in Canada and abroad, and Netflix has conspicuously placed itself on the side of consumers in this regard. Netflix has presented itself as a champion of net neutrality, giving itself a positive aura from the perspective of advocates and consumers. Netflix's advocacy of net neutrality presents a powerful veneer of the greater good over its own economic interests. Strong net neutrality laws allow Netflix to profit from the sale of its services directly to consumers without having to make costly investments in network infrastructure. In 2015, Netflix spent 1.32 million dollars (U.S.) on its lobbying efforts, most of which were aimed at Internet-related issues (Center for Responsive Politics, 2016), and U.S. federal records indicate

that in 2012, Netflix formed a political action committee (PAC), permitting it to contribute directly to federal campaigns (Thier, 2012).

Despite the fact that Netflix and consumer interests are *currently* closely aligned, the limits of this relationship have yet to be tested. Although publicly a champion of net neutrality, Netflix has, on multiple occasions, agreed to deals in which its services become prioritized, effectively undermining its commitment to the principle, including a multi-year direct traffic access deal with Comcast in 2014 (Brandom, 2014; Gustin, 2014), and one with Australian ISPs that sees its content excluded from data caps (Netflix, 2015b). Now that it has reached its current size, Netflix has indicated that even if net neutrality rules were to weaken under the current Trump administration, its bottom line would be materially unaffected “because we are now popular enough with consumers to keep our relationships with ISPs stable” (Netflix as cited in Dunn, 2017).

Another aspect of Netflix’s consumer-friendly aura, adding weight to the Baptists and Bootleggers analogy (Cable, 2016), was Netflix’s long-time tolerance of customers who surreptitiously bypassed the rights market in their own territories. In 2015, an estimated one-third of Anglophone Canadians

used a virtual private network (VPN) to access the U.S. version of the service, bypassing the Canadian rights market completely (Kwong, 2015). Canadians were eager to access the U.S. version of the service due to its richer content catalogue at the time.

Netflix’s user contract has long contained a clause that permits it to suspend user access on the suspicion of territory circumvention (Netflix, 2014c). For years the company did not act on these provisions, although it faced increasing pressure from rights owners to do so. Indeed, Netflix’s (leaked) contract with Hollywood’s Sony Studios reveals that it is required to “use ... geolocation bypass detection technology” to identify territory circumvention services (WikiLeaks, 2015a). Leaked private e-mails between Sony executives revealed their “deep dissatisfaction” with Netflix’s inattention to the matter, and the apparent intentionality of this behaviour, noting that Netflix had the incentive to be permissive with VPN usage “since they are getting paid by subscribers in territories where Netflix does not have the rights to sell our content” and “have every motivation to continue” given that increased subscriptions lead to a higher market valuation (WikiLeaks, 2015b). Canadian rights holders also objected to Netflix’s extended tolerance of rights violations. The senior vice president

of the Canadian vertically integrated communications firm Rogers, David Purdy, allegedly remarked that VPNs should be made illegal by the Canadian government in order to maintain a distinct rights market in Canada (Tencer, 2015). Bell Media president Mary Ann Turcke equated Canadian consumers’ usage of VPNs with stealing, triggering a wave of consumer and media backlash (Dobby & Bradshaw, 2015). While Netflix was being permissive with its tolerance of VPN-masking behaviour, old-media incumbent and Hollywood studio-owned streaming service, Hulu, had long enforced a stronger, payment-based authentication system, which had largely eradicated out-of-market access to its service (Van der Sar, 2014). Netflix thus could have similarly imposed stronger geolocation restrictions if it had been so inclined at the time. The issue was therefore not primarily a technological one, as implied by Netflix when it appeared before the Commission during LTT (CPAC Digital Archives, 2014b).

Rather than enforcing stricter protocols, in 2015, Netflix CEO Reed Hastings publicly commented that he hoped Netflix would be able to “get global and have its content be the same all around the world so there’s no incentive” to use a VPN (Hopewell, 2015). Just one year later, after Net-

flix's entry into another 130 territories and Hastings' declaration that the world was "witnessing the birth of a global TV network" (Liedtke, 2016), Netflix finally began enforcing its own longstanding policies on out-of-market access (O'Neil, 2016; Slater-Robins, 2016). Increased pressure on Netflix to honour its agreements with rights holders is likely behind the change in strategy. Prior to its recent global expansion, it made economic sense for the company to tolerate surreptitious access, given that many paying users were only able to access the service through VPNs when living in areas where the company was not officially a market player (Slater-Robins, 2016). In view of Netflix's recent global expansion, the risks associated with its permissiveness (i.e. potential legal action by rights holders) now outweigh the benefits.

In summary, with respect to its public image and branding, Netflix has closely aligned itself with consumer interests such that many regard it as an emancipatory and innovative disruptor of the much-derided Canadian status quo. In the next section, we analyze "Let's Talk TV" interventions to show how OTT is perceived to disrupt the Canadian broadcasting system.

LET'S TALK TV

The CRTC's review of the Canadian broadcasting system, "Let's Talk TV," invited stakeholders, including individual Canadians, to "shape the future" of the television system so that it "meets the needs of Canadians as consumers, creators and citizens" and "is adaptable for years to come" (CRTC 2013-563). The hearings had broad scope and examined programming, distribution and access, and accessibility issues. The Commission warned that the evidence collected during the LTT process could indicate the need to "remove or adapt some ... existing regulations" and that the Commission was not "interested in satisfying anybody's sense of entitlement, based on the way things used to be" (Blais, 2013b).

The LTT process demonstrates the significant political tensions that come along with the introduction of disruptive innovation into regulated markets. By making changes to existing regimes, regulators are at once at risk of alienating voter-consumers, disturbing the complex set of institutionalized benefits and tradeoffs developed in the previous regime, and inadvertently acting as barriers to innovation with the absence or introduction of new rules. As Cable (2016) contends, however,

each regulatory process is "its own political economy, and we cannot assume that the benefits of innovation necessarily outweigh" traditional policy concerns (p. 12).

Although the CRTC is an independent body that is supposed to operate at arm's length from the government, it is not completely insulated from politics (Salter & Odartey-Wellington, 2008) and its orientation is certainly affected by the government of the day (Raboy, 1994). The chairperson is appointed by the federal government. The regulator thus brings its own conceptual lens, which defines and limits the field of potential action, and determines which issues are deemed to be salient and worthy of attention.

