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FILED ELECTRONICALLY

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Mr. Robert A. Morin
Secretary General
Canadian Radio-Television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin,

Re: Broadcasting Notice of Consultation CRTC 2010-470, Call for comments on a review of the definitions for television program categories and related matters

1. The DOCUMENTARY ORGANIZATION OF CANADA | L'ASSOCIATION DES DOCUMENTARISTES DU CANADA (DOC) is the collective voice of independent documentary filmmakers across Canada. DOC is a national non-profit arts service association representing over 800 directors, producers and craftspeople in the documentary community, from all provinces and regions of our nation. DOC advocates on behalf of its members to foster an environment conducive to documentary production and strives to strengthen the sector within the broader film production industry.
2. DOC considers this proceeding to be a critical moment as we have sought greater clarity on the documentary definition from the Commission in the past. The current documentary category and television regulations have created an atmosphere where broadcasters do not respect the definition of documentary and abuse it. Instead of using the proper categories of reality or lifestyle programming to label their programming, broadcasters have used the documentary category. DOC has strenuously objected to the misapplication of the documentary definition, which is why we welcome the opportunity to comment on the definitions of program categories.
3. As stated in CRTC 2010-167, the programming of national interest (PNI) regime will support programming acting as primary vehicles for communicating Canadian stories and values while supporting targeted genres. Documentaries were included as one of the 3 genres of programming, along with Drama and Award shows. Unlike the previous regime, the PNI regime requires participating broadcasters to spend a certain amount on each genre. In order for this regime to fulfill the Commission's objectives, the definition of documentary needed to be updated. Otherwise, the PNI regime will support the wrong genres, and perpetuate the cycle of underfunding Canadian documentaries.
4. In its notice of consultation CRTC 2010-470, the Commission asked interveners to comment on numerous aspects of the programming regime and DOC wishes to

comment on the following: the definition of category 2b, the creation of a new programming category for documentary-style reality programming, the use of time restrictions, and regional programming.

5. We applaud the Commission's move to disaggregate documentaries from categories 2-5 when reporting expenditures; one of the many issues DOC has pointed out in previous hearings. However, we have concerns that some of the amendments being proposed to the documentary definition would hinder documentary production. These issues would be further compounded by the addition of a new category entitled *documentary-style reality-tv programming*.

6. In this intervention, we contextualize the problem of misapplication of the documentary definition by providing historical examples. Next, we argue that the definition of documentary should be harmonized with the CMF's current definition of documentary. Third, we argue that the suggested category for documentary-style reality programming should be refined and be called constructed non-fiction programming. Fourth, we suggest changes to the regional programming definition, so that it considers minority linguistic groups. Finally, we contend that the misapplication of categories can only be remedied through vigilant monitoring and the administration of penalties.

7. It is DOC's view that unless the Commission improves its monitoring of the program categories and their regulation, broadcasters operating in a regulated environment based on expenditures rather than exhibition will continue to substitute documentaries with reality and lifestyle programming, as they have in the past. This will render the new system ineffectual. As a result, the intended genres of the PNI regime will not be supported, and fewer programs communicating Canadian values and stories will be broadcast.

The Misapplication of the Documentary Definition

8. There are many reasons why broadcasters could be misapplying category 2b. First, completing program logs is subject to human error. Second, program loggers may have difficulty discerning where programming that is cross-genre would fit in the present system of categories. It is worthy of note that prior to the 1999, the effects of misapplication of categories did not have much of an impact. Once the priority programming regime was implemented, mislabeling of programs using category 2b became widespread.

9. In order to fully understand the misapplication of the documentary definition, DOC undertook a research project to see the frequency and tendency of the misapplication of the category 2b. Only the programming of conventional broadcaster services was analysed because they were the only services regulated by the priority program regime. Using seasonal samples of the program logs of the last ten years, the analysis yielded the following results:

- Every broadcaster subject to the priority programming regime misapplied category 2b.

- The misapplication of the category happened inside and outside of prime time hours.
- Reality programming, lifestyle programming, and news magazine programming were being labeled long-form documentaries.

10. At the beginning of the priority programming regime, all of the broadcasters eventually switched the labels of 2a to 2b of daytime programming. By lumping all “other information” programming (categories 2-5) and lifestyle programming into documentary programming, it has become increasingly difficult to differentiate other kinds of information programming and whether to use other categories at all. Program loggers stopped differentiating factual programming categories and labeled everything as a “documentary.”

- *Heart of the City, Investment Television, and Town and Country* were originally labeled as 2As (News and Analysis). After the creation of the priority programming regime, they were labeled as 2Bs.
- Travel programs such as *Word Travels*, and *Valerie Pringle has Left the Building* were labeled as 2bs.
- Sports programming was labeled as documentaries during the 2010 Olympics.
- DIY programming was labeled as 2bs: *Real Renos*, and a *Holmes on Holmes Special*
- Some examples of lifestyle programming labeled as 2bs are: *Antiques Roadshow, Balance: Television for Living Well, Body and Health, Chef at Large, Healthy Ever After, and The Great Canadian Food Show.*

11. All private conventional broadcasters labeled their reality programming as 2bs. One could argue that there is no appropriate category for docutainment and reality programming in the programming categories, and that broadcasters did not know which category these programs should be attributed to. However, docutainment and reality programming is not peculiar to the 21st century, and there are categories that could have been used instead such as: General Entertainment and Human Interest (category 11).

