

Submitted Electronically

July 25, 2023

Mr. Claude Doucet
Secretary General, Canadian Radio-television
and Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Doucet:

**Re: Reply of the Documentary Organization of Canada (DOC) - Broadcasting Notice of Consultation
CRTC 2023-138: The Path Forward – Working towards a modernized regulatory framework regarding
contributions to support Canadian and Indigenous content**

A. Executive Summary

1. In order to meet the objectives of the current *Broadcasting Act*, the new regulatory framework should require mandatory contributions for the documentary genre, as well as for Indigenous creators and equity seeking groups, within an appropriate balance of Francophone and Anglophone content.
2. DOC has reviewed the public record regarding online contributions and agrees that the initial base contributions for online audiovisual undertakings should be at least 5 to 10% of revenues to support Canadian and Indigenous content, as a subset of an overall contribution by online undertakings of at least 25 to 40% of annual revenues.
3. DOC agrees with comments that the mandatory initial base contribution for online undertakings should be directed to both public funds and to Certified Independent Production Funds (CIPFs). We agree that at least 80% of the contributions should be directed to public funds and 20% to the CIPFs.
4. DOC agrees that rigorous regulation and minimum requirements are necessary in order to achieve the desired outcomes of the proposed regulatory framework. DOC agrees with comments that are concerned by the lack of specific reference within the proposed regulatory framework to original, independent Canadian documentaries and other priority programming. DOC believes that the sector would experience significant instability were the proposed framework to be implemented without any

obligations to support programs of national interest, including long-form documentaries. DOC respectfully submits that the proposed approach as written will not ensure that the broadcasting system as a whole will contribute to the achievement of the Commission's and the *Broadcasting Act's* objectives.

5. DOC is pleased to note broad support for the documentary genre among intervenors in this proceeding, and for minimum requirements for documentaries and other priority programming within the new regulatory framework. DOC also notes that there is a demonstrable need for industry-wide commitments to documentaries and to communities who have been systematically under-served by the broadcasting sector.
6. DOC agrees with comments that while some CIPFs are actively supporting the documentary genre and our community of creators, CIPFs are currently under no regulatory requirements to do so. This lack of mandatory minimum requirements to documentaries and to Indigenous, Black, racialized and other equity-seeking and accessibility-seeking groups has limited CIPFs' potential within the sector. DOC agrees with the need for regulatory changes to the CIPFs, and that new CIPFs such as those proposed by the Indigenous Screen Office and Black Screen Office are needed.
7. DOC agrees that the CRTC should work with the ISO and Indigenous broadcasters and producers to carve out a definition of Canadian Indigenous content or Sovereign Indigenous Content. DOC agrees that increasing funding to the ISO and APTN is the best pathway to supporting Indigenous creators and Indigenous programming, and that imposing mandatory minimum requirements for Indigenous content is integral to the new regulatory framework. DOC agrees that the sector should move past the reliance on training initiatives as a mechanism for inclusion, and that the focus should be on funding, hiring and job retention across every production role.

B. Introduction

8. This submission is the reply comments of the Documentary Organization of Canada (DOC) in relation to Broadcasting Notices of Consultation CRTC 2023-138 (BNC 2023-138).
9. DOC is the collective voice of Canada's independent documentary creators. Founded in 1983, DOC has grown to 1,300 members across six chapters from coast to coast. DOC's mandate is to advocate for an equitable, sustainable environment for documentary production and to strengthen the sector within the broader cultural industry.
10. On 11 July 2023 DOC filed a written intervention relating to BNC 2023-138. DOC has reviewed the public records of this proceeding and is pleased to provide the following reply comments.

