

Court File No.

FEDERAL COURT OF APPEAL

B E T W E E N:

MOTION PICTURE ASSOCIATION – CANADA, NETFLIX
SERVICES CANADA ULC, AMAZON.COM.CA ULC, BUENA
VISTA INTERNATIONAL, INC., FUBOTV INC.,
PARAMOUNT ENTERTAINMENT CANADA ULC, PLUTO
INC., SONY PICTURES ENTERTAINMENT INC.,
CRUNCHYROLL, LLC, CULVER MAX ENTERTAINMENT
PRIVATE LIMITED, AND UNIVERSAL PICTURES
SUBSCRIPTION TELEVISION LIMITED

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

MOTION RECORD
(re: Motion for Leave to Appeal)

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**NOTICE OF MOTION
(Motion for Leave to Appeal)**

TAKE NOTICE THAT the Applicants will make a motion to the Court in writing under Rule 352 of the *Federal Courts Rules*.

THE MOTION IS FOR AN ORDER:

- (a) granting the Applicants leave to appeal to this Court in respect of Broadcasting Regulatory Policy CRTC 2025-299 issued by the Canadian Radio-television and Telecommunications Commission's ("CRTC") on November 18, 2025 ("Decision");
- (b) the costs of this motion; and
- (c) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

5. The Decision concerns the CRTC's determination to disclose online undertakings' confidential financial information that they are obliged to file with the CRTC, among other subjects. This determination violates the statutory confidentiality process and substantive confidentiality regime newly enacted by Parliament, putting the Applicants at serious risk of competitive and other harm. The CRTC's violation of its statutory confidentiality obligation undermines the integrated scheme Parliament mandated in the *Online Streaming Act*, which in 2023 amended the *Broadcasting Act*.

6. The CRTC made two errors of law and jurisdiction in the Decision concerning what the CRTC labelled its "Publication of financial data" decision:¹

- (a) The CRTC misinterpreted the statutory confidentiality process mandated at s. 25.3 of the *Broadcasting Act*, by erroneously deciding in advance to publish future sensitive financial information without giving the Applicants an opportunity to designate it as confidential and make representations at the time the information is provided.
- (b) The CRTC misinterpreted the scope of the phrase "disclosure is in the public interest" at s. 25.3 of the *Broadcasting Act*, by failing to construe this phrase in the context of the *Broadcasting Act* as a whole.

¹ [Decision](#), paras. 202-214, Motion Record ("MR") Tab 2.

The Applicants

7. The Applicant Motion Picture Association – Canada (“MPA-Canada”) is the Canadian affiliate of the Motion Picture Association (“MPA”). The MPA is the voice and advocate of major international producers and distributors of film, television and streaming programming for global audiences. MPA-Canada participated in the CRTC proceeding leading to the Decision on behalf of members of the MPA. The other Applicants are, directly or indirectly, such members (“MPA Companies”).

8. Under the Decision, the MPA Companies’ confidential information that they are required to provide to the CRTC will be disclosed to the public, to their serious detriment as discussed below.

The New *Broadcasting Act* Confidentiality Regime

9. In 2023, the *Broadcasting Act* was amended by the *Online Streaming Act* to add “online undertakings” (including foreign streaming services) as a sub-set of “broadcasting undertakings” governed by the *Broadcasting Act*. The *Online Streaming Act* also added the following provisions to the *Broadcasting Act*.

10. With respect to collecting information from broadcasting undertakings (which, as noted above, now include – but are not confined to – online undertakings), the *Broadcasting Act* now empowers the CRTC to,

9.1(1) ...in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting...

(o) *the provision to the Commission*, by persons carrying on broadcasting undertakings, of any other information that the Commission considers necessary for the administration of this Act, including

(i) *financial or commercial information*,

(ii) information related to programming,

(iii) *information related to expenditures* made under section 11.1, and

(iv) information related to audience measurement, other than information that could identify any individual audience member; [emphasis added]

11. However, Parliament circumscribed the CRTC's ability to disclose information submitted to it in confidence by adding s. 25.3 to the *Broadcasting Act*. Subsection 25.3(1) establishes categories of information that a person may designate as confidential when filing with the CRTC:

25.3(1) *A person who submits* any of the following information to the Commission *may designate it as confidential*:

(a) information that is a trade secret;

(b) *financial, commercial*, scientific or technical information that is *confidential* and that is *treated consistently in a confidential manner by the person who submitted it*; or

(c) information the *disclosure* of which could reasonably be expected

(i) to result in *material financial loss or gain to any person*,

(ii) to *prejudice the competitive position* of any person, or

(iii) to *affect contractual or other negotiations* of any person. [emphasis added]

12. Subsection 25.3(2) of the *Broadcasting Act* provides that once the information is designated as confidential, the CRTC cannot disclose it without first complying with steps laid out in other provisions:

25.3 (2) Subject to subsections (4), (5) and (7), ***if a person designates information as confidential and the designation is not withdrawn by that person, no person*** described in subsection (3) ***shall knowingly disclose the information, or knowingly allow it to be disclosed***, to any other person in any manner that is intended or likely to make it available for the use of any person who may benefit from the information or ***use it to the detriment of any person to whose business or affairs the information relates***. [emphasis added]

13. With respect to information submitted otherwise than in the course of proceedings before the CRTC (the situation at issue on this motion), s. 25.3(5) of the *Broadcasting Act* requires the CRTC to perform several mandatory steps, absent which it cannot disclose designated confidential information:

25.3(5) If ***designated information*** is submitted to the Commission otherwise than in the course of proceedings before it, the Commission may, while protecting the privacy of Canadians,

(a) disclose the information or require its disclosure ***if, after considering any representations from interested persons***, the Commission considers that the information is ***relevant to a matter arising in the exercise of its powers or the performance of its duties and functions*** and determines that the ***disclosure is in the public interest***; [emphasis added]

14. Section 25.3(4) of the *Broadcasting Act* provides similar procedural protections and imposes a similar public interest requirement where information is disclosed in the course of a proceeding.

The Decision

15. The Decision is part of a series of related CRTC determinations, to implement the changes brought about by the *Online Streaming Act*. It focuses on changing the definition of “Canadian program” and also addresses data collection and publication. Still to come from the CRTC are determinations about Canadian programming expenditures (“CPEs”) and

other contributions that must be made by traditional Canadian broadcasting undertakings and online undertakings, among other subjects.

16. With respect to data collection, the CRTC determined that in addition to other data it collects, all broadcasting undertakings, including online undertakings, “that currently are or may become subject to CPE requirements will be required to file with the Commission, via the annual returns, data on CPE”. As a result, while the CRTC has not yet made a determination about the substance of the CPEs it is contemplating, it has already decided to collect information about CPEs from broadcasting undertakings.

17. With respect to the CRTC publishing financial data of broadcasting undertakings (“**Financial Data**”), it used strong language under the heading “Commission’s decisions”, to determine that it

intends to publish the following information as it relates to audio-visual activities *on an annual basis, aggregated at the entity level*:

- annual Canadian gross broadcasting revenues less excluded revenue;
- CPE; and
- other contributions. [emphasis added]

18. The CRTC explained what it meant by “aggregated at the entity level”:

For greater clarity, this publication will be at the entity level, which, depending on each undertaking’s ownership structure, is either an individual broadcasting undertaking or a broadcasting ownership group.

The Commission recognizes that large online undertakings are not always part of a broadcasting ownership group, and that in such cases, the data disclosure above would apply to a single undertaking.

19. The CRTC determined that it would disclose the Financial Data because it is *always* in the public interest to do so, because it “fosters transparency” and “taking into account

existing practices for publication of traditional undertakings' data and information". The CRTC did not contemplate any further consideration on a case-by-case basis as Financial Data, and confidentiality designations are filed in the future.

20. The CRTC called this its "general approach" to "apply going forward, beginning with data collected in regard to the 2025-2026 broadcast year", i.e. the year ending August 31, 2026. It made this determination even before receiving any broadcasting undertakings' 2025-2026 Financial Data, confidentiality designations and representations about that information's confidentiality and applying the statutory test under s. 25.3 of the *Broadcasting Act*.

21. In the Decision, the CRTC brushed aside a 2024 decision implementing another aspect of the *Online Streaming Act* where the CRTC approved, correctly, a third party administered framework for the payment of certain financial contributions to various industry funds that ensured that each foreign online undertaking's specific financial information remains confidential. The CRTC approved that framework after certain online undertakings objected to disclosure under s. 25.3. The Decision provides no explanation for why the CRTC's interpretation of the s. 25.3 test changed between 2024 and 2025.

22. The following is the grand total of the CRTC's statutory interpretation analysis in the Decision about the confidentiality issue:

Paragraphs 9.1(1)(n) and (o) of the Act authorize the Commission to require that it be provided with various types of information, while subsections 25.3(4) and (5) authorize the Commission to make certain information provided to it available in the public interest.

...

Under section 25.3 of the Act, the Commission is required to balance the protection of such confidential data and disclosure of information in the public interest, thereby maximizing transparency while safeguarding sensitive information.

General

23. The Applicants rely on the following statutes, order and rules:

- (a) *Online Streaming Act*, S.C. 2023, c. 8;
- (b) *Broadcasting Act*, S.C. 1991, c. 11;
- (c) *Federal Courts Act*, R.S.C. 1985, c. F-7;
- (d) Order issuing directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework), SOR/2023-239; and
- (e) The Federal Courts Rules, SOR 98/106; and
- (f) Such further and other grounds as the solicitors may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used on this motion:

- (a) the affidavit of Sydney Grieve sworn December 17, 2025; and
- (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

December 18, 2025

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Broadcasting Regulatory Policy CRTC 2025-299

PDF version

References: 2024-288, 2024-288-1, 2024-288-2, 2024-288-3 and 2024-288-4

Gatineau, 18 November 2025

Public record: 1011-NOC2024-0288

The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector – Part 1 – Certification framework for Canadian programs, artificial intelligence, data collection and publication, and reporting requirements

Summary

The *Online Streaming Act* made significant changes to the *Broadcasting Act* that require the Commission to modernize the Canadian broadcasting framework and ensure that broadcasting undertakings, including non-Canadian undertakings, meaningfully support Canadian programs and talent.

As part of its broader regulatory plan to implement the modernized *Broadcasting Act*, the Commission launched a public consultation to modernize its definition of “Canadian program” and ensure the sustainability and growth of Canada’s broadcasting system.

As part of this consultation, the Commission received 480 written submissions and held a public hearing within a three-week period in May 2025 with 78 appearing parties.

Today, based on the public record, the Commission is addressing four issues that were considered in the consultation (Broadcasting Notice of Consultation 2024-288): the certification framework for Canadian programs; artificial intelligence (AI); data collection and publication; and reporting requirements. Canadian programming expenditures, including expenditures on news, and supports for the independent production sector will be addressed in a regulatory policy to be issued in the near future.

In this regulatory policy, the Commission recognizes how much the broadcasting industry has changed, while also taking key actions to ensure that Canadian creative voices in English and French are well supported. This regulatory policy introduces greater flexibility for producers and broadcasters while helping protect Canadian cultural objectives and jobs. It also takes into account the differences between English-language and French-language production in Canada, while ensuring that the business models present in both markets continue to be recognized.

The modernized certification framework will apply to audio-visual content that meets the criteria set out in this regulatory policy. The content may be broadcast by any

Canada^{ca}

broadcasting undertaking, whether traditional or online. In the Commission's view, its modernized framework will strongly support Canadian creative voices and allow the Canadian production and creative industries to continue to make and distribute content to Canadians and the world.

To this end, the Commission has recognized a greater number of key creative positions. The Commission is expanding the points system used to recognize "Canadian programs" to provide more paths for Canadian certification. In doing so, the Commission has recognized the importance of having Canadians occupy a wide range of positions in programming. It has also recognized that the way in which productions are made has changed over time, and that this needs to be reflected in the points system.

The Commission further recognizes that the key creative positions used in any Canadian production need to be staffed by humans and not by AI. Having heard the concerns about the use of AI in creating content and the transparency of AI use, the Commission is striking a balance by recognizing the usefulness and potential benefits of AI as a creative tool to assist producers and creators, while also recognizing the importance of human control being maintained. In doing so, the Commission emphasizes that Canadian creators continue to be at the heart of the Canadian broadcasting system.

The Commission is introducing requirements regarding minimum Canadian copyright ownership while providing a path for non-Canadian companies to share copyright in a production, with enhanced commitments to employing Canadian creators and using Canadian talent. This regulatory policy introduces a flexible copyright model that draws inspiration from international co-production treaties signed by the Government of Canada. This approach will lead to possibilities created by a broad spectrum of productions, and of business models and broadcasting and distribution models, while maintaining important safeguards. These safeguards include minimum Canadian copyright retention and best practices for fair negotiations.

This regulatory policy also levels the playing field in regard to the publication of financial data, thereby promoting transparency and accountability in the broadcasting industry. It also streamlines a number of reports filed by some broadcasting undertakings, thereby alleviating administrative burden and ensuring more consistency in disclosure requirements across broadcasters. To ensure transparency, the Commission has decided that Canadian broadcasting revenues and Canadian programming expenditures made by all players in the Canadian broadcasting system, including non-Canadian online undertakings, will be aggregated by entity and made public. This will provide Canadians with insight into how players in the broadcasting system are making meaningful contributions to Canadian creative industries and to the overall Canadian economy.

For ease of reference, the Commission has set out in Appendix 1 to this regulatory policy the detailed criteria of the certification framework. In Appendix 2, the Commission has set out its approach to the certification, verification and assessment of certain types of productions as well as the interpretation of terms used in Appendix 1.

To implement its decisions regarding the criteria for defining “Canadian program,” the Commission intends to issue in the near future a notice of consultation calling for comments on proposed new regulations defining “Canadian program” in the audio-visual sector and on consequential amendments to the *Television Broadcasting Regulations, 1987* and to the *Discretionary Services Regulations*. The Commission invites interested persons to consult that notice of consultation for further details.

Introduction

1. In Broadcasting Notice of Consultation 2024-288 (the Notice), the Commission launched a public consultation to modernize its definition of “Canadian program” for the audio-visual sector. This proceeding is part of the Commission’s broader regulatory plan to implement the *Online Streaming Act* and ensure the sustainability and growth of Canada’s broadcasting system.
2. In the Notice, the Commission sought comments on:
 - how to modernize the current definition of “Canadian program” in the audio-visual sector;
 - whether and how to adjust Canadian programming expenditure (CPE) and programs of national interest (PNI) expenditure requirements in the audio-visual sector and the funding of at-risk programming (including news content);
 - whether and how to address the use of artificial intelligence (AI) by audio-visual creators and broadcasters; and
 - how to ensure that the Commission, the broadcasting industry and Canadians have access to data and information to make informed choices about Canadian programs.
3. Throughout this proceeding, the Commission was guided by the following objectives:
 - to better support and promote Canadian stories through audio-visual programming that makes use of Canadian creativity and other resources, including French-language, Indigenous and news content;
 - to facilitate flexible audio-visual Canadian programming and a financial support ecosystem that encourages a variety of productions, and a variety of business models and broadcast and distribution models;
 - to better recognize the role played by Canadian key creators in the creation, broadcast and distribution of audio-visual Canadian programming;
 - to foster a sustainable Canadian broadcasting system where Canadian creators are able to profit from their creations, including through intellectual property rights;

- to further the exportability and discoverability of Canadian programming; and
 - to ensure that Canada’s diversity is reflected in the Canadian broadcasting system.
4. This regulatory policy is the first of two covering the issues examined during this proceeding. In the Commission’s view, defining what constitutes a “Canadian program” is a necessary step before establishing financial or policy measures to support its creation and distribution in the audio-visual sector. Accordingly, the Commission is issuing this regulatory policy to provide key determinations as to what constitutes a “Canadian program” in the audio-visual sector, in addition to making determinations on the use of AI in Canadian programming and on the collection and publication of financial and other data and information.
 5. Building on the foundations set out in this regulatory policy and in Broadcasting Regulatory Policy 2024-121,¹ the Commission will issue a regulatory policy in the near future that will focus on the funding and support for Canadian programming, including funding for news and at-risk programming. The Commission will address financial contributions, including contributions that could benefit the independent production sector, as part of its second regulatory policy.

Interventions

6. The Commission received 480 interventions in response to the Notice. A total of 78 parties appeared at the public hearing that was held from 14 to 27 May 2025. Several parties responded to requests for information and filed final submissions.
7. Parties to this consultation included Canadian and non-Canadian audio-visual undertakings, distributors, public broadcasters, private broadcasters, the creative and production sector, equity-deserving groups,² groups representing official language minority communities (OLMCs) and Indigenous peoples, screen offices, public interest and research groups, and numerous individuals.
8. The public record of this proceeding also includes [reports from industry workshops](#) held by the Commission in early 2024 on defining Canadian content and [a report on public opinion research](#) conducted in November 2024 by Phoenix SPI on the views of people across the country in regard to Canadian programming.

¹ The Commission’s decisions set out in that regulatory policy were finalized by Broadcasting Regulatory Policy 2024-121-1/Broadcasting Order 2024-194.

² Including but not limited to racialized people, people with disabilities, individuals who identify as 2SLGBTQI+, and women. The Government of Canada uses 2SLGBTQI+ (2S: at the front, recognizes Two-Spirit people as the first 2SLGBTQI+ communities; L: Lesbian; G: Gay; B: Bisexual; T: Transgender; Q: Queer; I: Intersex, considers sex characteristics beyond sexual orientation, gender identity and gender expression; +: is inclusive of people who identify as part of sexual and gender diverse communities, who use additional terminologies).

Legal framework

9. The *Online Streaming Act* came into force on 27 April 2023 and made significant changes to the *Broadcasting Act* (the Act). Those changes require the Commission to modernize the Canadian broadcasting framework and ensure that Canadian and non-Canadian audio-visual broadcasting undertakings, including online undertakings,³ contribute to the Canadian broadcasting system by, among other things, investing in Canadian and Indigenous audio and audio-visual content.
10. On 9 November 2023, the Government of Canada issued [*Order Issuing Directions to the CRTC \(Sustainable and Equitable Broadcasting Regulatory Framework\)*](#) (the Policy Direction). The Policy Direction emphasizes the need to support Canadian and Indigenous content and ensure equitable contributions by all players. It also provides specific guidance for determining what constitutes a Canadian program.⁴
11. Subsection 5(2) of the Act identifies the regulatory policy the Commission must consider when determining how to regulate the broadcasting system. Notably, the Commission must regulate and supervise the Canadian broadcasting system in a flexible manner that takes into account the diversity of Canadian society, as well as the different characteristics of English-, French- and Indigenous-languages broadcasting, and the nature and diversity of services, along with their size and impact on the Canadian creation and production industry. It must also facilitate providing Canadians with Canadian programs made in both official languages, including content made by and for OLMCs. In addition, under paragraphs 5(2)(a.2) and (g) of the Act, regulations applicable to the broadcasting system must ensure that broadcasting undertakings that cannot make maximum use of Canadian resources in the creation, production and presentation of programming contribute to those resources in an equitable manner, and that the Commission is sensitive to administrative burden.
12. Under paragraph 10(1)(b) of the Act, the Commission may make regulations that define “Canadian program” and, in doing so, must consider the factors set out in subsection 10(1.1) of the Act and section 13 of the Policy Direction. Paragraphs 9.1(1)(n) and (o) of the Act authorize the Commission to require that it be provided with various types of information, while subsections 25.3(4) and (5) authorize the Commission to make certain information provided to it available in the public interest.

³ As set out in the Act, “online undertaking” means “an undertaking for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus.” Pursuant to subsection 2(1) of the Act, the definition of “broadcasting undertaking” includes an online undertaking. For clarity, audio and audio-visual creators, whether amateur or professional, are not broadcasting undertakings or online undertakings and are therefore not subject to the Act. This means that the Commission cannot make regulatory requirements that apply directly to content creators.

⁴ See section 13 of the Policy Direction.

13. French-language content and content creators are an important part of the Canadian broadcasting system. Paragraph 3(1)(c) of the Act stipulates that English- and French-language broadcasting, while sharing common aspects, operate under different conditions – in particular, the minority context of French in North America – and may have different requirements. The Commission recognizes the importance of French-language content for Canadians, especially in a context where online undertakings that operate in Canada predominantly offer English-language content. The Commission took into consideration these particularities in making the determinations in this regulatory policy.
14. Throughout this proceeding, the Commission has taken into account the needs and interests of OLMCs and the need to protect and promote the French language, consistent with the Commission’s obligations under the Act, the Policy Direction and the *Official Languages Act*. The Commission continues to consider these elements in its deliberations regarding financial supports for the creation of Canadian programs.
15. Finally, under paragraph 3(1)(d)(iii) of the Act, the Canadian broadcasting system, through the employment opportunities arising out of its operations, should serve the needs and interests of all Canadians and reflect the special place of Indigenous peoples within Canadian society. The Commission recognizes the distinct contributions of Indigenous creators and aims to harmonize the regulatory framework for Canadian programs with broader policy initiatives that support Indigenous storytelling, governance, and participation in the broadcasting system. Of note, Indigenous content-related issues are currently under consideration by the Commission as part of the ongoing co-development of an Indigenous Broadcasting Policy.⁵

Issues

16. After examining the record for this proceeding, the Commission considered the following issues in regard to a modernized definition of “Canadian program”:
 - modernizing the certification framework for Canadian audio-visual programs;
 - the use of AI in Canadian productions;
 - data collection and publication; and
 - the streamlining of reporting requirements.

⁵ See Broadcasting Notice of Consultation 2024-67.

Modernizing the certification framework for Canadian audio-visual programs

17. The criteria set out in the current certification framework for Canadian audio-visual programs⁶ form the basis for the definition of “Canadian program.”⁷ These criteria support the reflection of Canadian creativity, decision-making, and storytelling. While these criteria also set clear requirements for Canadian creative and financial control, they do not ensure minimum copyright retention.
18. The certification framework includes a points system for key creative positions and functions along with requirements to focus production and post-production spending in Canada. It also includes conditions ensuring that Canadian producers retain control over the production of Canadian audio-visual content by ensuring that they are the central decision makers of a production from beginning to end. Other elements of the Canadian production system, including funds such as the Canada Media Fund (CMF) and certification bodies such as the Canadian Audio-visual Certification Office (CAVCO), also have certain requirements that help ensure, among other things, that copyright in relation to funded programs is retained by Canadians.
19. In the Notice, the Commission invited interested persons to comment on how the certification framework should be modernized to better reflect the state of the broadcasting industry, while ensuring Canadians maintain creative and financial control over their Canadian audio-visual productions. As such, the following issues are addressed below:
 - what the certification threshold(s) should be in regard to key creative positions and functions filled and performed by Canadians;⁸
 - whether it should continue to be mandatory for certain key creative positions to be filled by Canadians, and whether to provide flexibility for certain positions when filled by multiple individuals;
 - whether it would be appropriate to add new key creative positions to the points system;
 - whether the number of points awarded to key creative positions and functions should be reviewed;

⁶ The current certification criteria are described in further detail in the appendices to Broadcasting Regulatory Policy 2023-90 and paragraphs 128 to 130 of Broadcasting Regulatory Policy 2015-86.

⁷ The definition of “Canadian program” in the *Television Broadcasting Regulations, 1987* (SOR/87-49) and in the *Discretionary Services Regulations* (SOR/2017-159) refers to criteria for certification in Appendices 1 and 2 to Broadcasting Regulatory Policy 2023-90, paragraphs 128 to 130 of Broadcasting Regulatory Policy 2015-86, or programs in respect of which a *Canadian film or video production certificate*, as defined in subsection 125.4(1) of the *Income Tax Act*, has been issued.

⁸ For the purposes of defining a “Canadian program”, a “Canadian” is a person who is, at all relevant times, a Canadian citizen as defined in the *Citizenship Act* or a permanent resident as defined in the *Immigration and Refugee Protection Act* who has received a Permanent Residence Certificate. People who are First Nations, Inuit or Métis peoples in Canada meet any certification requirement that applies to a “Canadian.”

- whether, for animated productions, certain functions that must now be performed in Canada should instead be performed by Canadians, regardless of where they are located;
- whether incentives (such as bonus points) should be added for the use of Canadian works, characters and settings in productions;
- whether current requirements relating to production costs should be maintained;
- whether and how Canadian intellectual property ownership, and more specifically, Canadian copyright ownership, should be embedded in the certification framework; and
- whether and, if so, how the Commission should simplify and update other elements relating to certification.

20. The determinations set out in the following sections address those areas of the certification framework that the Commission believes need to be modernized. For greater clarity, elements from the current certification framework that are not addressed in this regulatory policy remain in place. The modernized certification framework will establish the criteria for qualifying a production as a Canadian program and form the basis of the new definition of “Canadian program.”

Threshold for certification

21. The Commission’s Canadian program certification framework seeks to ensure that Canadian stories are told from a Canadian perspective. By requiring that a number of key creative positions and functions be filled and performed by Canadians, the certification framework also supports Canadian creativity, employment, and skills development of Canadian talent across the wider audio-visual industry.
22. The current certification framework includes a points system mostly based on the key creative positions and functions filled and performed by Canadians. To qualify for certification, productions must generally reach a minimum of 6 points out of a maximum total of 10 points for positions and functions filled and performed by Canadians. If a production does not have a sufficient number of key creative positions or functions to attain the minimum 6 points, the Commission requires that all key creative positions and functions be filled and performed by Canadians to achieve a perfect score.⁹
23. In the Notice, the Commission sought comments on its preliminary view that, in order to receive Canadian program certification, a production (either live action productions and continuous action animated productions,¹⁰ or animated productions other than

⁹ For example, a perfect score requirement of 5/5, 4/4, 3/3, etc.

¹⁰ Referred to collectively as “live action productions” in this regulatory policy.

continuous action animation¹¹) should be required to attain at least 9 points out of a proposed maximum total of 15 points. The Commission's preliminary view was also to maintain the existing perfect score requirement when certain key creative positions or functions are not used.

Positions of parties

24. The Canadian Broadcasting Corporation (CBC) supported the current 10-point system given that it ensures stability and consistency with the requirements of CAVCO. Telefilm Canada added that alignment with CAVCO's criteria would ensure the creation of Canadian-led productions that reflect the country's unique cultural and artistic perspectives.
25. BCE Inc. (BCE), the Documentary Organization of Canada (DOC) and the Independent Broadcast Group (IBG) submitted that requiring 9 out of 15 points (i.e., 60%) for certification of a production as Canadian would unfairly disadvantage documentaries, given that many key creative positions are absent from this type of production. To address this, the DOC, supported by the Canadian Media Producers Association (CMPA), proposed a separate 7-point scale for documentaries, with a minimum of 6 points needed for certification as Canadian. Other interveners including the Directors Guild of Canada (DGC) and TLN Media Group Inc. (TLN Media) stated their preference for maintaining the current threshold of 6 out of 10 points, for consistency and predictability.
26. Certain interveners proposed a threshold based on the percentage of points attained rather than the number of points. The Motion Picture Association of Canada (MPA-C) proposed a 51% certification threshold for non-Canadian online platforms as this would align with the requirement of the Act to make the greatest practicable use of Canadian talent. Rogers Communications Inc. (Rogers) also considered that a majority of Canadian key creative points (over 50%) should be enough to qualify a production as Canadian. Quebecor Media Inc. (Quebecor) proposed a 70% certification threshold to ensure broad Canadian creative control and to grant flexibility that would allow up to three key creative positions in a production to still be filled by non-Canadians.

Commission's decisions

27. In the Commission's view, the modernized certification framework should be sufficiently flexible and adaptable given that many types of productions differ in regard to their genre, the size of their budgets, and the multitude of business models in the Canadian broadcasting system. For example, smaller Canadian productions may not include the full array of key creative positions, which means that establishing overly restrictive criteria for defining "Canadian program" would place an undue burden on those producers. As such, the Commission recognizes that the needs of productions and producers may vary and that they may use different key creative

¹¹ Referred to as "animated productions" in this regulatory policy

elements. Accordingly, the Commission considers that it would be appropriate to introduce greater flexibility in the points system for key creative positions and functions.

28. This framework must also continue to ensure the significant involvement of Canadian key creative talent and that the overall creative direction of Canadian programs is strongly influenced by Canadians.
29. As noted above, under the current framework, a production must generally be awarded a minimum of 6 points to meet the definition of “Canadian program.” The Commission considers that this approach can be challenging, especially for smaller productions that may not make use of all possible key creative elements. A minimum threshold requirement set in terms of a percentage of points would provide greater flexibility for productions that do not have a sufficient number of key creative positions to attain a minimum number of points.
30. For this reason, the Commission considers that it would be appropriate to establish a minimum percentage threshold based on the number of points a production attains, as opposed to a minimum number of points. In terms of establishing what that percentage should be, the Commission considers that a minimum threshold of 60% would provide sufficient flexibility to suit various types of productions while ensuring consistency with CAVCO’s requirements. This approach would support the policy objectives set out in paragraphs 3(1)(f) and 3(1)(f.1) of the Act, which state that Canadian broadcasting undertakings must employ and make maximum use of Canadian creative and other human resources in the creation of programming, and that non-Canadian online undertakings must make the greatest practicable use of such resources. At the same time, it would allow the framework to apply to the widest variety of productions, without unduly impacting smaller productions.
31. The sections that follow discuss the points to be awarded when various positions and functions of the certification framework are filled and performed by Canadians.¹² The following examples illustrate the application of the minimum percentage threshold based on certain of those positions and functions in a production.
32. A live action production that uses the key creative positions of Director (2 points), Screenwriter (2 points), First Lead Performer (1 point), Second Lead Performer (1 Point), Director of Photography (1 point), Music Composer (1 point) and Picture Editor (1 point) would be awarded a perfect score of 9 out of 9 points if all of the key creative positions used are filled by Canadians. However, if only the Director (2 points), Screenwriter (2 points) and First Lead Performer(1 point) positions are filled by Canadians (and the other key creative positions are filled by non-Canadians), the production would be awarded 5 out of 9 points. This production would therefore

¹² For complete information on these positions and functions and the points to be awarded, see Appendices 1 and 2 to this regulatory policy.

achieve a percentage threshold of 55.6% and would not qualify and be certified as a Canadian program as it would not meet the minimum percentage threshold of 60%.

33. By contrast, if a Canadian filled the position of Music Composer (1 point) in this same production, it would be awarded 6 out of 9 points, or 66.7%, thereby meeting the minimum percentage threshold for certification.
34. Another example is a production with fewer key creative positions that allow for a maximum of 4 points in total. In this case, the number of Canadians filling these positions must be sufficient to achieve 3 out of 4 points (75%), which exceeds the 60% threshold. Similarly, for a larger-scale production with a total of 12 points available, the number of Canadians filling key creative positions must be sufficient to achieve 8 out of 12 points (66.7%).
35. As discussed below, the modernized certification framework introduces bonus points, whereby a production could be awarded extra points if it meets certain criteria that contribute to the wider distribution and discovery of Canadian cultural works, characters and settings. The awarding of bonus points should not negatively impact the score a production attains. That is, it should increase the total number of points a production earns (i.e., the numerator) and not increase the number of points needed to meet the minimum percentage threshold (i.e., by increasing the denominator). For example, where a production is awarded 5 out of 9 points (5/9) for key creative positions or functions filled or performed by Canadians and is also awarded 1 bonus point, the total score for the production will be 6 out of 9 points (6/9, or 66.7%), thereby meeting the minimum percentage threshold of 60%.
36. For greater clarity, for the production to qualify and be certified as a Canadian program, the number of points awarded must always reach or exceed the required threshold, regardless of the value of the denominator, which may change based on the specific type of production and the positions and functions filled and performed by Canadians (as such, scores of 6/10, 7/11, 8/12, 8/13 and 9/14 would reach or exceed the 60% threshold). For a score that results in a percentage below the required threshold, that percentage will not be rounded up to meet that threshold.
37. Accordingly, the Commission determines that to qualify as a Canadian program, a production must meet, at a minimum, the 60% threshold of points possible for the production, based on the number of points it is awarded. This minimum threshold is contingent on copyright ownership in the program, which is addressed below.

Key creative positions, functions and elements

38. Having set a threshold, the Commission now addresses mandatory key creative positions in productions; flexibility on who can fill certain of those positions; the addition of new key creative positions to the certification framework; amendments to existing key creative positions and functions in animated productions; and the awarding of bonus points for other key creative elements of a production.

Mandatory key creative positions

39. A production requires various individuals to play a large variety of roles, from creative positions to post-production functions. Some of these roles are considered essential for the production, while the use of others may depend on the type of production. In the Commission's view, it is important to ensure that the roles that shape the creative vision and storytelling of a production (such as writers and directors) be given the appropriate weight to reflect their importance in conveying Canadian expression as referred to in the Act.
40. In the Commission's view, for live action productions, the key creative positions of Director and Screenwriter are essential in defining and guiding the creative control of a production. As such, where a production makes use of these key creative positions, the positions must be filled by Canadians for the production to qualify and be certified as Canadian. Further, the points awarded to and the prominence of these key creative positions in the current certification framework, and their status as mandatory positions for a production, should be maintained in the modernized certification framework. Accordingly, for live action productions, the Commission will continue to award the points noted below for the following key creative positions, when filled by Canadians:
- Director (2 points); and
 - Screenwriter (2 points).
41. For animated productions, the Commission considers that the key creative positions of Director, and Scriptwriter and Storyboard Supervisor are essential in defining and guiding the creative control of a production. As such, where an animated production makes use of these key creative positions, the positions must be filled by Canadians for the production to qualify and be certified as Canadian.
42. Further, the Commission determines that it would be appropriate to align the points allocated to the key creative positions Director, and Scriptwriter and Storyboard Supervisor with those awarded for comparable positions in live action productions (i.e., Director and Screenwriter), given their comparable level of influence on the creative direction of a production. Accordingly, for animated productions, the Commission will now award 2 points (instead of 1 point) for each of the key creative positions Director, and Scriptwriter and Storyboard Supervisor, when filled by Canadians.
43. In addition, the key creative positions of First and Second Lead Performers (or first and second voices) for live action productions, and First and Second Voice (or first and second lead performers) for animated productions, which communicate Canadian cultural expression to audiences of audio-visual programs, are key to the look and feel of Canadian productions. As such, where live action or animated productions make use of these key creative positions, the positions must be filled by Canadians for the production to qualify and be certified as Canadian.

44. Currently, for live action productions, the positions of First Lead Performer (or first voice) and Second Lead Performer (or second voice) must be filled by Canadians for each to be awarded 1 point towards certification. This Commission maintains this approach in the modernized certification framework.
45. For animated productions, either the First Voice (or first lead performer) or Second Voice (or second lead performer) must be Canadian, but only 1 point is awarded if either or both positions are filled by Canadians. In the Commission's view, these key creative positions in animated productions should also benefit from greater recognition in the certification framework for their contributions to Canadian storytelling. Accordingly, the Commission will now award 1 point for each of the positions First Voice (or first lead performer) and Second Voice (or second lead performer) in an animated production if these positions are filled by Canadians, as is currently the case for comparable key creative positions in live action productions.
46. Therefore, for animated productions, the Commission will award the points noted below for the following key creative positions, when filled by Canadians:
- Director (2 points; previously 1 point);
 - Scriptwriter and Storyboard Supervisor (2 points; previously 1 point); and
 - First Voice (or first lead performer) and Second Voice (or second lead performer) (1 point each; previously 1 point for one or the other, but not both).
47. As with the current approach to certification, the Commission is of the view that the following key creative positions and functions must be filled or performed by Canadians for a production to qualify and be certified as Canadian:
- for live action productions: Director **OR** Screenwriter, and either the First Lead Performer (or first voice) **OR** Second Lead Performer (or second voice); and
 - for animated productions: Director **OR** Scriptwriter and Storyboard Supervisor, and either the First Voice (or first lead performer) **OR** Second Voice (or second lead performer), and Key Animation **AND** Camera Operator.¹³
48. In this regulatory policy, the Commission introduces new rules regarding copyright ownership. To ensure that the overall Canadian creative vision for a production is maintained and that Canadians retain prominent roles in Canadian productions, adjustments to the rules on the key creative positions set out above will be discussed alongside the determinations on copyright ownership.

¹³ The Commission's decisions regarding criteria for Key Animation and Camera Operator are discussed in greater detail below.

Flexibility on who can fill certain mandatory key creative positions

49. In the Notice, the Commission proposed a new, flexible approach where the key creative positions of Director, Screenwriter, and Scriptwriter and Storyboard Supervisor would be awarded points even if filling each position is shared by Canadians and non-Canadians, provided that at least 80% of the individuals filling the position are Canadian. Currently, a production only receives points for a given position where all of the individuals filling that position are Canadian.

Positions of parties

50. The CMPA and the Black Screen Office (BSO) supported lowering the requirement for Canadian control over key creative positions from 100% to 80% for shared roles, as this would preserve Canadian creative control while creating more space for international collaboration. The BSO also noted benefits for working with the global Black diaspora, provided Black Canadian talent remains prioritized.

51. Some interveners¹⁴ opposed the change, arguing that it could weaken Canadian control over key creative positions. They noted that co-production treaties already allow international collaboration and stressed the need to protect Canadian cultural and economic benefits. Broadcasters including Quebecor and Corus Entertainment Inc. (Corus) agreed, while the MPA-C and major studios considered the 80% threshold too rigid, proposing a more flexible threshold of 50% for shared roles.

Commission's decisions

52. The Commission is of the view that it is important to ensure that key creative positions in a production are filled by Canadians. This ensures that a Canadian production is built on Canadian ideas, perspectives and creativity and that these elements are broadcast to Canadians and the world. At the same time, the Commission has considered other goals and outcomes in making its decisions.

53. The Commission has traditionally viewed significant Canadian key creative input into productions as important. The Commission maintains this view. It notes, however, that imposing a requirement that all individuals filling the totality of key creative positions be Canadian could unduly restrict producers from making use of non-Canadian resources that could bring value to improving a production and to training or mentoring Canadian talent.