Freedman's (2010) concept of "policy silence" is particularly useful for examining the trajectory of LTT in order to recognize potential alternative pathways that were not given consideration. According to Freedman (2010), policy scholars must "dig a little deeper" than the visible spectrum of the policy process (p. 347). Policy silence refers to the options that are not considered, to the questions that are kept off the policy agenda ... and to the values that are seen as unrealistic or undesirable by those best able to mobilize their policy-making power. (Freedman, 2010, p. 355)

From our analysis of the major LTT documents, it seems clear that the Commission never intended to impose any regulatory requirements on Netflix or any other foreign OTTs. Notably, a question about whether foreign OTT services should be subject to domestic content requirements was absent from the 80 questions the Commission posed to stakeholders in the Notice of Consultation (CRTC 2014-190) it issued to launch the final, most formal phase of the LTT process, or in the later working document (CRTC 2014-190-3), which proposed various concrete policies for consideration. There was no question regarding what to do with foreign OTTs, and no policy options concerning the issue were put forward for consideration. Although explicit questions about the imposition of cultural obligations on OTTs never made it to the more formal documents introduced later in the LTT process, the early “Choicebook” survey, designed for participation from the general public, did feature one question on the topic. The question asked the public to side with one of two statements, made by two fictional characters, Jenny and John. John’s statement associated the imposition of Canadian content requirements on OTTs with increased costs: John “does not think online services should be required to contribute to Canadian-made program-

ming if it is going to increase the price for consumers” (CRTC, 2014b). Although Jenny’s statement did not mention costs, and expressed only a conviction that OTTs should contribute to the creation of Canadian jobs and content, the implicit suggestion that such requirements would automatically result in increased costs to consumers was reinforced by John’s statement. The survey thus made the notion of OTT contributions to domestic content unattractive to survey participants, 67% of whom agreed with John.

The Commission’s active concern throughout the policy process was the identification and removal of regulatory “barriers” that supposedly have impeded the Canadian broadcasting system in “adapting to change” (CRTC 2014-190). The Commission portrayed Netflix and other OTTs as ushers of the change, noting that Canadian consumption of video is increasingly moving from “scheduled and packaged programming services to on-demand and tailored programs” (CRTC 2014-190). According to the Commission, the rise of on-demand viewing on the Internet has changed viewers’ expectations more generally, and has led to a growing dissatisfaction with the Canadian traditional system at large (CRTC 2014-190; Blais, 2013b). Using OTTs as the exemplar, the Commission then pro-

posed the forced unbundling of cable and satellite program packaging in the linear television realm so that it more closely resembles the responsiveness and consumer choice offered by OTTs.

The Commission seems not to have intended to modify the Digital Media Exemption Order under which foreign OTTs such as Netflix operate. Instead, the Commission sought to showcase Netflix in the LTT hearings as a beacon of innovation and a model for Canadian incumbents. However, this approach backfired when Netflix refused to provide the Commission with the information needed to make the case, and the hearings concluded with Netflix’s outright rejection of the Commission’s jurisdiction over its operations in Canada.

In the following sections, we discuss the major arguments presented by the various stakeholders, including Netflix, on the topic of foreign OTTs in Canada. Most broadcast industry stakeholders (other than Netflix) perceived the Commission’s use of Netflix as exemplary of a 21st century broadcast model as deeply flawed, and argued against using this model as the basis for making wide-ranging and substantive changes to the regulation of traditional linear broadcasting.

STAKEHOLDER POSITIONS

Broadcasting regulatory proceedings such as LTT often engender stark divisions of opinion among stakeholder groups. In the case of LTT, major industry stakeholders unanimously agreed that foreign OTTs such as Netflix are having a profound and tangible impact on the Canadian broadcasting system. Most of Canada's major Anglophone broadcasters either expressly recommended that the Commission impose contribution requirements on foreign OTTs such as Netflix (Bell, 2014; CBC, 2014), or argued that if the Commission is not prepared or able to impose such requirements, it should similarly refrain from imposing them on domestic services (Corus 2014; Rogers, 2014; Shaw, 2014). Only one major (Anglophone) broadcaster (Shaw, 2014), argued against the application of regulatory requirements on foreign OTT services such as Netflix. Canada's principal trade associations and guilds representing actors, directors, writers, and independent production firms (ACTRA, 2014; CMPA, 2014; DGC 2014; WGC, 2014), and the province of Ontario (the epicentre of Canadian television production), each argued that Netflix and other foreign OTTs should be required to contribute to the creation of Canadian content.

Additionally, we found that of the 137 interventions from individual Anglophone Canadians to the Commission's final phase of the policy process that expressed a definitive statement either for or against the issue, all but *three* were in favour of extending cultural obligations to Netflix and other OTTs.

Three key arguments pertaining to foreign OTTs recurred regularly in the submissions from major industry stakeholders (broadcasters, creator groups, and governments):

1) Industry stakeholders believed that the Canadian government has created an environment that is more favourable to foreign firms than to Canadian ones: Netflix does not pay sales tax in Canada, incur expenses related to regulatory processes, or make financial contributions toward the funding of Canadian content. According to one incumbent, this amounts to a cost advantage of 19-20% (Bell, 2014). In addition, Netflix has no regulatory constraints, including no restrictions on sources of programming, no limits on advertising, no accessibility expenditures for described video or closed captioning, and does not contribute toward the infrastructure costs required for service delivery (Bell, 2014; Corus, 2014; Rogers, 2014). The bottom line is that foreign OTTs benefit financially and strategically from Canada's regulatory protections

– including Canada's net neutrality policy – and undue preference rules, but do not contribute in a reciprocal manner (CBC, 2014; MTCS, 2014).

2) Stakeholder groups pushed back against the Commission's apparent embrace of the "digital sublime" (Mosco, 2005), or belief in the unqualified transformational power of the Internet – in this case, as a new global distribution platform, and the solution to Canada's problem of having a domestic market that is too small to support the production of expensive content. In a speech to industry delegates prior to the launch of LTT, CRTC Chairman Jean-Pierre Blais remarked that new broadband-based technologies and services offer Canadian creators an "unprecedented opportunity," "extraordinary possibilities," and open "doors to niche markets unimaginable even a decade ago" (Blais, 2013a).