- Reality programming labeled as documentaries included: *10 Marias: 1 Year Later, Canada’s Worst Driver, Canadian Idol, Family Restaurant, Hockeyville, How Do You Solve a Problem like Maria, Kitchen Nightmares, Making the Cut (I and II), Party Mamas, Pop Stars, Star Academie, and Survivorman*

12. Errors in programming logs are infrequent and do not suggest the same systematic kind of application of the category.

- *Question Period, Two and Half Men, Coronation Street, and Just for Laughs Gags* are examples of reporting errors.

13. These egregious examples of misapplication of the documentary definition lead us to consider whether the misapplication was intentional in order for broadcasters to appear to be fulfilling their regulatory responsibilities. As a result of the misapplication, there are less documentaries being broadcast during prime-time.

This is completely at odds with the stated objectives of the priority programming regime. In addition, the accuracy of program logs have deteriorated, which has caused the propagation of inaccurate information about the number of documentaries broadcast over the last 10 years.

14. If the Commission were to stem this practice, it would first need to make the labeling of docutainment, factual entertainment programming, lifestyle, news magazine, and reality programming as simple and clear as possible.

Amending Category 2b to include the CMF exemptions

15. Currently, the Commission's definition of long-form documentary is incomplete. It mirrors the CMF's definition, but omits the CMF's exclusions. The CMF's definition of documentary contains an extensive list of ineligible programming which provides producers and their analysts a way of judging whether their program qualifies for CMF funding or not. As a result, category 2b can be applied to most programs that aren't scripted, and the CMF definition cannot.

16. Irrespective that the Commission is not a fund, the PNI regime requires that it be more vigilant in monitoring broadcasters' expenditures. This kind of monitoring is similar to how a fund judges the appropriateness of projects. The switch to program expenditure requirements from exhibition requirements alters the Commission's relationship to the broadcasters. The Commission has already declared that it will require the broadcasters to report more extensively about their expenditures. We believe it to be critical that the Commission increase its capacity to monitor the broadcasters given the changes to the regulations. By increased monitoring of the reports, it can judge whether the PNI regime is operating as it should and respond quickly.

17. By adding the CMF's exclusions to the Commission's definition, it is our view that many of the misapplications of category 2b will stop. The exclusions would make it much harder to mislabel a program. Below is a list of ineligible programming with program examples drawn from the misapplication above (when available):

- fully contrived reality programming (*The Amazing Race**)
- less contrived reality programming (*Making the Cut*)
- celebrity/lifestyle (*Gene Simmons Family Jewels**)
- lifestyle achievement (*Real Renos*)
- lifestyle contest (*Star Academie*)
- lifestyle travel-logue (*Word Travels*)
- lifestyle/docu-soap (*Party Mamas*)
- news magazine programming/segmented programming (*Heart of the City*)

*examples of the genre, not examples of misapplication of category 2b

Time Restrictions

18. There is one aspect of the CMF's definition that DOC would encourage the Commission not to adopt: time restrictions. Although 30 minutes is the average programming block on television, this is not always the case for all audio-visual programs. Similar to other genres, there are also documentary shorts, usually aired as a compilation program. Currently, BravoFACT and the Canada Council fund many documentary shorts that should not be marginalized because of their length.

19. Furthermore, given the increasing convergence of new media broadcasting and television broadcasting, there will be programs aired on broadcasters' digital media platforms that may be shorter than the average programming block. Episodes of web series and webisodes are often shorter than 30 minutes. It would be short sighted in a digital media environment to exclude programming based on its length. Indeed, within the new television regulations, broadcasters are able to exhibit PNI programming on whatever platform they wish. Time restrictions would only encumber the objectives of the new television regulations, and Canada's digital media producers.

20. DOC understands that the Commission wishes to delineate documentaries from news magazine and entertainment magazine programs by using time restrictions. However, using the CMF's list of exclusions provides clear instructions on what are magazine and segmented programs and how to differentiate them from documentaries. A documentary need not be 30 minutes to provide in depth exploration, but programs that use only one 8 minute documentary segment cannot be considered documentary programming. However, there are documentary anthology programs that exhibit shorts. These are very few and far between, and easily identifiable. Creating time restrictions would not aid in distinguishing these programs from news magazine programs.

21. DOC recommends that the Commission use the CMF definition in its entirety, including the exceptions described above. It will allow for regulatory symmetry between the CMF and the CRTC, easier coding for the broadcasters, and prevent the misapplication of category 2b.

A New Category: Constructed Non-Fiction Programming

22. As demonstrated above, there are difficulties in reporting other kinds of programming such as lifestyle and reality. Although DOC is thankful that the Commission has developed a new program category, we take exception with many of its proposed aspects.