54. The use of non-Canadian talent may be particularly important for productions that leverage co-production arrangements with different countries. This consideration also stands for racialized and newly arrived Canadian producers who may have elaborate networks in other countries and who, absent certain flexibilities, may not be able to use their networks when making programming that would otherwise be eligible for

¹⁴ The Alliance des producteurs francophones du Canada, the Association québécoise de la production médiatique, the Producers Roundtable of Ontario, and the Writers Guild of Canada (WGC).

Canadian certification. The use of non-Canadian talent may also be necessary in certain genres of audio-visual content, such as documentaries, when shot in locations outside Canada.

55. In the Commission's view, it is appropriate to introduce some flexibility into the points system to allow for the use of non-Canadian talent for certain key creative positions. This could facilitate mentorship opportunities that strengthen Canadian productions through the sharing of expertise. Mentors from diverse backgrounds could contribute by sharing distinct perspectives, values and visions, thereby advancing inclusion and innovation at each step of a production.
56. The Commission also considers, however, that contributions made by Canadian talent should not be diluted. As such, it finds that in allowing the use of non-Canadian talent, safeguards should be put in place. Limiting the applicability of flexibility to only certain key creative positions will mitigate the risk of diluting the contributions of Canadians to a production and still provide sufficient support to the overarching goal of having primarily Canadians in key creative positions.
57. In the Commission's view, granting flexibility only to the key creative positions of Director, Screenwriter, and Scriptwriter and Storyboard Supervisor is likely to be used in larger productions that employ multiple individuals in these key creative positions and where training and mentoring is likely to be valuable. This approach would strike a balance between introducing flexibility and ensuring strong support for the use of Canadian talent.
58. Further, requiring not less than 80% of the individuals filling each of those positions to be Canadian would ensure the inclusion and prominence of Canadian talent in these key creative positions and would stimulate growth within the Canadian film and television industry. This would, in turn, lead to increased employment opportunities and the development of homegrown expertise. The Commission also considers that using certain non-Canadian resources with name recognition in other jurisdictions, without unduly diminishing the Canadian character of these key creative positions, may facilitate the discoverability of a program abroad, which could also enhance its appeal.
59. In light of the above, the Commission determines that where each of the key creative positions of Director, Screenwriter, and Scriptwriter and Storyboard Supervisor is filled by multiple individuals, points will be awarded where at least 80% of all individuals filling a given position are Canadians.

Additional key creative positions

60. The key creative positions that are included as part of the modernized certification framework will influence the extent to which Canadian creative control is predominant in a production. The recognition of key creative positions in a production can also support the employment and development of Canadian talent and incentivize producers to hire Canadians to meet the certification requirements.

61. While the key creative elements currently included in the certification framework remain appropriate to further the objectives of the Act, there are other key creative elements often present in a production that could influence the overall direction, look and feel of a production. In the Commission's view, the addition of new key creative positions would better reflect how the broadcasting industry is evolving and would maintain a certain balance in the allocation of points to ensure that positions related to creative vision and storytelling remain predominant.

62. In the Notice, the Commission proposed to add, as key creative positions in the modernized certification framework, the following roles:

- Showrunner;
- Heads of Department Responsible for Costume Design, Make-up Artists and Hair Artists; and
- Visual Effects Director and Special Effects Director.

63. The Commission addresses these proposals below.

Role and definition of Showrunner

Positions of parties

64. Unifor, the Public Interest Advocacy Centre (PIAC) and the Indigenous Screen Office (ISO) expressed support for the Commission's preliminary view to add Showrunner as a key creative position. Unifor and PIAC added that if a production includes a Showrunner, this position should be filled by a Canadian. Certain interveners¹⁵ supported the Commission's preliminary view to add the position Showrunner but also expressed concerns. According to the DGC, recognizing this position could replace or diminish the key creative positions of Director and Screenwriter.

65. Several interveners opposed adding Showrunner to the list of key creative positions. Quebecor considered that adding this position would be more problematic in the French-language market, where it is essentially non-existent. The Association québécoise de la production médiatique (AQPM) questioned the relevance of the position given that showrunners are not widely used in Canada. Lionsgate Canada (Lionsgate) noted that a Showrunner is not a credited position within the Canadian production industry. The Shaw Rocket Fund noted that the position is uncommon in children's and youth programming and is rarely found in animation productions, while Telefilm Canada noted that it is uncommon in feature film productions, including long-form documentaries.

¹⁵ The IBG, the DGC, and the CBC.

66. Certain interveners¹⁶ noted possible ambiguity in regard to defining Showrunner. Apple Canada Inc. (Apple) and Lionsgate, for example, indicated that the position can mean different things depending on the nature of the production.
67. According to the MPA-C, if Showrunner is included as a key creative position, it should be optional within the certification framework, earning only a bonus point¹⁷ or counting as a CPE credit¹⁸ if the position is filled by a Canadian. The MPA-C further proposed that a point (or points) should be awarded to a production for the Showrunner position if at least one of two individuals filling the position is Canadian or if at least 51% of three or more individuals filling the position is Canadian. Netflix Services Canada ULC (Netflix), Amazon, and Paramount Global (Paramount) opposed mandating Canadian Showrunners, citing limits on creative flexibility, genre exclusions, and obstacles to mentorship and financing. Apple noted the mixed support expressed for the Commission's preliminary view of including Showrunners in the certification framework and proposed focusing on other cast, crew, and creative positions instead.
68. Netflix noted that its Canadian productions "Wayward" and "North of North" involved non-Canadian showrunners, while Paramount noted that a Canadian showrunner worked on the non-Canadian production "Beauty and the Beast".

Commission's decisions

69. A showrunner in a production is typically responsible for helping to shape and maintain the overall vision, tone, and narrative of a production. The showrunner provides oversight of the creative process, plays a significant role in the development of the script and concept at pre-production stage, and has significant oversight in regard to the final edit of a production in post-production. The showrunner collaborates closely with a production's directors, writers, actors, producers, financiers, and broadcasters.
70. In the Commission's view, recognizing Canadian showrunners in the points system would reflect the increased importance of this position in the creation of some programming and would support Canadian artistic and cultural expression. This would further better align the criteria for qualifying a production as a Canadian program with global production practices, particularly for larger productions.
71. The Commission further expects that the presence of showrunners in Canadian productions will grow and that the role will become more widespread over time. Recognizing the contribution this position makes in the creative process by including

¹⁶ The AQPM, Reelworld Screen Institute, On Screen Manitoba, Apple Canada Inc., and Lionsgate.

¹⁷ The awarding of bonus points is discussed below.

¹⁸ The Commission's determinations regarding the modernization of the CPE regulatory framework will be set out in the above-noted regulatory policy that will focus on funding and support for Canadian programming.

it in the points system would likely accelerate the introduction of showrunners in more productions and support the hiring and development of Canadian talent.

72. The Commission acknowledges that the Canadian French-language market operates differently from the Canadian English-language market when it comes to the use of showrunners. Based on the public record, the use of showrunners in French-language productions is currently limited. The Commission is mindful of this difference and considers that any determinations it makes on the introduction of the position Showrunner into the point system should not undermine the distinctive conditions of the French-language market. Furthermore, in considering adding Showrunner as a key creative position to the points system, the Commission's objectives are to recognize the importance of that position in a production and to foster the growth of Canadian creative talent in this capacity. Accordingly, the Commission considers that it would be appropriate to include the position Showrunner as a key creative position in the points system, but that its presence should not be mandatory for certification purposes.
73. In light of the above, the Commission determines that the position Showrunner will be included, on a non-mandatory basis, as a key creative position in the points system for both live action productions and animated productions. As such, productions not using a Showrunner will not be penalized in that points for the Showrunner position will not be used to determine whether the production should be certified as Canadian. Where a production uses a non-Canadian showrunner, the production could still be certified as Canadian if it meets the minimum threshold for certification using other Canadian key creative elements. In such a case, it will be incumbent on the production to ensure that other key creative positions and functions are filled and performed by Canadians to meet that threshold.
74. A showrunner on a production plays a crucial role in shaping the overall creative direction of the production. In supporting other functions, namely, those of the directors, actors and writers, and in translating concepts and ideas in ways that engage audiences, the showrunner's importance in a production is comparable to that of those other creative positions. The Commission considers that this should be reflected in the weight awarded to the position of Showrunner. Accordingly, the Commission determines that a production will be awarded 2 points when the Showrunner position is filled by a Canadian.¹⁹ Where one or more non-Canadian individuals fill this position, no points will be awarded.
75. For the purposes of meeting the Canadian certification criteria, the Commission determines that the key creative position of Showrunner should be defined as follows:

¹⁹ The Commission notes there should be no double-counting of points awarded based on the multiple roles that a Showrunner may play in a production. That is, if the Showrunner directs, writes the screenplays and/or provides the written treatment for a production, points will be awarded for only one position, either Showrunner, Writer or Director. In a case where a Showrunner writes or directs individual episodes of a series, at least 80% of the episodes must be written or directed by others for a production to be eligible to be awarded the writing and directing points as well as the points for the position of Showrunner.

- a Showrunner is the creative leader of a production, overseeing its vision, tone, and style;
- a Showrunner manages the production process and ensures quality from start to finish, working closely with Writers to keep the narrative aligned with the creative direction from inception to final delivery;
- while they provide oversight on a production and act as a liaison between various elements of the production, which may include certain key creative positions and functions, producers, financiers and the broadcaster commissioning the programming, a Showrunner is subordinate to a producer in terms of exercising the overall control of a production;
- a Showrunner is often called on to ensure that the creative direction of a production aligns with the creative vision and cultural relevance that is intended for the production;
- in pre-production, a Showrunner is the key creative authority that guides the development of the final script and concept of a production. In post-production, a Showrunner is the key creative authority that oversees the final edit of a production, providing notes on picture, sound, music and visual effects to shape the finished product for delivery; and
- while a Showrunner may be present in production meetings, in the Writer's room or at the Director's table, a Showrunner's role is viewed as distinct from those roles in a production.

Roles and definitions of Heads of Department Responsible for Costume Design, Make-up Artists and Hair Artists

Positions of parties

76. The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada (IATSE) and the CMPA supported the inclusion of positions relating to costumes, make-up and hair in the points system.

77. Certain interveners²⁰ noted that these positions are rarely used in smaller productions and documentaries. According to Digital First Canada, adding these positions to the certification framework could disadvantage smaller productions given that team members for such productions often occupy many positions or collaborate with non-Canadian professionals.

²⁰ The DOC, TLN Media, Blue Ant Media Inc. (Blue Ant), and Digital First Canada.

78. Quebecor considered that adding these positions to the certification framework could lead to some productions being certified despite a significant and influential non-Canadian presence.
79. According to Corus, adding these positions as key creative positions to the points system and awarding them points when filled by Canadians should not disqualify productions that currently qualify as Canadian, should not affect the eligibility of programs that are already recognized as Canadian under existing frameworks, and should remain harmonized with existing systems, such as that of CAVCO.

Commission's decisions

80. The heads of the departments responsible for a production's costume design, make-up and hair play a key role in shaping a production's artistic vision. In particular, these positions contribute to the overall look and feel of a production, support actors in performing their roles, and ultimately reinforce the creative vision communicated to the audience. Their functions support other Canadian professionals in a production who might have been inadequately represented in the points system, including women and individuals from underrepresented groups, in better defining the production's visual identity.
81. The Commission considers that it would be appropriate to better recognize the contributions that Heads of Departments Responsible for Costume Design, Make-up Artists and Hair Artists make to Canadian productions. Adding these positions to the points system would better reflect the current audio-visual production environment and support the development of Canadian creative talent. It would also ensure greater Canadian control over the look and feel of a production and its overall artistic and aesthetic vision, in a way similar to the existing recognition of Production Designer or Art Director as a key creative position.
82. In light of the above, the Commission adds as key creative positions in the certification framework the following three positions: Head of Department Responsible for Costume Design, Head of Department Responsible for Make-up Artists, and Head of Department Responsible for Hair Artists.
83. Further, given that these positions taken together ensure, as a singular unit, an overall cohesive, artistic vision for a production, the Commission will consider these positions to form a group and will award 1 point if each position is filled by a Canadian.
84. Where not all of these positions are used on a production, the point will be awarded only if all persons employed in the position(s) that is used is Canadian. For example, if only one of the positions is credited on a production, a point will be awarded if the person filling the position is Canadian. This provides flexibility for numerous production and business models and does not unfairly penalize a production where only one individual heads each of the three possible departments and receives credit on the production. Similarly, where two or three department heads exist and are

credited, this ensures that the point is only awarded where Canadians fill all of the positions.

85. Based on views heard from industry stakeholders and during workshops held prior to the launch of this proceeding in regard to what is involved in filling these positions, for the purposes of the certification framework, the Commission defines these positions as follows:

The Head of Department Responsible for Costume Design is responsible for overseeing the costume department in a production. Their duties may include conceptualizing and designing costumes that align with the Director's vision, managing the costume department team, coordinating with other departments, sourcing or creating costumes, and ensuring that all costumes are completed on time and within budget.

The Head of Department Responsible for Make-up Artists is responsible for overseeing and executing the make-up design for a production. They collaborate closely with the Director, costume designers, and other creative team members to develop looks that enhance characters or themes. The Head of Department Responsible for Make-up Artists manages a team of assistants or technicians and ensures the consistency and quality of the make-up throughout the project.

The Head of Department Responsible for Hair Artists is responsible for overseeing and executing the hair design for a production. They collaborate closely with the Director, costume designers, and other creative team members to develop looks that enhance characters or themes. The Head of Department Responsible for Hair Artists manages a team of assistants or technicians and ensures the consistency and quality of the hair throughout the project.

86. In light of the above, the Commission also amends the definition of the key creative position of Production Designer or Art Director to remove the reference to that position being in charge of costumes.

Roles and definitions of Visual Effects Director and Special Effects Director

Positions of parties

87. Amazon noted the significant economic contributions made by visual effects directors and special effects directors to Canada's production and post-production sectors. It noted the extensive use of Canadian talent and the integral role these positions play in large-scale productions.
88. Other interveners²¹ raised concerns over the applicability of these positions to documentaries and lower-budget or unscripted productions, noting that such productions rarely employ visual or special effects. The MPA-C and The News

²¹ TLN Media, Blue Ant, and the DOC.

Forum Inc. (TNF) supported adding the position Special Effects Director to the certification framework, stressing that this is a distinct, specialized discipline whose artistic and technical contributions should be recognized. TNF also recommended a flexible points system that accounts for the broader team contribution, allowing Canadian certification points even when department heads are non-Canadian, but the majority of the team is Canadian.

Commission's decisions

89. Canada is known as a leader in terms of audio-visual post-production capacity. The Commission recognizes that as AI tools become integrated into the production process, the supervision of the artistic vision and technical execution of visual and special effects, in both production and post-production, will play an increasingly important role in the business of a production. Further, recognizing the Canadian oversight of the departments responsible for these visual and stylistic elements helps to ensure that Canadian creativity continues to receive appropriate weight in the creation of Canadian productions.
90. Visual and special effects directors help ensure the creation of the most compelling and immersive visual experiences. This is because visual and special effects significantly enhance storytelling and contribute to overall production quality, making stories more engaging and visually captivating. In the Commission's view, adding Visual Effects Director and Special Effects Director as key creative positions in the certification framework would enhance the representation of Canadian creators in productions. These additions would also acknowledge the industrial importance of these positions for the competitiveness of the Canadian audio-visual sector and would help to contribute to Canada being a world leader in this domain, including in terms of post-production capacity.
91. In light of the above, the Commission adds Visual Effects Director and Special Effects Director to the list of key creative positions. A production that uses a Visual Effects Director and a Special Effects Director will be awarded 1 point only if all individuals filling these positions are Canadians. Where a production uses either a Visual Effects Director or a Special Effects Director, but not both, 1 point will be awarded only if the person(s) filling the position is Canadian.
92. For the purposes of the certification framework, the Commission defines the key creative positions Visual Effects Director and Special Effects Director as follows, to be consistent with existing collective agreements in the industry:

The Visual Effects Director is responsible for overseeing and managing the creation and integration of visual effects in a production. The Visual Effects Director collaborates with the producer(s), the Director and the Showrunner (where applicable) to ensure that visual effects enhance the storytelling, meet artistic and technical standards, and are executed efficiently. The Visual Effects Director directs the visual effects team(s), oversees the design and implementation

of effects, reviews work for quality and consistency, and ensures that visual effects are completed on time and within budget.

The Special Effects Director is responsible for creating and overseeing the practical effects in a production. These effects include anything manually or mechanically manipulated, such as explosions, car crashes, animatronics, etc. The Special Effects Director collaborates closely with the producer(s), the Director and the Showrunner (where applicable) to ensure the effects align with the creative vision, meet artistic and technical standards, and are executed safely and efficiently. The Special Effects Director directs the special effects team(s), oversees the design and implementation of effects, reviews work for quality and consistency, and ensures that special effects are completed on time and within budget.

Amendments to existing key creative positions and functions in animated productions

93. One purpose of modernizing the certification framework is to ensure that certification requirements are flexible and in line with the current Canadian audio-visual environment and industry practices. As such, the Commission considered the following issues for animated productions:

- **Location requirements:** Whether the key creative function of Key Animation and the key creative position of Camera Operator (person) and Operation (location), as well as the key creative functions Layout and Background and Assistant Animation/In-betweening, in animated productions, should be filled or performed “by Canadians” instead of “in Canada” and, if so, whether this should be mandatory for certification.
- **Virtual Camera Operator:** Whether the key creative position Camera Operator and Operation in animated productions should include Virtual Camera Operator.

Positions of parties

94. Certain interveners²² noted that the role of the traditional camera operator is no longer current in modern animation methods and/or productions.

95. The BSO, the AQPM and Corus submitted that the Key Animation function should be performed by Canadians, but not necessarily in Canada. Corus argued that the Commission’s proposed amendment would provide animated productions with greater flexibility in terms of remote work. According to the BSO, the proposed amendment would be consistent with similar requirements for other key creative positions.

²² The CMPA, 9 Story Media Group Inc., Corus, Andromedia Distribution Inc., and the MPA-C.

96. The MPA-C and Apple welcomed the shift from “performed in Canada” to “by Canadians” for reasons of flexibility and recognizing the global nature of animation work. The MPA-C also noted that residency requirements make it more difficult for non-Canadian online undertakings to obtain Canadian program certification for their productions, which, it argued, is inconsistent with the objectives of the Act.²³
97. The IATSE stated that maintaining the “in Canada” requirement “offers the best opportunities for Canadian resident animators – particularly more junior animators seeking training experiences – to develop their skills and careers in Canada and contribute to truly Canadian productions.”

Commission's decisions

98. The key creative functions of Key Animation, Layout and Background Design, and Assistant Animation/In-betweening and the key creative position of Camera Operator and Operation play important roles in the creation of Canadian animated programs. They shape the visual style, pacing, and overall storytelling of a production, ensuring that the final work reflects a distinctly Canadian cultural voice.
99. The Commission is mindful of modernizing its approach to the framework related to the recognition of these key creative positions and functions to better align with industry practices. As such, the Commission finds that placing the emphasis on positions and functions in animated productions to be filled and performed by Canadians, rather than in Canada, would align with the principle of fostering Canadian talent while recognizing that Canadians may choose to live and work abroad. Accordingly, the Commission amends the criteria for animated productions to be certified as Canadian programs such that the key creative functions of Key Animation, Layout Artist and Background, and Assistant Animation/In-betweening and the key creative position of Camera Operator must be performed and filled “by Canadians” rather than “in Canada” for each to be awarded 1 point.
100. In regard to adding Virtual Camera Operator to the key creative position Camera Operator, the Commission notes that technological advancements have not only impacted Canadian workforce mobility but have also contributed to automating and improving camera functions. Images are increasingly being generated by virtual means. Accordingly, the Commission considers that it would be appropriate to adopt a regulatory approach that offers greater flexibility and adaptability to evolving industry practices, and particularly in the context of animation, where greater flexibility is required to adjust to technological advancements in methods and tools used in the creation of animated productions.

²³ Specifically, the objective set out in paragraph 3(1)(f.1), which states that “each foreign online undertaking shall make the greatest practicable use of Canadian creative and other human resources, and shall contribute in an equitable manner to strongly support the creation, production and presentation of Canadian programming, taking into account the linguistic duality of the market they serve.”

101. The Commission further considers that amending the position Camera Operator to add the position Virtual Camera Operator to the points system would also align with CAVCO's approach.²⁴
102. In light of the above, the Commission includes Virtual Camera Operator as part of the key creative position Camera Operator. This amended position will be awarded 1 point if filled by a Canadian.
103. The Commission notes that CAVCO, in its certification framework, recognizes the use of technology as part of its definitions for these positions. Accordingly, for the purposes of Canadian certification and to be consistent with CAVCO's approach, the Commission defines Virtual Camera Operator as follows:

A Virtual Camera Operator manages digital cameras within virtual environments, directing scenes and creating dynamic camera movements in a production. They also collaborate with the Director and visual effects teams to ensure camera work aligns with the creative vision.

For digitally animated productions, the Commission will generally accept a lead compositor in 3D digital animation or a layout supervisor in 2D digital animation as equivalent positions. Requests for consideration of other individuals occupying a position equivalent to the position Camera Operator will be examined by the Commission on a case-by-case basis.

Bonus point for the use of Canadian characters and settings

104. In the Notice, the Commission expressed the preliminary view that cultural elements should not be included within the certification framework but also noted that it was open to other views and alternate proposals. As such, the Commission sought comments on whether additional cultural elements should be added to the criteria for qualifying and certifying a production as a Canadian program.

Positions of parties

105. While parties generally commented on the importance of incorporating cultural elements in Canadian programs, several interveners²⁵ opposed using cultural elements for certifying a production as Canadian as they considered such elements to be subjective. The ISO stated that adding cultural elements would be highly restrictive for Indigenous screen-based storytelling and would negatively impact the sovereignty of Indigenous narrative. The AQPM supported the Commission's preliminary view that cultural elements should not form a criterion. It cited the 2024 report entitled [Defining Canadian Content – Workshops with Stakeholders and Industry: What We](#)

²⁴ For digitally animated productions, CAVCO will generally accept a lead compositor in 3D digital animation or a layout supervisor in 2D digital animation as equivalent positions. Requests for consideration of other individuals occupying a position equivalent to the camera operator position are examined by CAVCO on a case-by-case basis.

²⁵ The CMPA, the DGC, the CBC, the APFC, the AQPM, the WGC, Unifor, Telefilm Canada, and the ISO.

[Heard Report](#), which notes challenges with considering cultural elements given that “there are many ways of being Canadian.”

106. According to the Alliance des producteurs francophones du Canada (APFC), requiring key creative positions to be filled by Canadians already guarantees a Canadian viewpoint in a production seeking certification. In its view, adding intellectual property requirements instead of adding a criterion relating to cultural elements would further strengthen Canadian cultural expression by empowering producers and creators.
107. The IATSE, on the other hand, stated that the cultural criteria used in the certification frameworks of other countries²⁶ “generally include cultural content criteria that are objective and simple to verify.” It explained that such criteria include, among other things, whether the story takes place in the country, whether characters are identified as being from the country, the language spoken in the program, and whether the program is based on underlying library, artistic or historical material that originates from the country.
108. Other interveners²⁷ stated that cultural elements should be part of the definition of “Canadian program” but should not be the basis for a mandatory requirement. In their view, this would provide greater flexibility for ways in which productions can meet the criteria for certification as a Canadian program. Instead, they proposed recognizing such elements through bonus points or via CPE credits, so as to emphasize markers of Canadian experience and expression and incentivize contributions to Canadian cultural expression. Intervenors noted that this proposal is partly based on observations made in non-Canadian jurisdictions that recognize a cultural element in their domestic certification systems.

Commission’s decisions

109. The certification framework for Canadian audio-visual programs is both a powerful cultural policy tool and a catalyst for Canadian employment in the Canadian production industry. When it comes to cultural policy objectives and ensuring that the broadcasting system serves to safeguard, enrich and strengthen the cultural fabric of Canada, cultural elements in a production could play a role as they could be leveraged in a production to further enhance the recognition of Canadian experience and expression.
110. [Public opinion research](#) shows that Canadian locations, actors and stories are important markers for Canadian viewers, and that their use in productions helps Canadians better relate to Canadian programming.

²⁶ Citing the research report conducted on behalf of the MPA-C, “[Defining Canadian Content: Approaches Taken in Other Jurisdictions and Lessons Learned for Canada](#)”, published 23 February 2023 (filed in this proceeding as Appendix E of the MPA-C’s intervention).

²⁷ The MPA-C, Netflix, Apple, Google LLC, and the Forum for Research and Policy in Communications (FRPC).

111. Generally speaking, the record of the proceeding demonstrates a desire by many parties to recognize and reward efforts to promote markers of Canadian identity in Canadian programs while preserving the independence of creators' artistic expression. While not all parties supported the inclusion of cultural elements in the definition, those who did generally favoured doing so as a non-mandatory bonus point.
112. Identifiable characters and settings reinforce Canadian identity, support audience engagement, and enhance the domestic and international presence of Canadian programming. Canadian productions can tell a variety of stories. In many instances, the stories that are told may be about international events from a Canadian perspective or may be about fantastical settings made by Canadians. In other instances, plots and story lines may not lend themselves to using Canadian characters or settings. The Commission must nevertheless be mindful that Canadian characters and settings can resonate with domestic and world audiences in ways that help to support key markets and storytelling that would otherwise have been undervalued in the current certification framework.
113. In the Commission's view, awarding a bonus point for the use of these cultural elements would recognize the benefits of adding some markers of Canadian identity to a production without diluting the points allocated to key creative positions and functions. It would also avoid unfairly penalizing Canadian creators that choose to focus on characters and settings that may not be identifiably Canadian but who continue to display a Canadian perspective in telling those stories. This approach would appropriately promote Canadian identity, while maintaining the primacy of key creative positions in ensuring that Canadian perspectives are reflected in audio-visual productions.
114. In light of the above, the Commission will award 1 bonus point where identifiable Canadian characters and identifiable Canadian settings are included in a production.
115. The Commission heard the concerns of some interveners that assessing "cultural elements" could be too subjective for the purpose of awarding points. However, in the Commission's view, the submission of the IATSE in regard to the objective and verifiable nature of cultural criteria, if properly defined, is compelling. As such, the Commission determines that, to be awarded a bonus point for Canadian characters and settings, a production must meet the following three criteria:

Characters:

- i. All lead characters (up to 5 main fictional characters in dramatic productions) must be identified as Canadian or members of First Nations, Inuit or Métis in Canada.
- ii. All persons on screen in non-dramatic productions, such as presenters, musicians, dancers or hosts, and all persons who are the main subjects

of documentaries must be Canadian or members of First Nations, Inuit or Métis in Canada.

Synopsis: The synopsis of the production must be centred on or include these lead characters/subjects. The production must identify them as Canadian or members of First Nations, Inuit or Métis in Canada.

Location: The location of the story must be set in Canada. The story or narrative must take place entirely in an identified Canadian city/region/province/territory. The location can be identified by a Canadian landmark or by identification on screen or otherwise identified overtly in the narrative or text of the program.

Bonus point for productions based on Canadian written works, and removing pilot projects from the definition of Canadian program

116. In Broadcasting Regulatory Policy 2015-86,²⁸ the Commission announced that it would be launching two pilot projects to recognize as Canadian live-action drama/comedy productions that are based on the adaptation of best-selling, Canadian-authored novels or that have a budget of at least \$2 million/hour. It noted that this would encourage governments and partner agencies to consider more flexible and forward-looking approaches to the production and financing of high impact Canadian programs in the future.
117. Pilot projects are special high-impact Canadian productions that still qualify as Canadian programs even though they do not meet the current certification criteria. To reduce the barriers to qualification, some certification criteria are waived for these riskier projects under certain conditions.
118. A key element of the pilot project component of the certification framework is the recognition of live-action drama/comedy productions based on the adaptation of best-selling, Canadian-authored novels as Canadian. As reflected by the record of this proceeding, this approach did not yield the benefits that were initially anticipated when pilot projects were first put in place (only three applications for the Canadian certification of pilot projects have been received since 2015, none of which successfully qualified as a Canadian program).
119. As part of this proceeding, the Commission sought comments on whether points or other incentives should be included for the use of pre-existing Canadian source material. It also invited parties to comment on the possible removal of pilot projects from the definition of “Canadian program.”

²⁸ See paragraphs 128-131 of that regulatory policy.

Positions of parties

120. Various interveners²⁹ opposed awarding points or creating other incentives for the use of pre-existing Canadian source material. They cited the risk of having source material falling into the hands of large non-Canadian players, who may distort Canadian stories. According to the AQPM, there is no guarantee that adapting a pre-existing Canadian work will preserve its Canadian cultural essence on screen. The CMPA stated that awarding points for the use of pre-existing Canadian source material could allow larger players to secure certification without surrendering creative and financial control of the production itself.
121. Telefilm Canada and The Ontario Educational Communications Authority (TVO), on the other hand, considered that it would be appropriate to encourage the production of audio-visual productions based on pre-existing Canadian source material. The MPA-C, Apple, the CMF, and Lionsgate supported the consideration of pre-existing Canadian source material as part of the certification process. The CMF proposed awarding up to 1 point for Canadian-authored material.
122. While some interveners³⁰ agreed with the Commission's preliminary view to discontinue the certification of pilot projects as Canadian, others considered that their certification should be maintained.³¹ The Canadian Association of Broadcasters (CAB) supported maintaining their certification for flexibility purposes.

Commission's decisions

123. The use of Canadian written works and other pre-existing source material in the creation of audio-visual programs remains of cultural and policy value today. These works contribute directly to several policy objectives of the Act, including serving to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada (subparagraph 3(1)(d)(i)), providing Canadians with the opportunity to see and hear Canadian stories (subparagraph 3(1)(d)(ii)), and ensuring that the programming provided includes a significant contribution from the Canadian independent production sector (subparagraph 3(1)(i)(v)). In this respect, Canadian written works help to promote Canadian stories, enhance discoverability of Canadian content, reinforce Canadian identity and heritage, and support a sustainable Canadian broadcasting system where creators can profit from their works.
124. In particular, the Commission considers that adaptations of Canadian written works of fiction and non-fiction can strengthen the presence of Canadian perspectives in audio-visual content, increase access to Canadian creativity and resources,

²⁹ Including the CMPA, Rogers, the CBC, Quebecor, the AQPM, and the ISO.

³⁰ Including the DGC, the BSO, the CMF, the Bell Fund, the Deaf Wireless Canada Committee (DWCC), Canada Deaf Grassroots Movement (CDGM), the Disability Screen Office (DSO), and Irene Berkowitz.

³¹ This includes the MPA-C, Apple, Paramount, Buena Vista International, Inc. (Buena Vista), Discovery Digital Ventures, LLC (Discovery+), the DWCC, and BIPOC TV & Film.

showcase Canadian heritage domestically and internationally, and support Canadian authors and the discoverability and monetization of their written work.

125. Accordingly, the Commission finds that recognition of Canadian written works is better achieved through the points system and offers a more effective mechanism to advance cultural and policy outcomes than the current pilot project framework.
126. In light of the above, the Commission determines that 1 bonus point will be awarded for the use of Canadian written works as source material. For certification purposes, “written work” is defined as follows:

A written work of fiction or non-fiction (such as a novel, short story, graphic novel, novella, play, biography, autobiography, or poem), in either digital or print form, that is authored by a Canadian(s). This excludes written works such as manuals, programming text, pamphlets, tables and compilations, government publications, and blog posts. For further clarity, material developed solely and specifically to support the development of scripts and concepts as part of a production is not eligible to receive a point.

127. Further, the Commission will no longer recognize as Canadian programs pilot projects, that is, live-action drama/comedy productions based on the adaptation of best-selling, Canadian-authored novels and live-action drama/comedy productions with a budget of at least \$2 million per hour of content created.

Bonus point for Canadian musical selections

128. In the Notice, the Commission sought comments on whether to amend the key creative position of Music Composer so that a point could be awarded either for a Canadian Music Composer or the Canadian rights holders of pre-existing or pre-recorded music.

Positions of parties

129. The Screen Composers Guild of Canada (SCGC), supported by hundreds of individual Canadian music creators, strongly opposed expanding the music point as proposed by the Commission. It argued that doing so would result in giving key creative points for the purchase of rights as opposed to the employment of Canadian individuals. The Association des professionnels de l'édition musicale (APEM) also opposed changing the point for the position Music Composer. Both interveners proposed instead the addition of a criterion requiring that not less than 75% of the budget allocated to pre-existing music be devoted to Canadian musical selections. The APEM added that the 75% budget allocation could take the form of a production expenditure or of a contribution to a fund supporting Canadian music.
130. According to the National Film Board and BIPOC TV & Film, a point should be awarded for music originally composed by Canadian or Indigenous artists, even if the rights are held by both Canadian and non-Canadian owners.

131. Rogers supported awarding a point for the position of Music Composer when filled by a Canadian or to the rightsholders of pre-existing or pre-recorded music when purchased from both Canadian and non-Canadian rights holders as this would provide producers with more flexibility.

Commission's decisions

132. Supporting the inclusion of Canadian Music Composers and existing Canadian music in the certification framework recognizes the role of key Canadian creators. It also fosters a sustainable Canadian broadcasting system and ensures that Canadian creators can profit from their work, including through intellectual property rights. Further, it advances Canadian artistic and cultural expression and provides employment opportunities for Canadians, consistent with subparagraphs 3(1)(d)(ii) and (iii) and paragraphs 3(1)(f) and (f.1) of the Act.
133. In the Commission's view, hiring Canadian Music Composers for Canadian programs remains important. Maintaining a point for Canadian Music Composers would continue to support the policy objectives of promoting Canadian artistic and cultural expression. Accordingly, the Commission will continue to award 1 point for the key creative position of Music Composer when that position is filled by a Canadian.³²
134. That said, the Commission acknowledges that the current points system can have the unintended consequence of penalizing smaller productions that do not have the financial means to hire a Music Composer and must instead purchase music rights. In the Commission's view, there exists an opportunity to address this unintended consequence and also to support Canadian music in ways that it has not done in the past. Recognizing the inclusion of pre-recorded or pre-existing Canadian music in the certification system would support the discoverability of Canadian talent and would further the above-noted objectives of Act. As such, the Commission finds that it would be appropriate to allow for the inclusion of pre-recorded or pre-existing Canadian music in the certification framework, while continuing to recognize Canadian Music Composers. Through such an approach, producers may rely on different musical accompaniments to help support the overall narrative of their productions. Such an approach could also enhance the discoverability of Canadian music, not only for Canadians but also on the world stage.
135. In light of the above, a production will be eligible to receive 1 bonus point to count toward the threshold for certification if more than 50% of the pre-recorded or pre-existing musical selections featured in the production, including an excerpt of the musical selections of any duration of time, are Canadian. These musical selections

³² As specified in Appendices 1 and 2 to Broadcasting Regulatory Policy 2023-90, "The point [for Music Composer] is awarded only if a Canadian has been commissioned to compose the original music specifically for the production. The rearrangement of existing music, even if it is Canadian, utilizes the position but does not earn the point. Existing stock, library, or archival music may be used in addition to the original music. The position of Music Director is not accepted as equivalent to Music composer."

must not include original music specifically composed for the production for the bonus point to be awarded. Further, to qualify for the bonus point, the musical selections in question must meet the criteria of a “Canadian selection” as defined in subsection 2.2(2) of the *Radio Regulations, 1986* (the Regulations).³³ The point will be awarded only if there is no Music Composer specifically hired for that production, or, in the alternative, if there is a Canadian Music Composer hired for that purpose. For clarity, no point will be awarded if there is a non-Canadian Music Composer or if 50% or more of the music selections are non-Canadian.

Conclusion

136. For ease of reference, the Commission has set out in Appendix 1 to this regulatory policy the detailed criteria of the certification framework. In Appendix 2, the Commission has set out its approach to the certification, verification and assessment of certain types of productions as well as the interpretation of terms used in Appendix 1.

Production costs

137. Requirements relating to Canadian production costs are key safeguards for promoting Canadian employment in the broadcasting system and for encouraging the use and development of Canadian creative talent, ultimately fostering Canadian cultural expression. In the Notice, the Commission sought comments on its preliminary view that it should maintain the current requirement that at least of 75% of a production’s services costs be paid to Canadians and that at least 75% of the production’s post-production and laboratory costs be paid for services provided in Canada by Canadians or Canadian companies.³⁴

Positions of parties

138. Rogers, Quebecor, and several associations representing the creative sectors and funding organizations³⁵ generally expressed support for maintaining the current 75% requirement regarding a production’s service costs. Certain interveners³⁶ proposed lowering the threshold requirement for non-Canadian online undertakings such that from 10% to 50% of a production’s service costs be paid to Canadians, with a lower percentage for post-production and laboratory costs.

³³ The Commission notes that the Regulations define “musical selection” as “any live or recorded music of one minute or more in duration that is broadcast uninterrupted, and includes a medley and a montage.” The definition of “Canadian musical selection” is currently under review as part of Broadcasting Notice of Consultation 2025-52. Determinations to be made in that proceeding regarding that definition will apply here.

³⁴ The Commission’s [Canadian Program Certification Guide](#) defines a Canadian production company either as a licensee of the Commission or as a Canadian company carrying on business in Canada, with a Canadian business address, owned and controlled by Canadians.

³⁵ Including the BSO, the SCGC, the Bell Fund, and FilmOntario.

³⁶ The MPA-C, Apple, Paramount, Buena Vista, the Racial Equity Media Collective (REMC), and Discovery Digital Ventures, LLC (Discovery+).

Commission's decisions

139. The 75% thresholds for production service costs and for post-production and laboratory costs ensure that a substantial portion of the economic activity associated with production and post-production remains in Canada, thereby reinforcing Canadian employment and expertise in both technical and creative sectors for audio-visual productions. This is consistent with the objective of the Act relating to safeguarding, enriching and strengthening the cultural, political, social and economic fabric of Canada (subparagraph 3(1)(d)(i)).
140. As such, the Commission is concerned that lowering the thresholds for these costs would not be consistent with supporting Canadian creative control and key creators in their role of shaping Canadian storytelling. In the Commission's view, the current 75% thresholds for production service costs and post-production and laboratory costs continue to provide sufficient flexibility within the system to encompass Canadian and non-Canadian costs, while ensuring that most of these costs are paid to Canadians.
141. Accordingly, the Commission maintains the requirements that at least 75% of a production's service costs be paid to Canadians and that at least 75% of a production's post-production and laboratory costs be paid for services provided in Canada by Canadians or Canadian companies.