C. Contributions to the New Regulatory Framework

11. DOC has reviewed the public record with regards to the appropriate level of contributions to be made by online undertakings in support of Canadian and Indigenous programming.
12. DOC notes with interest the proposal by the Canadian Association of Broadcasters that 20% of the Canadian gross annual revenues of online programming undertakings be directed to the specified funds.⁵ This is in keeping with comments noting international examples that require comparable investments in their local production sector, such as France.⁶
13. In our Canadian context, multiple intervenors have suggested that the initial base contribution requirement for online undertakings should be set at a level of no less than 5% of annual revenues, and that this would be a starting point for the new regulatory framework. We also noted with interest the recommendation of the Director's Guild of Canada.
14. Considering the above, DOC proposes that the initial base contributions for online audiovisual undertakings should be at least 5 to 10% of revenues to support Canadian and Indigenous content, as a subset of an overall contribution by online undertakings of at least 25 to 40% of annual revenues.

D. Mandatory Contributions for the Feature Documentary Genre

15. DOC is pleased to note broad support for the documentary genre among intervenors in BNC 2023-138 in both English and French. The Canadian Media Producer's Association (CMPA) commented that "In implementing this new framework, the Commission must also ensure these funds support a greater diversity of programming, including important genres of increasingly underrepresented content such as feature film, children's programming and documentaries... Documentaries are critical for an informed citizenry. They challenge our conscience and societal assumptions." Furthermore, "documentaries are core elements of the Canadian programming contribution to our social, political, cultural and economic fabric... the influence of documentaries on our civic discourse mean broadcasting policy should strive to maintain a place for them in our system and on our screens"⁸ This sentiment is echoed in

⁵ CAB submission to Broadcasting Notice of Consultation CRTC 2023-139, p.18

⁶ In France, streamers are required to contribute 20% of their gross revenue generated in France to local French content, and 5.15% of their gross revenues generated in France goes to the Centre national du cinéma et de l'image animée ("CNC"). (source: CMF submission to Broadcasting Notice of Consultation CRTC 2023-139, para. 42)

⁸ CMPA submission to Broadcasting Notice of Consultation CRTC 2023-139, para. E11, para.104

submissions by Coalition M.É.D.I.A and by l'ARRQ-GMMQ-SARTEC-UDA with reference to Francophone documentaries.

16. The Director's Guild of Canada (DGC) mirrors DOC's comments on BNC 2023-138 regarding the need for minimum supports for documentaries and other Programs of National Interest (PNI) genres within the new regulatory framework: "Minimum requirements ... satisfy important public policy objectives of the recently updated broadcasting legislation" and "while a flexible approach to broadcast regulation is a relevant consideration, such flexibility must also be balanced with appropriate support mechanisms for the creation of Canadian and Indigenous content deemed of national importance."⁹

E. Funding for Original, Independent Canadian and Indigenous Content

17. DOC has reviewed the public record with regards to the role of existing funds and is pleased to offer the following comments.
18. As stated, DOC agrees with many of the comments that an initial base contribution is necessary as an outcome of this proceeding. We also agree that the contributions should be directed to public funds and to certified independent production funds. To that end, DOC supports an approach proposed by many interveners whereby at least 80% of the contributions should be directed to public funds and 20% to the CIPFs.
19. DOC reiterates our position that mandatory contributions to feature documentaries, Indigenous content, and regulations to ensure support for diversity, inclusion and accessibility with an appropriate balance for Anglophone and Francophone content are needed in order to meet the objectives within the *Broadcasting Act*, a position echoed by many others commenting on BNC 2023-138.
20. Within the public funds, natural recipients of mandated support for original independent documentary production include the National Film Board of Canada, the Canada Media Fund (CMF), and Telefilm Canada (Telefilm). Within the CMF, appropriate programs to receive funding mandated for documentaries currently consist of the POV Fund, pre-development and development programs, slate funding for documentary producers, the Pilot Program for Racialized Communities (PPRC), and the Indigenous Program. Within Telefilm, appropriate programs are the Theatrical Documentary Program, Talent to Watch, and the Development program. Within the National Film Board of Canada, new funding would support the development and production of independent documentaries created by a range of emerging, mid-level and veteran Canadian filmmakers. It may also be appropriate for the public funding bodies to develop new initiatives to support the creation of a diversity of high-quality Canadian and Indigenous long-form documentary content. Across all the public funds, DOC re-iterates

⁹ DGC submission to Broadcasting Notice of Consultation CRTC 2023-139, para.27

our position on the need for regulated support for Indigenous creators and equity-seeking and accessibility-seeking groups, within an appropriate balance of Francophone and Anglophone content.