Stakeholders were skeptical about the value of these opportunities. One intervention representing Canada's writers summarized the concern well. The organization argued that the notion that the Internet eradicates barriers to the creation and distribution of quality content is mistaken, and leads to a conviction in neoliberal economics and deregulation, in the belief that the new "perfect markets" created by the Internet will naturally lead to the

creation of the best content, which will automatically find its ideal audience online, with the financial rewards of such content flowing to those who most deserve them. (WGC, 2014)

Other stakeholders pointed out that the low barriers to entry in the digital space lead to the erroneous belief that “one can compete in the digital interactive world with cottage industries” (Corus, 2014, para. 49). Stakeholders called attention to the difference in size: While the major Canadian broadcasters may be large players in the Canadian industry, transnational digital companies have a substantial scale advantage that Canadian companies do not (Corus, 2014). The major industry stakeholders also contended that Netflix’s business model cannot be adopted by broadcasters since they have many other obligations that Netflix does not have, including obligations to be responsive to local communities through news and information services, upgrading costs, and investments in human capital and skills retraining (Bell, 2014b; CMPA, 2014; Corus, 2014; WGC, 2014). Others pointed out the curious economics of Netflix, noting that it has built its empire with content that was produced by the legacy broadcasting and film systems, which provided the training grounds for

content producers to learn their crafts. Stakeholders were concerned that an OTT model could not provide the same training grounds for new artists since Netflix does not produce nearly the same quantity of content, in Canada, that is produced by the legacy system (Corus, 2014; WGC, 2014).

3) Finally, a recurrent argument pertaining to Netflix relates to its refusal to divulge data about its audiences, an issue frequently reported by industry observers (for example, Stilson, 2014). In their submissions, stakeholders (ACTRA, 2014; Bell, 2014a; DGC, 2014; MTCS, 2014) urged the Commission to require foreign OTTs to submit annual reports on their levels of spending on Canadian content, and their revenues in the Canadian market so industry and audience developments can be better monitored.

NETFLIX AND THE REGULATORY SHOWDOWN

Netflix’s own written intervention to the LTT process demonstrated a clear understanding of traditional Canadian broadcasting policy goals, and many of its arguments responded directly to cer-

tain key objectives codified in the Act. Among its most substantive claims, Netflix (2014) maintained that it serves “diverse communities,” unlike traditional broadcasters who, due to a reliance on advertising, focus primarily on content with mass appeal. Netflix further argued that through consumer demand and market forces alone, it has stimulated innovation in the delivery of, and access to, programming; that it grows demand for Canadian audiovisual content and expands content production sources; and that it extends the reach of the public broadcaster and Canadian content more generally by disseminating this content to global audiences.

Although Netflix did not request to present at the oral hearing, the Commission invited it to appear. During the oral component, the Commission, looking for evidence to “support the conclusions that Netflix is advocating – that Internet video providers can support the policy objectives under the Broadcasting Act ... without the need for any additional regulatory action” (CRTC, 2014c), requested information from Netflix to substantiate the claims made in its written submission. Specifically, the regulator was seeking information about the number of Netflix’s Canadian subscribers, how Canadian content performs globally, how much Canadian

content is watched by Canadians, how much of Netflix's library is Canadian, and how much Netflix spends on Canadian original content (CPAC Digital Archives, 2014b).

After several requests by the CRTC and a heated debate, Netflix refused to comply. In a letter addressed to the Commission following the hearing, Netflix stated that the Commission's orders for the information "are not applicable to Netflix under Canadian broadcasting law" (Vlessing, 2014) and that Netflix's responses are filed "voluntarily" and do not represent "an acknowledgment of or attornment to either the jurisdiction of the Commission by Netflix, or the substantive application of Canadian law (including the provisions of the Broadcasting Act) to Netflix" (Netflix, 2014d). Following Netflix's refusal to provide the requested information, the Commission struck its participation from the public record completely, removing its written submission and even the transcripts of its oral participation at the hearing from LTT documentation, thereby adding to the accumulation of policy silences.

DISRUPTION, CONSUMER SOVEREIGNTY, AND ELECTORAL POLITICS

Despite the lack of concrete (and requested) evidence from the major foreign OTT provider of professional screen programming in Canada on how it contributes to the goals of the Broadcasting Act without any formal regulatory requirements to do so, and with reasons for concern provided by other industry stakeholders regarding OTT distribution of video content, the Commission concluded that "licensing digital media broadcasting undertakings is generally not necessary to achieve the broadcasting policy objectives set out in the Act" (CRTC 2015-86). Notably, the Commission opted not to initiate a separate review of the Digital Media Exemption Order, as was suggested by some industry interveners (Bell, 2014; OMTCS, 2014; WGC, 2014) who requested a review in order to be able to derive a more complete picture of the over-the-top environment and its effects on the Canadian industry. It similarly decided not to institute annual requirements for non-Canadian broadcaster affiliated OTTs, such as Netflix, to disclose information regarding their Canadian business operations and expenditures, as was also suggested by other industry interveners in order to restore overall trans-

parency in the broadcasting system (ACTRA, 2014; Bell, 2014; DGC, 2014). This would have required the Commission to strongly assert its jurisdiction over non-Canadian broadcaster affiliated OTTs. These overlooked potential policy pathways could have been part of a larger initiative to design a cultural policy toolkit for the digital age.

Further evidence that the Commission regarded Netflix as an exemplar to be emulated by incumbents can be seen in its decision to incentivize the adoption of an open OTT model. The Commission created a new "hybrid" category of service (CRTC 2015-86) that exempts previously regulated video-on-demand platforms based in traditional delivery systems (cable, satellite, IPTV) from all Canadian content requirements and restrictions, provided that broadcasters make the same pay service available online to *all* Canadians on an OTT video-on-demand platform. In an effort to encourage incumbents to move into the online space, the Commission initially proposed that incumbent broadcasters be able to count their expenditures on Canadian content placed online as part of their required spending on Canadian programs (CRTC 2014-190-3), but ultimately decided not to implement this measure. Without any Canadian content requirements in the online space, and now linked

video-on-demand services on traditional television, the Commission's decisions assume that incumbents will voluntarily produce or acquire Canadian content for online distribution.

