



3 December 2024

Marc Morin
Secretary General
CRTC
Ottawa, ON K1A 0N2

Filed online

Dear Secretary General,

Re: *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector*, Notice of hearing, [BNoC 2024-288](#) (Ottawa, 15 November 2024) – request for clarification

- 1 The Forum for Research and Policy in Communications (FRPC) is a non-profit and non-partisan organization established in 2013 to undertake research and policy analysis about communications, including broadcasting. The Forum supports a strong Canadian communications system that serves the public interest as defined by Parliament in the 1991 *Broadcasting Act*.
- 2 FRPC has carefully reviewed BNoC 2024-288 but remains uncertain as to what the CRTC is asking in eight instances. To ensure our participation in this important consultation is of maximum utility we are requesting that the Commission clarify the wording of the paragraphs addressed below.
 1. ***Types of programming addressed in paragraphs 15 and 16***
- 3 Paragraphs 12 to 17 of BNoC 2024-288 relate to “Key creative positions”. The CRTC refers to its current definition of a Canadian program in paragraph 12. Paragraph 13 provides the CRTC’s rationale for its preliminary view that adding “new key creative positions” better aligns its Canadian program definition “with evolving industry practices and positions”:

<p>13. It is the Commission’s preliminary view that adding new key creative positions (with proposed points) would better align the definition of “Canadian program” with evolving industry practices and positions that have emerged over the years. It would also recognize other key creative positions that have control over the production’s look and feel, as well as its narrative direction. The Commission considers that having Canadians responsible for key creative decisions will enhance Canadian stories while introducing additional ways to ensure that a program is Canadian.</p>

4 Paragraph 14 lists proposed new criteria for key creative positions in live action and continuous action animation productions (shaded text), and in animation programs (bold font):

14. The Commission proposes to add new key creative positions, and to amend certain existing key creative positions, as follows (additions and amendments in bold):
Key creative positions: **Live action and continuous action animation productions** – Total possible points: 15
...
Key creative positions: **Animation productions (other than continuous action animation)** – Total possible points: 15
....

5 Paragraph 15 refers to the live action and continuous action animation productions and continuous action animation productions in paragraph 14 and also to “productions (such as documentaries) [underlining added]” (see italicized text to the right).

15. It is the Commission’s preliminary view that, in order to receive Canadian program certification from the Commission, a production should be required to attain at least 9 out of a possible 15 points for **both types of productions detailed above**. When productions (*such as documentaries*) do not use certain key creative positions, the Commission will grant Canadian certification provided that Canadians fill all key creative positions and the production therefore earns a perfect score.

6 Please clarify whether by the use of “such as” the CRTC is referring to program categories other than documentaries and if so, please state which categories these are.

7 Paragraph 16 begins by referring to the directors or screenwriters of live action and continuous action animation productions (grey shading).

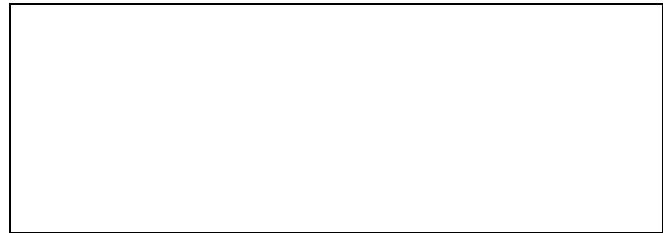
16. As part of that preliminary view, for live action and continuous action animation productions, either the director or the screenwriter must be Canadian. **For animation productions, either the scriptwriter and storyboard supervisor or the director must be Canadian, the key animation function must be performed by a Canadian, and the camera operator/virtual camera operator must be Canadian.** Where there is a showrunner, that position must be occupied by a Canadian, and the first or second lead performer must be Canadian. Further, in regard to the music composer key creative position, the Commission considers that the point could also be achieved through the purchase or use of pre-existing or pre-recorded music from a Canadian rights holder.

8 It then addresses the scriptwriters, storyboard supervisors or directors of animation programs separately (bold font).

9 The remaining two sentences address the concepts of “showrunner”, “lead performer” and “music composer” (underlined text).

10 Please clarify whether the underlined sentences refer to live action and

continuous action animation productions as well as animation productions, only to live action and continuous action productions, or only to animation productions.