21. Several existing private funds are also natural recipients of funding earmarked for documentaries. New funds are required as well, as DOC will elucidate below.
22. In DOC's initial submission, we made the general statement that the ensemble of existing funds are not adequately supporting the long-form documentary genre, nor OLMCs, diversity, inclusion and accessibility objectives. The state of crisis for the documentary genre, as outlined in DOC's initial comments regarding BNC 2023-138, and the structural inequalities outlined by other intervenors such as the ISO, the BSO, the Disability Screen Office (DSO), Coalition M.E.D.I.A., the Racial Equity Media Collective (REMC), BIPOC TV & Film, and the Canadian Independent Screen Fund for BPOC (Black and People of Colour) Creatives (CISF), among others, demonstrate the need for an industry-wide commitment to documentaries and to communities who have been systematically under-served by the broadcasting sector. As DOC has stated in our intervention relating to BNC 2023-138, many of the communities prioritized within the current *Broadcasting Act* are well represented among documentary filmmakers.
23. With regard to the efficacy of private funds, we wish to offer our comments on how existing and new CIPFs could better support documentaries and the communities prioritized by the current *Broadcasting Act*.
24. The Rogers Documentary Fund (RDF) and the Rogers Cable Network Fund (RCNF) are key supporters of Canadian documentary films. Last year, the RDF contributed \$3M toward 42 projects¹¹ and since 1996, the Rogers Group of Funds has invested more than \$213 million in 1,750 productions.¹² In 2020, RDCNF partnered with Creative BC on an \$800,000 an early-stage development fund for producers of documentary and factual content who live in British Columbia, with a special focus on filmmakers who identify as Indigenous, Black and/or persons of colour, or members of another equity-deserving groups. In 2021, the RGF launched a \$750,000 initiative partnering with the BSO and the CISF to provide script development funding to help BPOC creators transform their ideas into pitch-ready projects.¹³ For Canada's documentary filmmakers, both RDF and RCNF have been incredibly important in supporting the production of high quality independent original productions.
25. In addition to the Rogers Group of Funds, other CIPFs have been important supporters of the documentary genre in various formats, such as the Telus Fund, the Bell Fund, the Shaw Rocket Fund, and the Quebecor Fund. However, there are currently no regulatory requirements for the CIPFs to support documentaries and the diversity of communities who make them. This has impeded support for

¹¹ Rogers Group of Funds submission to Broadcasting Notice of Consultation CRTC 2023-139, para. 8

¹² Rogers group of funds annual report 2022

¹³ Rogers Group of Funds submission to Broadcasting Notice of Consultation CRTC 2023-139, p. 4

the creation, promotion and discoverability of programming made by and for equity-deserving groups¹⁴ and for the documentary genre. DOC notes the CMPA's comment that the lack of mandatory requirements for documentaries can result in lowered documentary spend by CIPFs that support multiple genres,¹⁵ a similar issue to the shift away from documentaries by broadcasters who have the flexibility to do so within their obligations to PNI.¹⁶

26. A CIPF's funding is entirely at the discretion of the contributor. The lack of mandatory requirements to pay into CIPFs that contribute to priority programs and communities can preclude funding of CIPFs that support these important genres of content, as well as under-represented content creators.¹⁷ Some of the CIPFs have implemented internal policies to prioritize Indigenous, Black, racialized, and other equity-seeking communities¹⁸ but as noted by Coalition M.É.D.I.A., individual initiatives toward equity, diversity and inclusion may not have the desired impact across the sector.¹⁹ DOC notes the DSO's comment that specific and rigorous standards of accessibility are needed in order to align CIPFs with the Accessibility Canada Act (ACA).²⁰ For these reasons, DOC is in favour of regulatory changes to the Commission's CIPF policy set out in Broadcasting Regulatory Policy 2016-343.