23. Having clear nomenclature will avoid the risk of misapplying the definition. DOC finds the proposed name problematic as it further conflates documentary programming and reality programming. As it stands, the title would confuse broadcasters into labeling the so called "documentary-style reality programming" as documentaries, and the labeling problem identified earlier would remain. DOC

suggests renaming the Documentary-Style Reality Programming category: Constructed Non-Fiction Programming.

24. Clearly demarcating the new category by stating its main characteristics of being contrived and constructed in nature will further eliminate any potential for confusion. The CMF descriptors of less-contrived reality programming identify the differences:

1. It blurs the distinction between fact and fiction because of its use of actual people in contrived situations
2. Its storylines are superficial commentary on events as they happen, rather than contextualized using in-depth analysis.
3. There is little to no establishment of the context of the events, nor in-depth treatment of a subject matter.
4. Although it uses the Cinéma-vérité style, it employs it superficially in a short time frame of exploration, without the in-depth treatment common in documentary programming.

25. The proposed definition of the new category includes conventions used in actual documentary programming:

This type of programming involves passively following individuals as they go about their daily personal and professional activities. Though unscripted, this programming may be directed and may resemble a soap opera – hence the popular references to “docusoaps” and “docudramas.”

This happens to describe the Cinéma-vérité style, a convention used by documentarians to let the subjects speak for themselves without the imposition of a narration.

26. Thus, DOC would like to propose the Constructed Non-Fiction Programming category be defined as follows:

Constructed non-fiction programming relies on contrivance of reality to create realistic situations where the programming follows the lives and achievements of ordinary people in a superficial and uncritical manner. It presents unscripted dramatic or humorous situations and documents actual events. The immediacy of events for the purpose of entertainment overshadows the unfolding of a constructed story in order to inform its audiences.

Other types of reality television programming are captured by program categories 10 Game shows and 11(a) General entertainment and human interest.

Making Broadcasters Accountable for Deliberately Misapplying Definitions

27. In the previous regime, the practice of mislabeling categories could not be remedied because there were no penalties for doing so, nor any annual evaluative review of the program logs. With the establishment of the PNI regime, the Commission has an opportunity to end this practice.

28. The Commission has already begun to fix the reporting regime by changing the reporting requirements of broadcasters in the new regime. Annually, broadcasters must report: how much they spend on programming of national interest, on what platform it has been aired, whether the programming received CMF funding, and the program genre.

29. DOC considers this a great first step towards the improvement of reporting, but we wonder about what happens next. What if the Commission discovers that broadcaster is not reporting properly, what then? How does the Commission get broadcasters to comply with the regulations? If there is no enforceable deterrent, why wouldn't the broadcasters continue this practice? There needs to be increased vigilance on the part of the Commission to respond to such abuses to the regulatory system.

30. When the Chair of the Commission appeared before the Standing Committee on Industry, Science and Technology, he suggested to the committee that administrative monetary penalties should be added to the box of regulatory tools at the Commission's disposal. They could be used to deter licencees from being non-compliant and also be used to execute punishment on the non-compliant licencees.

31. Currently, the Commission does not have many tools at its disposal that can be used for immediate regulatory response. It can change conditions of licence or revoke licences. The first option can only be used at the time licence renewal time, and the second is rarely, if ever, used.

32. If the Commission were granted the ability to use administrative monetary penalties, DOC would like to see them applied to the regulation of the programming of national interest regime. Without consequences for mislabeling, the practice of mislabeling non-documentary content as documentaries will continue, because there would be no consequences for such actions.

Regional Programming Definition

33. DOC is critical of the current definition of regional programming outlined in the notice because it does not recognize the differences between minority and majority language producers. The Commission is a designated agency under s.41 of the Official Languages Act and is responsible for assisting and developing the vitality of Anglophone and Francophone linguistic minorities. The current regional

program definition inhibits the production of linguistic minority programming in major production centres.

34. A Francophone producer in Toronto or Vancouver or an Anglophone producer in Montreal is a minority language producer working in a major production centre. Because a producer works in a major production centre, he or she is not entitled to the same support as a linguistic minority in a smaller community. The result is that the linguistic minority producers working in these locations are not properly assisted in their production, and their development is hindered.

35. In order to rectify this problem, the Commission should amend the regional definition to take into consideration the linguistic demographics of the major production hubs, and alter the definition to recognize that minority language productions occur when they are produced in an area where the other official language is the majority.

Conclusion

37. We would like to thank the Commission for the opportunity to provide our comments on the review of the program categories. For years, we have been advocating for this review, and we are pleased to see it realized.

38. For the last 10 years, Canadian documentary television production has suffered. The perversion of the definition – by omission or commission – has exacerbated the decline of the genre on the airwaves. This trend has been allowed to persist because unclear, poorly applied definitions have made it possible. Presently, the Commission has the opportunity to rectify this problem by updating its definitions and changing its regulations. The PNI regime will only fulfill its objectives if all of its genres are regulated properly. We believe that our amendments and proposals would decrease the possibility of the misapplication of category 2b and consequently, the objectives of the PNI system would be achieved.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Christou', written over a horizontal line.

John Christou
Chair

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