2. Paragraph 31: meaning of ownership flexibility

11 Paragraph 31 addresses intellectual property rights. The second bullet of this paragraph refers to “flexibility of ownership” [grey shaded text shown in column to the right]:

12 Please clarify whether “the greater the flexibility of ownership” means “the lower the level of Canadian ownership”, or “the higher the level of non-Canadian ownership”, or if it means something else altogether.

31. The Commission recognizes that a share in or the outright ownership of the intellectual property rights for a program would ensure that Canadians have control not only over the creation of the content but also over its monetization, including in the future. Different models could help it achieve that goal:

...

- o models that demonstrate a natural “give-and-take” symmetry, where the greater the flexibility of ownership of a program, the greater the number of Canadian points and Canadians occupying key creative roles would be required to balance out the elements of Canadian control and overall Canadian creative influence (for example, if all intellectual property rights rest outside of Canada but all creative control is Canadian); ...

3. Q17: “public broadcasters”

13 In question 17 the CRTC asks about “ownership of intellectual property rights by public broadcasters” (underlined text).

14 Currently the *Broadcasting Act* refers in subsection 3(1)(b) to the “public, private and community elements” of the broadcasting system, to “public property” and to “a public service”.

Q17. Are there any special considerations that the Commission should give to the ownership of intellectual property rights by public broadcasters?

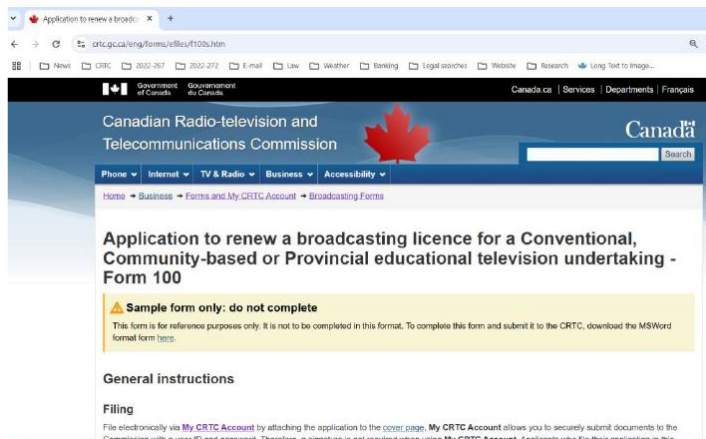
3 (1) It is hereby declared as the broadcasting policy for Canada that

...

(b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty

- 15 The *Act* also refers to “the national public broadcaster” (underlining added) in subsection 3(1)(l), to the right:
- 16 The CRTC ‘s licence renewal forms refer to ‘provincial educational television undertakings’ (see [Form 100](#), to the right).
- 17 Educational television licences have been granted to the Ontario French-language Educational Communications Authority (TFO) and the Ontario Educational Communications Authority (TFO) (see *e.g.* [Decision CRTC 2023-299](#)), as well as to the Société de télédiffusion de Québec (see *e.g.* [Decision CRTC 2018-450](#)). The CRTC has also licensed the Knowledge Network Corporation to provide an English-language non-commercial educational discretionary service (see *e.g.* [Decision CRTC 2023-393](#)).
- 18 FRPC therefore respectfully asks to which public broadcasters does Q17 refer?

...
 (l) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide broadcasting services incorporating a wide range of programming that informs, enlightens and entertains;



4. Q36: “best way to measure the success of the new framework”

- 19 In question 36 the CRTC asks about measuring success for expenditures (see bold and underlined font to the right):

Q36. What is the best way to measure and evaluate the **success of the new framework** for expenditures on Canadian programming?

- 20 Does “success of the new framework” refer to the new framework in general, or does it refer only to the new framework’s requirements for expenditures on Canadian programming?



5. *Importance of certain positions to programs*

- 21 The CRTC discusses foreign courtesy credits in paragraphs 67 to 71.
- 22 At paragraph 68 the Commission explains that it distinguishes between production-related positions “based on the importance of their ... control on a production” (underlined text, to the right).
- 23 Exercising ‘control on’ is an uncommon expression. Should it be understood as meaning an objective level of control exercised by production-related positions over a given production as in, “the importance of their ... control **over** the production?”
- 24 Alternatively, should this text be understood as referring to a subjective level of control exercised by production-related positions in relation to a specific program?: “the importance of their ... control **to** the production”?