27. DOC is also in favour of the creation of new CIPFs. Currently, there is only one CIPF with a mandate to devote 100% of its resources to supporting Black and racialized creators: the CISF. Furthermore, the CISF is the only CIPF which is BPOC governed, managed, and operated.²¹ The broadcasting sector would be well served by new funds with similarly specific mandates and governance models. DOC agrees with the comments by the ISO and the BSO regarding the need for new CIPFs that will increase

¹⁴ "While many of these funds have been effective in supporting a broad range of Canadian content, as well as some Indigenous content, it is clear that the current production fund infrastructure does not sufficiently support the creation, promotion and discoverability of programming made by and for equity-deserving groups." DGC submission to Broadcasting Notice of Consultation CRTC 2023-139, para.51

¹⁵ CMPA submission to Broadcasting Notice of Consultation CRTC 2023-139, para.97

¹⁶ DOC submission to Broadcasting Notice of Consultation CRTC 2023-139

¹⁷ CMPA submission to Broadcasting Notice of Consultation CRTC 2023-139, para.97

¹⁸ The Telus Fund began collected data in 2021 to include individuals in Racialized Communities in key positions on funded project teams, and reports that in 2021-22, individuals belonging to a Racialized Community filled at least one key role in thirty-seven percent (37%) or 11 of the 30 financing agreements provided by the Fund. Telus Fund submission to Broadcasting Notice of Consultation CRTC 2023-139, para.35

¹⁹ « Même si le système actuel et ses fonds se veulent diversifiés, ils n'ont malheureusement pas réussi à être réellement inclusifs en représentant des créateur.trice.s de différentes communautés sous-représentées et en incluant de façon significative et proportionnelle au sein de leur clientèle des sociétés de production majoritairement détenues et contrôlées par des personnes autochtones, afro-descendantes et racisées... Pour s'assurer de diversifier la clientèle à même l'industrie audiovisuelle, MÉDIA propose que tous les fonds financés et reconnus par le CRTC doivent allouer une cible d'au moins un tiers de leurs enveloppes à des compagnies détenues et contrôlées par des personnes appartenant aux communautés sous-représentées. De plus, il va sans dire qu'au moins le tiers du financement disponible devrait être alloué à des contenus francophones, et ce même dans le cas d'initiatives visant les communautés sous-représentées. »

MEDIA submission to Broadcasting Notice of Consultation CRTC 2023-139, para.33

²⁰ DSO submission to Broadcasting Notice of Consultation CRTC 2023-139, para.29

²¹ CISF submission to Broadcasting Notice of Consultation CRTC 2023-139, para.2

support for the communities they represent. DOC also supports the ISO's comment that an appropriate share of new production funds being dedicated to Indigenous video productions and audio projects is between 7% and 9%.²²

28. We also wish to note that DOC supports the proposal by the National Screen Institute, the Canadian Film Centre, and l'Institut national de l'image et du son to create a new "Canada Audiovisual and Immersive Training Fund."

29. DOC notes with interest the ISO's proposed changes to the CIPF regulations²⁴ and those proposed by the BSO.²⁵

F. Objectives and outcomes of the proposed framework

30. DOC has reviewed the public record regarding an outcomes-based framework and notes that many of the intervenors have commented on the need for rigorous regulation and minimum requirements in order to achieve the desired outcomes regarding the creation and production of Canadian and Indigenous content.