Intellectual property ownership and producer control

142. Under its current approach to Canadian program certification, the Commission does not take the Canadian ownership of intellectual property into consideration. Nor does the Commission extend any protections to support Canadian copyright retention in the way that other organizations do (including the CMF and Telefilm Canada) or in the way contemplated in co-production treaties signed between Canada and various international jurisdictions.
143. In the Notice, the Commission sought comments on a modernized approach where intellectual property rights retention, specifically, copyright retention, would be applied to maintain, strengthen, expand, and protect Canada's competitiveness in the audio-visual production industry, while ensuring continued international investment in the Canadian broadcasting production system. The Commission expressed the preliminary view that such an approach should foster Canadian financial control but be flexible enough to accommodate diverse business models and distribution methods, facilitate the exportability of Canadian programming and formats, and encourage all types of players to make Canadian programming discoverable both domestically and abroad, on traditional and online platforms.

Position of parties

144. In general, interveners' views on copyright requirements were divergent. Some interveners³⁷ proposed different models recognizing that different levels of Canadian copyright ownership can be included in Canadian programs. Several Canadian interveners³⁸ supported aligning copyright ownership requirements with those of CAVCO, including a 25-year retention period. Other interveners³⁹ urged the Commission to require 100% Canadian copyright ownership as a certification requirement, while some⁴⁰ favoured flexibility in regard to copyright sharing, with a requirement that most copyright remains Canadian. Conversely, the MPA-C and Netflix opposed mandatory Canadian copyright ownership, favouring instead flexible copyright models to foster investments and align with current industry practices and European trends. The MPA-C proposed incentivizing Canadian copyright ownership through bonus points or CPE credits.
145. Among interveners who stressed the importance of an approach focusing on strong Canadian copyright ownership retention, the Writers Guild of Canada (WGC) noted the relationship at law between “authors” and “works” under the *Copyright Act* and considered that no other factor is more determinative to the nature and character of a creative work than the creator(s) of the work. Corus proposed adopting CAVCO's approach of requiring copyright to be held by a Canadian producer for 25 years, while the CMPA proposed a model under which copyright ownership would be entirely with Canadian independent producers.
146. The IATSE, on the other hand, submitted that financial control and copyright ownership should only be part of the definition of “Canadian program” when included with other criteria, such as an expanded list of key creative positions and the inclusion of cultural elements as part of the certification framework. According to Netflix, existing models are in place where certification is achieved even when flexible copyright ownership is shared between producers in different territories. Other interveners⁴¹ also favoured flexibility in regard to copyright sharing, with a requirement that most copyright remains Canadian.
147. Rogers expressed the view that Canadians must hold more than 50% of intellectual property rights. It proposed that Canadian broadcasting undertakings be eligible to own intellectual property rights and that programming produced or commissioned by a Canadian broadcasting undertaking automatically qualify as Canadian. Rogers explained that its proposed flexible approach would give Canadian broadcasters enhanced flexibility to work with non-Canadian undertakings to produce programming for Canadian audiences that could then be exploited globally on non-Canadian platforms.

³⁷ The CMPA and the AQPM.

³⁸ Quebecor, the CAB, Blue Ant, the DGC, the CBC, and the Bell Fund.

³⁹ The AQPM, the IBG, Meridian Artists, and the SCGC.

⁴⁰ The REMC, Rogers, and the DOC.

⁴¹ *Ibid.*

Commission's decisions

Canadian control and benefit in programs

148. Intellectual property is an umbrella term for a set of legal rights and protections that include copyright under the *Copyright Act*. Under that statute, copyright ownership provides creators with a series of exclusive rights to exploit their works, including the right to reproduce, publish and perform Canadian programs and authorize such uses among others. In Canada, producers are generally the owners of copyright in programs for broadcast. The Commission notes that participation in copyright ownership enables creators to have control in and benefit from the creation of programming.
149. The Commission acknowledges that other forms of intellectual property, such as trademark ownership, can be involved in an audio-visual production and lead to financial benefit for Canadians. It is notable, however, that the Act makes particular mention of copyright as a consideration. Various parties, including the CMPA and Corus, emphasized the importance of copyright ownership as a criterion for Canadian programs to meet the objectives of the proceeding. A focus on copyright, among other forms of intellectual property, in defining “Canadian program” aligns with other Canadian content policies, such as those of Telefilm Canada, that have copyright protections.
150. The record of the proceeding did not yield any consensus on an appropriate model for copyright ownership. Many interveners who commented on this issue expressed the view that copyright should fully remain with Canadian creators, while others took the contrary view that no rules should be introduced. The Commission is not convinced that either position is appropriate as neither meets the objectives of reaching a balance between incentivizing international partnerships and maximizing the benefits to Canadians.
151. Paragraph 10(1.1)(a) of the Act states that in defining Canadian programs, the Commission must consider whether Canadians, including independent producers, have a right or interest in relation to a program, including copyright, that allows them to control and benefit in a significant and equitable manner from the exploitation of the program. Further, the Policy Direction requires the Commission to support Canadian intellectual property ownership in defining “Canadian program” and to consider how its determinations will complement other Canadian content policies, including those regarding audio-visual tax credits and government funding.⁴²
152. While the Commission recognizes that copyright ownership is an important determinant of financial control in a production, there are ways other than copyright through which the Commission currently enables Canadian creators to retain fair and equitable financial control of and benefit from their productions. These include the following:

⁴² See paragraphs 13(c) and 13(g) of the Policy Direction.

- **Canadian producer control:** Canadian programs must always involve Canadian producers.
- **Employing Canadians in a broad range of key creative positions and functions:** Requiring that the majority of key creative positions and functions of a production be filled or performed by Canadians significantly contributes to creative control.
- **Production costs:** Requiring that at least of 75% of a production's services costs be paid to Canadians and that at least 75% of the production's post-production and laboratory costs be paid for services provided in Canada by Canadians or Canadian companies ensures that a substantial portion of the economic activity associated with production and post-production remains in Canada, reinforcing economic benefits to Canadians.

153. In addition to the safeguards arising from the Commission's certification framework, there are other mechanisms within the larger Canadian content ecosystem that offer protections for Canadian producers to control and benefit financially from their productions in a significant and equitable manner. Importantly, this includes the following protections that specifically support Canadian copyright ownership of Canadian programs:

- Most Certified Independent Production Funds (CIPFs), which are certified by the Commission, require Canadian producers to hold all rights to their productions.⁴³
- The CMF includes eligibility requirements for funding on copyright, financial control and creative control. Certain CIPFs also impose similar requirements, although the specific criteria may vary from fund to fund.⁴⁴
- Productions that are certified as eligible for federal tax credits require a Canadian production company to hold 100% copyright ownership for 25 years for a production to be eligible for tax credits.⁴⁵
- Certain provincial tax credit programs also include Canadian and/or provincial copyright provisions as part of their eligibility criteria, with

⁴³ The Eastlink TV Independent Production Fund Program is an exception in that it requires producers to own and control at least 20% of rights and revenues.

⁴⁴ For example, the Bell Fund requires rights to be owned and meaningfully developed by Canadians and that creative and financial control remain with the Canadian producer throughout the production and post-production.

⁴⁵ See [Section 3 Copyright Ownership](#) of CAVCO's Application guidelines for the Canadian Film or Video Production Tax Credit.

some offering higher tax credits when Canadian ownership meets or exceeds defined thresholds.⁴⁶

154. Still, in the Commission's view, requirements relating to copyright should be included in the criteria for defining "Canadian program." Such requirements would provide long-term tangible benefits to Canadians by ensuring that the economic and cultural value of Canadian programming remains tied to Canadian creators. Including copyright ownership requirements in the certification framework would also offer additional and stronger support for Canadians' works than would the existing co-venture model, which does not include such safeguards relating to Canadian intellectual property.
155. The Commission recognizes the presence of safeguards ensuring that Canadian creators retain creative and financial control of their works in the larger ecosystem, and in a context where international partnerships in audio-visual productions are sought as ways to, notably, fund expensive productions and facilitate their exportation and discoverability abroad. As such, the Commission considers that copyright ownership requirements should be flexible and responsive to different business models, including international partnerships. The Commission is considering this flexibility in setting an appropriate threshold for Canadian copyright ownership in Canadian programs.
156. In establishing a new Canadian copyright ownership threshold, the Commission notes that such requirements are found in many co-production treaties already in place between Canada and other countries.⁴⁷ In the Commission's view, aligning the Canadian copyright ownership threshold with the provisions found in these treaties would be simpler to administer and would reduce confusion in the industry. Accordingly, the Commission determines that for a production to qualify as a Canadian program, Canadians must retain at least 20% of the copyright ownership in the program. In the Commission's view, this determination complements other Canadian content policies and ensures that Canadian creators retain fair and equitable control over and benefit from the exploitation of their productions without unduly deterring international investments.
157. However, the Commission is also of the view that where Canadians do not hold a majority of the copyright in a program, other measures must be put in place to ensure that the overall creativity, direction, and look and feel of a Canadian production remains Canadian. As noted above, to qualify as a Canadian program, a production must meet, at a minimum, the 60% threshold of points possible for the production, based on the number of points awarded. However, when 50% or less of the copyright in the program is retained by Canadians, the Commission finds that a greater number of Canadian key creative elements must be present in a production and that a greater

⁴⁶ Including in British Columbia, Alberta, Saskatchewan, Ontario, Quebec, New Brunswick, and Nunavut.

⁴⁷ For example, many treaties, including those with Austria, Brazil, Germany, Greece, Hong Kong, and South Africa, allow co-producer contributions to range from 20% to 80% of the budget, with a requirement that copyright ownership must match their respective contributions.

number of points must be attained. The Commission also considers that copyright ownership should be recognized whether it is retained by Canadian producers or by Canadian broadcasters, who would work in partnership with non-Canadians.

158. The Commission is of the view that it would be appropriate to introduce support for Canadian copyright ownership in programs as a criterion of defining “Canadian program.” Accordingly, the Commission adopts the following approach for Canadian copyright ownership, oversight and control in the Canadian program certification framework:

Minimum copyright requirement

- For a production to be eligible to qualify as a Canadian program, not less than 20% of the copyright in the program must be retained by a Canadian(s). This could mean a Canadian broadcaster or a Canadian producer.

Where Canadians own not less than 20% and not more than 50% of the copyright in a program, for the production to qualify as a Canadian program:

- it must attain not less than 80% of the maximum number of points possible for the production, based on the points awarded for key creative positions and functions along with any bonus points that may be awarded for other key creative elements;
- for live action productions, both the Director **AND** the Screenwriter positions in addition to either the First Lead Performer (or first voice) **OR** Second Lead Performer (or second voice) position must be filled by Canadians; and
- for animated productions, both the Director **AND** Scriptwriter and Storyboard Supervisor positions in addition to either the First Voice (or first lead performer) **OR** Second Voice (or second lead performer) position must be filled by Canadians. Further, the Key Animation function **AND** the Camera Operator/Virtual Camera Operator position must be performed or filled by Canadians.

Where Canadians own more than 50% of the copyright in a program, for the production to qualify as a Canadian program:

- it must attain not less than 60% of the maximum number of points possible for the production, based on the points awarded for key creative positions and functions along with any bonus points that may be awarded for other key creative elements;
- for live action productions, either the Director **OR** Screenwriter position in addition to either the First Lead Performer (or first voice) **OR** Second

Lead Performer (or second voice) position must be filled by Canadians;
and

- for animated productions, either the Director **OR** Scriptwriter and Storyboard Supervisor position in addition to either the First Voice (or first lead performer) **OR** Second Voice (or second lead performer) position must be filled by Canadians. Further, the Key Animation function **AND** the Camera Operator/Virtual Camera Operator position must be performed or filled by Canadians.

Producer creative and financial control

159. As an additional safeguard measure to strengthen Canadian creative and financial control, the Commission considers that there is merit in continuing to support Canadian producer decision-making control. This has been present in the criteria for defining a Canadian program to date, as well as in the Commission's co-venture system, which is addressed below. Canadian producers are not captured under the key creative positions. However, the Commission recognizes the importance of the role of Canadian producers among other creative resources used in Canadian productions. Accordingly, in instances of shared copyright, to qualify as a Canadian program, the production must be produced by a Canadian production company⁴⁸ that has no less than equal measure of decision-making responsibility⁴⁹ with partners on all creative elements of the production.

160. Currently, the roles of producer, co-producer, line producer and production manager must be entirely occupied by Canadians for a production to be eligible for certification as Canadian. A flexible copyright ownership model as implemented in this regulatory policy allows non-Canadian producers to work alongside Canadian producers on a Canadian program. Accordingly, it would be appropriate to ease the requirements relating to the nationality of the producers who take part in a production in cases of shared copyright ownership in the program. However, the Commission needs to balance the fostering of partnerships with international producers while ensuring that Canadian producers continue to play a vital role in Canadian productions.

161. In light of the above, for programs with 100% Canadian copyright ownership, the Commission maintains that the roles of producer, co-producer, line producer and production manager must be occupied by Canadians. As discussed below, courtesy credits are available for non-Canadians in producer-related roles. For productions involving shared copyright ownership, the Commission amends the current requirement to read as follows:

⁴⁸ A Canadian company carrying on business in Canada, with a Canadian business address, that is owned and controlled by Canadians.

⁴⁹ Decision-making responsibilities could include determining the production schedule, selecting and hiring above- and below-the-line cast and production personnel, and selecting and contracting production services (camera package, sound package, post-production facilities, and post-production elements).

Not less than 50% of persons occupying the roles of producer, co-producer, production manager and line producer, and all producer-related roles (such as executive producer, associate producer and supervising producer), must be Canadian.

Copyright retention period

162. In regard to a Canadian copyright retention period, the Commission notes that in the case of international treaties administered by Telefilm Canada, no retention period is imposed. The Commission finds it important to grant some flexibility to incentivize collaboration with international partners and to allow for all parties involved in a production to negotiate their own copyright retention periods. Accordingly, the Commission determines that it would not be appropriate to include a copyright retention period requirement as part of the criteria for defining a production as a Canadian program.

Guiding principles in negotiations among production partners

163. The Commission acknowledges the close relationship between copyright ownership, financial control and shared participation by all parties involved in a production. In the Commission's view, while aligning these three aspects of a production may be a good practice, it would not be appropriate to limit non-Canadian financial participation or financial participation of Canadian partners in a production. Being overly prescriptive about financial arrangements of productions would run counter to regulating in a flexible manner. Further, it would undermine the goal of fostering partnerships that further the exportability and discoverability of Canadian programs and of fostering a financial support ecosystem. It would also undermine the different ways that producers may choose to structure production agreements and may discourage some productions.
164. The Commission considers that it must balance the goals of regulatory flexibility so as to encourage a variety of productions, and of business models and broadcast and distribution models, while fostering a broadcasting system in which Canadian producers can retain significant, equitable control of their works and benefit from their long-term exploitation. The Commission is mindful, however, of its role and authority in respect of the business and trade arrangements among production partners involved in audio-visual productions and that being overly prescriptive can undermine flexibility. Accordingly, the Commission adopts the following guiding principles in negotiations among production partners:
- **Fair compensation and exploitation:** Ensure that remuneration, rights, and revenues are allocated in a way that fairly reflects the financial and human contributions to the production, while ensuring Canadian producers retain significant, equitable control and benefit from long-term exploitation.

- **Good-faith negotiation:** Production partners negotiate in good faith.⁵⁰

165. The Commission may assess the effectiveness of these non-binding principles in the future.

Co-ventures

166. Currently, there is a co-venture model⁵¹ that offers flexibility for Canadian producers who wish to work with non-Canadian producers, by sharing creative and financial decision-making responsibilities. The copyright provisions as introduced in this regulatory policy are meant to incentivize co-productions with non-Canadian partners and provide protections for Canadian creative and financial control that are not found in the current co-venture model. Accordingly, the measures adopted in this regulatory policy replace the co-venture framework.

Other criteria and issues relating to certification

167. The current certification framework includes incentives, such as the granting of time credits for the broadcast of certain types of certified programs, along with requirements, such as those relating to foreign courtesy credits and affidavits. In addition, the framework allows for specific types of productions and programming to be certified, including production packages⁵² and twinings.⁵³ Adult programming is also included in the scope of certification.

168. To simplify and modernize the certification framework in a way that aligns with a wide variety of business models, the Commission explored in the Notice⁵⁴ the possibility of amending or eliminating the above-noted elements.

Positions of parties

169. Most of the interveners who commented on time credits⁵⁵ stated that they should be discontinued given that they are less relevant in an on-demand environment. The

⁵⁰ The Commission acknowledges that defining the concept of “good faith” in negotiations is being considered in another proceeding to implement the modernized Act (see Broadcasting Notice of Consultation 2025-2). Any definition resulting from that proceeding will be applicable in the context of these guiding principles for negotiations in respect of Canadian programs.

⁵¹ This model includes ventures with co-producers from a foreign country that does not have a film or television production treaty with Canada and ventures with co-producers of a treaty country that do not otherwise meet Telefilm Canada’s eligibility requirements.

⁵² A production package is defined as two or more co-productions or co-ventures by a Canadian production company with one or more non-Canadian production companies, where a production with minor foreign involvement that qualifies as a Canadian production is matched with a foreign production with minor Canadian involvement.

⁵³ Twinning refers to the practice of pairing a fully Canadian production with a foreign production in which any Canadian participation is primarily financial and in which there is little to no Canadian participation in the creative or production aspects.

⁵⁴ See paragraphs 62 to 80 of the Notice for a detailed description for these items and the Commission’s related preliminary views.

AQPM and the Société de télédiffusion du Québec, among others, proposed adding new incentives for Canadian dubbing if time credits are removed. The CAB stated that since dubbing uses production resources, time credits should remain as long as exhibition requirements exist. BCE and Corus noted that time credits for dubbed productions continue to be especially valuable for French-language broadcasters.

170. Many interveners⁵⁶ supported the Commission's preliminary view that foreign courtesy credits should be streamlined. They proposed consolidating the credits into a single list and removing the Commission's equivalency approach. Intervenors also agreed with the Commission's proposal to replace the notarized affidavit with an attestation of duties.⁵⁷

171. Finally, intervenors generally agreed with discontinuing the Canadian certification of adult programming. Rogers, however, proposed maintaining the certification of adult programming while excluding it for the purpose of meeting CPE requirements. Kate Sinclair, a producer of adult programming, opposed the exemption of adult programming from certification. In this intervenor's view, "[a]rbitrarily exempting adult programming from Canadian designation will harm creative workers, harm film training, harm creativity, harm public opinion of sex workers, help monopolies, and open the Commission up to jurisdictional and Charter-based legal challenges."

Commission's decisions

Time credits

172. Currently, when a production is certified as Canadian, it also receives a time credit that broadcasters use to meet certain regulatory requirements. The time credit represents the percentage of time that a broadcaster can claim as Canadian content in its program logs. Supplementary time credits are also granted for productions dubbed in Canada using Canadian resources and for certain drama productions that hire Canadians for all key creative positions (i.e., the 150% drama time credit).

173. The Commission acknowledges that time credits are generally unsuitable in an on-demand environment, where programs are accessible by viewers at a time of their choosing rather than at any scheduled time, which makes it impossible to track for time credit purposes. As such, time credits no longer represent a strong incentive for broadcasting Canadian programming. In addition, the removal of time credits would

⁵⁵ Including the BSO, the Bell Fund, Rogers, Quebecor, the Société de télédiffusion du Québec, the CMF, , the AQPM, the DWCC, the DSO, the FRPC, and Irene Berkowitz.

⁵⁶ This includes the BSO, the MPA-C (supported by Buena Vista and Paramount), Rogers, the AQPM, the CMF, the Bell Fund, the DWCC, the DSO, CDGM, Discovery Digital Ventures, LLC (Discovery+), and Irene Berkowitz.

⁵⁷ As indicated at paragraph 70 of the Notice, this form would specify that the duties of the non-Canadian do not interfere in any way with the administrative, creative or financial decisions of the Canadian producer. The attestation would clearly state that the Commission has the right to audit and ask for additional documentation in relation to the foreign courtesy credit and has the right to revoke the certification if the requirements are not met.

reduce the administrative burden on certain broadcasters by simplifying reporting when they file their program logs. Finally, the Commission notes that very few traditional broadcasting undertakings are eligible to use the 150% drama time credit, especially since large English- and French-language broadcasters operating under the group-based approach are not eligible to claim them.

174. In regard to dubbing, the Commission has recognized in the past the contribution that artists and production resources in Canada's dubbing industry make to the production of Canadian programs. It has also recognized that Canadian dubbing reinforces the identification of Canadian viewers with dubbed Canadian programs. The contribution of the dubbing industry remains important today, especially in the French-speaking Quebec market. The dubbing industry in Quebec plays a vital role not only in sustaining local employment and economic activity, but also, and more importantly, in preserving and promoting distinctly Canadian French-language cultural expression by making audio-visual productions accessible to Quebec and Francophone audiences across the country, including those in OLMCs.
175. The Commission acknowledges that since dubbing uses production resources, time credits for dubbing should remain as long as exhibition requirements for traditional broadcasting undertakings exist. Moreover, maintaining time credits for dubbed content aired on linear services would ensure continued support for the Canadian dubbing industry. As such, the Commission maintains the following credits for programs broadcast on linear services:
- for Canadian programs:
 - o 100% + 33% Canadian time credit if dubbed in Canada using Canadian resources, from an official language of Canada or an Indigenous language in Canada into the other official language of Canada or an Indigenous language in Canada;⁵⁸ and
 - o no time credit if dubbed outside of Canada; and
 - for foreign programs:
 - o 33% Canadian time credit if dubbed in Canada using Canadian resources, from an official language of Canada or an Indigenous language in Canada into the other official language of Canada or an Indigenous language in Canada; and
 - o 50% Canadian time credit if dubbed in Canada using Canadian resources, from a language other than an official language of Canada or an Indigenous language in Canada into an official language of Canada or an Indigenous language in Canada.

⁵⁸ Two forms of dubbing processes are recognized by the Commission when done in Canada using Canadian resources: lip synchronization or voice-over translation.

176. Further, the Commission determines that it will discontinue the use of other time credits as part of its regulatory tools. With the exception of the dubbing credits noted above, Canadian programs will count for no more than full time duration (i.e., 100%) for the purpose of Canadian content exhibition requirements. This means that the 150% time credit for certain Canadian drama programs is discontinued and that a program under this category will count for 100% of its time duration.

Foreign courtesy credits and affidavits

177. Currently, to ensure that Canadians are clearly recognized as the central decision-makers for a domestic production, non-Canadians cannot receive a producer, co-producer, line producer, or production manager credit. They can however be awarded courtesy credits under certain conditions.⁵⁹

178. Notarized affidavits are currently required for all non-Canadians receiving foreign courtesy credits. The Commission currently separates producer-related roles into two distinct groups 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. If a non-Canadian obtains a foreign courtesy credit in a producer-related role from either of these groups, the Commission requires that a Canadian occupy a similar producer-related role also from these groups. This is known as an equivalency scope. In the Notice, the Commission proposed to simplify this criterion by consolidating the foreign courtesy credits into a single list (as opposed to having two distinct groups), thus eliminating the need to require equivalencies. It also proposed to simplify the affidavit requirement with a standardized attestation of duties form.

179. Parties that intervened on this issue generally agreed with the Commission's proposed approach. In the Commission's view, this simplified and streamlined approach would lighten the administrative burden for applicants without impacting Canadian productions. The framework includes safeguards (such as high-level requirements for Canadian key creative positions and production costs) that ensure Canadian creative and financial control are well supported.

180. Accordingly, the Commission amends the certification framework as follows for productions that are characterized by 100% Canadian copyright ownership:

- The foreign courtesy credits will be consolidated into a single list, without requiring equivalencies between the two above-noted distinct groups of producer-related roles. The Commission therefore requires that for every non-Canadian obtaining a foreign courtesy credit from the producer-

⁵⁹ Courtesy credits may be awarded to non-Canadians for non-creative, non production-related functions that in no way interfere with the financial and creative authority of the Canadian producer and either relate to the arranging of foreign distribution or financing or services to the production under the strict supervision and control of the Canadian producer.

related roles of the consolidated list, a Canadian also needs to be credited in a producer-related role from this same consolidated list.

- The notarized affidavit requirements will be replaced with an attestation of duties form. This form will specify that the duties of the non-Canadian do not interfere in any way with the administrative, creative or financial decisions of the Canadian producer. The form will clearly state that the Commission has the right to audit and ask for additional documentation in relation to the foreign courtesy credit and has the right to revoke the certification if the requirements are not met.

Production packages and twinings

181. The Commission has received very few applications for the certification of production packages and twinings since their implementation decades ago. As such, the Commission is of the view that certifying such productions does not add value to the flexibility or versatility of the certification framework. Accordingly, the Commission discontinues the certification of production packages and twinings.

Adult programming

182. In the Notice, the Commission stated that adult programming is an element of the production industry that does not require regulatory support for its overall economic stability. Further, the certification or non-certification of this type of programming does not impact the Canadian production industry associated with the creation or availability of such content. As such, the Commission confirms its preliminary view that it will no longer certify adult programming as Canadian for the purposes of the certification framework. The Commission notes that this determination does not materially affect the Commission's jurisdiction over that type of programming, as adult programs would remain "programs" under the Act.
183. The Commission notes that other existing requirements relating to the broadcast of adult programming by discretionary services remain in place, in particular, the standard condition of service⁶⁰ requiring a licensee that broadcasts adult programming to adhere to section D.3 of the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*.⁶¹ The Commission further notes that on-demand services continue to be subject to the requirement to maintain a code governing the broadcast of adult programming, and that other applicable programming codes, including those relating to equitable portrayal and related standards, remain in force. The Commission clarifies that, while it will no longer certify these programs as Canadian, this does not constitute the elimination or easing of any existing regulatory requirements.

⁶⁰ See Broadcasting Regulatory Policy 2023-306 for further details.

⁶¹ Broadcasting Public Notice 2003-10.

Conclusion on modernizing the certification framework

184. In brief, the Commission has considered the factors set out in the Act and in the Policy Direction and is satisfied that its decisions set out above for modernizing the certification framework for Canadian programs will adequately support Canadian artistic and cultural expression by ensuring that Canadian stories, perspectives, and creative talent remain central to the audio-visual sector, while also helping generate Canadian employment opportunities across key creative and technical positions. By setting clear criteria for Canadian programs, the framework strengthens the capacity of the Canadian production industry to develop distinctive programming that reflects national identity. A modernized framework that incorporates flexible Canadian copyright ownership provisions further enhances these benefits by safeguarding Canadian creative rights, thereby enabling Canadian creators to retain greater control over their programs while providing opportunities to foster partnerships with non-Canadian creators and other partners.

Next steps – Implementation of the modernized certification framework

185. To implement its decisions regarding the criteria for defining “Canadian program,” the Commission intends to issue in the near future a notice of consultation calling for comments on proposed new regulations defining “Canadian program” in the audio-visual sector and on consequential amendments to the *Television Broadcasting Regulations, 1987* and to the *Discretionary Services Regulations*. The Commission invites interested persons to consult that notice of consultation for further details.

186. In view of the time required to make regulations, the Commission will assess Canadian program certification applications that it received before the date of this regulatory policy under the certification framework currently in place, and not under the modernized certification framework, which will be implemented only once the above-noted new regulations come into force. For applications received between the date of this regulatory policy and the date the above-noted new regulations come into force, the Commission will also apply the certification framework currently in place. However, an applicant who submits an application during that same time period and wishes to be certified under the modernized criteria set out in this regulatory policy can indicate this in its application. In such cases, the application will be put on hold and subsequently evaluated when the new regulations come into force. The Commission further notes that once the new regulations come into force, the new criteria will apply to all applications received on or after that coming into force date.

The use of AI in Canadian productions

187. As part of this proceeding, the Commission sought comments on the growing use of AI-generated content and on the appropriateness of considering AI-generated content as Canadian. More specifically, the Commission wished to examine AI in light of, among other things, the impact it may have on various elements in the audio-visual production industry (such as dubbing, animation and scriptwriting) in so far as

that impact relates to Canadian programming and pre-production and post-production practices.

Positions of parties

188. Interveners including Unifor and the Conseil provincial du secteur des communications du Syndicat canadien de la fonction publique (CPSC-SCFP) called for clear boundaries around the use of AI, to protect Canadian jobs, uphold creative standards, and ensure the integrity of Canadian content. Broadcasters emphasized the need for flexibility and innovation in regard to their use of AI in programming production, so as to improve efficiency by automating tasks that allow for faster and more cost-effective production.

189. Several interveners expressed concerns over the integration of AI into the Canadian broadcasting system, particularly in regard to the potential replacement of media workers, loss of creative control, and the implications on eligibility for Canadian program certification. The DGC, Unifor, the CPSC-SCFP, Music Canada, and the Société professionnelle des auteurs compositeurs du Québec et des artistes entrepreneurs emphasized the critical need to ensure the primacy of human creators over AI, and for AI to serve only as a support tool. According to Accessible Media Inc., the use of AI should not replace human intervention, especially in regard to captioning, and American Sign Language (ASL) and Langue des signes québécoise (LSQ) (a position shared by the Disability Screen Office and by the Deaf and Hard of Hearing Coalition), but should be used as a tool to streamline production processes, reduce costs, and enhance accessibility.

190. The Computer & Communications Industry Association submitted that questions regarding copyright and authorship as they relate to AI-generated material remain unsettled and that determining the nationality of AI outputs is impractical. Broadcasters and producers, including Channel Zero Inc. (Channel Zero), Rogers and the IBG, expressed differing views on AI in broadcasting. Channel Zero cautioned against the Commission making hard and fast rules on broadcaster use of AI, urging it instead to encourage experimentation. Rogers stated that the Commission must take a cautious view toward the use of AI. It expressed support for the use of AI in programming production, but only to the extent that it improves efficiency. Rogers added that although technological innovation has always been an important part of Canadian broadcasting, content must truly strengthen Canada's cultural, political, social and economic fabric. The IBG argued that AI-generated material or elements within a production should not affect the qualification of a production that would otherwise meet the Canadian certification criteria, as long as the persons using that tool are Canadian. Finally, Pelmorex Weather Networks (Television) Inc. stated that AI-generated or AI-assisted content (including its AI-assisted avatar, when produced by its Canadian staff) should be considered Canadian content.

Commission's decisions

191. The use of AI in the broadcasting system is in its early stages; however, the impact of this technology is anticipated to grow. Many non-Canadian jurisdictions

have initiated public consultations regarding AI and are establishing guidelines or have adopted regulatory frameworks for the technology.⁶² In Canada specifically, the use of AI is not currently contemplated in the Act or in its broadcasting policy objectives. However, the Commission notes that broad discussions are ongoing in Canada on the legislative framework for AI.

192. The Canadian broadcasting industry is adapting to the growing presence of AI and is taking measures to set boundaries. Protective measures have been introduced in several collective agreements, notably those of the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) and the WGC.
193. The Commission heard during this proceeding how AI is being integrated into certain functions throughout the content production cycle, and how its use can raise concerns. The Commission also heard concerns about the transparency of AI content and whether users are able to tell what is AI-generated and what is not.
194. In the Commission's view, the record of this proceeding did not yield any clear policy proposals in response to the AI-related issues identified in the Notice, or any specific clear path forward in regard to addressing the use of AI in the broadcasting system. However, the Commission is mindful of the need to emphasize the importance of human input and creative control in the production of Canadian audio-visual programming.
195. It is the Commission's view that the key creative positions and functions of the modernized certification framework should be filled and performed by humans. While AI may serve as a potential tool to assist in the creation of Canadian content, the Commission is of the view that humans should hold creative control to support economic opportunities and remuneration for Canadians creators. The Commission will apply this lens when evaluating whether a production meets the criteria for key creative positions and functions, and other criteria used to certify productions as Canadian programs.

Data collection and publication requirements

196. In the Notice, the Commission sought comments on how to ensure that the Commission, the broadcasting industry and Canadians have access to appropriate data for accountability and transparency purposes.
197. As part of this proceeding, the Commission has considered the publication of financial data and CPE data collection requirements.

⁶² For example, the United Kingdom launched a public consultation on copyright that closed in February 2025. In January 2025, the United States Copyright Office issued guidelines on the copyrightability of AI-generated works, which reinforces the policy that only human authorship qualifies for copyright protection. China, the European Union and Korea have adopted regulatory frameworks on AI.

Positions of parties

198. Non-Canadian online undertakings⁶³ and the MPA-C generally did not oppose being required to file CPE-related data with the Commission where they are subject to such obligations. However, they opposed making such financial information public. According to Roku, Inc., collecting and making public information about the revenues and expenditures of online undertakings could jeopardize the competitive position of smaller and growing services. Amazon stated that publishing undertaking-level data would be competitively harmful. Google LLC proposed publishing only aggregate CPE-related data to show system-level spending and trends. Many interveners noted that the Commission had determined, with respect to base contributions,⁶⁴ that these undertakings' financial information could be treated as confidential.
199. Organizations that represent public-interest and equity-deserving groups⁶⁵ submitted that comprehensive data collection and publication for all undertakings is necessary for accountability, market transparency and public participation. Friends of Canadian Media argued that the online undertakings that opposed these measures failed to demonstrate how the current obligations cause competitive harm. It called for the Commission to apply the current disclosure requirements to online undertakings.
200. The CAB considered the Commission's current category groupings for programming and production expenditures to be reasonable and expressed support for the public disclosure of aggregate CPE-related data where there is a clear public policy interest. Broadcasters including Rogers and Quebecor, however, argued that the current requirements are excessive and hinder content production, and should be reduced and harmonized with other sectors.
201. Certain producer associations including the CMPA and the APFC expressed support for the Commission's proposal endorsing the mandatory disclosure of disaggregated revenue and expense data from all broadcasters subject to CPE requirements.

Commission's decisions

Publication of financial data

202. Access to relevant data and information promotes transparency and accountability among industry players. Such access is also necessary for the Commission to regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in the Act. The Commission has a responsibility to regulate and supervise the Canadian broadcasting system. In doing

⁶³ Including Netflix, Apple, and Roku, Inc.

⁶⁴ See Broadcasting Regulatory Policy 2024-121-1.

⁶⁵ Including the BSO, the REMC, PIAC, Friends of Canadian Media, and the Quebec English-language Production Council.

so, it must take into account the nature and the diversity of the services provided by broadcasting undertakings, as well as their size, their impact on the Canadian creation and production industry (particularly with respect to employment in Canada and Canadian programming), and their contribution to implementing the broadcasting policy set out in the Act.⁶⁶ Further, the Policy Direction directs the Commission to provide information to the public on a periodic basis regarding the achievement of the Canadian broadcasting policy objectives.⁶⁷

203. Accordingly, the Commission finds that there is a clear public interest in ensuring sufficient and transparent reporting by all players (Canadian or non-Canadian) in the Canadian broadcasting industry, of all sizes and regardless of origin, so that all broadcasters and Canadians are informed. Also, it is important for the Commission, as the regulator, to facilitate fair and equitable disclosure of data and information. This is achieved by balancing the public interest in disclosing information versus any potential harm that could result from its disclosure.

204. Under paragraph 9.1(1)(o) of the Act, the Commission may make orders requiring persons carrying on all types of broadcasting undertakings, including online undertakings, to provide any information to the Commission that it considers necessary for the administration of the Act, including financial or commercial information, and information related to programming or expenditures.⁶⁸ Currently, most online undertakings are required to submit information requested by the Commission consistent with their conditions of service,⁶⁹ while traditional broadcasting undertakings are subject to various similar provisions set out in regulations or orders, including exemption orders. Transparency is the default under the Act; only limited types of information submitted to the Commission may be designated as confidential. Under section 25.3 of the Act, the Commission is required to balance the protection of such confidential data and disclosure of information in the public interest, thereby maximizing transparency while safeguarding sensitive information.

205. Online undertakings are currently required to publicly disclose only limited financial information, with the Commission solely publishing aggregated information on Canadian broadcasting revenues across all online undertakings in the audio and

⁶⁶ See paragraph 5(2)(a.1) of the Act.

⁶⁷ Under section 18 of the Policy Direction, the Commission is directed to provide information to the public on a periodic basis regarding the progress made in achieving the objectives of the broadcasting policy set in subsection 3(1) of the Act, including progress on the inclusion and participation of Indigenous persons, members of OLMCs and members of equity-seeking groups and ethnocultural groups in the Canadian broadcasting system.

⁶⁸ The Commission makes ad hoc requests for information and conducts routine data collection notably through annual surveys, annual and quarterly reports, and annual production reports. Information submitted to the Commission in its proceedings is proactively made publicly available and information filed in the above-noted surveys and reports to be treated as confidential is generally identified in advance by the Commission.