In its desire to align the linear environment with the more flexible OTT space, the LTT process concluded with the regulator requiring the unbundling of cable and satellite channels by December 2016 (CRTC 2015-96). While maintaining requirements that broadcasters spend a set portion of revenues on Canadian content, the Commission eliminated all requirements for exhibition of Canadian content from television except in the prime time evening hours. These changes, taken together, are expected to affect the quantity of Canadian content that is commissioned, and the range of available choices, with spending on domestic Canadian content over the next four years forecast to decline to one-third of what it is today (Nordicity & Miller, 2015). The forced unbundling of channels is expected to reduce content diversity since special interest channels that could never survive in the small Canadian marketplace on their own are currently sold in bundles with other, more successful channels. Without this bundling, the channels are unlikely to achieve the audience share necessary to thrive in the Canadian domestic market. It is in this sense that the

regulator has demonstrated a rupture from some of the public good values and goals related to cultural sovereignty that it previously sought to secure in the legacy broadcasting space. In its reprioritization of values, consumer concerns – the desire for convenience and more control, for example – have been given top billing.

It is important to mention also that the timing of the Commission's major television policy review coincided with an upcoming federal election. The party then in power, the Conservative Party, selected a consumerist platform for this election. At the start of CRTC Chairman Blais' appointment, the Minister of Heritage sent a letter to the new appointee expressing his belief that the Commission could do a better job of addressing consumer issues, by, among other things, ensuring that consumers have access to "more" and "affordable" programming choices across all distribution platforms, including the Internet (Moore, 2012). The Minister also expressed his hope that the Commission "regulate broadcasting undertakings *only to the extent necessary*" (*ibid*; emphasis added).

In the 2013 Speech from the Throne, the federal government announced (long before any LTT decisions were made by the CRTC) that in order to protect "everyday Canadians," it intended to "re-

quire channels to be unbundled" (*ibid.*). Shortly thereafter, the Commission received an Order-in-Council requiring it to submit a report about how consumer access to programming on a per-channel (unbundled) basis "can be maximized in a manner that most appropriately furthers the implementation of the broadcasting policy for Canada" (Order-in-Council 2013-1167).

There were thus clear political expectations that the Commission conduct the LTT hearings in a manner consistent with the consumerist orientation endorsed by the federal conservatives. While the LTT hearings were still ongoing, and before the Commission took any decisions, the (Conservative) Minister of Heritage publicly commented that the federal government would "not allow any moves to impose new regulations and taxes on Internet video" (Bradshaw, 2014a). Although the CRTC publicly made assurances about the fairness of the hearing (*ibid.*), the independence of the Commission from government became a topic of debate amongst industry observers and news organizations (see for example O'Brien, 2014; Winseck, 2014). During the federal election, and to much public ridicule (including several YouTube parody videos, as well as a substantial Twitter backlash), then Prime Minister Stephen Harper launched a campaign video

in which he is shown sitting in front of a television screen with the Netflix logo prominently displayed, assuring voters that only his political party could be trusted not to impose a “Netflix tax” and to “focus on the needs of Canadian consumers, and to keep your taxes low” (Harper, 2015).

Regardless of how direct an influence the federal election and the government’s stated hopes had on the CRTC, it is clear that the regulator was operating under prevailing assumptions that certain policy pathways were to be favoured over others.

CONCLUSION: REGULATE OR CHILL

According to a popular theme, digital disruption arises from a collision between exponential rates of technological change and slower-paced or incremental rates of change in law, economy, policy, and society (Franklin, 2012). Broadcasting policy, in particular, is often portrayed as being reactive and more sensitive to the welfare of incumbent broadcasters than to the welfare of citizens or consumers. The “near-glacial pace” of regulatory change in democratic systems is attributed to its intrinsic features including its public character, deliberative

nature, and inclusivity (Downes & Mayo, 2015, p. 23).

The “digital revolution,” and the “tornado” of digital disruption that accompanies it, are being framed by many as not merely unstoppable, but also as intrinsically good (Morley, 2006; Mosco, 2005). Thus, in many countries the rationale for regulatory intervention in broadcasting has shifted from spectrum scarcity to the interests of “citizen-consumers” who seek a greater range of choices from domestic broadcasters (Freedman, 2015a; Freedman, 2015b; Lunt & Livingstone, 2011).

Our examination has revealed the complexity of Netflix’s presence in Canada, and how it has been able to capture such a substantial share of the Canadian market in such a short period of time. Canada has provided ideal conditions within which Netflix can thrive, disrupt, and induce regulatory policy to become unstuck. The regulator’s commitment to a greater reliance on market forces, and its overall prioritization of consumer choice, have made Netflix’s entry and continued presence an easy one. Netflix and OTTs have furthermore provided a way for the Commission to legitimize its application of wider deregulatory measures to the Canadian linear television system. The Commis-

sion appears to have used the seeming inevitability of the changes related to technological disruption, and the unsubstantiated claim that OTTs contribute to the goals of the Broadcasting Act through market forces alone, to ease regulatory requirements. Policy silences (Freedman, 2010), notably the lack of consideration of alternative measures to deal with OTTs, have supported the hands-off approach to streaming services, and failed to consider the development of shared, non-commercial, digital public spaces.

Although Netflix received the majority of public attention due to its ostentatious rejection of the Commission’s jurisdiction, Google also ran afoul of the Commission’s requests for the company to provide evidence to substantiate claims it made during LTT about how it contributes to the goals of the Broadcasting Act (CRTC, 2014d). Unlike Netflix, Google did not publicly reject the Commission’s jurisdiction, noting “we stand by the submissions we made in this process and believe we made a positive contribution to the discussion” (Google spokesperson, as quoted in Bradshaw, 2014b). However, the result was the same – the Commission was forced to make its decisions without complete information, “based on the remaining evidence on the re-

cord” (CRTC, 2014d). The Commission then similarly struck Google’s submitted documents from the LTT public record.