31. DOC notes ACTRA's alarm that the proposed approach does not include specific reference to the critical programming genres of high-quality Canadian fiction, scripted comedies, children's programs, and documentaries,²⁷ a sentiment echoed by the DGC, which points out that the "flex" approach provides no year-over-year certainty about the level of Canadian and Indigenous content that will be supported, created or promoted. Of specific concern to DOC is that the CRTC's approach "appears to allow broadcasters to choose whether or not they will support PNI content" which could in turn "threaten the strength of the Canadian broadcasting and independent production sectors in the rapidly evolving digital media environment."²⁸ DOC also notes the CMF's caution to the Commission that it prevent the

²² ISO submission to Broadcasting Notice of Consultation CRTC 2023-139, para.52 & 53

²⁴ The ISO comments that the Funds should align more closely with how the ISO has been successfully supporting Indigenous filmmakers, namely that the ISO's Board approves funding above \$250,000, and the management of the ISO, working with industry professional peer assessment panels, approves funding below this amount. ISO submission to Broadcasting Notice of Consultation CRTC 2023-139 para.50

²⁵ the BSO's proposed changes to the CIPF regulations by the CRTC, that would require demonstrable evidence of how it will "serve the needs and interests of all Canadians—including Canadians from Black or other racialized communities and Canadians of diverse ethnocultural backgrounds, socio-economic statuses, abilities and disabilities, sexual orientations, gender identities and expressions, and ages—and reflect their circumstances and aspirations, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society, and the special place of Indigenous peoples and languages within that society." BSO submission to Broadcasting Notice of Consultation CRTC 2023-139 para.13

²⁷ ACTRA submission to Broadcasting Notice of Consultation CRTC 2023-139 p. 12

²⁸ DGC submission to Broadcasting Notice of Consultation CRTC 2023-139 para.91

framework from becoming so malleable that it does not hold undertakings to certain foundational requirements.²⁹

32. DOC agrees with the Writer's Guild of Canada (WGC) that one of these foundational requirements is the production of high quality, original Canadian programming, which is not listed within paragraph 59 of the Commission's notice of consultation,³⁰ a point also made by the DGC in its comment that the proposed regulatory framework fails to propose minimum obligations for this key component for a strong Canadian broadcasting system³¹ The need for investment in original programming is also stated by APTN, which points out that if the CRTC adopted new language requiring contributing entities to commission a minimum amount of original Indigenous production or to provide funding to such productions, the increased demand and resources for content would then support the development of new Indigenous companies.³²
33. DOC also notes the WGC's concern that the Commission is using similar language in the present Notice of Consultation as in its most recent licence renewal of CBC/Radio-Canada (CBC-SRC), and notes that the type of "outcomes-based approach" applied by the Commission to CBC-SRC is not an appropriate model for the regulation of private entities in the broadcasting system.³³ DOC agrees with the DGC's comment that the proposed approach will not ensure that the broadcasting system as a whole (including online undertakings) will contribute to the achievement of the Commission's and the *Broadcasting Act's* objectives and that "clear, transparent and measurable regulatory requirements" are essential to ensure that a broad range of high quality, high cost and high-risk Canadian content is made, in particular Canadian and Indigenous dramas and long-form documentaries."³⁴
34. With regard to reporting requirements and other incentives, DOC agrees with the BSO that reporting does not act as an incentive, and that while reporting is a key element to identify and measure progress, reporting alone cannot and should not be used as a tool to incentivize diversity and inclusion in programming.³⁵ The REMC supports the CRTC imposing demographic reporting requirements, including race-based data, and comments that while requirements and incentives can support the distribution, promotion, and discovery of video content created by equity-deserving communities, such requirements are secondary to dedicated funding.³⁶ DOC also notes the ISO's comment that the

²⁹ CMF submission to Broadcasting Notice of Consultation CRTC 2023-139 para.100

³⁰ WGC submission to Broadcasting Notice of Consultation CRTC 2023-139 para.125

³¹ DGC submission to Broadcasting Notice of Consultation CRTC 2023-139 ES iii

³² APTN submission to Broadcasting Notice of Consultation CRTC 2023-139 para.35

³³ WGC submission to Broadcasting Notice of Consultation CRTC 2023-139 ES.11

³⁴ DGC submission to Broadcasting Notice of Consultation CRTC 2023-139 ES.iv

³⁵ BSO submission to Broadcasting Notice of Consultation CRTC 2023-139 para.43

³⁶ REMC submission to Broadcasting Notice of Consultation CRTC 2023-139 para.24 & para.29

framework should include reports, consultations, and public opinion research, as there is very little data on the Indigenous screen sector and the extent to which the broadcasting system is relevant to Indigenous peoples.³⁷