⁶⁹ See Broadcasting Order 2023-332, set out in the appendix to Broadcasting Regulatory Policy 2023-331, and Broadcasting Order 2024-194, set out in the appendix to Broadcasting Regulatory Policy 2024-121-1.

audio-visual sectors.⁷⁰ In contrast, some large broadcasting ownership groups are subject to more extensive disclosure requirements, including for annual aggregate returns, service-specific financial summaries, and annual production reports.⁷¹

206. The Commission acknowledges having taken a more cautious approach to the disclosure of information by online undertakings prior to their express inclusion in the Act. This approach continued after their inclusion and extended to the Commission's determinations set out in Broadcasting Regulatory Policies 2024-121 and 2024-121-1/Broadcasting Order 2024-194. With online undertakings being fully integrated into the Canadian broadcasting system as the Commission continues to implement the modernized Act, its current light approach to data publication for online undertakings limits the ability of the Commission and the public to monitor and adjust to changes in the system. The Commission considers that it must update its approach.
207. In the Commission's view, broadcasters' annual CPE and other contributions,⁷² and the total annual Canadian gross broadcasting revenues less excluded revenue⁷³ as they relate to audio-visual activities⁷⁴ in the Canadian broadcasting system, aggregated at the entity level,⁷⁵ should be public information and not routinely treated as confidential. This approach would better align the data publication requirements between online and traditional players and offer valuable information to the public.
208. The Commission acknowledges the concerns raised by interveners that some information, and in particular financial data, is competitively sensitive, and that its disclosure could place the competitive position of smaller broadcasters – especially small independent Canadian undertakings – at risk. The Commission also notes that large traditional players in the Canadian broadcasting system have for many years been, and still are, required to publish financial data at the ownership group level, and in some cases, for their individual undertakings.
209. In Broadcasting Regulatory Policies 2024-121 and 2024-121-1/Broadcasting Order 2024-194, the Commission required certain online undertakings to make base contributions: those whose operator forms part of a broadcasting ownership group that has, after deducting any excluded revenue, annual Canadian gross broadcasting revenues of more than \$25 million, and those whose operator does not form part of a broadcasting ownership group and that have, after deducting any excluded revenue,

⁷⁰ Estimates from Omdia for the period 2018-2020 are publicly available, but actual revenues, collected as part of the Commission's Annual Digital Media Survey, have been published, on an aggregated basis, since 2021.

⁷¹ See Broadcasting Regulatory Policy 2009-560.

⁷² This refers to expenditures to be made pursuant to the Act for Canadian content, including any contributions to be made as contemplated in Broadcasting Regulatory Policy 2024-121-1.

⁷³ As defined in Broadcasting Order 2024-194.

⁷⁴ Confidentiality and publication of data and information in respect of the audio sector is being considered in the proceeding initiated by Broadcasting Notice of Consultation 2025-52 (see in particular Broadcasting Notice of Consultation 2025-52-3).

⁷⁵ This refers to either the individual operator level or the broadcasting ownership group level if the operator forms part of such a group, as set out in Broadcasting Regulatory Policy 2024-121-1.

annual Canadian gross broadcasting revenues of more than \$25 million. This threshold approach has merit for the purpose of setting a disclosure threshold as it balances fairness, simplicity and equity based on the size of undertaking. However, the Commission considers that it would be appropriate, in setting a threshold for the public disclosure of data, to consider total annual Canadian gross broadcasting revenues rather than “annual contributions revenues”,⁷⁶ since that is the data to be disclosed.

210. In the Commission’s view, it is necessary to balance the needs of meeting public interest and protecting smaller entities, taking into account existing practices for publication of traditional undertakings’ data and information. Accordingly, the Commission finds it appropriate to publish information on broadcasters’ annual CPE and other contributions, and on their annual Canadian gross broadcasting revenues less excluded revenue as it relates to the audio-visual activities in the Canadian broadcasting system, from both online undertakings and traditional broadcasting undertakings. This applies to online and traditional broadcasting undertakings whose operator forms part of a broadcasting ownership group that has, after deducting any excluded revenue, annual Canadian gross broadcasting revenues of \$25 million or more, and those whose operator does not form part of a broadcasting ownership group and that have, after deducting any excluded revenue, annual Canadian gross broadcasting revenues of \$25 million or more. For greater clarity, this publication will be at the entity level, which, depending on each undertaking’s ownership structure, is either an individual broadcasting undertaking or a broadcasting ownership group.
211. The Commission recognizes that large online undertakings are not always part of a broadcasting ownership group, and that in such cases, the data disclosure above would apply to a single undertaking. Certain online undertakings have expressed concerns that data disclosure could affect their level of competitiveness in the market. In the Commission’s view, it is unlikely that any harm resulting from disclosure of that data would outweigh the public interest, given the relatively large size of the online undertakings whose information is intended to be made public and their associated large impact on the Canadian broadcasting system.
212. In light of the above, the Commission intends to publish the following information as it relates to audio-visual activities on an annual basis, aggregated at the entity level:
- annual Canadian gross broadcasting revenues less excluded revenue;
 - CPE; and
 - other contributions.

⁷⁶ Annual contributions revenue is based on online undertakings’ activities, whereas annual Canadian gross broadcasting revenues encompass broader broadcasting activities in Canada. The threshold applied will be aligned with that approach taken in regard to base contributions, to maintain consistency and simplicity.

213. This general approach would apply going forward, beginning with data collected in regard to the 2025-2026 broadcast year.
214. Leveling the playing field by modifying the publication requirements as described above is in the public interest as it fosters transparency and provides stakeholders with a more comprehensive view of market trends. As such, better informed interveners will be in a better position to fully participate in the Commission's proceedings, thereby supporting the Commission's efforts in making its decisions. This public input is critical to the Commission properly taking into account broadcasting undertakings' impact on the Canadian broadcasting system in keeping with paragraph 5(2)(a.1) of the Act.⁷⁷

CPE data collection requirements

215. The Commission collects detailed CPE data annually from broadcasters, which include breakdowns of expenses directed to overall programming production, closed captioning, and programming production by Indigenous or OLMC producers. To date, CPE-related information currently collected and published by the Commission only reflects activities of traditional broadcasting undertakings and not online undertakings. Online undertakings, however, are active in creating programming in Canada and making that programming available to Canadian audiences. As such, the Commission and the public have access to only partial information on this important element of Canadian programming in the Canadian broadcasting system, which limits the Commission's ability to effectively regulate and supervise the Canadian broadcasting system to support various objectives outlined in the Act.
216. In regard to the granularity of the CPE data collected, the Commission considers that there is value in continuing to collect expenditure data on Canadian programs by program category. This allows for a more comprehensive picture of how CPE are allocated and amortized and offers valuable information to monitor and assess elements of the Canadian broadcasting system for which regulatory support might be necessary.
217. In light of the above, the Commission determines that operators of all broadcasting undertakings that currently are or may become subject to CPE requirements will be required to file with the Commission, via the annual returns, data on CPE. For the purposes of that requirement, the data collection approach requiring programming expenditure data divided by program category will be maintained.⁷⁸

⁷⁷ Specifically, "[t]he Canadian broadcasting system should be regulated and supervised in a flexible manner that takes into account the nature and diversity of the services provided by broadcasting undertakings, as well as their size [and] their impact on the Canadian creation and production industry [...]."

⁷⁸ The full list and definitions of program categories are set out in the appendix to Broadcasting Regulatory Policy 2010-808.

218. In regard to the applicability and scope of CPE requirements, the Commission will issue its determinations in the above-noted separate regulatory policy that will focus on funding and support for Canadian programming.

Streamlining of reporting requirements

219. The Commission recognizes the importance of balancing data publication and collection requirements with the goal of streamlining reporting and reducing administrative burdens on broadcasters.

Positions of parties

220. Several interveners⁷⁹ supported the filing of a single, standardized production report for undertakings subject to CPE requirements.
221. The MPA-C supported a requirement to submit a streamlined production report focused solely on compliance monitoring. Apple noted that existing production reports are not standardized and considered that a single template would not suit diverse online models. It further stated that publication requirements should include confidentiality safeguards and limit disclosure to aggregate data.
222. Quebecor stated that the current reporting requirements are overly burdensome and hinder content production as they consume significant resources. It requested a substantial reduction in administrative burden and a harmonization of obligations with those in other sectors. Similarly, the CAB noted the burden of reporting and proposed a single, streamlined report.
223. Certain interveners⁸⁰ proposed the addition of sufficient fields to the current production report to assess outcomes for equity-deserving groups and OLMCs. The APFC and the Quebec English-language Production Council proposed adding language-market data collection to the report.

Commission's decisions

224. The Commission is mindful of the overall burden that data reporting and data publication requirements impose on the industry, and especially on traditional undertakings that, as noted above, file annual returns and a number of reports with the Commission. With that in mind, the Commission considers that it would be appropriate to alleviate some of that burden where there is duplication in the collection or publication of data.

⁷⁹Knowledge Network, Apple, the DSO, the BSO, the REMC, Rogers, and PIAC.

⁸⁰ The BSO, the DSO, PIAC, and the REMC.

225. Currently, vertically integrated broadcasters⁸¹ are required to disclose annual aggregate financial returns, as well as revenues and subscriber totals for each of their discretionary services. The filing and publication of these aggregate financial returns and service-specific financial summaries result in duplicated activities as the data is also collected as part of the annual returns in a disaggregated form. Furthermore, the Commission's current disclosure practices placed on large traditional broadcasting undertakings result in regulatory asymmetry given that online broadcasting undertakings are not subject to the same level of disclosure. This, in the Commission's view, can put the traditional broadcasters at a competitive disadvantage.
226. Some broadcasting undertakings are also currently required to file with the Commission [annual production reports](#).⁸² These reports provide detailed information⁸³ on an individual program basis for broadcasters' production expenditures, except those for programming in the news and sports categories. The reports offer insights on broadcasters' spending on programming, including that produced by OLMCs and by Indigenous producers, and on the presence of women in key production roles. The data is published on an aggregated basis, by large English- and French-language broadcasting ownership groups. Production expenditures by online undertakings are not currently included in the reports.
227. Consistent with subparagraph 3(1)(d)(iii) of the Act, the broadcasting system should serve the needs and interests of a wide range of Canadian equity-deserving groups, including through its programming and employment opportunities. In the Notice, the Commission stated its goal of ensuring that Canada's diversity is reflected in the Canadian broadcasting system and that a range of creators is supported. In the Notice, equity-deserving groups were defined as racialized people, people with disabilities, individuals who identify as 2SLGBTQI+ and women. As such, and to better monitor progress towards meeting that objective and to meet the stated needs of the public for such data, the Commission is of the view that collecting data on key creative positions filled by Canadians that are part of equity-deserving groups is necessary, in addition to reporting on OLMC, Indigenous and women creators.
228. Given the success in tracking data on some equity-deserving groups (namely, women in production), OLMCs and Indigenous peoples through the production reports, the Commission is of the view that the report lends itself well to be expanded to gather information on all equity-deserving groups (specifically, racialized people,

⁸¹ As noted in Broadcasting Regulatory Policy 2011-601, vertical integration can refer to the ownership or control by one entity of both programming services and distribution services, or of both programming undertakings and production companies.

⁸² See Broadcasting Information Bulletin 2019-304 for details on current production reports.

⁸³ For example, original, first-run programming and other content; content produced by OLMC producers as defined in Broadcasting Information Bulletin 2019-304, and Indigenous producers; and the commissioning of programming made by women occupying the roles of producer, director, writer, cinematographer and editor and women occupying the roles of first and second lead performer.

people with disabilities and individuals who identify as 2SLGBTQI+, in addition to women).

229. Accordingly, starting in the 2025-2026 broadcast year, the Commission will collect, as part of the annual production report, information on the presence, in key creative positions, of people who self-identify as members of the above-noted equity-deserving groups, members of OLMCs, and Indigenous peoples.
230. The Commission acknowledges the concerns raised during the proceeding regarding the administrative burden associated with compiling data for the production reports. Specifically, it can be difficult to track information for older, repeat programming where such data was not originally identified. Furthermore, reporting on the same content for multiple years (i.e., repeat programming) results in data duplication.
231. Accordingly, production reports to be filed with the Commission starting with the 2024-2025 broadcast year will only report on broadcasters' data relating to original first-run Canadian programming⁸⁴ that they license or commission, excluding news and sports programming. The Commission acknowledges that this will reduce the information publicly available on spending directed to older, repeat programming at the level of granularity the production report currently provides. However, CPE data will continue to be made publicly available, notably in the [Open Data portal](#) and the [broadcasting financial summaries](#) on the Commission's website. This, in combination with the original, first-run Canadian programming information from the production reports, will continue to provide sufficient information to interested parties to understand how various entities allocate their programming budget. Production information generally covering broadcasters operating in the Canadian broadcasting system is crucial to the Commission, industry stakeholders and the public to monitor compliance and trends and to ensure policy goals are met, especially when it comes to representation of equity-deserving groups. Currently, the Commission does not collect that data for online undertakings. This lack of data results in a partial picture of production spending and representation of equity-deserving groups in the production sector.
232. The Commission considers that online undertakings, given their strong presence in the Canadian broadcasting system, should also be required to submit production reports on an annual basis to provide a more fulsome picture of the diversity of people represented in that system.
233. Accordingly, the Commission determines that the requirement to file production reports with the Commission will apply to online undertakings and other broadcasting undertakings whose operator forms part of a broadcasting ownership group that has, after deducting any excluded revenue, annual Canadian gross broadcasting revenues

⁸⁴ For these purposes, this means the original exhibition of a program that has not been broadcast or distributed by another broadcasting undertaking.

of \$25 million or more and to online undertakings and other broadcasting undertakings whose operator does not form part of a broadcasting ownership group and that have, after deducting any excluded revenue, annual Canadian gross broadcasting revenues of \$25 million or more, and that currently are or will be subject to CPE requirements.

234. The Commission will require both a publicly available abridged version and a non-abridged confidential version of the production report to be filed at the entity level (i.e., single report per entity for groups) in a machine-readable format. The Commission will publish the aggregated abridged production reports by program (excluding financial data) provided by each entity subject to this reporting requirement.
235. Finally, while financial data (i.e., expenditures at the individual production level) will not be disclosed as part of published production reports, the Commission will publish broadcasters' aggregated regional production data in instances where data entries are provided by at least three entities in a given region, to preserve the confidentiality of the financial information.
236. To level the disclosure requirements across broadcasters, streamline regulatory processes, alleviate administrative burden, and ensure more consistency in disclosure requirements across broadcasters, the Commission will, beginning with data collected in regard to the 2025-2026 broadcast year:
- eliminate the requirements to file and disclose annual aggregate financial returns imposed on vertically integrated broadcasters; and
 - discontinue its publication of individual discretionary services' financial summaries.

Secretary General

Related documents

- *The Path Forward – Supporting Canadian and Indigenous audio content*, Broadcasting Notice of Consultation CRTC 2025-52, 20 February 2025, as amended by Broadcasting Notices of Consultation CRTC 2025-52-1, 24 March 2025; 2025-52-2, 4 April 2025; 2025-52-3, 15 April 2025; 2025-52-4, 26 May 2025; and 2025-52-5, 3 October 2025
- *The Path Forward – Working towards a sustainable Canadian broadcasting system*, Broadcasting Notice of Consultation CRTC 2025-2, 9 January 2025, as amended by Broadcasting Notices of Consultation CRTC 2025-2-1, 24 March 2025, 2025-2-2, 31 March 2025, 2025-2-3, 23 July 2025, and 2025-2-4, 1 August 2025

- *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector*, Broadcasting Notice of Consultation CRTC 2024-288, 15 November 2024, as amended by Broadcasting Notices of Consultation CRTC 2024-288-1, 26 February 2024; 2024-288-2, 24 March 2024; 2024-288-3, 31 March 2025; and 2024-288-4, 29 May 2025
- *The Path Forward – Supporting Canadian and Indigenous content through base contributions*, Broadcasting Regulatory Policy CRTC 2024-121, 4 June 2024, as finalized by *The Path Forward – Supporting Canadian and Indigenous content through base contributions – Finalization of conditions of service*, Broadcasting Regulatory Policy CRTC 2024-121-1 and Broadcasting Order CRTC 2024-194, 29 August 2024
- *Call for comments – Co-development of an Indigenous Broadcasting Policy*, Broadcasting Notice of Consultation CRTC 2024-67, 22 March 2024
- *Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings*, Broadcasting Regulatory Policy CRTC 2023-331 and Broadcasting Order CRTC 2023-332, 29 September 2023
- *Standard conditions of service for licensed discretionary services, national news discretionary services and mainstream sports discretionary services and exemption order for exempt discretionary services – Modifications to the advertising time limit requirement*, Broadcasting Regulatory Policy CRTC 2023-306 and Broadcasting Order CRTC 2023-307, 5 September 2023
- *Change to the treatment of stock footage costs as part of the evaluation of applications for Canadian program certification*, Broadcasting Regulatory Policy CRTC 2023-90, 23 March 2023
- *Production Report to be completed annually by large English- and French-language ownership groups*, Broadcasting Information Bulletin CRTC 2019-304, 29 August 2019
- *Let’s Talk TV – The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2025
- *Regulatory framework relating to vertical integration*, Broadcasting Regulatory Policy CRTC 2011-601, 21 September 2011, as corrected by *Regulatory framework relating to vertical integration – Correction*, Broadcasting Regulatory Policy CRTC 2011-601-1, 14 October 2011
- *Definitions for television program categories*, Broadcasting Regulatory Policy CRTC 2010-808, 1 November 2010

- *Public disclosure of aggregate financial data for owners of large broadcasting distribution undertakings, multi-system operators and conventional television and radio ownership groups*, Broadcasting Regulatory Policy CRTC 2009-560, 4 September 2009
- *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003

Appendix 1 to Broadcasting Regulatory Policy CRTC 2025-299

Criteria for qualifying and certifying a Canadian audio-visual program

This appendix sets out the consolidated criteria for determining which audio-visual productions will qualify and be certified as Canadian programs.

The following requirements apply to live action and continuous action animation productions (referred to collectively as “live action productions” in this appendix) and to animated productions other than continuous action animation (referred to as “animated productions” in this appendix), unless specified otherwise.

Appendix 2 sets out the Commission’s approach to the certification, verification and assessment of certain types of productions as well as the interpretation of terms used in this appendix.

1. General requirements

To qualify and be certified as a Canadian program, the following requirements must be met in all cases:

- a) **Canadian production company:** The production must be produced by a Canadian production company.
- b) **Minimum Canadian expenses:** At least 75% of the production’s services costs must be paid to Canadians.⁸⁵ At least 75% of the production’s post-production/laboratory costs must be paid for services provided in Canada by Canadians or Canadian companies.
- c) **Canadian copyright ownership – Minimum threshold:** Not less than 20% of the copyright in the program must be retained by a Canadian, which for this purpose could mean a Canadian broadcaster or a Canadian producer.
- d) **Key creative positions and functions, and other Canadian key creative elements – Minimum percentage threshold:** A production must attain a minimum threshold of either 60% or 80% of the points possible for a production as detailed in Section 2 below. Further, where a production makes use of certain key creative positions and functions, those positions and functions must be filled or performed by Canadians for the production to qualify and be certified as a Canadian program (i.e., mandatory Canadian positions and functions). The specific minimum percentage threshold and the mandatory positions and functions

⁸⁵ For the purposes of defining a “Canadian program”, a “Canadian” is a person who is, at all relevant times, a Canadian citizen as defined in the Citizenship Act or a permanent resident as defined in the Immigration and Refugee Protection Act who has received a Permanent Residence Certificate. People who are First Nations, Inuit or Métis peoples in Canada meet any certification requirement that applies to a “Canadian.”

will depend on the Canadian copyright ownership share in the program, as set out in Section 3 below.

2. The points system

Points are awarded for the key creative positions and functions set out in Tables 1 and 2 below when filled and performed by Canadians, up to the maximum possible points for each type of production.

Tables 1 and 2 also set out bonus points that are awarded for other Canadian key creative elements, which are added to the points awarded for key creative positions and functions. For greater clarity, bonus points increase the total number of points a production earns (i.e., the numerator) and do not increase the number of points needed to meet the minimum percentage threshold (i.e., by increasing the denominator).

Where bonus points are used to qualify and certify a production as a Canadian program, the mandatory key creative positions and functions must still be filled or performed by Canadians for the production to be certified as a Canadian program.

If a production does not use certain key creative positions and functions, the points associated with those positions and functions are not included (in the numerator and denominator) when calculating whether the production meets the applicable minimum threshold for Canadian certification.

Table 1 – Live action productions: Key creative positions, points to be awarded when filled by Canadians, and bonus points for Canadian key creative elements (see notes below)

Key creative positions and points (maximum number of points possible: 14)	• Director – 2 points • Screenwriter – 2 points • Showrunner – 2 points • First Lead Performer (or first voice) – 1 point • Second Lead Performer (or second voice) – 1 point • Director of Photography – 1 point • Production Designer or Art Director – 1 point • Picture Editor – 1 point • Music Composer – 1 point • Head of Department Responsible for Costume Design, Head of Department Responsible for Make-up Artists, and Head of Department Responsible for Hair Artists – 1 point • Visual Effects Director/Special Effects Director – 1 point
Key creative elements and bonus points (maximum number of points possible: 3)	• Canadian musical selections – 1 point • Canadian written works – 1 point • Canadian characters and settings – 1 point

Table 2 – Animated productions: Key creative positions and functions, points to be awarded when filled or performed by Canadians, and bonus points for Canadian key creative elements (see notes below)

Key creative positions/ functions and points ⁸⁶ (maximum number of points possible: 15)	• Director – 2 points • Scriptwriter and Storyboard Supervisor – 2 points • Showrunner – 2 points • First Voice (or first lead performer) – 1 point • Second Voice (or second lead performer) – 1 point • Design Supervisor – 1 point • Layout Artist and Background – 1 point • Key Animation – 1 point • Assistant Animation/In-betweening – 1 point • Camera Operator or Virtual Camera Operator – 1 point • Music Composer – 1 point • Picture Editor – 1 point
Key creative elements and bonus points (maximum number of points possible: 3)	• Canadian musical selections – 1 point • Canadian written works – 1 point • Canadian characters and settings – 1 point

Multiple persons filling a key creative position

Other than for the positions of Director and Screenwriter (live action productions)/Scriptwriter and Storyboard Supervisor (animated productions), points are awarded for a particular position if all persons sharing the duties of and credited in that position are Canadian.

If more than one person fills any of the Director or Screenwriter (live action productions)/Scriptwriter and Storyboard Supervisor (animated productions) positions, at least 80% of the individuals filling the same position must be Canadian for the points to be awarded.

In animated productions that use Scriptwriters or Storyboard Supervisors, but not both, 2 points will be awarded if at least 80% of the persons filling the position are Canadian.

Notes on the awarding of points for key creative positions and functions

Writer (Screenwriter [live action productions]/Scriptwriter and Storyboard Supervisor [animated productions])

All individuals involved in any stage of developing the screenplay (including outline or treatment, various drafts, dialogue polishing, and final shooting script) must be Canadian

⁸⁶ While the following functions play a significant role in animated productions, no points are awarded to them: Tracer/Photocopier, Opaquer and Animation Director.

to be awarded 2 points for the Screenwriter, Scriptwriter and Storyboard Supervisor positions.

To assess the qualification for the Screenwriter, Scriptwriter and Storyboard Supervisor positions, the Commission will examine on-screen credits, including the following:

- Story Editor (Executive, Senior, Junior);
- Creative Consultant;
- Story Consultant, Executive Story Consultant; and
- Creative Producer.

Showrunner

Showrunner points cannot be double counted. That is, if the Showrunner directs or writes the screenplays for a program, points may be awarded for either the Showrunner position or for the Director or Screenwriter positions, but not both.

Where a Showrunner writes or directs individual episodes of a series, at least 80% of the episodes must be written or directed by others for the writing and directing points to be awarded separately from the Showrunner points.

First and Second Lead Performers (or first and second voices) [live action productions], and First and Second Voices (or first and second lead performers) [animated productions]

Adding Canadians in minor roles is not sufficient for a production to qualify for the points for these positions. A production in which non-Canadians are the only lead performers or voices will not qualify or be certified.⁸⁷

For live action productions, determining the First and Second Lead Performer (or first and second voice) positions must take into account billing, on-screen time (or off-screen time for voices) and remuneration of the performers.

For animated productions, determining the First and Second Voice (or first and second lead performer) positions must take into account billing, on-screen time (or off-screen time for voices), number of lines and payment.

In non-dramatic productions, the Second Lead must have at least 50% of the on-screen time (or off-screen time where narrators or interviewers are involved) and at least 50% of the remuneration of the First Lead, plus billing appropriate for a Second Lead, in order to be awarded the point. Persons not meeting these criteria are considered to be filling minor roles.

⁸⁷ See 1.d) in the “General requirements” section above and Tables 3 and 4 regarding mandatory positions.

Music Composer

The position of Music Composer is awarded 1 point only if a Canadian has been commissioned to compose the original music specifically for the production. The rearrangement of existing music by the Music Composer, even if such music is Canadian, will not qualify for the point. Existing stock, library, or archival music may be used in addition to the original music.

Head of Department Responsible for Costume Design, Head of Department Responsible for Make-up Artists, and Head of Department Responsible for Hair Artists

If a production uses all three Head of Department positions, 1 point will be awarded only if all persons filling these positions are Canadian. In productions that do not use all three positions, the point will be awarded only if all persons in the positions that are used by the production are Canadian.

Visual Effects Director/Special Effects Director

If a live action production uses both a Visual Effects Director and a Special Effects Director, 1 point will be awarded only if all persons filling these positions are Canadian. If the production uses only one of these positions, the person filling the position must be Canadian for the production to be awarded the point.

Notes on the awarding of bonus points

Bonus point for Canadian musical selections

A bonus point for Canadian musical selections may be awarded where more than 50% of the pre-recorded or pre-existing musical selections featured in the production, including an excerpt of any duration of time, are Canadian musical selections. For greater clarity, original music specifically composed for a production is not eligible to count toward this point.

This bonus point will be awarded only if there is no Music Composer or, in the alternative, if there is a Canadian Music Composer. It will not be awarded where there is a non-Canadian Music Composer and where 50% of the musical sections in the production are non-Canadian.

Bonus point for Canadian written works

A bonus point may be awarded for the use of Canadian written works as source material for a production. For the purposes of this bonus point, a Canadian written work is defined as follows:

A written work of fiction or non-fiction (such as a novel, short story, graphic novel, novella, play, biography, autobiography, or poem), in either digital or print form, that is authored by a Canadian(s). This excludes written works such as manuals, programming text, pamphlets, tables and compilations, government publications, and blog posts. For

further clarity, material developed solely and specifically to support the development of scripts and concepts as part of a production is not eligible to receive a point.

Bonus point for Canadian characters and settings

A bonus point for Canadian characters and settings may be awarded if a production includes identifiable Canadian characters and identifiable Canadian settings. For the purposes of this bonus point, the following criteria must be met (for a series, they must be met for each and every episode):

Character:

- i. All lead characters (up to 5 main fictional characters in dramatic productions) must be identified as Canadian or members of First Nations, Inuit or Métis in Canada.
- ii. All persons on screen in non-dramatic productions, such as presenters, musicians, dancers or hosts, and all persons who are the main subjects of documentaries must be Canadian or members of First Nations, Inuit or Métis in Canada.

Synopsis: The synopsis of the production must be centred on or include these lead characters/subjects. The production must identify them as Canadian or members of First Nations, Inuit or Métis in Canada.

Location: The location of the story must be set in Canada. The story/narrative must take place entirely in an identified Canadian city/region/province/territory. The location can be identified by a Canadian landmark or by identification on screen or otherwise identified overtly in the narrative or text of the program.

3. Calculating the minimum percentage threshold

To qualify and be certified as a Canadian program, a production must meet a minimum percentage threshold. This threshold is calculated by dividing the points a production is awarded (based on the key creative positions and functions filled or performed by Canadians, along with any bonus points) by the points that are possible for the production (based on the positions and functions the production uses). This would first be expressed as a fraction (where the numerator represents the points awarded and the denominator represents the points possible) and then converted to a percentage. This minimum threshold may be 60% or 80%, depending on the level of Canadian copyright ownership in the program, as explained in Section 4 below.

For example, a live action production that uses the key creative positions of Director (2 points), Screenwriter (2 points), First Lead Performer (1 point), Second Lead Performer (1 point), Director of Photography (1 point), Music Composer (1 point) and Picture Editor (1 point) would be awarded a perfect score of 9 out of 9 points if all of the key creative positions used are filled by Canadians. However, if only the Director (2 points),

Screenwriter (2 points) and First Lead Performer (1 point) positions are filled by Canadians (and the other key creative positions are filled by non-Canadians), the production would be awarded 5 out of 9 points. This production would therefore achieve a percentage threshold of 55.6% and would not qualify and be certified as a Canadian program as it would not meet the minimum percentage threshold of 60%.

By contrast, if a Canadian filled the position of Music Composer (1 point) in this same production, it would be awarded 6 out of 9 points, or 66.7%, thereby meeting the minimum percentage threshold for certification.

Another example is a production with fewer key creative positions that allow for a maximum of 4 points in total. In this case, the number of Canadians filling these positions must be sufficient to achieve 3 out of 4 points (75%), which exceeds the 60% threshold. Similarly, for a larger-scale production with a total of 12 points available, the number of Canadians filling key creative positions must be sufficient to achieve 8 out of 12 points (66.7%).

Where bonus points are awarded, this should not negatively impact the score a production attains. That is, the bonus points should increase the total number of points a production earns (i.e., the numerator) and not increase the number of points needed to meet the minimum percentage threshold (i.e., by increasing the denominator). For example, where a production is awarded 5 out of 9 points (5/9) for key creative positions or functions filled or performed by Canadians and is also awarded 1 bonus point, the total score for the production will be 6 out of 9 points (6/9, or 66.7%), thereby meeting the minimum percentage threshold of 60%.

For greater clarity, for the production to qualify and be certified as a Canadian program, the number of points awarded must always reach or exceed the required threshold, regardless of the value of the denominator, which may change based on the specific type of production and the positions and functions filled and performed by Canadians (as such, scores of 6/10, 7/11, 8/12, 8/13 and 9/14 would reach or exceed the 60% threshold). For a score that results in a percentage below the required threshold, that percentage will not be rounded up to meet that threshold.

4. Canadian copyright ownership and the minimum percentage thresholds

4.1. Requirements based on Canadian copyright ownership levels

Tables 3, 4 and 5 below set out various requirements of the certification framework under three different levels of Canadian copyright ownership in a program.

Table 3 – Canadian copyright ownership in the program: 100%

Requirement	Live action productions	Animated productions
Minimum percentage threshold (includes bonus points)	Not less than 60% of the maximum number of points possible for the production.	
Mandatory Canadian positions and functions⁸⁸	Director OR Screenwriter AND First Lead Performer (or first voice) OR Second Lead Performer (or second voice)	Director OR Scriptwriter and Storyboard Supervisor AND First Voice (or first lead performer) OR Second Voice (or second lead performer) AND Key Animation AND Camera Operator or Virtual Camera Operator
Canadian producer(s)	All persons occupying producer, co-producer, line producer and production manager roles must be Canadian (foreign courtesy credits for non-Canadians occupying producer-related roles, which are available under certain conditions, are discussed below).	

Table 4 – Canadian copyright ownership in the program: More than 50% and less than 100%

Requirement	Live action productions	Animated productions
Minimum percentage threshold (includes bonus points)	Not less than 60% of the maximum number of points possible for the production.	
Mandatory Canadian positions and functions⁸⁹	Director OR Screenwriter AND First Lead Performer (or first voice) OR Second Lead Performer (or second voice)	Director OR Scriptwriter and Storyboard Supervisor AND First Voice (or first lead performer) OR Second Voice (or second lead performer) AND Key Animation AND Camera Operator or Virtual Camera Operator
Canadian producer(s)	Not less than 50% of persons occupying producer, co-producer, line producer and production manager and producer-related roles ⁹⁰ must be Canadian. AND The production must be produced by a Canadian production company that has no less than equal measure of decision-making responsibility with partners on all creative elements of the production.	

⁸⁸ This means that these key creative positions/functions, when used in a production, must be filled/performed by Canadians for the production to qualify and be certified as a Canadian program.

⁸⁹ *Ibid.*

⁹⁰ These roles are set out in the following section on foreign courtesy credits.

Table 5 – Canadian copyright ownership in the program: Not less than 20% and not more than 50%

Requirement	Live action productions	Animated productions
Minimum percentage threshold (includes bonus points)	Not less than 80% of the maximum number of points possible for the production.	
Mandatory Canadian positions and functions⁹¹	Director AND Screenwriter AND First Lead Performer (or first voice) OR Second Lead Performer (or second voice)	Director AND Scriptwriter and Storyboard Supervisor AND First Voice (or first lead performer) OR Second Voice (or second lead performer) AND Key Animation AND Camera Operator or Virtual Camera Operator
Canadian producer(s)	Not less than 50% of persons occupying producer, co-producer, line producer and production manager and producer-related roles ⁹² must be Canadian. AND The production must be produced by a Canadian production company that has no less than equal measure of decision-making responsibility with partners on all creative elements of the production.	

4.2. Foreign courtesy credits

The use of foreign courtesy credits applies only to programs with 100% Canadian copyright ownership.

To use foreign courtesy credits, applicants must submit an attestation of duties form.

Courtesy credits are available only for the following producer-related roles:

- Executive Producer, Senior Executive, Executive in Charge of Production, Supervising Producer, Associate Producer, Supervising Executive, Production Supervisor, Production Executive, Production Associate, Executive Consultant, Production Consultant and Creative Consultant.

For every non-Canadian obtaining a courtesy credit, a Canadian also needs to be credited in any producer-related role from the list above.

Non-Canadians may receive courtesy credits for producer-related roles provided that:

- the remuneration to the Canadian producer(s) exceeds the aggregate remuneration to non-Canadians in producer-related roles;

⁹¹ *Ibid*, footnote 88.

⁹² *Ibid*, footnote 90.

- with the exception of a non-Canadian lead performer, non-Canadians in producer-related roles must limit their time on the set to 25% of principal photography, and limit their role solely to that of observers;
- the duties of non-Canadians in producer-related roles shall be limited to non-creative, non-production-related functions. Such functions could include arranging financing or foreign distribution; and
- non-Canadians in producer-related roles may not interfere with the administrative financial and creative authority of the Canadian producer(s)/Canadian production company.

5. Certification criteria specific to certain types of productions

As set out below, different types of productions have specific criteria to qualify and be certified as Canadian programs.

Series

For a series to qualify and be certified as a Canadian program, the following criteria must be met, in addition to the general requirements listed in Section 1:

- a) The principal photography for all episodes must be completed within a 12-month period.
- b) The program must have a title, theme, and situation or set of characters common to each episode.
- c) Each episode must be of similar duration.

The production elements of a series can vary, and some individual episodes might not meet the minimum requirements of the points system. For a series in which some episodes do not meet the minimum percentage threshold to be considered a Canadian program:

- a) At least 60% of the series' episodes must meet or exceed the applicable minimum percentage threshold based on the points possible for the series, and the average percentage threshold for the entire series, based on the points awarded for each individual episode, must meet the applicable minimum percentage threshold.
- b) The episodes must be broadcast or otherwise distributed at equitable times.
- c) For live action series and animated series, each episode must meet the two mandatory requirements for the positions of Director or Screenwriter/Scriptwriter and Storyboard Supervisor, and First or Second Lead Performer (live action productions)/ First or Second Voice (animated productions) [for a minimum of 3 points for key creative positions]. For

animated productions, each episode must also fulfill the mandatory requirements regarding the Key Animation function and the position of Camera Operator/Virtual Camera Operator.

Episodes that are ineligible for qualification and certification as a Canadian program for any reason will not be segregated from the remainder of the episodes.

Live or live-to-tape productions of sports events or tournaments

Live or live-to-tape productions of sports events or tournaments will be considered Canadian if the following criteria are met:

- a) A Canadian production company exercises control over the production and provides the commentators.
- b) One of the major on-camera personalities (commentators, analysts or hosts) must be Canadian.

If the event or tournament takes place outside Canada, the production will qualify and be certified as a Canadian program only if Canadian-based teams or Canadian athletes participate in the sporting event or tournament. Other types of sports programs are assessed under the general requirements in Section 1.

Music video clips

Music video clips played in their entirety will be considered Canadian programs if the following criteria are met:

- a) The music is a Canadian musical selection.
- b) The music video clip meets at least one of the following conditions:
 - i. the video director or producer is Canadian;
 - ii. the video production facilities are located in Canada; or
 - iii. the video has already been qualified as a Canadian selection under regulations previously in effect.
- c) The music video clip must be played in its entirety. It will not be credited if played in part as an opening, a bridge or a closing, or as a backdrop for program credits.

To be considered Canadian programs, all performances exceeding five minutes in length, including commercially released music videos appearing outside music video clip

programs and logged as program category 8(b) Music video clips,⁹³ require a certification number from the Commission.

Music video programs

A music video program will be considered a Canadian program if all elements other than the music video clips qualify as Canadian, and if a minimum of 30% of those music video clips are Canadian. This is not applicable to music specialty services.

6. Dubbing

For programs broadcast on linear services, broadcasting undertakings may claim a Canadian program time credit in respect of certain dubbed programs, as set out below:

- a) for Canadian programs:
 - i. 100% + 33% Canadian time credit if dubbed in Canada using Canadian resources, from an official language of Canada or an Indigenous language in Canada into the other official language of Canada or an Indigenous language in Canada;⁹⁴ and
 - ii. no time credit if dubbed outside of Canada.
- b) for foreign programs:
 - i. 33% Canadian time credit if dubbed in Canada using Canadian resources, from an official language of Canada or an Indigenous language in Canada into the other official language of Canada or an Indigenous language in Canada; and
 - ii. 50% Canadian time credit if dubbed in Canada using Canadian resources, from a language other than an official language of Canada or an Indigenous language in Canada into an official language of Canada or an Indigenous language in Canada.

7. Treatment of other programs

A. Programs generally recognized as Canadian programs without formal certification

Programs that are produced solely by Canadian broadcasting undertakings (which include Canadian online undertakings) and that meet the Canadian program criteria set out in this appendix will be recognized as Canadian programs without formal certification.

⁹³ The program categories and their definitions are set out in the appendix to *Definitions for television program categories*, Broadcasting Regulatory Policy CRTC 2010-808, 1 November 2010.

⁹⁴ Two forms of dubbing processes are recognized by the Commission when done in Canada using Canadian resources: lip synchronization or voice-over translation.

Interstitials (program category 12) and public service announcements (program category 13) that meet the criteria and are not produced solely by a Canadian broadcasting undertaking will also be recognized as Canadian programs without formal certification.

News and public affairs programs produced solely by Canadian broadcasting undertakings automatically qualify as Canadian programs and, therefore, are not subject to the criteria set out in this appendix and will be recognized as Canadian programs without formal certification.