While the Canadian government has thus far refrained from extending sales tax and cultural obligations to the online space, other jurisdictions are exploring alternative policy pathways and attempting to assert themselves in this direction: Australia is moving forward with the extension of sales tax to foreign streaming services (Pash, 2015); the French government is considering several initiatives; and the City of Chicago recently extended its amusement tax to apply to streaming services and introduced a new cloud tax targeting leased computer-based services such as Amazon Web Services (Hinz, 2015; Pletz, 2015). The question of how successfully these measures can be implemented is unclear. From a strictly consumer standpoint, these measures are unwelcome. Chicago-based subscribers to popular OTT services have already filed a lawsuit to challenge the city’s extension of the amusement tax to streaming services, arguing that the city does not have the authority to implement such an initiative (Pletz, 2015). The city has also delayed the implementation of its cloud tax more than once, allegedly due to criticism from consumers and tech businesses alike (Hinz, 2015). Netflix has stated

that, for its part, it plans to comply with Chicago’s new sales tax by “adding it to the cost we charge subscribers” (Anne Marie Squeo, Netflix spokesperson, as quoted in Farivar, 2015). Netflix and other OTTs might therefore be more accepting of strictly tax-related initiatives, rather than cultural ones, since the former do not affect their spending, strategic operations, or creative and business decisions, and can be put into effect without additional costs to the companies themselves by offloading the extra charges onto subscribers. Netflix, in particular, is also in such a strong market position that consumer behaviors would likely be unaffected by an added tax, and the negative aura associated with such a move would primarily be centered on the jurisdiction that imposed the tax, rather than Netflix itself.

Some participants in the LTT hearings argued that *disruption through policy* is a greater immediate threat to the Canadian broadcasting industry than economic disruption (Miller, 2014). In countries without high levels of broadband connectivity, Netflix and other streaming services do not represent an immediate threat (Strangelove, 2015). But in countries in which the business model of incumbents emphasizes providing broadband connectivity bundled with access to licensed imported

content, the threat is more tangible, especially in countries such as Canada where the audiovisual regime is an elaborately designed mixture of entitlements and responsibilities. Netflix’s public rejection of the Commission’s jurisdiction adds an important new layer of complexity to domestic broadcasting’s digital shift. The arrival of large, unregulated transnational video distributors makes it unclear how or whether legacy audiovisual policy goals concerning national, regional, and cultural representation can be implemented, measured, or enforced. These issues are intertwined with larger questions surrounding the future cultivation of informed citizenries and functional democracies through civic discourse and shared national experiences.

In fact, the LTT hearing can be considered to be a preview of the impending tensions in the media sector between transnational corporations and domestic governments’ mandates to ensure media development in the public interest, making the idea of cultural sovereignty seem very quaint indeed. Regulated incumbents will not fail to point out the asymmetry of policy regimes that impose obligations on one set of players and not the other. When they do not provide audience, market, and expenditure data to regulators, streaming services

such as Netflix, which are both “everywhere and nowhere,” introduce policy silence in the form of strategic opacity in previously transparent sectors. The relative sovereignty of national markets is undermined, as it is no longer clear where and how people are watching domestic content.

It is urgent to reconstruct the “policy toolkit” for 21st century mediated cultural policy in a way that ensures that all relevant policy pathways are considered. Under the lead of a new Liberal government in Canada, the country has recently launched an expansive review of cultural policy, the results of which will not be known for some time. Any substantive reconstruction of the policy toolkit must involve reconsidering the predominant role attributed to legacy broadcasting in ensuring cultural expression, upgrading the responsibilities and resources attributed to public service media, and eliminating uncertainty about jurisdiction over digital space in national territory. It is crucial that such a reconstruction recognize the significant power held by “reformer” startups like Netflix, and consider novel approaches, including cooperation amongst regulatory agencies, to induce compliance of transnational players. The longer that regulatory agencies wait to act, the more difficult and turbulent the implementation of new policies will be.

The Journal of Media Innovations 4.1 (2017)

ACKNOWLEDGEMENTS

Earlier versions of this paper were presented at the International Symposium on Media Innovations in Brussels (June 2015), the Canadian Communications Association annual conference in Ottawa (June 2015), the annual conference of the International Association for Communication and Media Research (IAMCR, Montreal, August 2015), and the Technology Policy Research Conference (Arlington, Virginia, September 2015). We are grateful to Roslyn Layton (Aalborg University) for useful comments on an earlier draft. Research reported here was supported in part by a grant from the Social Sciences and Humanities Research Council (SSHRC) on “Creating Digital Opportunities,” which is gratefully acknowledged.

REFERENCES

- Alliance of Canadian Cinema, Television and Radio Artists (ACTRA). (2014). Intervention. CRTC Public process number: 2014-190.
- Armstrong, R. (2010). *Broadcasting policy in Canada*. Toronto: University of Toronto Press.
- Arthofer, F., Hardarson, A., Kon, M., Lee, E., & Rose, J. (2016). The Future of television. The impact of OTT on video production around the world. Boston Consulting Group, September.
- Baccarne, B., Evens, T., & Schuurman, D. (2013). The television struggle: an assessment of over-the-top television evolutions in a cable dominant market. *Communications & Strategies* 92: 43-61.
- Bell Canada (Bell). (2014a). Intervention. CRTC Public process number: 2014-190.
- Bell Canada (Bell). (2014b, September 10). Transcript from hearing - CRTC Public process number 2014-190. Retrieved <http://www.crtc.gc.ca/eng/transcripts/2014/tb0910.htm>
- Blais, J.P. (2013a, June 12). Speech presented at Banff World Media Festival in Banff, Alberta. Retrieved from <http://www.crtc.gc.ca/eng/com200/2013/s130612.htm>