35. DOC has reviewed the comments regarding the need for a fund such as the Broadcast Participation Fund (BPF) and we agree with the necessity for a democratic, accessible, adequately financed BPF. DOC noted several comments on how to improve the BPF in order to ensure equitable contribution to and participation in CRTC proceedings. DOC agrees with the BSO's comment that the CRTC revise the structure of the funding from the BPF so that it can be provided in advance of participation rather than as a reimbursement of costs, an essential change for small organizations to be in a position to actively participate in proceedings.³⁸ DOC also notes the suggestion by Eastlink that costs mechanism introduced for broadcasting proceedings could mirror the mechanism employed for telecom proceedings, in which only the entities driving the proceeding are required to pay the costs associated therewith in order to not put undue pressure on smaller broadcasting entities.
36. DOC has also reviewed the comments by the Broadcasting Accessibility Fund (BAF) and agrees that the BAF requires targeted new funding through the policy and regulatory framework established through the implementation of *The Online Streaming Act*.³⁹

G. Specific Questions Regarding Indigenous Content

37. Regarding support for Indigenous creators and storytellers, DOC agrees with the ISO's comment that increasing funding to the ISO and APTN is the best pathway to supporting Indigenous-owned production companies in producing compelling, innovative content with high production values that connects with audiences.⁴⁰ DOC also agrees with the DGC that minimum regulatory support obligations must be established in order to ensure support for Indigenous creators.
38. Regarding discoverability of Indigenous content, DOC supports establishing programming requirements upon broadcasting and online undertakings to support Indigenous storytelling⁴² and that Indigenous content should be viewed as mandatory in Canada's broadcasting system.⁴³
39. Regarding increasing the number of Indigenous creators and storytellers in key creative positions, DOC agrees with the ISO's comment that "[i]t is time to move past the reliance on training initiatives as the

³⁷ ISO submission to Broadcasting Notice of Consultation CRTC 2023-139 para.58

³⁸ BSO submission to Broadcasting Notice of Consultation CRTC 2023-139 para.19

³⁹ BAF submission to Broadcasting Notice of Consultation CRTC 2023-139 para. 13

⁴⁰ ISO submission to Broadcasting Notice of Consultation CRTC 2023-139 para.60

⁴² APTN submission to Broadcasting Notice of Consultation CRTC 2023-139 para.36

⁴³ ISO submission to Broadcasting Notice of Consultation CRTC 2023-139 para.61

mechanism for Indigenous inclusion, where there is a segment of the sector adequately trained and prepared for key creative roles” and that the focus needs to shift to hiring and job retention across every production role. “Support tends to be directed to the four key creatives, when we know that an entire ecosystem of talent is required to have a truly Indigenous screen sector.”⁴⁴

40. DOC agrees with APTN that the CRTC can work with Indigenous broadcasters and producers to carve out a definition of Canadian Indigenous content or Sovereign Indigenous Content in order to facilitate Indigenous collaborations across colonial borders, which would “usher in a new area of explosive content collaboration, and open up new International markets for Canadian Indigenous content, including unprecedented opportunities for Indigenous artists and performers.”⁴⁵

H. Conclusion

41. DOC represents 1,300 creators who will be deeply impacted by the outcomes of this proceeding and we appreciate the opportunity to speak on behalf of our community. DOC feel strongly that greater support measures are required to sustain, strengthen and ensure the perennity of Canadian and Indigenous long-form documentaries within our broadcasting sector, and that these measures will benefit all Canadians.

Sincerely,



Sarah Spring
Executive Director, Documentary Organization of Canada

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⁴⁴ ISO submission to Broadcasting Notice of Consultation CRTC 2023-139 para. 65

⁴⁵ APTN submission to Broadcasting Notice of Consultation CRTC 2023-139 para.45