B. Programs that will not qualify or be certified as Canadian programs

Infomercials, promotional and corporate videos (program category 14), such as those produced by groups and businesses for public relations reasons, recruitment, or other reasons, and other forms of advertising material will not qualify or be certified as Canadian programs.⁹⁵

Productions made up of pre-existing content will not qualify or be certified as Canadian programs, as follows: except for documentaries, productions that are made up predominantly of existing footage (stock, archival, library, B-roll, etc.) produced by a foreign producer, even if assembled or edited in Canada with Canadian narration.

Also, existing foreign productions or program segments will not qualify or be certified as Canadian programs or as Canadian documentaries by repackaging or adapting them using any of the following techniques:

- excerpts from an original foreign production;
- the use of a significant portion of the original foreign production in essentially unedited chunks; and
- the mention of the original foreign production in the credits.

Productions that have not used such mechanisms require more intense editing of stock footage. Relatively short portions of such footage are carefully selected from a variety of sources to illuminate and develop the subject.

Adult programming will not be certified as Canadian programs (see paragraphs 182-183 of *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector – Part 1 – Certification framework for Canadian programs, artificial intelligence, data collection and publication, and reporting requirements*, Broadcasting Regulatory Policy CRTC 2025-299, 18 November 2025).

⁹⁵ See *Definitions for new types of priority programs; revisions to the definitions of television content categories; definitions of Canadian dramatic programs that will qualify for time credits towards priority programming requirements*, Public Notice CRTC 1999-205, 23 December 1999.

C. Exception to qualification

Upon application, where an applicant has provided compelling reasons why a production should qualify and be certified as a Canadian program as an exception to the criteria set out above, the Commission may certify, as a Canadian program, a production in which the following positions are filled by non-Canadians:

- a) Director and Writer positions, or
- b) First and Second Lead Performer/Voice positions,

as long as Canadians fill and perform all other key creative positions and functions.

Appendix 2 to Broadcasting Regulatory Policy CRTC 2025-299

Certification, verification, assessment and interpretation in regard to qualifying and certifying an audio-visual production as a Canadian program

This appendix sets out the Commission’s approach to the certification, verification and assessment of certain types of productions as well as the interpretation of terms used in Appendix 1 to Broadcasting Regulatory Policy 2025-299.

For the purposes of this appendix, “live action productions” refers to live action productions and continuous action animation productions, whereas “animation” and “animated productions” refers to animated productions other than continuous action animation productions.

1. Commission certification

The Commission will issue a final certification (“C” number) for a production that meets the criteria for certifying audio-visual productions as Canadian programs set out in Appendix 1 to *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector – Part 1 – Certification framework for Canadian programs, artificial intelligence, data collection and publication, and reporting requirements*, Broadcasting Regulatory Policy CRTC 2025-299, 18 November 2025 (Broadcasting Regulatory Policy 2025-299).

To be certified, the production must be underway, with all key creative personnel under contract and committed budgets in place.

For programs generally recognized as Canadian without formal certification, and for News and public affairs programs produced solely by Canadian broadcasting undertakings (which include Canadian online undertakings) as set out in Section 7 of Appendix 1 to Broadcasting Regulatory Policy 2025-299, Canadian broadcasting undertakings do not need to apply for certification or submit production information unless the Commission requests that they do so or if they are requesting a time credit for those programs.

The Commission will also recognize as Canadian programs those productions that are certified as Canadian by the Minister of Canadian Heritage on recommendation of Telefilm Canada, or by the Canadian Audio-Visual Certification Office (CAVCO).

2. Verification

The Commission may require audited statements, affidavits and other legal documents in support of an application for Canadian certification of a production. For example, to verify producer control of a production, the producer must be prepared to demonstrate the necessary decision-making power by submitting, upon Commission request, ownership documents, contracts, attestation of duties forms, or other relevant information. The producer must also submit, upon Commission request, an independent legal opinion

confirming that financial and creative control of the production lies in the hands of Canadians.

3. Assessment of certain animated productions

A. Assessment of computer-animated productions

Depending on the nature of the production, computer-assisted animation is assessed using either the criteria for frame-by-frame animation or those for live action productions set out in Appendix 1 to Broadcasting Regulatory Policy 2025-299. Computer-generated animation is assessed on a case-by-case basis, generally using the criteria for frame-by-frame animation.

B. Assessment of productions that mix live action and animation formats

Productions may include a mix of live action and animation formats. The Commission will assess such productions based on the following considerations:

- A documentary on or including animation will be dealt with as a documentary under the criteria for live action productions. A documentary exclusively in animation format will be dealt with under the criteria for animated productions.
- Non-documentary productions with scenes combining live action and animation will generally be considered live action productions.
- Productions combining a mix of forms of traditional animation or less commonly used forms of traditional animation will be dealt with on a case-by-case basis according to the most applicable scheme for traditional animation (e.g., cell, puppet, pixilation or camera-less).
- Productions that include a mix of live action and animation formats will be assessed according to the criteria of the predominant format. If more than 20% of the production is in the minor format, both sets of criteria will be used.

4. Policy regarding artificial intelligence

As set out in Broadcasting Regulatory Policy 2025-299, key creative positions and functions should be filled and performed by humans. While artificial intelligence may serve as a potential tool to assist in the creation of Canadian content, humans should hold creative control.

5. Guiding principles for financial participation negotiations

As set out in Broadcasting Regulatory Policy 2025-299, negotiations among production partners regarding financial participation in Canadian programs should reflect the following principles:

- **Fair compensation and exploitation:** Ensure that remuneration, rights, and revenues are allocated in a way that fairly reflects the financial and human contributions to the production, while ensuring Canadian producers retain significant, equitable control and benefit from long-term exploitation.
- **Good faith negotiation:** Production partners negotiate in good faith.

6. Interpretation notes

The following interpretation notes assist the Commission in assessing and defining the various elements of the certification framework set out in this appendix and in Appendix 1 to Broadcasting Regulatory Policy 2025-299. Where the Commission does not have detailed specific descriptions or interpretations, those set out in the CAVCO certification guidelines may be used.

Animation: The process of creating the illusion of motion through the use of inanimate or still images. Animation can be produced using either traditional methods or digital synthesis in computer-assisted or computer-generated animation. Animation includes computer animation and traditional animation.

A. Computer animation

- **Computer-assisted animation:** The technique of revising existing animated material using computer technology.
- **Computer-generated animation:** The technique of generating animated movement principally or wholly through digital image synthesis using computers and computer programs.

B. Traditional animation: Traditional animation is referred to as either “continuous” or “frame-by-frame”.

- **Continuous action animation:** The process of filming real figures, shapes or objects as they are manipulated using mechanical or other devices. When the film or the recording is played, the rapid projection of the multiple images gives the illusion of movement.
- **Frame-by-frame animation:** The process of filming or otherwise recording a series of poses of figures, objects or shapes, or drawings, each slightly displaced from the preceding pose, or of drawing them in sequence on successive frames of recording material, one or more frames at a time. When the film is projected or the recording is played, the rapid projection of the multiple images gives the illusion of movement.

Among the many types of traditional animation are the following:

- **Pixilation animation:** The technique of using live action shots of real people in real locations, manipulated to achieve the effect of having actors

jump, jerk or twitch as if they were being animated. The three ways to obtain this effect are:

- by editing live action film to remove single frames;
 - by taking single-frame photographs of actors posed as puppets; and
 - by taking one frame at a time during normal action (speed-up) or slowed-down action (normal).
- **Cell animation:** “Cell” refers to a single piece of transparent celluloid material on which a drawing is made and subsequently recorded, exposing one or more frames of film for each such cell.
- **Puppet animation:** Puppet animation is accomplished by two methods:
 - In the first method, sometimes referred to as stop-motion animation, the manipulation of two- or three-dimensional figures is recorded frame-by-frame.
 - In the second method, real figures controlled by a puppeteer are filmed continuously in real time. This latter form of animation is subject to the same criteria as live action productions.
- **Camera-less animation:** This technique involves drawing or painting directly on film frames.
- **Other forms of traditional animation:** Less common forms of traditional animation include pin-screen, silhouette, anaform and sand (drawing and form) techniques. The Commission will generally consider these styles to be frame-by-frame animation.

Animation Director: For large feature productions, this role is sometimes created to supervise the animation of entire sequences. For television specials and series, the Animation Director will sometimes be responsible for supervising the entire production. (Also see Director [animated productions].)

Assistant Animation/In-betweening: The person(s) performing these key creative functions completes the breakdown drawings and in-between work once the key characters or figures have been determined by the animator and the animation has been completed. Breakdown drawings are the main drawings between the key animation drawings that help to define the path of action. In-between drawings are done after the main path of action breakdown drawings are completed.

Background: The person performing this key creative function provides finished backgrounds for individual scenes of a film.

Camera Operator: The person filling this key creative position operates the camera for the purpose of recording the sequences of cells and backgrounds according to instructions from the director.

Canadian: A person who is, at all relevant times, a Canadian citizen as defined in the *Citizenship Act* or a permanent resident as defined in the *Immigration and Refugee Protection Act* who has received a Permanent Residence Certificate.

For the purposes of eligibility for the criteria of a Canadian program, First Nations, Inuit or Métis peoples in Canada meet any requirement that applies to a “Canadian.”

“At all relevant times” refers to the commencement of the person’s duties in relation to the production, and for the entire course of the filming or taping and post-production.

Canadian expenses: All expenses related to services and post-production and laboratory (including remuneration, fringe or employee benefits, and travel and living expenses incurred in Canada or abroad) paid to or in respect of Canadians or for services rendered by Canadian companies in Canada. This includes travel and living expenses for Canadians, even if spent outside of Canada. For greater clarity, this does not include non-Canadian expenses.

Canadian musical selection: A musical selection that conforms to the criteria in the definition of “Canadian selection” set out in subsection 2.2(2) of the *Radio Regulations, 1986*, as amended from time to time.

Canadian production company: A Canadian company carrying on business in Canada, with a Canadian business address, that is owned and controlled by Canadians and whose principal business is the production of film, videotape or live programs for distribution on television or in theatrical, industrial or educational markets.

Design Supervisor (sometimes referred to as Art Director or Character Designer): The person filling this key creative position is responsible for style, visual character, colour theme and colour continuity; develops the tones of the backgrounds, figures and textures; can sometimes create the actual characters jointly with the director; and prepares visual proportion charts of the characters to safeguard uniformity during the production.

Director (animated productions): The person filling this key creative position has overall control of the artistic and creative aspects of the production; establishes the instructional workbook for the production from script and storyboard; times the action and supervises the creative and technical aspects of the work in the various stages of production; provides shot-by-shot and frame-by-frame details of the camera movement and shot punctuation by preparing the timing of each individual scene at the storyboard stage; and prepares the bar-sheets or exposure sheet instructions for the animator. These functions may also be performed in collaboration with or by the person performing the function Key Animation or the role of Animation Director.

Director (live action productions): The person filling this key creative position controls the action and dialogue in front of the camera and is therefore responsible for realizing the intentions of the scripted concept.

Director of Photography or Chief Camera Operator: The person filling this key creative position is in charge of the camera and lighting crews working on a film. This person is responsible for making artistic and technical decisions related to the image. If there is no Director of Photography, the equivalent is Chief Camera Operator.

Dubbing: Refers to dubbing processes of lip synchronization or voice-over translation.

First Lead Performer/Voice and Second Lead Performer/Voice (live action productions/animated productions): The persons filling these key creative positions speak lines of dialogue, mime a scene, or interpret a character even where there is no dialogue. The First or Second Voice is an actor reading a character voice.

For program categories⁹⁶ 7 Drama and Comedy, 8 Music and dance, Music video clips and Music video programs, and 9 Variety, the leads are the actors, musical performers, singers, or dancers, etc. The hosts of these productions are not considered lead performers unless the hosts also perform.

In other program types, the leads will usually be the host, narrator, moderator, quizmaster, commentator or interviewer (a performer engaged to perform narrative material or commentary on- or off-camera), off-camera performer (a performer other than the narrator or commentator engaged to perform a role in a dramatic work off-camera), or the person who performs or reads the voice of a character in a film or animated production.

Guests on a magazine program or the subjects of biographical documentaries are not considered performers for certification purposes.

Head of Department Responsible for Costume Design: The person filling this key creative position is responsible for overseeing the costume department in a production. Their duties may include conceptualizing and designing costumes that align with the Director's vision, managing the costume department team, coordinating with other departments, sourcing or creating costumes, and ensuring that all costumes are completed on time and within budget.

Head of Department Responsible for Make-up Artists: The person filling this key creative position is responsible for overseeing and executing the make-up design for a production. They collaborate closely with the Director, costume designers, and other creative team members to develop looks that enhance characters or themes. The Head of Department Responsible for Make-up Artists manages a team of assistants or technicians and ensures the consistency and quality of the make-up throughout the project.

⁹⁶ The program categories and their definitions are set out in the appendix to *Definitions for television program categories*, Broadcasting Regulatory Policy CRTC 2010-808, 1 November 2010.

Head of Department Responsible for Hair Artists: The person filling this key creative position is responsible for overseeing and executing the hair design for a production. They collaborate closely with the Director, costume designers, and other creative team members to develop looks that enhance characters or themes. The Head of Department Responsible for Hair Artists manages a team of assistants or technicians and ensures the consistency and quality of the hair throughout the project.

Key Animation: The person performing this key creative function (sometimes referred to as the animator) is primarily responsible for the creative vitality of the production. This person draws the key phases of movement that determine the life and expression of the characters; creates the movement of figures or objects; roughs out the timing path or sequence of the animation; and provides on dope sheets technical information to the camera operator about the order in which individual animation phases should be photographed. This person depicts extremes of movement to provide key drawings and sets the style and character of the sequence. This person's work is part of the final print.

Layout Artist: The person filling this key creative position works from the storyboard to outline the graphic organization of an animated production in the form of line drawings of background environment and by staging action for the animators' and background artists' reference. This person also draws up camera field references. In feature work, this person will also provide a detailed tonal rendering for the background department. (A related role is that of the poser. The poser, however, is an animator whose work is preliminary and ephemeral and does not form part of the final print.)

Music Composer: The position of Music Director is not accepted as equivalent to Music Composer.

Music video clips: Short films, videotape productions or concert excerpts (clips) not produced primarily for the program in which they are presented, and which normally contain one musical selection with visual material.

Non-Canadian expenses: All expenses paid to or in respect of non-Canadians or paid to non-Canadian companies. This includes any remuneration (and fringe/employee benefits) paid to non-Canadians, even if earned in Canada. This also includes travel and living expenses for any non-Canadians involved in the production, whether incurred in Canada or abroad.

Opaquers: The person occupying this role applies paint to the inked-in outlines of acetate drawings or cells or does the equivalent using electronic methods.

Picture Editor (animated productions): The person filling this key creative position assembles individual shots and sequences in continuity and fits them to the various soundtracks; provides the sound effects track; analyzes the characteristics of the music or dialogue track; provides information to animators in terms of timed film frames; supervises the dubbing, the separate soundtracks; and liaises with laboratories to obtain prints.

Picture Editor (live action productions): Means Film Editor. The positions of Sound or Music Editor will not be acceptable in the place of Picture Editor. For videotape productions, the equivalent to Picture Editor is the Off-Line Editor.

Post-production/laboratory costs: Includes all costs for the post-production, including laboratory work, sound recording, and sound and picture editing, but excludes the costs for the key creative position of Picture Editor.

Producer: The person occupying this role is expected to, among other things, be involved in acquiring and developing the story, selecting and hiring the persons to fill and perform the key creative positions and functions, preparing the budget, obtaining financing, and controlling expenditures on and the distribution of the production.

Producer and key creative personnel costs: Includes:

- remuneration for producer(s), co-producer(s), and key creative personnel eligible for points but does not include remuneration for producer-related roles; and
- related fringe or employee benefits, and travel and living expenses for the above-noted individuals.

Production Designer or Art Director: For a live action production, the Art Director will be considered equivalent to Production Designer. The person filling this key creative position is in charge of a production's artistic design, which consists of everything that appears on the screen, including sets and properties. This person is generally responsible for the conception, planning and supervision of the overall visual design of the production.

Series: A program with two or more episodes produced by the same production company or producer.

Service costs: The total cost of a production including the costs related to the "non-key" creative personnel (i.e., production labour, executive producers), rentals and acquisition rights. Service costs do not include the following:

- producer and key creative personnel costs;
- costs for the acquisition of stock footage;
- post-production/laboratory costs;
- accounting and legal fees;
- insurance brokerage and financing costs;
- indirect expenses;
- contingency costs; and

- costs for goods purchased and other costs not directly related to production (such as overhead, financing, interest, legal, insurance, auditing, contingency, distribution and publicity, etc.).

Showrunner: A Showrunner is the creative leader of a production, overseeing its vision, tone, and style. A Showrunner manages the production process and ensures quality from start to finish, working closely with Writers to keep the narrative aligned with the creative direction from inception to final delivery. While a Showrunner provides oversight on a production and acts as a liaison between various elements of the production, which may include certain key creative positions and functions, producers, financiers and the broadcaster commissioning the programming, it is subordinate to a producer in terms of exercising the overall control of a production. A Showrunner is often called on to ensure that the creative direction of a production aligns with the creative vision and cultural relevance that is intended for the production. In pre-production, a Showrunner is the key creative authority that guides the development of the final script and concept of a production. In post-production, a Showrunner is the key creative authority that oversees the final edit of a production, providing notes on picture, sound, music and visual effects to shape the finished product for delivery. While a Showrunner may be present in production meetings, in the Writer's room or at the Director's table, a Showrunner is viewed as distinct from those roles on a production.

Special Effects Director: The person filling this key creative position is responsible for creating and overseeing the practical effects in a production. These effects include anything manually or mechanically manipulated, such as explosions, car crashes, animatronics, etc. The Special Effects Director collaborates closely with the producer(s), Director and Showrunner (where applicable) to ensure the effects align with the creative vision, meet artistic and technical standards, and are executed safely and efficiently. The Special Effects Director directs the special effects team(s), oversees the design and implementation of effects, reviews work for quality and consistency, and ensures that special effects are completed on time and within budget.

Tracer/Photocopier: The person occupying this role copies the animated line drawings onto acetate sheets or does the equivalent using electronic methods.

Virtual Camera Operator: The person filling this key creative position manages digital cameras within virtual environments, directing scenes and creating dynamic camera movements in a production. This person also collaborates with Directors and visual effects teams to ensure that camera work aligns with the creative vision for the production.

Visual Effects Director: The person filling this key creative position is responsible for overseeing and managing the creation and integration of visual effects in a production. The Visual Effects Director collaborates with the producer(s), the Director and the Showrunner (where applicable) to ensure that visual effects enhance the storytelling, meet artistic and technical standards, and are executed efficiently. The Visual Effects Director directs the visual effects team(s), oversees the design and implementation of

effects, reviews work for quality and consistency, and ensures that visual effects are completed on time and within budget.

Writer: This includes the following key creative positions:

- **Screenwriter (live action productions):** The person who fills this key creative position is involved in any stage of developing the screenplay (including outline or treatment, various drafts, dialogue polishing, and final shooting script).
- **Scriptwriter (animated productions):** The person who fills this key creative position provides the written treatment; outlines the continuity of the story, dialogue or action and the parts the various characters will play in it; and elaborates upon the script during the process of visual development at the storyboard stage.
- **Storyboard Supervisor (animated productions):** Depending on the type of production and studio organization, the person filling this key creative position (either in co-operation with or instead of the Writer) creates a series of pictures to illustrate the development of the story in parallel with the written text; determines the flow of action from one scene to another; and creates a series of drawings with associated continuity showing the major action and scene changes.

In the case of a dance production, the choreographer will be considered equivalent to the Writer.

3

Court File No.

FEDERAL COURT OF APPEAL

B E T W E E N:

MOTION PICTURE ASSOCIATION – CANADA, NETFLIX
SERVICES CANADA ULC, AMAZON.COM.CA ULC, BUENA
VISTA INTERNATIONAL, INC., FUBOTV INC., PARAMOUNT
ENTERTAINMENT CANADA ULC, PLUTO INC., SONY
PICTURES ENTERTAINMENT INC., CRUNCHYROLL, LLC,
CULVER MAX ENTERTAINMENT PRIVATE LIMITED, AND
UNIVERSAL PICTURES SUBSCRIPTION TELEVISION LIMITED

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

**AFFIDAVIT OF SYDNEY GRIEVE
(Motion for Leave to Appeal)**

I, Sydney Grieve, of the City of Guelph, in the Province of Ontario, AFFIRM:

1. I am the Vice President, Public Affairs and Communications, of the Applicant Motion Picture Association – Canada (“**MPA-Canada**”).
2. MPA-Canada is the Canadian affiliate of the Motion Picture Association, Inc. (“**MPA**”). It serves as the voice and advocate of major international producers and distributors of film, television and streaming content for global audiences. MPA-Canada participated in the CRTC proceeding leading to Broadcasting Regulatory Policy CRTC 2025-299 issued on November 18, 2025 (“**Decision**”), the

determination at issue on this motion for leave to appeal, on behalf of members of the MPA. The other Applicants are, directly or indirectly, such members (“**MPA Companies**”).

3. I provide this affidavit to briefly describe certain regulatory documents, one court filing in another matter, and the MPA Companies that are parties to this proceeding. Save for those statements about MPA-Canada, which are within my personal knowledge, the statements in this affidavit are informed by my review of the documents I attach and websites I reference below, which I believe to be accurate and authoritative. For each document and website, I have identified its source and believe the information I have summarized from it to be true.

Regulatory Documents

4. Attached as Exhibit “A” is MPA-Canada’s Submission re: Broadcasting Notice of Consultation CRTC 2024-288, dated January 20, 2025.
5. Attached as Exhibit “B” is MPA-Canada’s Response to Requests for Information re: Broadcasting Notice of Consultation CRTC 2024-288, dated June 12, 2025.
6. Attached as Exhibit “C” is MPA-Canada’s Post-hearing Reply Submission re: Broadcasting Notice of Consultation CRTC 2024-288, dated June 23, 2025.
7. Attached as Exhibit “D” is MPA-Canada’s Post-hearing Reply Submission re: Broadcasting Notice of Consultation CRTC 2025-52, dated December 11, 2025.

8. Attached as Exhibit “E” is MPA-Canada’s Submission re: BNC 2019-90-1 re: Annual Digital Media Survey, dated July 30, 2021.
9. Attached as Exhibit “F” is Netflix’s Response to Requests for Information re: Broadcasting Notice of Consultation CRTC 2024-288, dated June 12, 2025.
10. Attached as Exhibit “G” is Amazon’s Response to Requests for Information re: Broadcasting Notice of Consultation CRTC 2024-288, dated June 17, 2025.

Court Filing by the Canadian Broadcasting Corporation

11. Attached as Exhibit “H” is a notice of application for judicial review filed on October 10, 2025, with the Federal Court of Canada by the Canadian Broadcasting Corporation / Societe-Radio Canada.

Description of the Applicants

12. The following entities are Applicants in this proceeding. Based on the CRTC’s “List of Registered Online Streaming Services” at https://applications.crtc.gc.ca/portail-portal/eng/listes-lists/Digital-Media/12?_ga=2.97733400.648543977.1765640676-20612309.1765116603, which I accessed on December 15, 2025, they are either the entities that are currently registered with the CRTC as operating online streaming services or, in one instance, the parent entity.
13. Netflix Services Canada ULC is the operator of the “Netflix” online streaming service in Canada. The Netflix streaming service is available in over 190 countries.

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This description is based on information obtained from the following web addresses, accessed on December 15, 2025:

- a) <https://www.netflix.com/ca/>
- b) https://s22.q4cdn.com/959853165/files/doc_financials/2024/ar/Netflix-10-K-01272025.pdf

14. Amazon.com.ca ULC is the operator of the “Prime Video” online streaming service in Canada. Although the CRTC’s List of Registered Online Streaming Services (referenced above) identifies “Amazon.com.ca, Inc.”, as the operator for Prime Video, Amazon.com.ca, Inc. was continued into Amazon.com.ca ULC effective January 1, 2024. The Certificate of Continuation evidencing this continuation is attached as Exhibit “I”. The Prime Video streaming service is available in over 200 countries and territories. This description is based on information obtained from the following web addresses, accessed on December 15, 2025: <https://www.primevideo.com/help?nodeId=GD5REBNJD74BURF6#:~:text=Prime%20Video%20is%20available%20in,subscription%20or%20Amazon%20Prime%20membership>.

15. Buena Vista International, Inc. is the operator of the “Disney+” online streaming service in Canada and an affiliate of The Walt Disney Company. The Disney+ streaming service is available in North America, Latin America, Asia-Pacific and Europe. This description is based on information obtained from the following web addresses, accessed on December 15, 2025:

- a) <https://press.disneyplus.com/about>
 - b) <https://help.disneyplus.com/article/disneyplus-en-ca-location-availability#:~:text=Disney+%20plans%20to%20launch%20in%20all%20major,in%20the%20country%20or%20region%20they're%20in.>
16. FuboTV Inc. is the operator of the “fuboTV” online streaming service in Canada. FuboTV Inc. is an affiliate of The Walt Disney Company. The fuboTV streaming service is available in several international markets, such as Canada, the United States, France and Spain. This description is based on information obtained from the following web addresses, accessed on December 15, 2025:
- a) <https://www.fubo.tv/welcome>
 - b) <https://ir.fubo.tv/overview/default.aspx>
 - c) <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001484769/9869ce49-1245-4fad-b88e-dc2799a80021.pdf>
17. Paramount Streaming Canada, a division of Paramount Entertainment Canada ULC, is the operator of the “Paramount+” online streaming service in Canada. Paramount+ is available in its top ten streaming markets globally. This description is based on information obtained from the following web address, accessed on December 15, 2025: <https://ir.paramount.com/node/69691/html>
18. Pluto Inc. is the operator of the “Pluto TV” online streaming service in Canada. The Pluto TV streaming service is available across four continents and over 35 markets.

This description is based on information obtained from the following web addresses, accessed on December 15, 2025:

- a) <https://ir.paramount.com/node/69691/html>
- b) <https://www.paramount.com/about/brands/pluto-tv>

19. Sony Pictures Entertainment Inc. (“SPE”) offers the following two online streaming services that are available in Canada. This description is based on information obtained from the following web address, accessed on December 17, 2025: <https://www.sony.com/en/SonyInfo/IR/library/corporatereport/CorporateReport2024/>

- a) Crunchyroll, LLC is the operator of the “Crunchyroll” streaming service in Canada. The Crunchyroll streaming service is available from 15 global offices. This description is based on information obtained from the following web address, accessed on December 15, 2025: <https://www.crunchyroll.com/about/>
- b) Culver Max Entertainment Private Limited is the operator of the “SonyLIV” online streaming service. The SonyLIV streaming service is available globally. This description is based on information obtained from the following web address, accessed on December 17, 2025: <https://www.sonyliv.com/faqs>

20. Universal Pictures Subscription Television Limited is the operator of the “Hayu” online streaming service in Canada. The Hayu streaming service is available in 45

- 7 -

markets. This description is based on information obtained from the following web addresses, accessed on December 15, 2025:

- a) <https://get.hayu.com/welcome?geo=CA>
- b) <https://support.hayu.com/hayuArticle?id=kA0240000005k96CAA&lang=en>
-GB

AFFIRMED

L.D.

SWORN remotely at the City of Toronto
in the Province of Ontario before me on
December 17, 2025 in accordance with O.
Reg. 431/20, *Administering Oath or
Declaration Remotely.*



A Commissioner for taking affidavits



Sydney Grieve

Name: Luke Devine LSO# 841870

A

This is Exhibit "A" referred to in the
affidavit of Sydney Grieve
affirmed before me, this 17th
day of December, 2025



A Commissioner for taking affidavits



MOTION PICTURE ASSOCIATION CANADA

January 20, 2025

Filed Electronically

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

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2024-288 – The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector (“BNC 2024-288” or “Canadian Content Consultation”)

1. These comments in response to the Canadian Content Consultation are submitted by Motion Picture Association - Canada (“**MPA-Canada**”) on behalf of the operating companies (“**Companies**”) of the online undertakings (“**Services**”)¹ affiliated with the global studios that are members of the Motion Picture Association (the “**MPA Studios**”).² Certain of the Companies may file individual submissions. Given the importance of this proceeding, MPA-Canada requests to appear in person at the public hearing scheduled to commence on March 31, 2025 in Gatineau, Quebec in order to expand upon our submission.
2. This consultation deals with the most fundamental aspects to implement the amended *Broadcasting Act* (the “**Act**”) for audiovisual (“**AV**”) online undertakings and traditional linear broadcasters, namely: (a) how a “Canadian program” should be modernized to support the production of high-quality programming; and (b) what contributions should be made to such programming in a flexible, incentives-based contribution framework.

I. EXECUTIVE SUMMARY

3. MPA-Canada supports the Commission’s goal in this consultation of a better, more modern Canadian regulatory system that foreign online undertakings can actively participate in by creating, distributing, and presenting Canadian programs. Unfortunately, the Commission’s proposed framework is a step backward, not forward. Key parts of the Commission’s proposals do not align with the clear requirements of the Act or the Policy Direction.³ The proposed changes also do not reflect the way modern productions are made and are too limited to bring meaningful change to a system that the Commission is mandated to modernize. Moreover, the proposals will not incentivize innovation or the creation of more high-quality, modern Canadian

¹ The Services (and their Canadian operating Companies) include: Crunchyroll (Crunchyroll, LLC); Discovery+ (Discovery Digital Ventures, LLC); Disney+ (Buena Vista International, Inc.); Hayu (Universal Pictures Subscription Television Limited); Netflix (Netflix Services Canada ULC); Paramount+ (Paramount Streaming Canada, a division of Paramount Entertainment Canada ULC); Pluto TV (Pluto Inc.); Prime Video (Amazon.com.ca ULC); and SonyLIV (Sony Pictures Networks India Private Limited).

² Amazon Studios LLC; Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment Inc.

³ [Order Issuing Directions to the CRTC \(Sustainable and Equitable Broadcasting Regulatory Framework\)](#), SOR/2023-239 (“**Policy Direction**”).

programming that will appeal to both Canadian and global audiences. They must be reconsidered.

The Commission should create a truly modernized, flexible, incentives-based framework

4. MPA-Canada agrees with the Commission that a “modernized definition should make room for flexible business models and different types of programming, and facilitate the discoverability and exportability of Canadian content, both within Canada and globally. It should also enable innovation brought about by technological advancements in a manner that supports creativity and employment in the industry”.⁴ We also support the Commission’s goal to “facilitate flexible audio-visual Canadian programming and a financial support ecosystem that encourages a variety of productions, and a variety of business, broadcast and distribution models”.^{5,6}
5. However, the Commission’s proposed framework adds only a handful of positions to the key creative positions test, and in proposing mandatory and disqualifying requirements, would continue to be among the most stringent and antiquated in the world. It is not designed to and will not attract the type of sophisticated, large-scale productions that Canadian creative workers want to be a part of, and Canadians really want to see, much less that appeal to international audiences. The Companies know from experience that when a government system dictates too many details of creative productions – such as exactly which roles must be held by Canadians without exception, or the details of IP ownership – content creators simply will look elsewhere to get the flexibility they need to make a production succeed. MPA-Canada’s suggested changes are meant to provide *incentive-based* flexibility to keep productions in Canada and achieve the shared goals of the Companies and the Commission.

The Commission is required to establish a lower contribution standard for foreign online undertakings

6. The proposed framework ignores key aspects of the Act and the Policy Direction that require the Commission to create a regulatory framework for a Canadian broadcasting system comprised of both Canadian and foreign participants⁷ and permitting each broadcasting undertaking to contribute ***“in a manner that is appropriate in consideration of the nature of the services provided by the undertaking”***.⁸
7. Fundamentally, the proposed framework ignores the express statutory provisions establishing different contribution requirements for Canadians and non-Canadians in ss. 3(1)(f) and (f.1) of the Act. These provisions mandate that ***each Canadian broadcasting undertaking*** is required to “employ and make ***maximum use, and in no case less than predominant use***, of Canadian creative and other human resources in the creation, production and presentation of programming”⁹ whereas ***each foreign online undertaking*** is required only to “make ***the greatest practicable use*** of Canadian creative and other human resources” and “contribute in an ***equitable manner*** to strongly support the creation, production and presentation of Canadian

⁴ BNC 2024-288, Summary.

⁵ BNC 2024-288, para. 7.

⁶ Such goals are consistent with the Act and s. 8(d) of the Policy Direction, which require the Commission to create an equitable, flexible, and adaptable regulatory framework and where appropriate, to “***use tools based on incentives and outcomes***” [emphasis added]. The Commission has also repeatedly espoused an incentives and outcomes-based approach over a prescriptive model (including, for example, at para. 42 of BNC 2024-288).

⁷ Act, s. 3(1)(a); Policy Direction, s. 4.

⁸ Act, s. 3(1)(a.1), emphasis added.

⁹ Unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources.

programming”.¹⁰ BNC 2024-288 and the proposed framework do not account for, or even discuss, these foundational differing statutory standards.

8. The Government deliberately adopted a lower standard for contributions by foreign online undertakings because “[i]t is just not realistic, in the opinion of the government, to expect that foreign broadcasters who operate in a global marketplace to be subject to the same provisions as Canadian broadcasters”.¹¹ Further, the Government recognized the potential negative impact that an inflexible single standard could have on the global business models of foreign online undertakings and Canada’s trade obligations under CUSMA.¹² In these proceedings, the Commission must expressly address the differing statutory standards and give them meaning.
9. This requires the Commission to develop a regulatory framework that permits foreign online undertakings to contribute in a manner that is consistent with their distinct business models and to establish a lower contribution threshold for foreign online undertakings than Canadian broadcasting undertakings. It also requires a more flexible approach to a modernized definition of a Canadian program that recognizes a collaborative and shared creative direction and control of a program between Canadians and non-Canadians, than the inflexible interpretation previously applied in a closed regulatory system comprised only of Canadian broadcasting undertakings.

An equitable system must account for and build on the existing contributions of foreign online undertakings

10. The MPA Studios are massive investors in and supporters of Canada’s creative ecosystem and the talented Canadians working within it. We want to use our resources and expertise in content production to help achieve the goals of the Act and the best outcomes for Canadian creatives and audiences. The Act requires the Commission to account for these existing contributions to build an equitable system.¹³ The system must be flexible, practical, and fair to all parties involved, including foreign online undertakings, if it is going to work.
11. The existing contributions of the MPA Studios and MPA Services¹⁴ are foundational to the creation of a contribution system that includes foreign online undertakings. The proposed framework fails to account for and reflect these contributions. If the proposed framework is adopted, the Commission will have missed a critical opportunity to create a modernized Canadian broadcasting system, one which incorporates foreign online streaming services in a manner envisaged by the drafters and as articulated by the Government during the legislative review of the *Online Streaming Act*. The Commission must account for these existing contributions to adhere to the statutory requirements in the Act and the Policy Direction to make contribution requirements equitable.¹⁵
12. The MPA Studios and Services contribute to the policy goals for online undertakings established in the Act and support the creation, production, discoverability and exportation of Canadian programming consistent with the nature of their services. **As production levels from global studios and streaming services in Canada have increased 285% over the last decade, so too have opportunities for Canadians working in film, television and streaming.**¹⁶ Today, the

¹⁰ Emphasis added.

¹¹ Senate, Standing Committee on Transportation and Communications (“TRCM”), 44th Parl, 1st Sess, [30 November 2022](#).

¹² As set out in Appendix A.

¹³ Act, s. 5(2).

¹⁴ Described in the KPMG Report attached as Appendix B.

¹⁵ As addressed in detail in para. 20 below.

¹⁶ Appendix B - KPMG Report, Table 7, p. 28.

productions made by global partners account for **more than half of all production in Canada**, with the industry **supporting more than 239,000¹⁷ Canadian creative workers**. Many global productions employ a vast majority of Canadian cast, crew and production personnel. While the use of unionized individuals is not a precondition to access government funding via Telefilm or the Canada Media Fund (the “CMF”), the MPA Studios and Services and their Canadian productions regularly engage unionized workers, who are leaders in their craft.

13. Over the last decade, global producers have been the driving force behind the transformation of Canada’s world-class production industry, **accounting for 80% of total growth in film, television and streaming production across the country**.¹⁸ Driven by the rise in online services, the content the MPA Studios and other global producers make – in Canada, with Canadian creative personnel – has resulted in **investment in production in Canada of over \$7.86 billion annually**.¹⁹
14. Our proposals in this submission are aimed at allowing foreign online undertakings to continue to contribute in an equitable, flexible, and incentives-based manner that will result in positive outcomes for Canadian viewers and creators, including Indigenous peoples, equity-deserving groups,²⁰ official language minority communities (“OLMCs”), and the Canadian broadcasting system as a whole.

A modernized definition of a “Canadian program” must recognize the contributions of more Canadian talent and provide more flexibility for certification

15. The Commission’s proposals fail to recognize Canadian creative workers whose skills and talent enrich productions in meaningful ways, which is the same flaw in the outdated test in use today. The Commission is of the view that those working on a project, rather than the story on the screen, should determine whether content is Canadian. However, the contributions of most Canadian screen industry workers are not factored into the points system, nor are the contributions to world-class skills development provided to Canadians working on international productions recognized or rewarded.²¹ In addition, pursuant to s. 10(1.1)(c) of the Act, the content of story must also now be considered.²² Global studios and streaming services are fueling unparalleled opportunities for Canadian talent and cultural policy should support investment in all Canadian creative workers.
16. The MDR Report notes that “[t]hrough their more flexible approaches to national content definitions, for example, by providing a greater number of points for the participation of local casts and crews, other jurisdictions recognize the opportunities afforded by international production models to advance the careers of talented individuals, increasing their jurisdiction’s capacity for world-class local production, and positively enhancing their national branding”.²³
17. The following proposals incorporate the different contribution requirements for Canadian broadcasters and foreign online undertakings mandated by ss. 3(1)(f) and (f.1) of the Act. The

¹⁷ CMPA, [Profile 2023](#), *At a Glance*, p. 4.

¹⁸ CMPA, [Profile 2023](#), Exhibit 1-3: *Sources of growth in the total volume of film and television production in Canada*, p. 11.

¹⁹ CMPA, [Profile 2023](#), *At a Glance*, p. 4.