- Blais, J.P. (2013b, October 24). Speech presented at RTA School of Media, Ryerson University, Toronto, Ontario. Retrieved from <http://www.crtc.gc.ca/eng/com200/2013/s131024a.htm>
- Bradshaw, J. (2014a, September 15). Harper backs pick-and-pay TV options. Retrieved from <http://www.theglobeandmail.com/report-on-business/harper-backs-pick-and-pay-tv/article20609744/>
- Bradshaw, J. (2014b, September 29). CRTC to strike Netflix, Google testimony from 'Let's Talk TV' record. Retrieved from <http://www.theglobeandmail.com/report-on-business/crtc-to-decide-tv-outcome-without-netflix-google-evidence/article20836870/>
- Brandom, R. (2014, February 23). Netflix is paying off Comcast for direct traffic access. Retrieved from <http://www.theverge.com/2014/2/23/5439566/the-wall-street-journal-confirms-multiyear-traffic-deal-between>
- Cable, A. J. (2016). Institutionalized Disruption: The Rise of the Reformer Startup. *Hastings Business Law Journal* 12(1): 1-14.
- Canada. (2013). Speech from the throne to open the 2nd session of the 41st Parliament of Canada. Ottawa: Govt. of Canada.
- Canada, Department of Justice. (1991, February 1). Broadcasting Act 1991, C. 11. Retrieved from <http://laws.justice.gc.ca>
- Canadian Broadcasting Corporation (CBC). (2014). Intervention. CRTC Public process number: 2014-190.
- Canadian Media Production Association (CMPA). (2014). Intervention. CRTC Public process number: 2014-190.
- Canadian Radio-television and Telecommunications Commission (CRTC). (2013, September). Communications Monitoring Report. Catalogue No. BC9-9/2013E-PDF.
- Canadian Radio-television and Telecommunications Commission (CRTC). (2014a, October). Communications Monitoring Report. Catalogue No. BC9-9/2014E-PDF.
- Canadian Radio-television and Telecommunications Commission (CRTC). (2014b, May 1). *Let's Talk TV: Choicebook, research conducted by Hill+Knowlton Strategies* (Rep.). Retrieved from http://www.crtc.gc.ca/eng/publications/reports/rp140424a.htm#h3_2
- Canadian Radio-television and Telecommunications Commission (CRTC). (2014c, September 29). *Broadcasting Commission letter addressed to Corie Wright (Netflix)*. Retrieved from <http://www.crtc.gc.ca/eng/archive/2014/lb140929.htm>
- Canadian Radio-television and Telecommunications Commission (CRTC). (2014d, September 29). *Broadcasting Commission letter addressed to Jason Kee (Google Inc.)*. Retrieved from <http://www.crtc.gc.ca/eng/archive/2014/lb140929a.htm>
- Center for Responsive Politics. (2016). Netflix Inc. Retrieved February 7, 2016, from https://www.opensecrets.org/lobby/client_reports.php?id=D000036161&year=2015
- Corus. (2014). Intervention. CRTC Public process number: 2014-190.
- Coutanche, M., Davis, C. H., & Zboralska, E. (2015). Telling our stories: Screenwriters and the production of screen-based culture in English-speaking Canada. *Canadian Journal of Communication* 40(2).
- CPAC Digital Archives. (2014a). *CRTC hearing- September 19, 2014 (AM) Part 1*. [Video file]. Retrieved May 15, 2015, from <http://www.cpac.ca/en/digital-archives/?search=CRTC+Netflix>
- CPAC Digital Archives. (2014b). *CRTC hearing- September 19, 2014 (AM) Part 2*. [Video file]. Retrieved May 15, 2015, from <http://www.cpac.ca/en/digital-archives/?search=CRTC+Netflix>
- Cunningham, S. & Silver, J. (2013). *Screen distribution and the new King Kongs of the online world*. Palgrave Macmillan.

- D'Arma, A. (2010). Content aggregation in the age of online video: An analysis of the impact of Internet distribution on the television business. *Journal of Media Business Studies* 8(3): 1-18.
- Directors Guild of Canada (DGC). (2014a). Intervention. CRTC Public process number: 2014-190.
- Dobby, C., & Bradshaw, J. (2015, June 3). Accessing U.S. Netflix is 'stealing,' new Bell Media president says. Retrieved from <http://www.theglobeandmail.com/report-on-business/bell-media-president-urges-behavioural-shift-to-prevent-stealing/article24783094/>
- Downes, L., & Mayo, J. W. (2014). Evolution of innovation and the evolution of regulation: Emerging tensions and emerging opportunities in communications. *CommLaw Conspectus* 23: 10-51.
- Downes, L., & Nunes, P. (2014). *Big Bang disruption; Strategy in the age of devastating innovation*. New York: Portfolio/Penguin.
- Doyle, G. (2015). Multi-platform media and the miracle of the loaves and fishes. *Journal of Media Business Studies* 12(1): 49-65.
- Dunn, J. (2017, January 18). Netflix says it is 'unlikely' to be affected by weaker open internet laws under Trump. Retrieved from <http://www.businessinsider.com/netflix-net-neutrality-changes-trump-unlikely-2017-1>
- Edwardson, R. (2008). *Canadian content: Culture and the quest for nationhood*. Toronto: University of Toronto Press.
- Evens, T. (2014). Clash of TV platforms: How broadcasters and distributors build platform leadership. Paper presented at the 25th European Regional Conference of the International Telecommunications Society, Brussels, June.
- Farivar, C. (2015, July 1). Chicago Netflix customers: Your bill is about to go up 9 percent. Retrieved from <http://arstechnica.com/tech-policy/2015/07/chicago-netflix-customers-your-bill-is-about-to-up-9-percent/>
- Franklin, M. (2012). Internet-enabled dissemination: managing uncertainty in the film value chain. In Iordanova, D. and Cunningham, S. (Eds.) *Digital disruption: Cinema moves on-line*. St. Andrews Film Studies, 101-116.
- Freedman, D. (2010). Media policy silences: The hidden face of communications decision making. *The International Journal of Press/Politics* 15(3): 344-361.
- Freedman, D. (2015a). Media Policy Fetishism. *Critical Studies in Media Communication* 32(2): 96-111.
- Freedman, D. (2015b). The resilience of TV and its implications for media policy. In Oakley, K., & O'Connor, J. (Eds.). *The Routledge companion to the cultural industries*. Routledge.
- Grant, P.S., & Wood, C. (2004). *Blockbusters and trade wars: Popular culture in a globalized world*. Vancouver: Douglas & McIntyre.
- Guindon, A., & Dennie, D. (2010). Net neutrality in Canada and what it means for libraries. *Partnership: The Canadian Journal of Library and Information Practice and Research* 5(1).
- Gustin, S. (2014, February 23). Comcast's traffic pact with Netflix is shrouded in secrecy. Retrieved from <http://time.com/9373/comcast-netflix-deal/>
- Harper, S. (2015). Tweet, 7:19 PM - 5 Aug., <https://twitter.com/pmharper/status/629054056678363136>.
- Hasselbalch, J. (2014). Regulating disruptive innovations: The policy disruption of electronic cigarettes. Global Reordering: Towards the Next Generation of Scholarship conference. Brussels, November 18-20.
- Hinz, G. (2015, August 7). City delays cloud tax until Jan. 1. Retrieved from <http://www.chicagobusiness.com/article/20150807/BLOGS02/150809876/city-delays-cloud-tax-until-jan-1>
- Holt, J. (2014). Regulating connected viewing: media pipelines and cloud policy. Chapter 1 in J. Holt and K. Sanson (Eds.), *Connected viewing. Selling, streaming, and sharing media in the digital era*. Routledge.