68. The Commission currently separates production-related positions into two distinct groups^{Footnote34} based on the importance of their creative and financial control on a production, and reviews any courtesy credits given to a non-Canadian to ensure that their duties do not interfere in any way with the administrative, creative or financial decisions of the Canadian producer.

[footnote 34 omitted]

6. *Definition of ‘interventions’ in terms of pages*

- 25 At paragraph 90 the CRTC sets a page limit for “interventions” (bold font to the right).
- 26 Please clarify whether ‘pages’ refers to physical pages – meaning that a page that is physically printed on both its front and its back constitutes a single page, or whether

90. To help ensure that interveners send only comments relevant to the questions included in the notice and to help ensure timelines can be met for this process, **the Commission limits interventions to 20 pages**.

‘pages’ refers to pagination – meaning that a paginated page printed on its front and its back constitutes two pages.

27 Paragraph 101 then excludes summaries from the intervention’s page limit – see underlined text to the right.

101. Submissions longer than five pages should include a summary, which will not be counted toward the 20-page limit for interventions. Each paragraph of all submissions should be numbered, and the line ***End of document*** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.

28 Paragraph 102 states the CRTC’s expectation that “submissions” will be filed “in accessible formats” and “to provide assistance in this regard” states that “the Commission has posted on its website guidelines for preparing documents in accessible formats” (underlined text to the right).

102. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website guidelines for preparing documents in accessible formats.

29 The CRTC’s [Creating Accessible Documents](#) states that 3 “basic principles can be applied to improve the accessibility of documents” – see quoted section to the right:

“The following basic principles can be applied to improve the accessibility of documents:

1. Use text-based file formats.
2. Use text descriptions to explain the content and functionality of images used in documents.
3. Use formatting features to organize documents.”

30 Section 3 of the CRTC’s *Creating Accessible Documents* (“Use formatting features to organize documents”) states that one way “to ensure that the content of your document ... makes sense” is to

3. Use formatting features to organize documents

The following are ways to use formatting features of your software application to ensure that the content of your document is organized and makes sense.

- a. use heading styles such as Title and Subtitle (see underlined text) and to

Use the software application’s heading styles (for example, if using Microsoft Word, use Title, Subtitle, Heading 1, and Heading 2).

b. “Include a table of contents for long documents” (see bold-font text)

31 Please clarify whether a single page used to introduce the intervention by setting out its title and its subtitle as well as its date and its author counts or does not count as a page of an intervention in this proceeding.

32 Paragraph 90 excludes separately provided supplementary documents, including reports or appendices, from the intervention’s page limit (see underlined text).

33 Please clarify whether the table of contents included as part of the CRTC’s formatting principles for accessible documents to make sense and show the organization of a document – by listing, for example, the intervention’s headings and sub-headings as well as the separately provided “reports or appendices” – does or does not count as part of the 20 pages permitted for an intervention in this proceeding.

Include a table of contents for long documents.

Use an easily-readable font that is at least 10 or 12 point.

...

90. ... If interveners wish to provide any supplementary documents for their submissions, such as reports or appendices, the number of pages for those documents will not form part of the 20-page limit for interventions. Further, any appendices should each be provided as a separate document accompanying the intervention.

34 The CRTC states at paragraph 90 that it is limiting the pages in interventions in this proceeding in part “to help ensure timelines can be met for this process”. Paragraph 85 states that the procedures set out at paragraphs 85 to 113 “must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission’s website under [“Statutes and Regulations.”](#) The [Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure](#) state at paragraph 12(1)(c) that that “the period beginning on December 21 in one year and ending on January 7 in the following year must not be included in the computation of a time period.”

35 The CRTC’s responses to the questions it has set out above will enable the Forum to “participate more effectively”¹ in this proceeding and contribute to the “fulsome public record” the CRTC desires the proceeding to have (see paragraph 81). We therefore respectfully request that the Commission expedite the issuance of answers it provides to the questions above, so as to

¹ [Guidelines on the CRTC Rules of Practice and Procedure, Broadcasting and Telecom Information Bulletin CRTC 2010-959](#) (Ottawa, 23 December 2010, at paragraph 4).



“ensure the efficient, transparent and predictable conduct” of this proceeding.² Specifically, the Forum asks that the Commission respond to these queries as quickly as possible but no later than Friday, December 20, 2024.

Sincerely,

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² *Ibid.*, at paragraph 3.