²⁰ Defined in BNC 2024-288, footnote 27 as “Racialized people, people with disabilities, individuals who identify as 2SLGBTQ+ and women.”

²¹ Appendix E - MDR Report, p. 26.

²² As described in response to Q6.

²³ Appendix E - MDR Report, p. 26.

proposals will make large-scale Canadian productions possible and Canadian content exportable by providing flexibility with respect to certification of Canadian programs:

- (a) ***It is critical that Canadian IP ownership not be a mandatory part of the definition of a Canadian program. Instead, whole or partial Canadian IP ownership should be added as a non-mandatory bonus after the application of the key creatives test or as a Canadian programming expenditure (“CPE”) credit,*** to incentivize “support [for] Canadian ownership of intellectual property”.²⁴ Without this flexibility, many productions that could otherwise qualify as a Canadian program will never be made. While Canadian ownership of IP makes sense in certain situations, in other cases it simply does not. To meet the Commission’s stated objectives to “make room for flexible business models [to] facilitate the discoverability and exportability of Canadian content, both within Canada and globally”,²⁵ and to “facilitate ... a financial support ecosystem that encourages a variety of productions, and a variety of business, broadcast and distribution models”,²⁶ the Commission must permit financial control/intellectual property “models that support investment and balance the economic benefits of holding/sharing the intellectual property of a production with incentives to collaborate and partner between Canadians, including Canadian undertakings, and foreign online undertakings”,²⁷ including through the use of co-ventures.
- (b) ***The key creatives position test should be expanded to recognize more Canadian creative workers whose skills and talent enrich productions in meaningful ways.*** We have attached as Appendix D, our proposed changes to the Commission’s preliminary view on key creative positions. These changes are meant to update an outdated test to reflect the reality of modern production practices.
- (c) ***Foreign online undertakings should be eligible to attain certification at 51% rather than 60% of the total points.*** A lower threshold of total points for foreign online undertakings is required by the expressly distinct contribution standards for Canadians and non-Canadians mandated by the Act.
- (d) ***There should be no mandatory Canadian key creative positions for foreign online undertakings.*** In adopting the lower standard of “greatest practicable use of Canadian creative and other human resources” for foreign online undertakings, Parliament recognized that it may be impractical for a Canadian to fulfill certain key creative positions. Imposing any mandatory Canadian key creative positions would undermine this flexibility and contravene the Act. It would also make this single factor determinative, contrary to s. 10(1.1) of the Act, which obligates the Commission to consider each of the enumerated matters in that provision. Further, it would ignore the many elements of the creative process and could undermine the ability of content producers to create and produce the best stories in Canada by limiting their discretion to fill key roles, depending on the nature of the production or story being told.
- (e) ***Foreign online undertakings should be entitled to use a percentage test for any position that can be shared between Canadians and non-Canadians, and obtain the point(s) if at least 50% of those persons are Canadian where two people are sharing the role, or at least 51% are Canadian where more than two people are sharing the role.*** Shared positions are

²⁴ Consistent with s. 13(c) of the Policy Direction.

²⁵ BNC 2024-288, Summary.

²⁶ BNC 2024-288, para. 7.

²⁷ As proposed by the Commission at para. 31 of BNC 2024-288.

standard practice in modern productions, and it would be inequitable to refuse to award points to a position shared equally between Canadians and non-Canadians.

- (f) ***The levels for production costs should be 10% to 50% for foreign online undertakings, with the percentage for post-production and laboratory costs set lower than the percentage for services costs.*** These levels are consistent with the statutory requirement of “greatest practicable use” and would better align the Canadian program certification system to the realities of global production and other jurisdictions. They would present a floor and not a ceiling and may be surpassed in certain productions.
- (g) ***The Commission should incentivize cultural elements in a production via a non-mandatory bonus added after the application of the key creatives test or a CPE credit.*** The Commission is required to consider “whether a program furthers Canadian artistic and cultural expression”.²⁸ Adding a cultural element factor would be consistent with the objectives of the Government²⁹ and the Commission to “better support and promote Canadian stories”³⁰ and “ensure that Canada’s diversity is reflected”³¹ onscreen. Canadian stories are often told through creative collaborations between Canadians and non-Canadians. The converse is also true based on the programs certified by the Commission over the last decades: requiring that Canadians have creative control has not always resulted in the telling of Canadian stories. The Commission’s preliminary view that such a component should not be included conflicts with international best practices and jurisdictions around the world that successfully use cultural elements to incentivize the telling of domestic “stories”.
- (h) ***The Commission should incentivize productions comprised of 75% or more total Canadian cast and crew in Canada through a non-mandatory bonus added after the application of the key creatives test or a CPE credit.*** Such an incentive would “support creativity and employment in the industry”.³² As the Commission has noted, the production of a program is “a collaborative effort, involving numerous individuals in a variety of creative roles”.³³ Any predominant use of Canadian creative and human resources in a production, surpassing the statutory standard of “practicable use” for foreign online undertakings, should be incentivized and rewarded.

18. By imposing a base contribution requirement, applying it only to foreign online undertakings, and mandating payments to funds they cannot access, Canada’s approach stands in stark contrast to more flexible global streaming regulation trends.³⁴ It risks becoming even more of an outlier by adopting a prescriptive and outdated content framework at a time when the global film/TV production market has never been more competitive. When measuring global audience demand for content made available on international streaming services, projects originating from Australia, the UK, and South Korea commonly rank among the world’s “most watched.”³⁵ Notably, these three jurisdictions have *not* imposed restrictive cultural regulations on streaming

²⁸ As required by the Act, s. 10(1.1)(c).

²⁹ As described at Appendix C.

³⁰ BNC 2024-288, para. 7.

³¹ BNC 2024-288, para. 7.

³² Which is another objective identified by the Commission in BNC 2024-288, Summary.

³³ Broadcasting Regulatory Policy CRTC [2015-86](#): *Let’s Talk TV - The way forward - Creating compelling and diverse Canadian programming*, 12 March 2015 (“**BRP 2015-86**”), para. 126, emphasis added.

³⁴ For instance, an AVMSD directive provides that foreign AV media service providers that are required to contribute to film funding schemes should be able to benefit in a non-discriminatory way from the aid available under such schemes. This was recently put in place by the Czech Republic.

³⁵ Sources include Netflix’s Top 10 site, Nielson Streaming Rankings, FlixPatrol (aggregates data across multiple platforms), Parrot Analytics (measures global audience demand). Production examples include *Bluey* (one of the most popular children’s animation shows around the world from Australia), *Squid Game* (Netflix’s most-watched series globally), and *Baby Reindeer* (UK dark comedy thriller and one of the most-watched Netflix series of all time).

services, opting instead for a targeted and flexible approach to date. In Australia for example, where policy makers have engaged in over a decade of debate, and where the current government had previously committed to implementing local content quotas,³⁶ it has been reported that plans to move ahead with legislation have now been postponed indefinitely.³⁷

19. Canada is also the only jurisdiction to require foreign online undertakings that do not produce local news in country to contribute to a local news fund. This aspect of the base contribution requirement is also contrary to the provisions of the Act that refer to news solely in connection with Canadians who produce news programs, the community element, and the public broadcaster.³⁸ In addition, it is contrary to the Commission's policy that the duty to provide local programming (such as news) is part of a licensee's "duty to serve the public interest in return for using the public airwaves and the privilege of holding a licence. In the case of conventional television stations, privileges such as distribution on the basic service, the right to broadcast local advertising and simultaneous substitution go hand in hand with the responsibility to provide local programming."³⁹ Foreign online undertakings do not enjoy any of these privileges and should not have the corresponding duty to fund Canadian news.

Canadian programming expenditure requirements must be equitable and consistent with existing business models

20. The Act and the Policy Direction are replete with directions to make contribution requirements equitable and consistent with an undertaking's business model. Subsection 3(1)(a.1) of the Act provides that each broadcasting undertaking should contribute "***in a manner that is appropriate in consideration of the nature of the services provided by the undertaking***" and s. 3(1)(f.1) sets an "***equitable***" standard for contributions by foreign online undertakings. The Policy Direction similarly directs the Commission that both financial and non-financial requirements "***must be equitable given the size and nature of the undertaking and equitable as between foreign online undertakings and Canadian broadcasting undertakings***".⁴⁰ Equity as between foreign online undertakings and Canadian broadcasting undertakings means distinguishing between international content distribution with associated international expenditures, and local content distribution with expenditures only within Canada.
21. In addition, when exercising its powers under s. 11.1 of the Act to make regulations in respect of expenditures to be made by broadcasting undertakings, the Commission is directed to: (a) ensure that expenditure requirements are "***proportional*** to their objectives and that those objectives are clear"; and (b) "consider providing ***flexibility*** for all broadcasting undertakings in meeting expenditures requirements".⁴¹
22. The Policy Direction specifically endorses flexibility for foreign online undertakings by directing the Commission "***where appropriate for a given business model ... [to] prioritize the imposition of requirements to make expenditures directly on the creation, production and presentation of Canadian programming***", rather than pay into a fund.⁴² The Government made it clear throughout the legislative review process that it expects global streaming services to "***move a portion of [their existing production] investment into***" Canadian programs, rather

³⁶ Australian Government, "[National Cultural Policy – Revive: a place for every story, a story for every place](#)", February 8, 2023.

³⁷ ABC News Australia, "[Federal government quietly shelves plans for local content requirements](#)", November 5, 2024.

³⁸ Act, ss. 3(1)(i)(ii.1), 3(1)(s)(ii) and 46(1)(i).

³⁹ Broadcasting Regulatory Policy CRTC [2016-224](#): *Policy framework for local and community television*, 15 June 2016 ("Local Television Policy"), para. 18.

⁴⁰ Policy Direction, s. 4, emphasis added.

⁴¹ Policy Direction, ss. 12(a) and (c).

⁴² Policy Direction, s. 12(e).

than “pay all that money into a fund”, which “would have a direct flow-through effect to consumers”.⁴³

23. Given the requirements under the Act and the Policy Direction, the Commission must:

- (a) **Eliminate the existing 5% base contribution requirement.** The base contribution has been inequitably imposed only on foreign online undertakings,⁴⁴ is contrary to the sections of the Act and Policy Direction noted above and is inconsistent with international requirements.⁴⁵
- (b) **Provide foreign online undertakings flexibility to make all contributions via CPEs,** where direct expenditures are consistent with the nature of their services and their business models. The Commission already provides such flexibility to Canadian broadcasting undertakings, and equity demands that it do the same for foreign online undertakings.
- (c) **Set CPE contribution levels for foreign online undertakings lower than Canadian broadcasting undertakings as required by the Act, but only after finalizing the definition of a Canadian program and taking further public comments.**⁴⁶ We are not able to indicate the appropriate contribution level at this time, without clarity on what will count as a Canadian program.
- (d) **Apply any CPE requirement equitably and in a non-discriminatory manner to both Canadian and foreign online undertakings, including hybrid video-on-demand (“HVOD”) services,** as required by the Act and CUSMA.⁴⁷ HVOD services are the closest Canadian competitors to global streaming services and the Commission acknowledges that “many Canadians likely view HVOD undertakings as being comparable to audiovisual DMBUs”.⁴⁸ Moreover, BCE, the owner and operator of Crave, describes it as an online undertaking and fully expects that it will be required to make contributions.⁴⁹ It said, for example, that “now that online undertakings will be regulated, there is no policy reason why HVOD undertakings would continue to benefit from exemptions whereas all other services are regulated”⁵⁰, and has called for the “fair treatment between all the on-demand undertakings, regardless of their delivery method”.⁵¹ It would therefore be inequitable and discriminatory to continue to exempt HVOD services from financial contribution requirements.⁵²

⁴³ TRCM, 44th Parl, 1st Sess, [November 22, 2022](#), emphasis added.

⁴⁴ While the base contribution applies to Canadian online undertakings not affiliated with licensees or Canadian broadcasting ownership groups, given the handful of registered online undertakings that fall into this category and the \$25M threshold for base contributions, we believe that little to no Canadian online undertakings fall into this category.

⁴⁵ The 5% base contribution requirement is well above the average *overall* contribution amounts in the EU, where the average amount of the mandatory payment to a fund/levy of the seven EU member states that currently have such a requirement is 2.2% to 2.7%. However, unlike the base contribution, AVMSD Recital 36 prescribes that AV services that are required to contribute to national film funding schemes must benefit in a non-discriminatory way from the aid available under those film funding schemes.

⁴⁶ Section 19 of the Policy Direction requires the Commission to prioritize redefining a “Canadian program”, given the “foundational nature” of this definition as described in the accompanying Regulatory Impact Analysis Statement.

⁴⁷ While the Commission indicated at para. 43 of BNC 2024-288 that online AV undertakings affiliated with traditional Canadian broadcasting ownership groups that meet the appropriate threshold should also be required to make CPEs, footnotes 17 and 23 state that it is *not* considering expenditure requirements for exempt undertakings, which currently includes HVOD services like Crave.

⁴⁸ Broadcasting Decision [2023-34](#): *Publication of aggregate data collected in response to the Annual Digital Media Survey*, 15 February 2023 (“**Decision 2023-34**”), paras. 43-44.

⁴⁹ At para. 76 of its [July 11, 2023 intervention](#) to BNC 2023-138, BCE indicated that the \$50M revenue threshold that it has proposed for contributions would capture “large Canadian streaming operations including our online undertaking Crave”.

⁵⁰ BCE, [June 12, 2023 intervention](#) to Broadcasting Notices of Consultation CRTC 2024-139 and 2024-140, para. 47.

⁵¹ *Ibid.*, para. 33.

⁵² The Commission has previously acknowledged that it “can continue to exempt broadcasting undertakings from licensing requirements (under subsection 9(4) of the amended Act), but require such undertakings to adhere to conditions of service (and regulations, including fees regulations)”. Broadcasting Notice of Consultation [2023-280](#): *Call for Comments on Proposed Broadcasting Fees Regulations*, 23 August 2023, para. 8.

- (e) **Provide foreign online undertakings flexibility to make over- and under-expenditures over various broadcast years, provided their overall CPE requirements are met by the end of a 5-year period.**⁵³ Canadian broadcasting undertakings are allowed CPE over- and under-expenditures and such flexibility will be essential for foreign online undertakings to ramp-up their Canadian content development and production under a new regulatory framework.
- (f) **Permit foreign online undertakings to fulfill any CPE requirements using a group-based approach** that allows a group member to count CPEs by another group member in the same broadcast year towards fulfilling its CPE requirement, provided such expenditures are not double-counted. The Commission currently provides such flexibility to large and mid-sized Canadian ownership groups and it would be inequitable not to extend it to foreign online undertakings.
- (g) **Expand eligible CPEs to include expenditures associated with each stage of a production, including on-screen and off-screen marketing and promotional expenses.** These expenditures play a crucial role in the discoverability and potential success of a Canadian program.⁵⁴ Subsection 11.1(1)(a) of the Act authorizes the Commission to qualify expenditures for “developing, financing, producing or promoting” Canadian programs⁵⁵ and the Commission currently permits independent programming services to claim promotional expenses as eligible CPEs.⁵⁶ The Canadian Association of Broadcasters has also previously argued for the inclusion of both on-screen and off-screen promotions as eligible CPE expenditures for all broadcasters.⁵⁷
- (h) **Extend existing CPE credits for productions by Indigenous producers and OLMC producers to foreign online undertakings** in order to incentivize such productions and provide equitable treatment to foreign online undertakings.
- (i) **Create new CPE credits for foreign online undertaking productions with: Canadian IP ownership (in whole or in part); a cultural element(s); 50% or more of all lead performers are Canadian; and/or 75% or more Canadian cast and crew in Canada,** unless such elements are included as bonuses under the Canadian program certification framework (as proposed above).
- (j) **Make expenditures for the purpose of “supporting, promoting or training Canadian creators” of AV programs eligible CPEs.** Subsection 11.1(1)(b) of the Act authorizes the Commission to qualify expenditures made for the purposes of “supporting, promoting or training Canadian creators” as eligible CPEs. Together with local and national partners, global streaming services lead and support a range of programs and initiatives that provide meaningful opportunities to engage, uplift, and accelerate the success of aspiring and established Canadian creative personnel, both on and off-set, above and below-the-line, at all career levels. These programs and initiatives include Indigenous creators and Canadian creators from equity-deserving groups and diverse backgrounds.⁵⁸

⁵³ A 5-year period is consistent with s. 53(1) of the Act, which provides that the Government must undertake a comprehensive review of the amendments to the Act and of their operation every 5 years.

⁵⁴ See MPA-Canada’s [July 11, 2023 intervention](#) to BNC 2023-138, at paras. 46-49 and 71-76 for more information about our proposals and the promotion and discoverability efforts undertaken by global streaming services.

⁵⁵ Emphasis added.

⁵⁶ See BRP 2015-86, at para. 70. Since 2015, the Commission has allowed independent programming services (i.e., all programming services not affiliated with a vertically integrated entity) to claim promotional expenditures incurred with third parties for Canadian programs as eligible CPEs, up to a maximum of 10% of their requirement.

⁵⁷ CAB Intervention dated July 5, 2019, at para. 121 to Broadcasting Notice of Consultation CRTC [2019-91](#): *Call for comments on the Commission’s policy on Canadian programming expenditures*, 28 March 2019.

⁵⁸ See MPA-Canada’s [July 11, 2023 intervention](#) to BNC 2023-138, at paras. 63-70 for more detail and examples of training and development programs and other diversity and inclusion initiatives led and supported by global streamers.

- (k) ***Adopt a \$50M threshold for CPE contributions applied to individual online undertakings, not broadcasting ownership groups.*** We oppose the Commission's preliminary view that expenditures on Canadian programming should apply to online undertakings, either individually or as part of a broadcast ownership group, that earn \$25M or more in annual Canadian gross broadcasting revenues (less excluded revenues). Given the long-term nature of the general contribution requirement, a higher threshold is warranted as it would ***avoid capturing thematic, niche or nascent online undertakings within broadcasting ownership groups that are well below the threshold on their own.***⁵⁹ Imposing a contribution requirement on such services could push them out of the market and disincentivize the launch of new or niche services. Given that niche services often serve third-language, equity-deserving groups and Canadians of diverse backgrounds, contrary to the Act, this would hinder innovation, responsiveness to the preferences and interests of various audiences, and the provision of varied and comprehensive programming to people of all ages, interests and tastes.⁶⁰

The Commission should review the policy framework against metrics at specified intervals

24. ***The Commission should review the definition of a "Canadian program" as well as the framework for expenditures on Canadian programming against clearly defined metrics at specified intervals, beginning in the fifth year following implementation.*** This should be incorporated as an express requirement in the regulatory framework.

The Commission must provide ongoing confidential treatment for financial and competitively sensitive information

25. We strongly oppose the Commission's preliminary view that data relating to the revenues and programming expenditures of broadcasting undertakings (or broadcasting ownership groups) should be made public. Such a requirement would contradict recent decisions in which the Commission recognized the importance of confidential treatment of financial information, including revenues and expenditures of individual online undertakings, "given that such information is ***fundamental to the preservation of their competitive positions***".⁶¹ It would also contradict the Commission's ongoing confidential treatment of budget information for individual productions by Canadian broadcasters. ***There is no public policy reason for the disclosure of information at the individual-level that could not be addressed by the disclosure of aggregated data.*** Such information should only be disclosed in an aggregated manner that protects the financial and commercially sensitive information of broadcasting undertakings and individual productions.
26. Our proposals will create a flexible Canadian broadcasting system that provides incentives, and fosters collaboration between Canadian and non-Canadian broadcasting undertakings and creators, to the benefit of Canadian audiences. We have set out below our responses to certain

⁵⁹ Subsection 5(2)(h) of the Act requires the Commission to take into account the variety of broadcasting undertakings and to avoid imposing obligations on any class of broadcasting undertakings if they will not contribute in a material manner to the implementation of the broadcasting policy objectives.

⁶⁰ Act, ss. 3(1)(d)(iv), (d)(v) and (i)(i).

⁶¹ Broadcasting Regulatory Policy CRTC [2024-65](#): *Broadcasting Fees Regulations*, 21 March 2024 ("**BRP 2024-65**"), para. 203, emphasis added.

of the questions raised by the Commission in BNC 2024-288, along with the Commission's questions.⁶²

II. DEFINITION OF “CANADIAN PROGRAM”

(a) KEY CREATIVE POSITIONS

Q1. *Currently, if a production does not have a sufficient number of key creative positions to attain the minimum 6 points, the Commission's approach has been to require that all key creative positions of a production be filled by Canadians. Should the Commission continue with this approach? If not, under the Commission's preliminary view above, what should be the minimum threshold for a production to be certified Canadian?*

27. If a production (such as a documentary) does not have a sufficient number of key creative positions to attain the minimum points, there should be a graduated scale to increase the number of points of the positions that are applicable to the production. Without such flexibility (and the other proposals for flexibility made throughout this submission), there would be a chilling effect on the production of new high-quality Canadian documentaries by foreign online undertakings.

28. Requiring that *all* key creative positions of a documentary (or other production) be filled by Canadians would provide no flexibility and would be fundamentally inconsistent with the realities of modern global productions and how foreign online undertakings operate. It would amount to a mandatory Canadian requirement for *every* applicable key creative position, which is *entirely inconsistent* with the statutory requirement for foreign online undertakings “to make the *greatest practicable use* of Canadian creative and other human resources”. Consistent with this statutory requirement, there should be no mandatory Canadian position requirements for foreign online undertakings.

Q2. *In productions where rights for pre-existing or pre-recorded music were purchased from both Canadian and [non-Canadian] rights holders, should the Commission still grant a point? If not, please explain.*

29. We support the flexibility to use pre-existing or pre-recorded music, instead of original compositions, as this would incentivize more extensive use of music owned by any Canadian rightsholders (which may include a performer, songwriter, publisher, etc.). Granting a point(s) when music is acquired from a Canadian rightsholder and from non-Canadian rightsholders would be consistent with s. 10(1.1)(d) of the Act, which refers to “*the extent to which*” online undertakings or programming undertakings “*collaborate with*” Canadian owners of copyright in musical works or in sound recordings. It would also reflect the reality of modern productions where many pieces of pre-existing or pre-recorded music are used in a production, which may include popular pieces from international artists to elevate the project. The Commission's proposal would enhance the opportunity to showcase and promote Canadian artists alongside their international peers.

Q3. *Does the Commission's preliminary view regarding key creative positions help ensure that the creative direction and control of a Canadian program remain Canadian? If not, how should this preliminary view be modified?*

30. This question presumes that the creative direction and control of a program must be with Canadians for a program to qualify as a “Canadian program”. However, no such requirement is contained in the Act⁶³ or the Policy Direction. Instead, the Act now requires the Commission to

⁶² We take no position at this time on the following questions but reserve our rights to address proposals made by others: Q17 (IP ownership by public broadcasters), Q39 (monitoring under the *Official Languages Act*), Q44 (discontinuance of time credits), Q48 (production packages and twinning), and Q50 (adult programming).

⁶³ Including s. 10(1.1), which sets out the matters the Commission must consider in making regulations under s.10(1)(b) prescribing what constitutes a Canadian program for the purposes of the Act.

“regulate and supervise the Canadian broadcasting system in a *flexible* manner” that “takes into account the *nature and diversity of the services provided by broadcasting undertakings*, as well as their size, their *impact on the Canadian creation and production industry, particularly with respect to employment in Canada and Canadian programming*, their contribution to the implementation of the broadcasting policy set out in subsection 3(1) and any other characteristic that may be relevant in the circumstances”.⁶⁴

31. Likewise, the Policy Direction requires the Commission “[i]n its determination of what constitutes Canadian programming” to “*support Canadians holding a broad range of key creative positions, in particular those with a high degree of creative control or visibility*”,⁶⁵ and at the same time “*recognize that the Act applies to foreign broadcasting undertakings*”.⁶⁶ This requires a more flexible approach to a modernized definition of a Canadian program that recognizes *a collaborative and shared creative direction and control of a program between Canadians and non-Canadians*, than the inflexible interpretation previously applied in a closed regulatory system comprised only of Canadian broadcasting undertakings.
32. We have attached as Appendix D, our proposed changes to the Commission’s preliminary view regarding key creative positions. Among other things, we propose the following changes to maximize flexibility to reach the certification threshold:
 - (a) The key creatives position test should be expanded to recognize more Canadian creative workers and foreign online undertakings should be required to attain 51% rather than 60% of the total points.
 - (b) There should not be mandatory Canadian positions for foreign online undertakings. In addition to being contrary to s. 3(1)(f.1) of the Act, mandatory Canadian positions would be counterproductive to a foreign online undertaking making “the greatest practicable use” of Canadian creative and human resources and would also make one factor determinative, contrary to s. 10(1.1) of the Act. For instance, if a foreign streaming service is set on a particular non-Canadian screenwriter and director for a production, which automatically disqualifies it from “Canadian program” certification, then there may be less of an incentive to employ Canadians for other positions because the rest of the points system becomes moot. However, if employing a non-Canadian director and screenwriter were not determinative, the foreign online undertaking would have more of an incentive to employ Canadians for other key creative positions. Ultimately, mandatory Canadian positions would either: (i) lead to a production being made elsewhere if there is a desire to use particular talent, even if the production could satisfy many other elements of the test, or (ii) undermine the quality of Canadian productions and make it more difficult for them to succeed in Canada and abroad.
 - (c) For any position that is shared between Canadians and non-Canadians, a foreign online undertaking should be entitled to use a percentage test and obtain the point(s) if at least 50% of those persons are Canadian where two people are sharing the role, or at least 51% are Canadian where more than two people are sharing the role.
 - (d) Non-mandatory bonus points should be awarded after the application of the key creatives test where: (i) Canadians own the IP (in whole or in part) in a production; (ii) the program contains one or more cultural elements; (iii) 50% or more of all lead performers are Canadian (recognizing the increasing use of ensemble casts); and/or (iv) 75% or more of the

⁶⁴ Act, s. 5(2)(a.1).

⁶⁵ Policy Direction, s.13(b).

⁶⁶ Policy Direction, s. 13(e).

total cast and crew in Canada are Canadian. Alternatively, such programs should be rewarded with CPE credits.

- (e) The showrunner role is amorphous and difficult to define. It should not be a mandatory or defining characteristic of a Canadian program. It has no general applicability to documentaries, movies, or non-episodic productions. If included, it should only be considered as a non-mandatory bonus after the application of the key creatives test or as a CPE credit if the showrunner is Canadian.
- (f) Ensemble casts, and those with more than two lead roles, should be recognized by not limiting lead performers to first and second leads only.
- (g) Positions should be added in main areas that have been overlooked and are essential in modern productions, such as sound. The hair and makeup functions, and the visual effects and special effects functions, should be separate. Each are highly skilled and historically award-winning categories in their own right.
- (h) Positions or functions that are restricted to specific types of productions and would result in automatic deductions of points for all other production types, such as the assistant animation/in-betweening function (which is restricted to 2D animation) and the showrunner position (which is restricted to episodic productions) should either be updated or eliminated.
- (i) The animation key creative positions are outdated and should be revised to reflect modern animation productions and techniques.

Q4. The Commission currently does not have a definition for the position of a “showrunner.” Please provide details on what such a definition should entail.

- 33. Showrunners are restricted to episodic series but not all episodic series have a showrunner. The role and responsibilities of a showrunner work differently every season of a series, making the term very fluid and difficult to define. Thus, there is no on-screen credit for this title.
- 34. Depending on the individual showrunner and episodic series, the showrunner can be regarded as the head writer, who is the primary creator of the series and ultimately responsible for its overall *creative vision*, development and management, in charge of the writing room and staff writers, and often credited as a producer or executive producer. Therefore, the showrunner can occupy and/or share multiple roles, including that of writer, producer and/or executive producer. However, *creative control* of a production is not vested exclusively in the showrunner and can rest with many different individuals, who determine the function of the production team for each project and season of a series.

Q5. Please comment on the Commission’s preliminary view that if a production includes a showrunner, a Canadian must occupy that position.

- 35. We oppose the inclusion of the showrunner in the key creative positions test and the proposal that a Canadian must occupy the position. If the goal is flexibility, this would be a major step backwards. As noted above the showrunner role is limited to only certain episodic series. Therefore, the inclusion of this role would invariably require all other productions (e.g., series without showrunners, documentaries, movies, award shows, etc.) to attain 9/13 points (based on the current proposal), putting them at a severe disadvantage with fewer available categories (and ultimately requiring almost 70% of points to be achieved relative to 60% of points in an episodic series with a showrunner).
- 36. In addition to being inconsistent with s. 3(1)(f.1) of the Act, the proposal that a showrunner must be Canadian would conflict with CAVCO’s current approach to the Canadian Film or

Video Production Tax Credit (“CPTC”), which permits a non-Canadian showrunner.⁶⁷ This is because there is simply not a large enough pool of Canadian showrunners and also exemplifies that CAVCO appreciates that the showrunner does not have *de facto* creative control of a production.

37. If the Commission is determined to include the showrunner position, it should be added as a non-mandatory bonus after the application of the key creatives test or a CPE credit if there is a Canadian showrunner. Further, because there could be more than one showrunner on a given production,⁶⁸ the percentage test for shared positions (as described in response to Q7 below) should also be applied to the showrunner position.

(b) CULTURAL ELEMENTS

Q6. *Should the Commission include cultural elements within the certification framework? If yes, please describe what would constitute a “cultural element.” Further, how should the Commission identify such elements in an objective way and incorporate those elements into the definition?*

38. We strongly disagree with the Commission’s preliminary view that cultural elements should not be included within the certification framework.⁶⁹ The Commission has previously acknowledged that under its existing framework, “*it is not the content of the production that counts as Canadian, but the citizenship of the creators*”.⁷⁰ Thus, even programs certified as “programs of national interest” do not necessarily contain cultural elements.⁷¹
39. However, this historical policy approach is now contrary to s. 10(1.1)(c) of the Act, which requires the Commission to consider “**whether a program [i.e., the content] furthers Canadian artistic and cultural expression**” when making regulations prescribing what constitutes a Canadian program. As described in Appendix C, throughout the legislative review of the *Online Streaming Act*, the Government emphasized the creation and promotion of “**Canadian stories**” as a key objective of the Act⁷² and that the modernized definition of a Canadian program requires the Commission to consider “**whether the content furthers Canadian cultural expression**”. This is also echoed in the Commission’s objective for this consultation “**to better support and promote Canadian stories**”.⁷³
40. As set out in the MDR Report attached as Appendix E, cultural elements in films and series connect global audiences to the stories, way of life, locations, characters, settings, cultural themes and language(s) of a jurisdiction. Of the 19 content certification systems studied by MDR across 10 jurisdictions, Canada stands alone for failing to consider cultural criteria that other jurisdictions consider important to achieving their cultural policy goals.⁷⁴
41. While we recognize that fulfilling a cultural element may not be possible for every Canadian program, we recommend that either non-mandatory bonus points be added after the application

⁶⁷ Policy Direction, s. 13(g) requires the Commission to consider whether its definition of Canadian program complements other Canadian content policies, including the CPTC.

⁶⁸ For instance, with respect to certain animated television series.

⁶⁹ BNC 2024-288, paras. 20-21.

⁷⁰ BRP 2015-86, para. 126.

⁷¹ As evident from the [List of Canadian programs certified by the Commission](#) available on its website.

⁷² This objective was most recently confirmed by the Director General of the Digital and Creative Marketplace Frameworks branch of the Department of Canadian Heritage in a November 28, 2024 affidavit, filed in connection with challenges brought by Amazon, Apple and Spotify to the Commission’s base contribution decisions and orders.

⁷³ BNC 2024-288, para. 7.

⁷⁴ The Commission could draw from international examples like the UK’s cultural test model which allocates 63% of points to cultural content while maintaining flexibility, Australia’s “holistic” approach that weighs overall cultural and industrial contributions, and how EEA countries balance cultural goals while embracing international mobility and international cooperation.

of the key creatives test or CPE credits be awarded to incentivize contributions to Canadian artistic and cultural expression via “risky to produce, high impact productions”,⁷⁵ such as those:

- (a) based on underlying Canadian creative, artistic or historical material (e.g., a novel or story written by a Canadian);
- (b) with a story or narrative based on a Canadian setting (in whole or in part);
- (c) that include Canadian characters, subject matter, or themes; or
- (d) that demonstrate Canadian creativity, heritage and/or diversity (i.e., through the inclusion or reflection of equity-deserving groups, OLMCs and Canadians of diverse backgrounds).

(c) CREATIVE CONTROL

Q7. Would this new flexible approach incentivize more collaboration and partnerships between Canadian and foreign creators?

42. We recommend that the new, flexible approach proposed by the Commission for shared positions be extended to *all* applicable key creative positions (or functions in the case of animation productions) and a point(s) should be awarded if at least 50% of those persons are Canadian where two people are sharing the role, or at least 51% are Canadian where more than two people are sharing the role. Shared positions are often essential to the creation of modern collaborative productions. It would be inequitable and inflexible to fail to recognize the contributions of Canadians in such shared key creative positions.
43. The Commission recognizes that an approach “where multiple people share duties for a particular position, or multiple people share screen credits for a single position” and “the production only earns the point if all of the people are Canadian ... *may disincentivize collaborations between Canadian and foreign production partners and, consequently, limit the ability of productions and artists to access international audiences.*”⁷⁶ This holds true of all key creative positions that may be shared. The proposed 80% threshold provides no real flexibility unless more than five people are sharing a position (which is very rare) and does not work at all in situations where there are four or fewer people sharing a position (e.g., if there is a four-person writers’ room, one non-Canadian would disqualify it entirely).

Q8. Would this new, flexible approach facilitate the exportability and discoverability of Canadian programming domestically and abroad?

44. Provided the proposed changes identified in our response to Q7 above are implemented, we agree with the Commission that a flexible approach to all shared positions “would allow a production to make use of foreign talent, where appropriate, and pursue international partnership opportunities ... to help with its discoverability abroad, or enhance its marketability.”⁷⁷ However, the Commission’s proposal to limit any flexibility for shared positions to the director and screenwriter/scriptwriter/storyboard supervisor positions is too restrictive, and the proposed 80% Canadian threshold is too high, to incentivize collaboration between Canadian and foreign creators. It ignores the real value in collaborations between artists from different backgrounds and nationalities telling Canadian stories.
45. We support more flexibility, consistent with different business models, which will help to meet the objective under the Act to “foster an environment that encourages the development and

⁷⁵ As described by the Commission in its [High Impact Productions: Canadian Program Certification Process](#).

⁷⁶ BNC 2024-288, paras. 23-24, emphasis added.

⁷⁷ BNC 2024-288, para. 26.

export of Canadian programs globally”.⁷⁸ Recognizing the opportunities for Canadian content that lie beyond Canada’s borders would be in the best interests of Canadian producers, who face significant production financing challenges. The “exportability” of Canadian programs is required for Canadian producers to attract US and other international sources of production financing (e.g., pre-sales, distribution advances, etc.) to fund their production costs to make higher quality and more successful Canadian programs. Valuing exportability also allows foreign online undertakings to build on their strengths, incenting the production and global distribution of even more Canadian content.

Q9. Would this new flexible approach ensure that a production remains culturally relevant and reflective for Canadians, and that Canadians continue to exercise significant creative input and control in a production?

46. As set out in our response to Q6 above, the key creative positions test, in and of itself, does not guarantee cultural relevance and reflection. This is why a cultural elements component is necessary to incentivize such productions.

Q10. Currently, the director or screenwriter/scriptwriter/storyboard supervisor position must be filled by a Canadian for a production to be eligible for certification. Please comment on whether the Commission should maintain this approach on top of the new flexibility proposed above (i.e., 80% of Canadians). Should other key creative positions be opened to this flexibility?

47. As set out above, there should not be any mandatory Canadian positions for foreign online undertakings. Further, all shared key creative positions should be able to obtain a point(s) if they meet the test described in response to Q7 above.

Q11. Currently, for a production to be certified, the following positions must be filled by a Canadian: (a) the first or second lead performer (performer or voice); and (b) camera operator (for animation productions other than continuous action animation). Please comment on whether the Commission should maintain this approach.

48. As set out above, there should be no mandatory Canadian requirements for productions by foreign online undertakings. Modern global productions often have ensemble casts with multiple leads. Therefore, we propose that lead performers should not be limited to just the first or second lead (performer or voice) and the shared position test described in response to Q7 above should be applied. In addition, recognizing the increasing use of ensemble casts, where 50% or more of all lead performers are Canadian, such programs should either be eligible for bonus points (after the key creatives test has been applied) or CPE credits.

49. The proposed key creatives test for animation (other than continuous action animation) is largely based on 2D animation and is outdated. The position of camera operator should be removed from the key creatives test. Camera operators that photograph physical cels are no longer a significant part of modern animation filmmaking. The role that assembles the final picture is more commonly referred to a compositor, and they report to a compositing supervisor. In addition, there are other creative roles that significantly impact the final look of an animated production that we recommend for inclusion in Appendix D.

Q12. Currently, for an animation production to be certified, the following functions must be performed in Canada: (a) Key Animation (1 point) and (b) Camera Operator (1 point). Please comment on whether the Key Animation function should now be performed “by Canadians” instead of “in Canada,” and whether this should be mandatory for certification. Also, please comment on whether the Commission should continue to

⁷⁸ Act, s. 3(1)(d)(ii).

require that the “Camera Operator” function be performed in Canada as a mandatory requirement for certification.

50. The proposal that these functions be performed “by Canadians” rather than “in Canada” is a positive change as it provides more flexibility and recognizes the contributions of Canadians living abroad, especially in a post-COVID era where remote working has been embraced and encouraged by many companies. However, as previously noted, there should be no mandatory Canadian key creative personnel requirements for foreign online undertakings. In addition, we have proposed other changes to the key creative positions for modern animation productions in Appendix D, including the addition of key animation positions that have been overlooked such as the animation director and visual effects supervisor.

(d) FINANCIAL CONTROL / INTELLECTUAL PROPERTY

Q13. Please provide an intellectual property rights model (or models) for the Commission to consider based on the different ways that a definition of “Canadian program” would account for intellectual property rights as set out in paragraph 31. Please explain how the proposed model(s) would incentivize collaborations and foreign equity investments, and ensure that Canadian programming is competitive in the global market.