- Hopewell, L. (2015, March 19). Netflix CEO Reed Hastings on the NBN, piracy and launching in Australia. Retrieved from <http://www.gizmodo.com.au/2015/03/netflix-ceo-reed-hastings-on-the-nbn-piracy-and-launching-in-australia/>
- Hoskins, C., McFadyen, S., & Finn, A. (2004). *Media economics: Applying economics to new and traditional media*. Sage.
- J.D. Power. (2014, June 26). The Canadian television provider customer satisfaction study (Rep.). Retrieved April 26, 2014, from J.D. Power website: <http://canada.jdpower.com/press-releases/2014-canadian-television-and-Internet-service-provider-studies>
- Kushida, K. E. (2015). The politics of commoditization in global ICT industries: a political economy explanation of the rise of Apple, Google, and industry disruptors. *Journal of Industry, Competition and Trade* 15(1): 49-67.
- Kwong, M. (2015, January 07). Netflix geoblocking in Canada 'a game of whack-a-mole' Retrieved from <http://www.cbc.ca/news/business/netflix-geoblocking-in-canada-a-game-of-whack-a-mole-1.2890915>
- Lee, L.T. (2014). Going Over the Top: an economic study of the rise of OTT video services. Paper presented at the 11th World Media Economics and Management Conference (WMEC), Rio de Janeiro, June.
- Le Goff, J.P., Brunet, J., Davis, C.H., Giroux, D. & Sauvegeau, F. (2011). *La production audiovisuelle canadienne indépendante: Aides financières, diffusion et écoute*. Sainte-Foy, QC: Centre d'études sur les médias, Université Laval.
- Liedtke, M. (2016, January 06). Netflix expands into 130 more countries | Toronto Star. Retrieved February 7, 2016, from <http://www.thestar.com/business/2016/01/06/netflix-goes-global.html>
- Lunt, P. & Livingstone, S. (2011). *Media regulation: Governance and the interests of citizens and consumers*. Sage.
- Media Technology Monitor (MTM). (2016, February 4). Media technology adoption 2015: Analysis of the English-language market. (Rep.).
- Meisel, J. (2013). Reactions by broadband service providers to the growth of video streaming. *CommLaw Conspectus* 22: 267-286.
- Middleton, C. (2011). Canada's telecommunications policy environment. *Telecommunications Journal of Australia* 61(4): 69.1-69.14.
- Miller, P. (2014). *Canadian television: An environmental scan*. Report submitted to the CRTC, June.
- Ministry of Tourism, Culture and Sport (MTCS). (2014). Intervention. CRTC Public process number: 2014-190.
- Montebourg, A. (2014, July 10). Speech presented at Bercy, France. Retrieved from http://www.economie.gouv.fr/files/files/PDF/20140710_discours_A_Montebourg.pdf
- Moore, J. (2012). [Letter written June 18, 2012 to Jean Pierre Blais]. Retrieved from <http://www.thewirereport.ca/sites/thewirereport.ca/files/05letter.pdf>
- Morley, D. (2006). *Media, modernity and technology: The geography of the new*. London: Routledge.
- Mosco, V. (2004). *The digital sublime. Myth, power, and cyberspace*. Cambridge, MA: The MIT Press.
- Naldi, L., Wikström, P., & Von Rimscha, M. B. (2014). Dynamic capabilities and performance: an empirical study of audiovisual producers in Europe. *International Studies of Management & Organization* 44(4): 63-82.
- Netflix. (2014a). Intervention. CRTC Public process number: 2014-190.
- Netflix. (2014b, September 8). Netflix ISP speed index for August. Retrieved May 15, 2015, from <http://blog.netflix.com/search/label/ISP%20speed%20index>