51. Canadian ownership of IP cannot be mandatory, nor is it required under the Act. However, it could be added as a non-mandatory bonus after the application of the key creatives test or a CPE credit, to incentivize the support for Canadian ownership of IP.⁷⁹
52. The Act requires only that the Commission consider “*whether Canadians have ... a right or interest in relation to a program, including copyright*” that “*allows them to control and benefit in a significant and equitable manner from the exploitation of the program*”.⁸⁰ That “right or interest” can but does not necessarily have to include all or part of the copyright, provided it allows Canadians to control and benefit in a significant and equitable manner from the exploitation of the program. This interpretation is consistent with the Commission’s long-standing co-venture model, where the IP is generally held by non-Canadians (as described in our response to Q16 below).
53. In addition, IP ownership is only one non-determinative matter among many other “matters” that the Commission is required to consider under s. 10(1.1) of the Act. When the words of the statute are read in their “grammatical and ordinary sense” as required by the modern approach to statutory interpretation,⁸¹ the use of the plural “matters” combined with the imperative “shall” makes clear that the Commission is required to consider *all* of the matters listed in s. 10(1.1) and *does not have a discretion to consider only one of them as determinative*. Allowing any one of the enumerated matters to be determinative would make the others meaningless.⁸² As discussed during the legislative review of this provision, the drafters intentionally chose this language as “assurance that the CRTC is not going to craft a definition based on only one of

⁷⁹ Consistent with s. 13(c) of the Policy Direction.

⁸⁰ Act, s. 10(1.1)(a), emphasis added.

⁸¹ *Re Rizzo & Rizzo Shoes Ltd.*, at para. 21, citing Elmer Driedger, *Construction of Statutes* (2d ed., 1983).

⁸² Which would be contrary to the principle of statutory interpretation that “no legislative provision should be interpreted so as to render it mere surplusage.” (*R. v. Jarvis*, 2000 SCC 5 at para. 28). It is presumed “that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain. Every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose”, and any interpretation that “would render any portion of a statute meaningless or pointless or redundant” should be avoided (Ruth Sullivan, *The Construction of Statutes*, 7th ed. (LexisNexis Canada, 2022) at 211). Each of the “matters” enumerated in s. 10(1.1) has a role to play in advancing Parliament’s purpose in providing for the Commission to define what constitutes a Canadian program for the purposes of the Act; making any single one of them determinative would be contrary to the intent of Parliament.

these factors” and “the outcome or definition [of a Canadian program] must reflect all the factors”.⁸³

54. IP ownership is not a problem to be fixed. Where foreign streaming services bring IP to Canada, they own it and are providing the financing, so they must have the ability to control the exploitation of the program to get the return on their investment. Much of that content is based on existing IP (such as international formats) owned by the MPA Studios, which cannot be shared with Canadian producers. Where a project with Canadian-owned IP is brought to foreign streaming services, they accommodate that via various business and financing models as described at paras. 57 and 59 below. Our goal is not to usurp the Canadian program certification system by taking Canadian-owned IP and making it under our umbrella. Nor are we claiming that the Services should not have to make any contributions to the system aside from what they are producing today in Canada. Rather, our focus is on creating a system that provides incentives, and fosters collaboration between Canadian and non-Canadian broadcasting undertakings and creators.
55. Our proposal is consistent with the Commission’s goal for foreign online undertakings to partner with Canadians and make Canadian stories that would be prominently released not only in Canada but all over the world via global streaming platforms. ***The regulatory framework must grant maximum flexibility for ownership models*** that recognize the position of foreign online undertakings with respect to owning their own IP. Our proposals are aimed at providing flexibility so that we may fulfill the industrial objectives of the Act by actively engaging Canadian creatives and other human resources in Canadian productions, while simultaneously ensuring the marketability and exportability of these productions to broader audiences. Without this flexibility, there will be a negative impact with respect to domestic content generation. Moreover, productions will be diverted to other jurisdictions that are increasingly becoming more competitive with flexible incentives to attract foreign productions. We agree fundamentally with Chairperson Eatrides that “we can’t take regulatory frameworks that have been in place for years and simply apply them to our new reality”, instead, “[t]he time is right to innovate and to explore new models”.⁸⁴
56. Within that context, the first IP model proposed in para. 31 of BNC 2024-288 is unworkable. Model 1, where IP rights in programs are fully Canadian-owned and key creative roles are all held by Canadians, is inconsistent with s. 10(1.1) of the Act and is more stringent than the status quo and the Commission’s own key creative positions proposal. Likewise, Model 2 is completely unrealistic in that it expects a foreign IP owner would be willing to cede all creative control to a Canadian (and *vice versa*) in a “give-and-take” approach. Model 3 – models that support investment and balance the economic benefits of holding/sharing the IP of a production with incentives to collaborate and partner between Canadians, including Canadian undertakings, and foreign online undertakings – is consistent with the Act and would best achieve the Commission’s ambitious vision for a flexible, incentives-based and equitable approach:

The Commission envisions a modernized approach where intellectual property rights retention in the program is applied to maintain, strengthen, expand, and ***protect Canada’s competitiveness in the audio-visual production industry*** as well as to ***ensure continued international investment in the Canadian production system***. This approach would be flexible enough to ***accommodate diverse business models and distribution methods***, ***facilitate the exportability of Canadian programming and formats***, and encourage all

⁸³ Thomas Owen Ripley, Associate Assistant Deputy Minister of Canadian Heritage, TRCM, 44th Parl, 1st Sess, [December 7, 2022](#)

⁸⁴ [Speech](#) by Chairperson Eatrides to the Banff World Media Festival, “Going Fast and Far Together: Our Journey to Create the Broadcasting System of the Future”, June 12, 2023.

types of players to **make Canadian programming discoverable both domestically and abroad**, on traditional and online platforms. It would also facilitate the ownership of content by Canadian entities, including Canadian broadcasters.⁸⁵ [emphasis added]

57. As the Commission has previously acknowledged, “[p]roducing programs often involves a mix of talent and financing from different sources, **including other countries**”.⁸⁶ Foreign online undertakings often collaborate on Canadian-owned productions to provide valuable financing. Through various business and financing models, global studios and streaming services are expanding the availability of Canadian-owned content, generating new audiences, revenues and discoverability for Canadian creators and producers of that content.⁸⁷ The evolving media landscape has brought significant changes to Canadian production financing. Global studios and streamers have been a major source of investment, contributing 12% (\$508 million) of financing for Canadian-owned productions in 2022/23 – a share exceeding the CBC (10%), or the CMF and Telefilm (9%) combined.⁸⁸ This trend strengthened in 2023/24, with global studios and streamers becoming the second-largest source of financing at 13%, more than Canada’s regulated private broadcasters and public broadcasters (at 12%).⁸⁹
58. While we hope that the new regulatory framework is sufficiently flexible to recognize and incentivize such collaborations, **any model that prevents foreign online undertakings from owning the IP in a Canadian program would effectively mandate by regulatory fiat an acquisition rather than a production model for foreign companies**. This approach not only would disregard the fact that many foreign companies’ expertise and business models are deeply rooted in production, it would derogate from the Commission’s stated objectives to “make room for flexible business models [to] facilitate the discoverability and exportability of Canadian content, both within Canada and globally”⁹⁰ and to “facilitate ... a financial support ecosystem that encourages a variety of productions, and a variety of business, broadcast and distribution models”.⁹¹ A requirement that purports to “fix” one of the key variables in production structures (by precluding non-Canadian ownership of IP outright) will necessarily affect other variables in the production funding and financing equation. This will inevitably result in less flexibility and poorer outcomes with respect to achieving the above-noted objectives of the Commission.
59. The assumption that Canadian producers should retain and exploit copyright under any circumstances, does not take into account the range of investments made by commissioning partners and associated risk as described in the KPMG Report (attached as Appendix B). Creating and distributing AV programs is high-risk, and flexibility – for example, to choose from different types of deal models and terms, according to the nature and scale of the project, including debt financing, optioning, pre-purchase, licensing of rights, commissioned productions, backend, and co-productions; and as supplemented by local, regional, national subsidy schemes and incentives where applicable – is essential to ensure the vitality of the AV sector and the success of Canadian programs.⁹² A forced acquisition model would also result in Canadian and non-Canadian broadcasting undertakings bidding against each other and driving

⁸⁵ BNC 2024-288, para. 33.

⁸⁶ BRP 2015-86, para. 125, emphasis added.

⁸⁷ Appendix B - KPMG Report, 3.1 *Activities of global studios and streamers in Canada*, p. 11

⁸⁸ CMA, [Profile 2023](#), Exhibit 2-10: *Financing for Canadian Film and Television Production*, p. 28.

⁸⁹ CMA, [Profile 2024](#), Exhibit 2-12: *Financing for Canadian Content Production*, p. 33.

⁹⁰ BNC 2024-288, Summary.

⁹¹ BNC 2024-288, para. 7.

⁹² See Appendix B - KPMG Report, p. 14, which outlines different models and typical risk/reward profiles between partners in today’s global marketplace.

up the price of licensing Canadian programs, which would be bad for Canadian broadcasters seeking to acquire that content.

60. There are some situations where Canadian IP ownership may make sense, such as when a Canadian creator brings a story to a foreign online undertaking and we are willing to work with that in appropriate situations. However, to justify the significant investments that foreign online undertakings make in high-budget films or series shot in Canada, they often need the option to own the IP. Global streaming services balance risk with ownership, and removing the ability to own IP will impact the type of projects that global streaming services are willing to invest in and whether they are willing to acquire global rights or invest in a global marketing campaign. That would result in material negative repercussions to the larger production ecosystem. When global studios and foreign online undertakings bring their IP to produce content in Canada, their high budget, large-scale productions make a significant impact on Canadian local businesses with spending across the country. These businesses include Canadian independent producers, visual effects houses, Canadian sound stages and production facilities, as well as a wide range of local businesses supplying production-related goods and services.⁹³ More broadly, the spin-off effects spurred by foreign investment have contributed to the significant evolution in the sophistication of the *entire* Canadian AV industry, including the domestic production sector which has benefitted from the knowledge transfer of best practices, technological advancements, and techniques employed on global productions.⁹⁴
61. Such outcomes would be bad for Canadian creatives as it would result in smaller budget productions, fewer jobs, less training and development of talent, less exportability of content and less success for Canadian programs and talent. It would also be bad for Canadian viewers as it would ultimately result in less diversity of high-quality programming choices.
62. The Policy Direction directs the Commission to “respect audience choice and, where possible, increase the options available”.⁹⁵ As Chairperson Eatrdes indicated, “paying attention to Canadians’ needs is at the heart of [the Commission’s] work”.⁹⁶ Based on national public opinion research commissioned by MPA-Canada in December 2024 and a corresponding expert’s report that reviews the consistent views of Canadians on these issues since 2020 (attached as Appendix F), most Canadians do not think the definition of a Canadian program should hinge on whether the production is owned by a Canadian production company. Instead, they feel other factors should also be considered, including whether it is “shot in Canada, based on a Canadian book, employing Canadian actors and crew and supporting local business”. The Commission has very recently indicated that “[a] policy principle of ... the resulting regulatory framework is to ensure choice in content and the ability to consume that chosen content, not to direct Canadians in which content they must consume, or how they must consume it.”⁹⁷ The Commission should therefore ensure that its determinations from this proceeding do not result in that unintended consequence.

Q14. In light of an approach based on Canadian intellectual property rights retention, should the Commission maintain the requirement that the key producer roles (producer, co-producer, line producer and production

⁹³ Appendix B - KPMG Report, p. 18

⁹⁴ Appendix B - KPMG Report, p. 20-23

⁹⁵ Policy Direction, s. 8(c).

⁹⁶ [Speech](#) by Chairperson Vicky Eatrdes to the Public Interest Advocacy Centre: “Taking action on what Canadians care about”, November 28, 2024.

⁹⁷ Broadcasting Notice of Consultation CRTC [2025-2](#): *The Path Forward – Working towards a sustainable Canadian broadcasting system*, 9 January 2025, para. 21.

manager) be filled by Canadians to ensure Canadian financial and creative control? If not, please explain why.

63. This question presumes that the Act requires “Canadian intellectual property rights retention”, which is an incorrect premise as explained in our response to Q13 above.
64. The Commission should not maintain the current requirement that the key producer roles (producer, co-producer, line producer and production manager) must be filled by Canadians to ensure Canadian financial and creative control. As set out in the MDR Report (attached at Appendix E), this approach is out of step with evolving financial models.⁹⁸ In addition, it is contrary to s. 3(1)(f.1) of the Act and is inconsistent with the Commission’s vision of “a modernized approach where intellectual property rights retention ... would be flexible enough to accommodate diverse business models and distribution methods, facilitate the exportability of Canadian programming and formats, and encourage all types of players to make Canadian programming discoverable both domestically and abroad”.⁹⁹ It also departs from a model that supports investment and balances the economic benefits of holding/sharing the IP of a production with incentives to collaborate and partner between Canadians, including Canadian undertakings, and foreign online undertakings. Such an inflexible approach would disqualify productions that overwhelmingly involve Canadians in other key roles on the basis that certain producer roles are not held by Canadians. Maintaining the requirement would place Canada at a competitive disadvantage when compared to other jurisdictions that do not have similar requirements.

Q15. How can the Commission incorporate the use of ownership and financial control of Canadian programs to help ensure the exportability of Canadian programming and formats through its modernized regulatory framework?

65. International IP ownership furthers this goal, while IP rights forced to be held in-country alone actively discourages it. The Commission has previously recognized that to create “higher-quality Canadian programming with more success domestically and internationally”, broadcasting undertakings should have the option to own equity in the content and IP so that they have “an incentive to promote its long-term exploitation and export”, as Canadian producers often lack the capacity to do so.¹⁰⁰ This is especially true of foreign online undertakings whose global streaming services provide very effective platforms by which to meet the Commission’s goal of ensuring the exportability of Canadian programs and formats. As set out in our response to Q13 above, while the Services and MPA Studios are open to collaborating on Canadian IP-owned productions, they must have the option to own the IP and equity in other Canadian content so that they have an incentive to promote its long-term exploitation and export.

Q16. Is the current co-venture model used by the Commission relevant to a modernized definition of “Canadian program” that includes a requirement relating to the retention of intellectual property rights?

66. The Commission’s long-standing co-venture model should be retained as it provides necessary flexibility on many projects in which a non-Canadian streaming service may be involved at the inception or commissioning stage with a Canadian producer, thereby conferring a degree of flexibility in models towards the creation of high-quality Canadian programming. However, the

⁹⁸ Appendix E - MDR Report, p.29.

⁹⁹ BNC 2024-288, para. 33.

¹⁰⁰ BRP 2015-86, paras. 117 and 121.

co-venture model is by no means sufficient on its own: there must be other paths to Canadian program certification that allow foreign online undertakings to retain all or part of the IP.

67. As previously noted, s. 10(1.1)(a) of the Act does *not* require Canadian retention of IP rights – it is simply one consideration among many. The co-venture model is a prime example where the Commission certifies programs as Canadian, despite the IP being held by non-Canadians. Given that co-ventures are not eligible for the CPTC, it is a tax-inefficient model for Canadian IP ownership.¹⁰¹ Therefore, the IP is typically held by the foreign producer and creative and financial decision-making responsibilities are shared between Canadian and foreign producers. While at least 50% of the financing required for the production must be raised or acquired by the Canadian production company, this often takes the form of pre-sales, production services tax credits (“**PSTC**”) and distribution profits, thereby allowing the Canadian producer to defer part of its financial investment until monies have been recouped from the production. Therefore, the co-venture model supports investment and balances the economic benefits of holding/sharing the IP of a production with incentives to collaborate and partner between Canadians and foreign online undertakings.

III. EXPENDITURES ON CANADIAN PROGRAMMING

Q18. How does the Commission’s view regarding PNI align (or not align) with business models and the availability of programming in the current broadcasting system?

68. We support the elimination of prescriptive PNI requirements. A more flexible model should incentivize PNI programs by providing CPE credits for expenditures on such programs.

Q19. Would the proposed changes to the definition of “Canadian program” ensure continued financial support for Canadian programs previously supported through the Commission’s approach to PNI? Would the proposed changes ensure that those Canadian programs are not only made available to Canadians, but also exported internationally?

69. We agree with the Commission’s preliminary view that “in an “on-demand” system driven by online undertakings whose business models are based on the programs that underscore the current definition of PNI, such as drama and documentaries, the current approach to PNI is no longer needed”.¹⁰² However, while the business models of many foreign online undertakings are based on PNI programs, the overarching concerns of MPA-Canada expressed in these comments underscore that if the Commission were to adopt its proposed inflexible approach to the definition of Canadian programs, high quality PNI programs would be at risk. This is further accentuated by the fact that Canadian broadcasters have or are currently seeking relief from their commitments to PNI programming.
70. The Commission’s proposed changes to the definition of a “Canadian program” focus too much on “supply” measures and ignore “demand” preferences, thereby diminishing its stated objective to “facilitate the discoverability and exportability of Canadian content, both within Canada and globally”.¹⁰³ As previously noted, a flexible Canadian program definition and IP

¹⁰¹ Under the *Income Tax Act*, if the copyright in a co-venture production is owned or co-owned by a Canadian producer, since a co-venture is not eligible to be “certified” by CAVCO for the CPTC, the Canadian producer cannot depreciate the asset at the 100% rate of capital cost allowance, which is only available to a CPTC eligible production. Rather, the co-venture production can only be depreciated at the significantly lower 30% rate of capital cost allowance, subject to the half-year rule, so the Canadian producer would effectively depreciate the production at the rate of 15% over several years, rather than 100% up front, very likely resulting in a substantial income inclusion.

¹⁰² BNC 2024-288, para. 46.

¹⁰³ BNC 2024-288, Summary.

model are the only way to ensure continued financial support for expensive and risky to produce Canadian programs in the PNI categories and to encourage their international export.

Q20. Should the CPE requirements for traditional Canadian broadcasters and foreign online undertakings be similar or different? How can the Commission impose equitable requirements that respect the different business models of the various undertakings and broadcasting groups?

71. Please refer to our proposals at para. 23 above.

Q21. Please explain how the Commission should determine: (a) what types of expenditures would fulfill the needs in the broadcasting system relating to Canadian programming, in particular news programming; and (b) how these expenditures should be allocated.

72. We agree with the Commission's preliminary view that "*although support for news programming should be a priority, it may not be necessary for such support to be provided by all broadcasting undertakings*".¹⁰⁴ We strongly oppose any requirements for expenditures on news programming by foreign online undertakings that are not in the business of producing local news.¹⁰⁵ The responsibility for news is integral to the regulatory bargain that benefits Canadian conventional television stations and broadcasting distribution undertakings ("BDUs") and is a fundamental component of their licences to serve local communities, as described in the Commission's Local Television Policy.¹⁰⁶ None of the Services produce news, let alone Canadian local news. The imposition of any requirement to make expenditures on, or otherwise subsidize, news programming by foreign online undertakings that are not in the business of producing news is inconsistent with their natures of service and business models and therefore, is not compliant with the Act and the Policy Direction.¹⁰⁷

Q22. Should different approaches be undertaken for the English- and French-language markets in a modernized CPE framework? For example, should the Commission impose a minimum expenditure requirement for Canadian original English- and French-language programs? If yes, should the approaches differ in both official language markets?

73. Contrary to the Commission's statement that it "must prescribe the minimum level of expenditures that are to be allocated to Canadian original programs",¹⁰⁸ s. 11.1(3) of the Act refers only to "Canadian original French-language programs in the case of broadcasting undertakings that offer programs in both official languages", not to Canadian original programs generally. Therefore, Parliament did not see the need for the Commission to impose a minimum expenditure requirement for Canadian original English-language programs and deliberately adopted a different requirement for French-language programs.¹⁰⁹

74. Most foreign streaming services do not offer programs in both official languages, since they only offer programs that are either dubbed in French from other languages or originate in other French-speaking countries outside of Canada. During the legislative review of the *Online Streaming Act*, it was made clear that qualifying expenditures for Canadian original French-

¹⁰⁴ BNC 2024-288, para. 46, emphasis added.

¹⁰⁵ We reserve all rights given the application for judicial review (Court File No. A-225-24) and motion for leave to appeal (Court File No. 24-A-25) currently before the Federal Court of Appeal by MPA-Canada et al, challenging the Commission's determination that certain foreign online undertakings must make an initial base contribution of 1.5% of their annual contributions revenues derived from audio-visual activities to the Independent Local News Fund.

¹⁰⁶ See footnote 39.

¹⁰⁷ As previously noted, imposing a requirement on foreign online undertakings to support local news is also contrary to the provisions of the Act that refer to news solely in connection with Canadians who produce news programs, the community element, and the public broadcaster.

¹⁰⁸ BNC 2024-288, para. 37.

¹⁰⁹ This is consistent with s. 3(1)(c) of the Act, which indicates that "English and French language broadcasting operate under different conditions ... and may have different requirements".

language programs should **not** include “French language original programs that could originate outside of Canada - France, for example”.¹¹⁰ Therefore, such programs should also not be included in determining whether a broadcasting undertaking offers “programs in both official languages” such that it raises the application of a minimum expenditure requirement for Canadian original French-language programs.

75. Foreign online undertakings should have the same flexibility to acquire existing Canadian programs to fulfill any CPE requirements, as currently accorded to Canadian linear broadcasters. Given that the objectives of the Act include the domestic and global discoverability and exportability of Canadian programs, an original English-language program requirement could have the unintended consequence of restricting the acquisition and promotion of existing English-language Canadian programs to the rest of the world. For those online undertakings where producing or commissioning original content is a key part of their business models, competitive market forces will be sufficient to ensure the production of original English-language Canadian programs, given the high churn rates and ease by which consumers can unsubscribe from streaming services.
76. The objectives of the Act are best served by permitting foreign online undertakings to contribute in ways that align with their business models, and not by requiring every undertaking to satisfy all objectives of the Act. Imposing sub-obligations for English- and/or French-language content would heavily constrain the online undertaking’s editorial and programming decisions, as language can become the number one criterion to invest in a title to fulfil a regulatory obligation, rather than the quality of the script, the potential to match the audience needs, etc. This can potentially distort the production market with an influx of investments in content of a certain language to meet a regulatory requirement and a corresponding decrease in investments in programs in the other language, to the detriment of producers of such content.

Q23. How can a modernized expenditure framework support Indigenous content and content created by and for equity-deserving groups, OLMCs and Canadians of diverse backgrounds?

77. We agree with the Commission’s position that a flexible, incentives-based approach to regulation would “ensure that incentives and other regulatory measures are introduced to better support the creation and distribution of Canadian content by communities that are currently under-represented in the broadcasting system, while also ensuring that this content is reflective of and relevant to these communities”.¹¹¹
78. As detailed in our submission to BNC 2023-138¹¹² and the Indigenous Broadcasting Policy Consultation,¹¹³ the Services have made concerted efforts to collaborate directly with Indigenous-led organizations and local and national partners to support, promote and train Indigenous creators and creators of diverse backgrounds of AV programs, which are showcased on their platforms. The Services also provide opportunities for diverse talent, creators, artists and costume designers, both in front of and behind the camera. We ask that the Commission ensure that the modernized regulatory framework provides sufficient flexibility and incentives to permit online undertakings to foster these existing relationships and to develop new ones.

¹¹⁰ TRCM, 44th Parl, 1st Sess, [7 December 2022](#).

¹¹¹ BNC 2023-138, para. 19.

¹¹² See MPA-Canada’s [July 11, 2023 intervention](#) to Broadcasting Notice of Consultation CRTC [2023-138](#): *The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content*, 12 May 2023 (“**BNC 2023-138**”).

¹¹³ See MPA-Canada’s [July 22, 2024 intervention](#) to Broadcasting Notice of Consultation CRTC [2024-67](#): *Call for Comments - Co-development of an Indigenous Broadcasting Policy*, 22 March 2024 (“**Indigenous Broadcasting Policy Consultation**”).

Q24. *In the modernized CPE framework, what programming, such as news, should be viewed as risky and expensive to produce and difficult to monetize but exceptionally important to the achievement of the objectives of the Act? How is such programming not already supported by the various business models in operation in the Canadian broadcasting system?*

Q25. *How should expenditures on news programs be incorporated into a modernized CPE framework?*

79. Please refer to our response to Q6 above for our position on programs that promote Canadian cultural elements. As set out in our response to Q21 above, news programming should be supported by conventional television stations and BDUs that are licensed to serve local communities.

Q26. *What other incentives, such as CPE credits, could be used to support certain types of programming (for example, original first-run programs and/or independent productions)?*

80. Given that s. 8(d) of the Policy Direction directs the Commission to “where appropriate, use tools that are based on incentives and outcomes” and the Commission’s stated objective to adopt an incentives and outcomes-based approach over a prescriptive model, we fully support the use of incentives, including CPE credits, to incentivize the acquisition or investment in certain types of programs, such as original first-run programs and independent productions. For the reasons described in response to Q23 above, the existing CPE credits provided to large private television ownership groups to incentivize the creation of Canadian programming by Indigenous (50% credit) and OLMC (25% credit) producers should also be extended to foreign online undertakings. In addition, as proposed above, new CPE credits for productions with: Canadian IP ownership (in whole or in part); a cultural element(s); 50% or more of all lead performers being Canadian; and/or 75% or more Canadian cast and crew in Canada should be added, if such elements are not included as bonuses under the Canadian program certification framework.

IV. DATA-RELATED ISSUES, REPORTING, PERFORMANCE MEASUREMENT

Q27. *Should the Commission set out reporting requirements, as described above (for example, through a requirement to provide production reports), for all broadcasting undertakings operating in Canada, whether they are Canadian or foreign, and whether they operate on traditional platforms or online?*

81. We strongly oppose the Commission’s preliminary view that the collection of data relating to the revenues and programming expenditures of broadcasting undertakings (or broadcasting ownership groups) should be made public.¹¹⁴ Consistent with the Commission’s recent decisions recognizing the importance of confidential treatment of such information, the financial information (including, but not limited to, revenues and expenditures) of individual online undertakings must continue to be granted confidentiality. In keeping with the Commission’s existing treatment for traditional broadcasters, the budget information for individual productions must also be granted confidentiality. Such information should only be disclosed in an aggregated manner that protects the financial and commercially sensitive information of broadcasting undertakings and individual productions.

82. Pursuant to s. 25.3(1) of the Act, a person has the right to designate as confidential any financial information that is confidential and consistently treated in a confidential manner by that person, as well as any information the disclosure of which could reasonably be expected to: (a) result in material financial loss or gain to any person; (b) prejudice the competitive position of any person; or (c) affect contractual or other negotiations of any person. The Commission has an obligation under s. 25.3 of the Act to maintain the confidentiality of information designated as confidential.

¹¹⁴ BNC 2024-288, para. 53.

83. The Commission has generally found that **“the more the information is disaggregated or the greater the degree of competition, the more likely it is that the direct harm will outweigh the public interest and that the information should not be disclosed”**.¹¹⁵ Therefore, it “routinely collects documents and data that it presumptively treats as confidential”.¹¹⁶
84. The Commission has very recently acknowledged the importance of preserving the confidentiality of financial information of online undertakings, both in order to protect the financial information of online undertakings as well as their identity, and that it is reasonable for parties to seek such assurance, “given that such information is **fundamental to the preservation of their competitive positions**”.¹¹⁷ The Commission has also recognized that online undertaking data at the individual level “is commercially sensitive, is consistently treated in a confidential manner by the parties, and **could reasonably be expected to prejudice the competitive positions of the respondents if disclosed**”.¹¹⁸
85. **There is no public policy reason for the disclosure of information at the individual-level that could not be addressed by the disclosure of aggregated data.** The Commission has previously determined that “[a]ggregating the data by industry segment would ... serve the public interest by allowing members of the public and industry stakeholders to better understand the Canadian broadcasting system, make informed decisions and submit informed submissions to the Commission on matters of policy”.¹¹⁹ Thus, the Commission has determined that “the publication of data aggregated by industry segment would preclude the disclosure of confidential ... microdata, mitigate the risk of harm to ... respondents [and] serve the public interest”.¹²⁰ The Commission has also previously determined that “given the similarities between these undertakings”,¹²¹ the data of HVOOD services should be aggregated and reported with online undertakings in order to preserve confidentiality for both groups and we are not opposed to the continuation of that approach going forward.
86. Maintaining the confidentiality of the financial and commercially sensitive data of foreign online undertakings is of utmost importance, given the highly competitive environment in which they operate. As the Commission is aware, the forced disclosure of financial information at the individual undertaking level was a ground of leave to appeal and judicial review by MPA-Canada et al,¹²² prior to the Commission acknowledging “the importance of confidentiality”¹²³ of such data and permitting online undertakings to put in place a mechanism to preserve confidentiality. Significant time and resources have gone into negotiating and finalizing an industry-wide third-party payments administrator agreement, in accordance with the Commission’s determination issued just five months ago. It would be extremely prejudicial to foreign online undertakings if any steps are now taken to essentially unwind that determination by placing confidential data on the public record and MPA-Canada and the Companies reserve all rights in that regard.

¹¹⁵ Broadcasting and Telecom Information Bulletin [2010-961](#): *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*, para. 17, emphasis added.

¹¹⁶ Decision 2023-34, para. 15.

¹¹⁷ BRP 2024-65, para. 203, emphasis added.

¹¹⁸ Broadcasting Regulatory Policy [2022-47](#): *Annual Digital Media Survey*, 23 February 2022 (“**BRP 2022-47**”), at para. 143.

¹¹⁹ BRP 2023-34, para. 23, emphasis added.

¹²⁰ BRP 2023-34, para. 24.

¹²¹ BRP 2023-34, para. 44.

¹²² In the court challenges referenced at footnote 105.

¹²³ Broadcasting Regulatory Policy CRTC [2024-121-1](#) and Broadcasting Order CRTC 2024-194: *The Path Forward – Supporting Canadian and Indigenous content through base contributions – Finalization of conditions of service*, 29 August 2024, para. 76.

Q28. Should the Commission require the public disclosure of the revenues and programming expenditures of all broadcasting undertakings subject to CPE requirements? Should the information be collected and published by the Commission or published by the undertakings themselves?

87. Please refer to our response to Q27 above.

Q29. Should the published revenue and CPE data be broken down? Should it be published by service, by ownership group, or further, for example, by program category, language, or other elements?

88. As set out in our response to Q27 above, any published data should be aggregated across all online undertakings and HVD services (similar to the Commission's decision with respect to the Annual Digital Media Survey) and not by ownership group (which may consist of only one online undertaking). Any published data must not result in the disclosure of the data of an individual online undertaking or production.

Q30. What type of data should the production report include or not include (for example, language, region, producer information, and Canadian certification number)? Please explain.

89. Any reporting requirements should be sensitive to the administrative burden imposed on broadcasting undertakings and minimize that burden where appropriate, as required under s. 5(2)(g) of the Act and s. 8(a) of the Policy Direction. Therefore, any production reports should include only data that is essential for the Commission to monitor regulatory obligations as foreign online undertakings that operate in various global jurisdictions would not keep the same detailed reporting records as broadcasters that operate only in Canada, and should avoid including any personal information.

Q31. To make it easier to work with industry data and to compare such data, should the production report include an identifier that is unique for each program? If yes, please explain how this identifier should work (for example, a serial number or alphanumeric text). Should the identifier itself carry any metadata (that is, data providing information about one or more aspects of the data)?

Q32. If the Commission decides to use unique identifiers, how could the production report be linked to audience measurement sources, providing information about the viewing patterns and availability of content produced?

90. It is unclear what the Commission means by a "unique program identifier" and what it would solve for. A requirement to assign a unique program identifier to every program would be unduly burdensome given the expansive libraries of programs offered by global streaming services. In addition, the inclusion of any metadata linked to audience measurement such as viewing patterns would give rise to significant privacy issues under various international privacy and data protection regimes. It would also be inconsistent with s. 5(2)(g.1) of the Act, which requires the Commission to regulate and supervise the Canadian broadcasting system in a flexible manner that "protects the privacy of individuals who are members of the audience for programs broadcast by broadcasting undertakings".

Q33. How should the Commission collect data regarding key creative positions, producer positions and intellectual property for Canadian programming owned by people from the following groups: Indigenous peoples; equity-deserving groups; and OLMCs?

Q34. How should the Commission address concerns regarding privacy and self-identification issues? Could the use of a unique identifier help in addressing those concerns?

91. As the Commission is aware, asking individuals to self-identify their race, cultural identity or gender raises a host of potential privacy and human rights issues, particularly in respect of a specific production. Moreover, unlike some Canadian producers, the Services and MPA Studios are all subject to collective agreements with Canadian unions that do not allow for the mandatory collection of such information. While individuals may choose to voluntarily disclose

such information to their own unions, the Services and MPA Studios cannot compel the unions to disclose this information to them. Therefore, the Services do not have such information.

Q35. Should certain types of data (relating to, for example, programming or the operation of undertakings) provided by broadcasting undertakings be presumed to be confidential when filed? If yes, please explain why.

92. Yes, data provided by broadcasting undertakings relating to programming or the operation of undertakings – in particular, data related to revenues, program expenditures and number of subscribers – should be presumed to be confidential when filed. Please refer to our response to Q27 above.

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

93. Existing industry reports, such as the Commission’s *Communications Market Reports* and the CMPA’s *Profile* report can serve this purpose. Also refer to our response to Q38 below.

Q37. Given the Commission’s preliminary view with respect to PNI, how can future data collection practices help track which types of programming are risky to produce and difficult to monetize, and consequently require regulatory incentives?

94. This question assumes ongoing regulatory intervention is required. We believe that if a flexible, incentives-based approach as described throughout this submission is put in place, market forces would act to ensure that Canadian long-form documentaries, drama and comedy programs, and award shows are made by those broadcasting undertakings that are in the business of producing or commissioning such programs.

Q38. How can the Commission measure whether the future modernized definition of “Canadian program” is meeting the desired goals as specified in paragraph 7 of this notice?

95. A modernized definition of “Canadian program” should position Canada as a competitive production destination and be inclusive of a range of success metrics in addition to simply measuring the quantity of Canadian programs. While it is difficult to suggest a closed list of metrics that the Commission could use to measure whether the definition is meeting the desired goals, we propose consideration be given to the factors identified in Appendix G. However, to make any such success metrics meaningful, the Commission should include in its policy framework an express requirement that it review the definition of a “Canadian program” as well as the framework for expenditures on Canadian programming against these metrics at specified intervals, beginning in the fifth year following implementation.¹²⁴

V. ARTIFICIAL INTELLIGENCE

Q40. Can AI-generated material be considered Canadian content? If yes, on what basis? Please explain.

Q41. What could the potential impact of AI be on pre- and post-production, including but not limited to tasks such as visual effects?

Q42. How could the use of AI impact discoverability of Canadian content?

96. Different forms of AI have been used in the production and post-production of film and television programs for decades and are a fast-developing tool for storytellers to enhance the audiovisual experience for their audiences. The questions posed by the Commission, however, implicate core copyright issues under consideration by the Government of Canada in both the [Consultation on Copyright in the Age of Generative Artificial Intelligence](#) and [Survey on the](#)

¹²⁴ As noted above, a 5-year period is consistent with s. 53(1) of the Act, which provides that the Government must undertake a comprehensive review of the amendments to the Act and of their operation every 5 years.

[Impacts of Artificial Intelligence in the Cultural Sector](#). We encourage governments to approach these issues in a thoughtful and careful manner. Reflexive approaches that do not take into account the speed with which AI is evolving and the diversity of AI technologies have the potential to hamper creativity and innovation.¹²⁵

VI. OTHER CRITERIA AND ISSUES RELATED TO CERTIFICATION

Q43. *If the 75% threshold should not be maintained, please explain why and provide an alternative that would ensure continued and significant investment in Canadian resources.*

97. The levels for production costs should be set at between 10% to 50% for foreign online undertakings, with a lower percentage for post-production and laboratory costs than services costs. Many productions prefer post-production to be performed closer to home so that studio executives can oversee in person without having to relocate. Maintaining a requirement that post-production costs be expended at the same level as services costs in Canada prejudices foreign online undertakings, where post-production is traditionally performed in their home location even if the production itself is Canadian.

98. As set out in MDR Report (attached as Appendix E), Canada's minimum 75% expenditure requirement for production costs and for post-production and laboratory costs is more restrictive than any of the jurisdictions examined that impose minimum expenditure requirements expressed as a percentage of the production budget" (i.e., the UK, Germany and Spain).¹²⁶ Maintaining this approach would result in "a Canadian system that is poorly adapted to the realities of global production trends. Where other jurisdictions provide producers with the flexibility needed to create globally competitive larger-scale productions, the Canadian content system with its high level of **both** production and post-production expenditures, is not well suited to these increased opportunities."¹²⁷

Q45. *Is there still a need for the Commission to continue incentivizing the dubbing of productions in Canada by Canadians? Please explain.*

Q46. *If you reply "Yes" to Q45, what types of incentives should be used to ensure that Canada's dubbing industry continues to thrive? What types of regulatory tools could the Commission use to incentivize the dubbing of productions in Canada by Canadians in a modernized expenditure framework?*

99. Continuing to incentivize the dubbing of productions in Canada by Canadians is consistent with the Commission's goal to support creativity and employment in the industry.¹²⁸ It may also encourage investment in French-language productions. A potential incentive would permit dubbing costs incurred in Canada to count as eligible CPEs.

Q47. *Do you agree with the Commission's proposal to consolidate the foreign courtesy credits, remove the equivalency-based approach, and replace the notarized affidavit with an attestation of duties for each person who receives a courtesy credit? If not, please explain.*

100. We support these proposals as they will provide greater flexibility and reduce the administrative burden for those seeking to use foreign courtesy credits.

Q49. *Should the Commission eliminate pilot projects from the definition of a Canadian program? Please explain.*

101. Given our position on including a cultural element in the Canadian program certification test as

¹²⁵ Please refer to MPA-Canada's [submission](#) filed in response to the generative AI consultation. The Government has not yet published submissions in response to the AI cultural sector survey.

¹²⁶ Appendix E – MDR Report, p. 27, s. 3.1.