- Netflix. (2014c, September 15). Netflix Terms of Use. Retrieved from <https://www.netflix.com/TermsOfUse>
- Netflix. (2014d). Undertaking. CRTC Public process number: 2014-190.
- Netflix. (2015a, January 20). Netflix long term view. Retrieved May 10, 2015, from <http://ir.netflix.com/long-term-view.cfm>
- Netflix. (2015b, April 15). *Q1 letter to shareholders* (Rep.). Retrieved from http://files.shareholder.com/downloads/NFLX/46343406x0x821407/DB785B50-90FE-44DA-9F5B-37DBFoDCDoE1/Q1_15_Earnings_Letter_final_tables.pdf
- Netflix. (2016, January 14). Evolving proxy detection as a global service. Retrieved February 7, 2016 from <https://media.netflix.com/en/company-blog/evolving-proxy-detection-as-a-global-service>
- Noam, E. (2014). Cloud TV: Toward the next generation of network policy debates. *Telecommunications Policy* 38(8): 684-692.
- Nordicity & Miller, P. (2015). Canadian television 2020: Technological and regulatory impacts. Retrieved February 8, 2016, from <https://www.friends.ca/files/PDF/nordicity-miller-lets-talk-tv-economic-impact-forecast.pdf>
- Nowak, P. (2012, September 18). Canada's (almost) 'third-world' Internet access - Macleans.ca. Retrieved May 15, 2015, from <http://www.macleans.ca/society/technology/canadas-almost-third-world-Internet-access/>
- O'Brien, G. (2014, September 9). Let's Talk TV: Playing politics with the Commission, Glover warns CRTC about trying to lay regs on Netflix et al., slams Liberals. Ontario hits back (update #3). Retrieved from <https://cartt.ca/article/let's-talk-tv-playing-politics-commission-glover-warns-crtc-about-trying-lay-regs-netflix-et>
- Oliver, J. (2014). Dynamic capabilities and superior firm performance in the UK media industry. *Journal of Media Business Studies* 11(2): 57-78.
- O'Neil, L. (2016, April 19). Netflix enrages Canada by actually following through with VPN crackdown plans. Retrieved from <http://www.cbc.ca/news/trending/netflix-officially-kills-vpn-access-canadians-very-mad-1.3543299>
- Ookla. (2015a, May 15). Quality index in OECD. Retrieved from <http://www.netindex.com/quality/1.8/OECD/>
- Ookla. (2015b, May 15). Value index in OECD. Retrieved from <http://www.netindex.com/value/1.8/OECD/>
- Ookla. (2015c, May 15). Download speed in OECD. Retrieved from <http://www.netindex.com/download/1.8/OECD/>
- Order-in-Council 2013-1167. Retrieved <http://www.pco-bcp.gc.ca/oic-ddc.asp?lang=eng&page=secretariats&dosearch=search+/+list&pg=98&viewattach=28427&blnDisplayFlg=1>
- O'Regan, T., & Goldsmith, B. (2006). Making cultural policy: Meeting cultural objectives in a digital environment. *Television & New Media* 7(1): 68-91.
- Pash, C. (2015, May 13). Here's how the 'Netflix tax' in the budget will work. Retrieved from <http://www.businessinsider.com.au/heres-how-the-netflix-tax-in-the-budget-will-work-2015-5>
- Pletz, J. (2015, September 10). Chicago 'Netflix tax' under fire. Retrieved from <http://www.chicagobusiness.com/article/20150910/BLOGS11/150919992/chicago-netflix-tax-under-fire>
- Picard, R.G., Davis, C.H., Papandrea, F., & Park, S. (2016). Platform proliferation and its implications for domestic content policies. *Informatics and Telematics* 33: 683-692.
- Quail, C. (2012). Television goes online: Myths and realities in the contemporary context. *Global Media Journal* 12(20).
- Raboy, M. (1990). *Missed opportunities: The story of Canada's broadcasting policy*. Montreal & Kingston: McGill-Queen's University Press.

- Raboy, M. (1995). The role of public consultation in shaping the Canadian broadcasting system. *Canadian Journal of Political Science* 28: 455-477.
- Raboy, M. & Bonin, G. A. (2008). From culture to business to culture: Shifting winds at the CRTC. In Moll, M. & L. Regan Shade (Eds.). *For sale to the highest bidder: Telecom policy in Canada*. Ottawa: Canadian Centre for Policy Alternatives, 61-69.
- Rogers Communications Inc. (Rogers). (2014). Intervention. CRTC Public process number: 2014-190.
- Salter, L., & Odartey-Wellington, F. N. L. (2008). The CRTC and broadcasting regulation in Canada. Thomson Carswell.
- Schweizer, C., Puppis, M., Künzler, M., & Studer, S. (2014). Blast from the past? A comparative analysis of broadcast licensing in the digital era. *Journal of Information Policy*, 4, 507-528.
- Shaw Communications Inc. (Shaw). (2014). Intervention. CRTC Public process number: 2014-190.
- Simon, J.P. (2012). *The dynamics of the media and content industries: A synthesis*. Seville: European Commission Joint Research Centre, Institute for Prospective Technological Studies. JRC Scientific and Policy Reports.
- Simon, J. P., & Bogdanowicz, M. (2012). *The digital shift in the media and content industries: Policy brief* (No. JRC77932). Institute for Prospective and Technological Studies, Joint Research Centre.
- Skinner, D. (2008). Broadcasting in Canada. In D. Ward and A. McNicholas (Eds.). *Television and public policy: Change and continuity in an era of liberation* (pp. 3-26). New Jersey: Lawrence Erlbaum.
- Slater-Robins, M. (2016, January 22). Netflix is following through on its promise to block people trying to access content from other countries. Retrieved February 7, 2016, from <http://uk.businessinsider.com/netflix-blocks-vpn-usage-in-australia-2016-1>
- Stewart, J.B. (2015). How Netflix keeps finding itself on the same side as regulators. *The New York Times*, 28 May.
- Stilson, J. (2014, June 29). Programmers are frustrated by a lack of Netflix metrics. Retrieved from <http://www.adweek.com/news/television/programmers-are-frustrated-lack-netflix-metrics-158645>
- Strangelove, M. (2015). *Post-TV. Piracy, cord-cutting, and the future of television*. University of Toronto Press.
- Tencer, D. (2012, September 15). Netflix Canada: Ted Sarandos says Canadians 'have almost third-world access to the Internet' Retrieved May 15, 2015, from http://www.huffingtonpost.ca/2012/09/15/netflix-canada-Internet-third-world_n_1887114.html
- Tencer, D. (2015, March 03). Rogers denies it wants ban on tech to access U.S. Netflix. Retrieved from http://www.huffingtonpost.ca/2015/03/03/rogers-ban-vpn_n_6787222.html
- Thier, D. (2012, April 8). Netflix gets a Political Action Committee: FLIXPAC. Retrieved February 7, 2016, from <http://www.forbes.com/sites/davidthier/2012/04/08/netflix-gets-a-political-action-committee-flixpac/#6f05214317ce>
- Van der Sar, E. (2014, April 25). Hulu blocks VPN users over piracy concerns. Retrieved from <http://torrentfreak.com/hulu-blocks-vpn-users-over-piracy-concerns-140425/>
- Vlessing, E. (2014, September 23). Netflix offers peek at biz as standoff continues with CRTC. Retrieved from <http://playbackonline.ca/2014/09/23/as-crtc-netflix-stand-off-continues-u-s-streamer-offers-sneak-peek-at-business/#ixzz3aEnPGkFk>
- WikiLeaks. (2015a). *Omnibus amendment to subscription video-on-demand license agreements*. Retrieved from <https://wikileaks.org/sony/docs/>

Page 224

**is withheld pursuant to sections
est retenue en vertu des articles**

19(1), 20(1)(b)

**of the Access to Information Act
de la Loi sur l'accès à l'information**