¹²⁷ *Ibid.*, p. 28, emphasis added.

¹²⁸ BNC 2024-288, Summary.

described in response to Q6 above, we recommend maintaining these pilot projects. If the reason such programs have never been certified was a lack of funding because CAVCO and the CMF did not adjust their rules to accommodate such productions, the adoption of a flexible IP model as described above may encourage certain online undertakings to fill the funding gap for these “risky to produce, high impact productions”.¹²⁹

102. MPA-Canada appreciates the opportunity to comment on behalf of the Companies.

All of which is respectfully submitted,



Wendy Noss
President, Motion Picture Association – Canada

Appendices:

- A – Different Contribution Standards in ss. 3(1)(f) and (f.1) of the Act
- B – KPMG Report: “Impact of global studios and streamers on Canadian creatives and cultural ecosystem”, April 2024
- C – Cultural Elements in the Definition of a “Canadian Program”
- D – Proposed Changes to Key Creative Positions Test
- E – MDR Report: “Defining Canadian Content: Approaches Taken in Other Jurisdictions and Lessons Learned for Canada”, February 23, 2022
 - Addendum, December 5, 2024
- F – *spark insights Public Opinion Survey: “What Canadians Think – How Global Streamers Can Best Contribute to Making Canadian Programs”, December 2024
 - Report of Bruce Anderson, January 2025
- G – Metrics to Measure Success of a Modernized “Canadian Program” Definition

*****End of Document*****

¹²⁹ As described by the Commission in its [High Impact Productions: Canadian Program Certification Process](#).

Appendix A

APPENDIX A

DIFFERENT CONTRIBUTION STANDARDS

Government statements re: reasons for different contribution standards for Canadian broadcasting undertakings and foreign online undertakings in ss. 3(1)(f) and (f.1) of the *Broadcasting Act*

1. Official Publications Issued by the Government of Canada

a. Canadian Heritage News Release (February 2, 2022)

*We are updating our laws so online streamers have to contribute in a similar and equitable way. The Online Streaming Act does just that. It brings online broadcasters under similar rules and requirements as our traditional broadcasters.*¹ [emphasis added]

2. Statements by the Minister of Canadian Heritage

a. House of Commons Debates (February 16, 2022)

Hon. Pablo Rodriguez:

...

This bill is about those big streaming companies that already invest here. Some of them invest a lot of money and we love that. We are in favour of it, and we ask them to invest even more.

*The approach will be very flexible. It is going to be based on the company's own business model. Not everyone will have to act the same way. The contributions or participation will be different to take into consideration the fact that they are very different. At the end of the day, it will bring more money into the system to help our Canadian creators and Canadian artists.*² [emphasis added]

b. Standing Senate Committee on Transport and Communications, Study on Bill C-11 (November 22, 2022)

Senator Miville-Dechêne: *A number of Canadian groups are fighting to have both Canadian and foreign companies subject to the same requirements when it comes to the use of cultural workers.*

I refer you to new paragraph 3(1)(f.1). The government has chosen to impose different hiring requirements on Canadian companies and foreign companies. Canadian companies have to make maximum use of Canadian human resources, while foreign companies have to do what they can.

¹ Canadian Heritage, News Release, [Government of Canada Introduces Legislation to Support the Next Generation of Canadian Artists and Creators](#), dated February 2, 2022.

² Canada, House of Commons Debates, 44th Parl, 1st Sess, Vol 151, No 32 (16 February 2022) (P. Rodriguez) at 1645, <https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-32/hansard>.

Can you tell us why you made that decision? A number of Canadian stakeholders are clearly not happy about it, broadcasters and musicians alike, and we've heard that from many of the groups we've met with. [emphasis added]

Mr. Rodriguez: Again, thank you for your question. It's safe to say that our industry is one of the best in the world, and so are our human resources. The bill will make the industry even stronger by bringing in more money and more productions and by creating more jobs.

At the same time, it's important to recognize that the players we are bringing into the system are different. We are talking about online broadcasters currently operating wholly outside the system that are being brought into the system. They are multinational companies with productions all over the world and a system all their own. Those companies are not subject to any requirements today.

I understand the way you're looking at it, senator. You're saying that, instead of holding them to this standard, we're only holding them to this standard down here. What we are saying is that, instead of those companies being down here, we're going to bring them up here. [emphasis added]

Senator Miville-Dechêne: Does it have to do with the free trade agreement? Are you worried about reprisals? What's behind it? [emphasis added]

Mr. Rodriguez: Yes, there are also concerns from a free trade standpoint.³ [emphasis added]

3. Statements by the Government of Canada's Representative in the Senate

a. **Standing Senate Committee on Transport and Communications, Study on Bill C-11 (November 30, 2022)**

Senator Gold: The government cannot support this amendment, and I will be brief in my reasoning. As you see from the section in the bill itself, it splits the provisions governing the use of Canadian resources into two categories: Canadian broadcasters and foreign broadcasters. We are dealing in the context of this bill with large multinational corporations, and we need to recognize the reality that foreign players operating in Canada have global business models. It is just not realistic, in the opinion of the government, to expect that foreign broadcasters who operate in a global marketplace to be subject to the same provisions as Canadian broadcasters, notwithstanding the flexibility that Senator Cormier introduced in the language of his amendment.

³ Canada, Senate, Standing Committee on Transportation and Communications, Proceedings, 44th Parl, 1st Sess (22 November 2022), <https://sencanada.ca/en/Content/Sen/Committee/441/TRCM/32EV-55835-E>.

I'm also advised that the minister has noted publicly — or I am certainly putting it on the record here — that our trade partners would have serious issues with these proposed changes were they adopted. In that regard, I might ask the officials to elaborate on what the threat might be of foreign companies challenging these provisions under the terms of our trade agreements, notably CUSMA.⁴ [emphasis added]

4. Statements by Officials from Canadian Heritage

a. Standing Senate Committee on Transport and Communications, Study on Bill C-11 (November 22, 2022)

Senator Miville-Dechêne: *Does it have to do with the free trade agreement? Are you worried about reprisals? What's behind it?* [emphasis added]

Mr. Rodriguez: *Yes, there are also concerns from a free trade standpoint.* [emphasis added]

Senator Miville-Dechêne: *Can you be more specific? Since the beginning, we've been hearing about concerns in general terms. What are those concerns?*

Thomas Owen Ripley, Associate Assistant Deputy Minister, Canadian Heritage: *Thank you for your question, senator. The bill was drafted to take into account our obligations as far as discrimination is concerned. We can't be seen in any way to be discriminating against foreign services.*

As the minister mentioned, for them, it's about more than producing content just for the Canadian market. [emphasis added]

Senator Miville-Dechêne: *But how would it be a discrimination if it is a level playing field between Canadian enterprises and foreign enterprises?* [emphasis added]

Mr. Ripley: *It's not only about discrimination. We also have to consider whether we have any rules requiring companies to do certain things here, in Canada, that aren't allowed under the free trade agreement. We have to find a balance. Those companies are ready to make a contribution, and we didn't want to craft the bill in such a way that, right off the bat, they would want to launch a court challenge. The objective is twofold: to be ambitious while respecting the fact that these companies have a different business model than Canadian companies operating here, in Canada.⁵ [emphasis added]*

⁴ Canada, Senate, Standing Committee on Transportation and Communications, Proceedings, 44th Parl, 1st Sess (30 November 2022), <https://sencanada.ca/en/Content/Sen/Committee/441/TRCM/35EV-55874-E>.

⁵ Canada, Senate, Standing Committee on Transportation and Communications, Proceedings, 44th Parl, 1st Sess (22 November 2022), <https://sencanada.ca/en/Content/Sen/Committee/441/TRCM/32EV-55835-E>.

b. Standing Senate Committee on Transport and Communications, Study on Bill C-11 (November 30, 2022)

Mr. Ripley: Thank you very much, Senator Gold, for the question, and through the chair, what I would say is that throughout the bill process, the government has borne in mind its trade obligations. We've talked about that and the importance particularly of ensuring that any obligations are non-discriminatory in nature with respect to Canadian services and non-Canadian services. That certainly has been one element of it.

I would characterize or say the second element we have borne in mind is a recognition of action that may be perceived as a trade irritant, as putting in place a framework that does not have sufficient flexibility to accommodate those global business models that you referenced, senator. The current paragraph (f) has indeed been elaborated and interpreted in a context where the only participants in the system have been Canadian broadcasters.

There has been a long debate on these two provisions over the course of the former Bill C-10 and the current Bill C-11. The current drafting that is in the bill was the ultimate balance that parliamentarians who looked at Bill C-10 decided this achieved the appropriate balance in terms of that issue, a recognition that there are many stakeholders who believe that maximum use standard is very important, but at the same time recognizing that when it comes to those global streaming services, there has indeed been concern expressed about the impact that could potentially have on the business models.⁶ [emphasis added]

*****End of Document*****

⁶ Canada, Senate, Standing Committee on Transportation and Communications, Proceedings, 44th Parl, 1st Sess (30 November 2022), <https://sencanada.ca/en/Content/Sen/Committee/441/TRCM/35EV-55874-E>.

Appendix B



Impact of global studios and streamers on Canadian creatives and cultural ecosystem

April 2024



DISCLAIMER

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1. EXECUTIVE SUMMARY

The present study examines a range of contributions from global studios and streamers to the Canadian economy. From the contracting of Canadian production services for films and television series, to a wide variety of partnerships that support Canadian creatives, the engagement of global studios and streamers is multifaceted and their impact a key ingredient in ensuring the resilience and growth of the Canadian audiovisual ecosystem.

Investments of global studios and streamers in Canada take many shapes.

The public debate on investments in the Canadian audiovisual sector is often framed around the distinction between foreign location and services (FLS) productions and Canadian content, as is defined in different legislative and policy instruments. As it appears from an overview of industry practices, the reality is more nuanced as partnerships and other forms of cooperation between domestic and foreign entities and creatives are commonplace and take many shapes.

Foreign investments in the Canadian media ecosystem carry benefits analogous to those of other types of foreign direct investments.

Although not strictly speaking fitting within the traditional notion of foreign direct investment (FDI), foreign investment in production (FIIP) from global studios and streamers carry analogous effects, in that they impact the Canadian economy through the same vectors. The presence of global firms in a given industry results in increased demand for local products and labour to support their operations. Their participation in the local economy may also foster improvements to productivity and higher wages for workers through the domestic implementation of foreign best practices. The data reviewed by KPMG supports the notion that FIIP has produced such impacts on the Canadian audiovisual sector.

Specifically, FIIP carry *horizontal spillover* effects via knowledge transfer of the practices and techniques employed in global productions to domestic productions, ensuring that the latter benefit from the latest advancements in that sector. *Vertical spillovers* happen through the increased demand created by global productions on auxiliary sectors, such as construction, transport, props, costuming, catering, and other inputs necessary to the production of a feature film or television program. MPA data substantiates the potential for such diffusion of foreign production techniques in the audiovisual sector, as 97% of those employed on FLS productions maintain their residence in Canada.

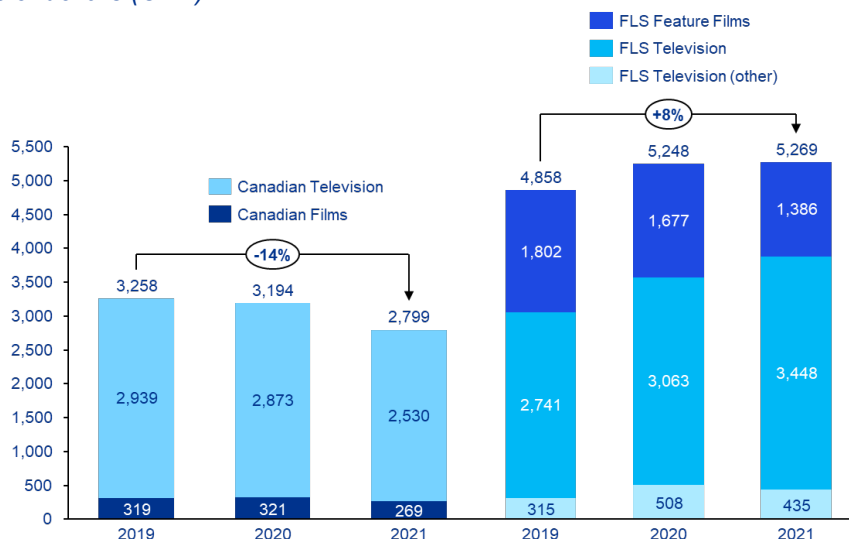
Foreign investment in film, television and streaming diversifies the Canadian economy and increases its resilience.

Diversification is a key factor in mitigating risk and ensuring the long-term resilience of an industry. In the case of the Canadian audiovisual sector, the wide geographic provenance of production investment means that economic turbulences specific to the domestic or a foreign market have less of a disruptive impact on the sector overall. In this sense, the coexistence of FLS and domestic production helps strengthen the Canadian industry.

By diversifying sources of investment and employment opportunities, FIIP has made the Canadian audiovisual industry more resilient and able to withstand crises, such as the COVID-19 pandemic. Indeed, during that period, while Canadian content experienced contraction in production volume, FLS enjoyed moderate growth, leading to net overall growth in the industry and providing much-needed employment to creatives and crews, who initially experienced extreme job losses:

Change in production volumes during the height of the COVID-19 pandemic: Canadian content versus FLS

2018-2022; millions of dollars (CAD)



Source: Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3 2023 [\[Link\]](#). Data compiled and estimated based on data received from CAVCO, the CRTC, CBC/Radio-Canada, and the Association of Provincial Television and Film Agencies.

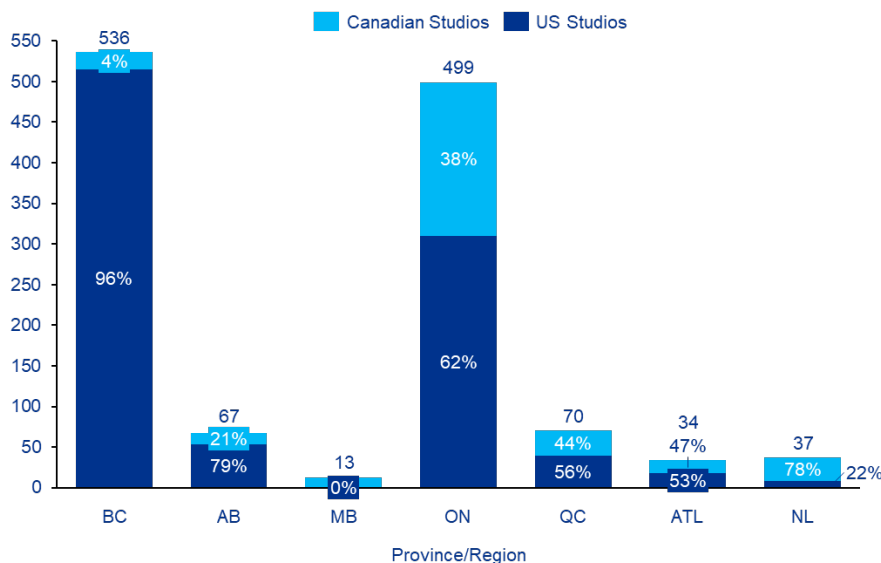
Note: FLS TV (other) includes TV movies, specials, pilots, or other formats. Total financing of CRTC television productions based on estimates of historical CRTC certification volumes. KPMG has not certified the accuracy of this estimate.

Note: Each year refers to the period from April 1st of the previous year to March 31st of the year indicated.

Moreover, FIIP acts as a vector of diversification in the sources of investment in Canadian film, television and streaming production, whether these investments originate from the United States or elsewhere. Indeed, except in British Columbia, where FLS productions are most prevalent, Canada's regional film, television and streaming industries are sustained in comparable proportions by domestic and foreign investments.

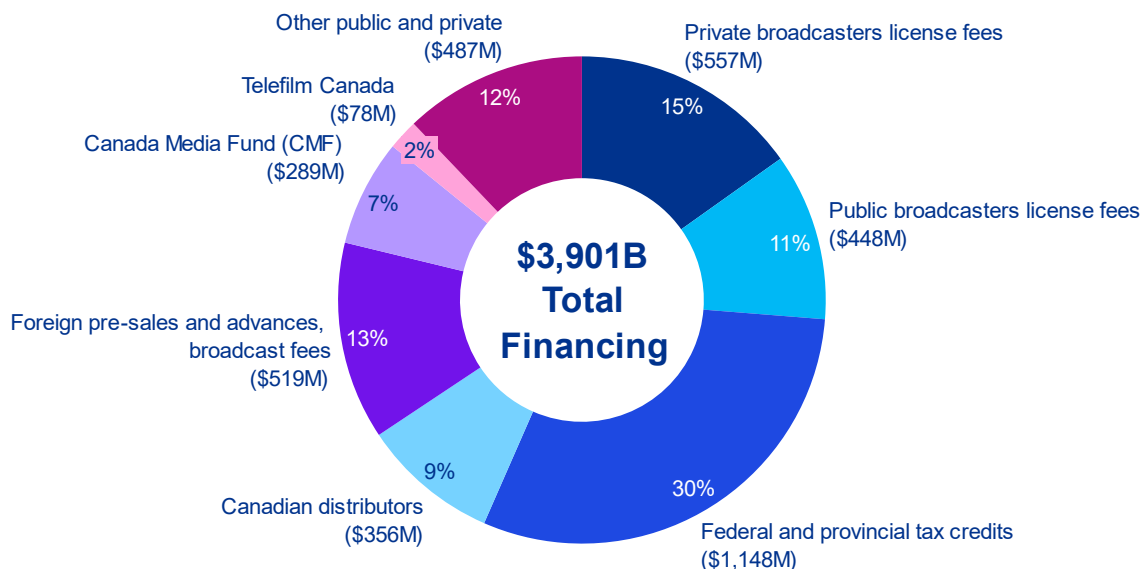
Volume of English-language television episodes funded by Canadian versus US studios, by province/region

2021; episodes produced



Source: Reproduced from: Directors Guild of Canada, "2021 NATIONAL Director Statistics Report", November 2022. [\[Link\]](#)

Share of financing for CRTC-certified Canadian content production, by source
 2021-2022; millions of dollars (CAD)



Source: Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3 2023 [\[Link\]](#). Data compiled and estimated based on data received from CAVCO, the CMF and Telefilm Canada. Total financing of CRTC television productions based on estimates of historical CRTC certification volumes. KPMG has not certified the accuracy of this estimate.

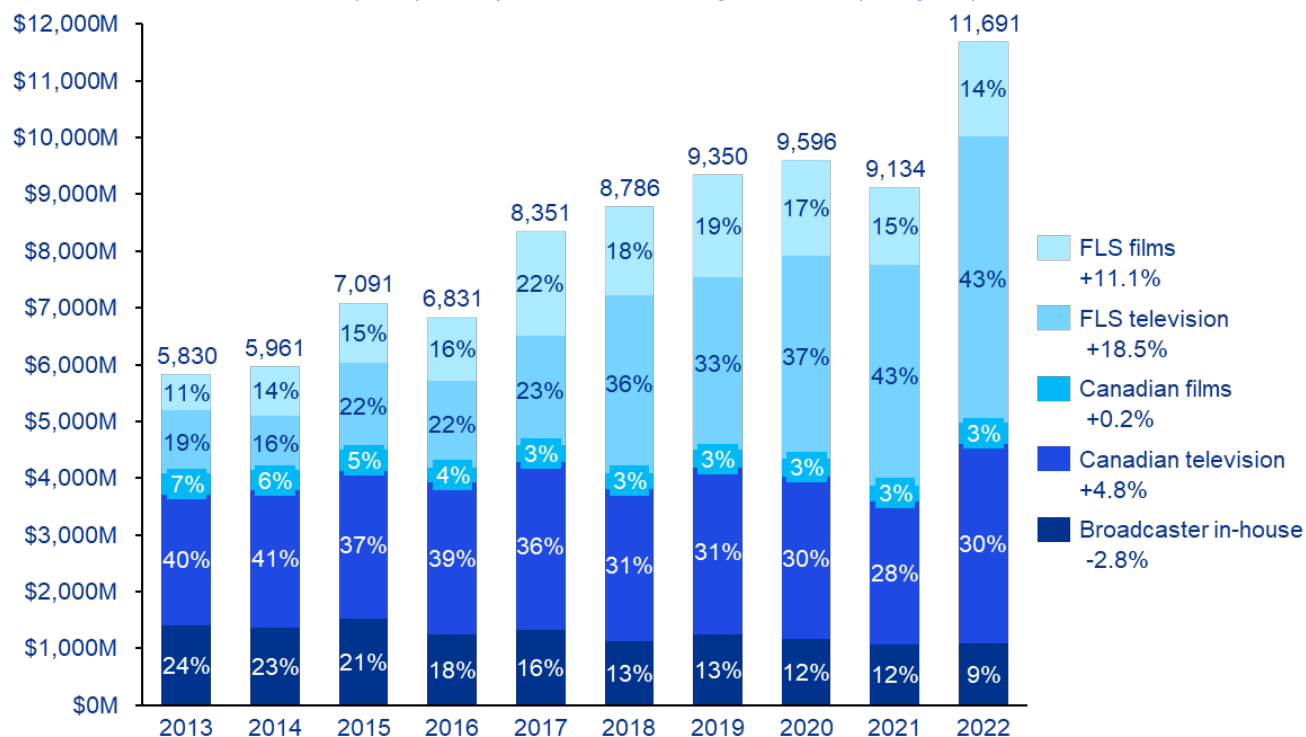
Finally, global studios and streamers provide 13% of the total financing for certified Canadian film and television productions via pre-sales, advances, broadcasting fees, etc., which is more than the combined share of Telefilm Canada and the Canada Media Fund (CMF).

Foreign location and services production drives growth in the Canadian film, television and streaming industry.

As of 2022, FLS production accounted for 57% of total production volume in Canada, with a total value of \$6,705 billion. This share in production has remained steady since 2018, averaging 55% over the period. In the last 10 years, FLS production volumes have experienced a cumulative average growth of 16.2%, compared to 4.8% for Canadian television and 0.2% for Canadian films.

Evolution of net production volumes by source and type

2013-2023; millions of dollars (CAD), Compound annualised growth rate (in legend)

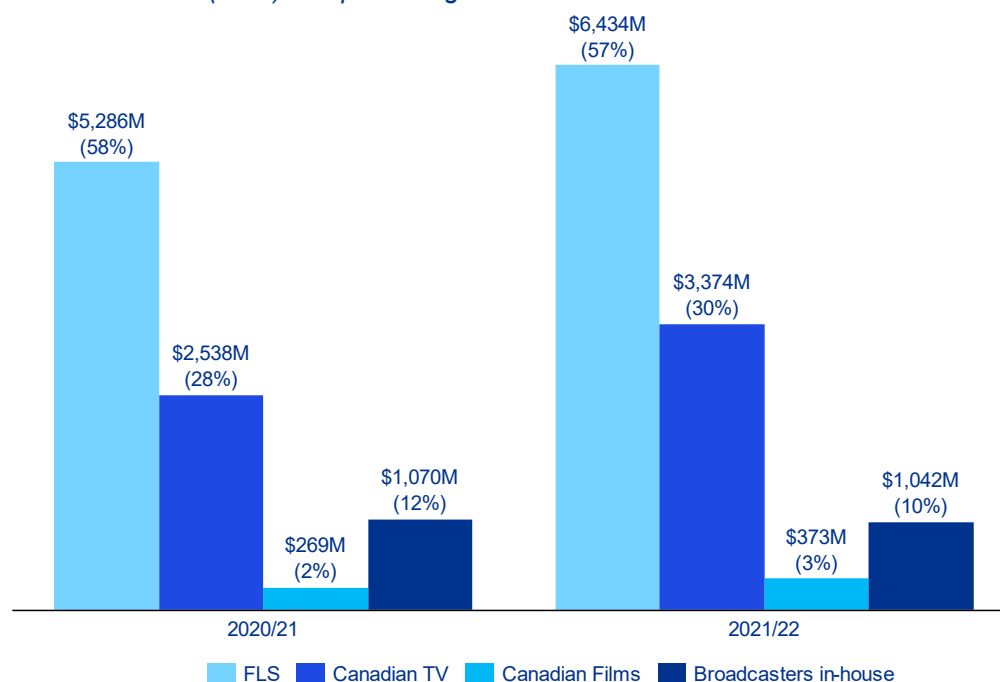


Source: Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3 2023 [\[Link\]](#). Data compiled and estimated based on data received from CAVCO, the CRTC, CBC/Radio-Canada, and the Association of Provincial Television and Film Agencies.

Similarly, FLS production remains the driving component of job growth in the sector in Canada, with a lead in average growth rates, and a change in the share of employment three times higher than that of domestic productions over the 2012-2022 period.

Estimated labour income by production type

2020-2022; millions of dollars (CAD) and percentage of total



Source: Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3, 2023 [\[Link\]](#). Estimates based on data compiled by CAVCO, the CRTC, CBC/Radio-Canada, and the Association of Provincial Television and Film Agencies, industry unions, Statistics Canada and Conference Board of Canada. Note: According to the methodological approach utilised in Profile 2022, estimated labour income is computed by adding:

1. The product of the estimated number of direct full-time equivalent (FTE) jobs and the estimated average production-sector FTE cost. 2. The product of the estimated number of spin-off FTE jobs and the Canadian economic average for FTEs. Further information on estimation techniques can be found in the methodological annex of Profile 2022. KPMG does not certify the accuracy of this approach.

Global investment in Canada drives technological transformation and opportunities for Canadian talent.

According to the industry and union representatives interviewed by KPMG for the purposes of this study, much of the improvement in the technical sophistication of domestic production capacities in the last two decades can be attributed to growing FIIP and the increased use of visual effects and other advanced production techniques in FLS. The Canadian visual effects industry has directly benefited from that evolution.

Investments from global studios and streamers are amplifying marginalized voices and providing training for the next generation of Canadian creatives.

Global studios and streamers are important contributors to the professional and ongoing training of workers in the industry. Some of them have set up dedicated programs to support the emergence of the next generation of talent and provide them with the skills they need to succeed in the industry. Many of these initiatives are focused on communities that have traditionally been underrepresented on and off screen.

2. INTRODUCTION

2.1 Context and objectives

Canadians' viewing habits have evolved in significant ways over the last decade or so, in line with the technological changes and digitization of video contents that have enabled the emergence of new players in the global media landscape. The latest available data shows that 76% of Canadian households subscribe to at least one subscription video on demand (SVOD) service or streaming (87% in the case of people below the age of 35),¹ while the market share of traditional broadcasters is trending downward, recording an aggregated loss of 13 percentage points between 2013 and 2023, now standing at 71%.²

Taking stock of these changes, the Canadian government moved to modernize the *Broadcasting Act*, which had last been overhauled in 1991. This led to the passage of the *Online Streaming Act* (OSA) by Parliament in April 2023. That legislation modernizes Canada's broadcasting policy and establishes a framework governing the contribution of online broadcasters, or streamers, to the creation, distribution, promotion, and discoverability of Canadian media content.³

Pursuant to the OSA, the Canadian Radio-television and Telecommunications Commission (CRTC) is tasked with defining the precise nature of the obligations that the streamers must meet. The CRTC has indicated that it will proceed in three steps, with the first one focused on establishing a provisional financial contribution framework for streamers and traditional broadcasters pending the full implementation of the legislation.⁴ The CRTC launched a consultation process with respect to the latter in the fall of 2023, including an opportunity for interested parties to provide written submissions and three weeks of public hearings.⁵ As the leading advocate for the US film, television, and streaming industry in Canada, MPA is actively participating in the CRTC process. It filed written submissions and made oral representations during the hearings.

KPMG has been retained by MPA to conduct a study on the impact of global studios and streamers on Canadian creatives and the domestic cultural ecosystem, and to produce the current report presenting its findings. More specifically, the goals of this report are to:

- Provide an overview of the investments made by global studios and streamers in the production of films, television shows and series in Canada;
- Document the opportunities global studios and streamers provide to Canadian creatives for content made by, with, or about Canadians, and to make that content available to a global audience;
- Explore the role that global studios and streamers play in Canada's creative ecosystem.

2.2 Motion Picture Association – Canada and its members

The MPA has six members: The Walt Disney Studios, Netflix, Paramount, Sony Pictures, NBCUniversal Media and Warner Bros. Discovery. All operate streaming services available to Canadians (Disney+, Netflix,

¹ Statista, "Share of people subscribing to and paying for subscription video-on-demand (SVOD) services in Canada from 2016-2023", June 20, 2023, [\[Link\]](#).

² Paid television penetration rate provided by the Media Technology Monitor.

³ The current threshold for OSA registration for foreign streamers is \$10 million of revenues generated in Canada. See: CRTC, "Broadcasting Regulatory Policy CRTC 2023-329 and Broadcasting Order CRTC 2023-330", September 29, 2023. [\[Link\]](#)

⁴ CRTC, "Modernising the broadcasting system", September 29, 2023. [\[Link\]](#)

⁵ CRTC, "CRTC takes major step forward to modernize Canada's broadcasting framework", September 27, 2023. [\[Link\]](#)

Paramount+, Discovery+, Crunchyroll, SonyLIV and Hayu). Some of their movies and series are also distributed in Canada by domestic streamers and traditional broadcasters. Moreover, MPA members produce film, television, and streaming content in Canada, form different types of partnerships with the domestic industry, and employ local talent and crews. How the OSA is implemented by the CRTC will therefore impact their operations in this country and the effects are likely to be felt throughout the sector's value chain.

2.3 Methodological approach

This study begins with a review of the economic literature on the impact of foreign direct investment on domestic industries, followed by a transposition of those findings to the audiovisual sector to assess the likely effects of global studio investments in Canada. The study then provides an overview of the investments made by global studios and streamers in the Canadian film, television and streaming ecosystem based on aggregate industry data. The impact of FLS production and investments of global studios and streamers in Canadian content (as it is currently defined) are both specifically examined.

To supplement its analysis and connect the economic theory and data with real life stories, KPMG conducted interviews with key industry representatives (producers, union leaders, executives).

2.4 Limitations

The following analysis constitutes a non-exhaustive overview of the impact of global studios and streamers on the Canadian film, television, and streaming industry. It accomplishes this task via integrating academic and industry literature, industry level data and information obtained in interviews from a diverse group of people involved in the industry. KPMG's report is based on the information made available to the firm.

Notably, this report does not analyze the impact of the contribution of global studios and streamers on gross domestic product (GDP), nor does it compare it to an alternative, hypothetical scenario where they would be compelled by the CRTC to make financial contributions to production funds pursuant to the OSA.

KPMG has carried out interviews and analysis during the months of September and October 2023. KPMG can not guarantee that the information appearing in this report will be accurate at the time the reader will access it, neither that it will continue to be accurate in the future. KPMG has not conducted an audit of data used in this analysis, nor carried out all economic modeling used to support its conclusions.

3. OVERVIEW OF THE CANADIAN ACTIVITIES OF GLOBAL STUDIOS AND STREAMERS

This section provides a bird's-eye view of the Canadian activities of global studios and streamers, explaining the variety of ways in which they operate, from Canadian content to foreign production and other engagements.

3.1 Activities of global studios and streamers in Canada

With a large presence in Canada dating back decades, global studios have historically accounted for a significant portion of the total investments in the country's film and television sector.⁶ The emergence of internet streaming in the last two decades has led to an increased demand for content. During the same period, audiovisual production in Canada has significantly expanded, driven in large part by increasing investments by global studios and streamers, as will be explored in greater details in Section 4.

But first, there is a need to define a few notions that frame much of the available data as well as the public policy conversation, and then to summarize the different business models employed by global studios and streamers in their interactions with the Canadian media ecosystem.

3.1.1 Foreign investment in production

Foreign investment in production (FIIP) captures the total value of international financial participation in the Canadian film, television and streaming industry, exclusive of items allocated to foreign budget components (such as the remuneration of foreign actors). FIIP includes foreign investments in Canadian television and film productions, whether certified as Canadian content or not, as well as FLS productions.

3.1.2 Canadian content

The notion of Canadian content has been around in some form or another since the 1920s.⁷ At this time, Canadian content certification is used in the following contexts:

- a) To qualify as a Canadian program under the *Broadcasting Act* regime and thereby count toward the minimal Canadian content requirements imposed by the CRTC on domestic broadcasters;
- b) To secure the 25% Canadian Film or Video Production Tax Credit (CPTC), which is more generous than the 16% Film or Video Production Services Tax Credit (PSTC) otherwise available to a broad range of audiovisual productions shot in Canada, including FLS;⁸ and

⁶ From 2004 to 2012, FLS production's share of total audiovisual investments in Canada ranged from 28% to 38%, averaging 32% overall. See: Canadian Media Production Association, "Profile 2013, Economic Report on the Screen-based Media Production Industry in Canada" 2013 [\[Link\]](#)

⁷ CRTC, "So what makes it Canadian?" October 13, 2016. [\[Link\]](#)

⁸ Both tax credits are provided for in the *Income Tax Act* and are administered by the Canadian Audio-Visual Certification Office (CAVCO): [\[Link\]](#). Note that certain genres are specifically excluded by regulation, none of which are relevant for the purposes of this report (e.g., news

- c) To access funding from Telefilm Canada, the CMF and other CRTC-certified independent production funds.⁹

In all of those cases, certification is based on a 10-point scale pursuant to which the Canadian citizenship or permanent residency of key creative personnel is worth 1 or 2 points:

Table 1: Points system utilised for CRTC, CAVCO, Telefilm, and CMF certification

Function	Points
Director	2 points
Screenwriter	2 points
Lead performer with the highest remuneration	1 point
Lead performer with the second highest remuneration	1 point
Director of photography	1 point
Art director	1 point
Music composer	1 point
Picture editor	1 point
Total	10 points

Source: CRTC, "So what makes it Canadian?" October 13, 2016. [\[Link\]](#)

Canadian content requirements vary for each type of certification. For example, to qualify for:

- a) CRTC certification, a production must score 6 points out of 10 on the scale, plus:
 - i. Either the director or screenwriter, and either the lead performer or second lead performer must be a Canadian citizen or permanent resident;
 - ii. The producer must be Canadian and control production; and
 - iii. 75% of production and 75% post-production services costs must be paid to Canadians;¹⁰
- b) CAVCO certification for the 25% CPTC, a production must meet the CRTC certification criteria, plus:
 - i. A Canadian entity or individual must own the production's copyright for all commercial exploitation purposes for a 25-year period; and
 - ii. There must be an agreement with a Canadian distributor or licensed broadcaster for the production to be shown in Canada within the first two years;¹¹
- c) Funding from Telefilm Canada, a feature film must be certified by CAVCO for the CPTC, plus:
 - i. Score 8 points out 10 on the scale; and
 - ii. The director, screenwriter and lead performer must all be Canadian citizens or permanent residents;¹²
- d) Funding from the CMF, a television production must be certified by CAVCO for the CPTC, plus:

and current affairs, game shows, sports, galas, reality television). These film and television production tax credits are widely believed to have significantly contributed to the growth of the industry in Canada, as mentioned by John Weber, President and CEO of Take 5 Productions, in an interview with KPMG on September 27, 2023, and by John Lewis, Director of Canadian Affairs at the International Alliance of Theatrical Stage Employees (IATSE), the main Canadian union outside Quebec for below-the-line workers, in an interview with KPMG on September 28, 2023.

⁹ For example: Shaw Rocket Fund, Bell Fund, Independent Production Fund, Fonds Québécois, Rogers Documentary Fund. For a full list of the certified funds, see: "List of Certified Independent Production Funds", CRTC, December 21, 2023. [\[Link\]](#)

¹⁰ See: "So what makes it Canadian?", CRTC, October 10, 2016. [\[Link\]](#)

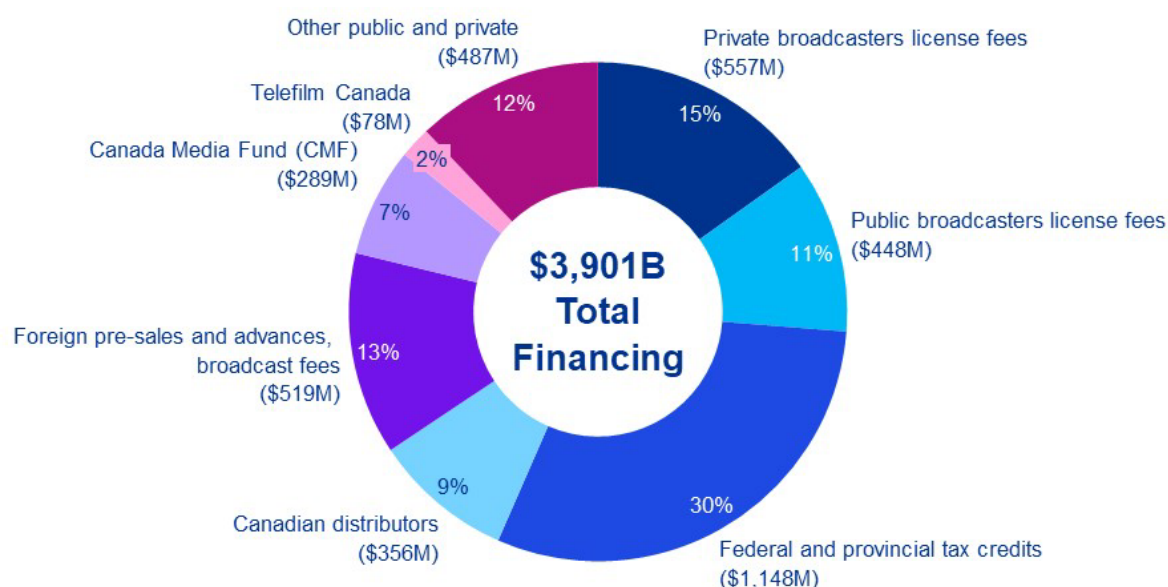
¹¹ See: CAVCO "Application Guidelines", February 20, 2023. [\[Link\]](#) Note that these are the criteria applicable to scripted live action Canadian productions. There are specific rules for treaty co-productions, documentaries, and animated productions.

¹² See: Telefilm Canada "Canada Feature Film Fund: Production program – Guidelines", October 18, 2023. [\[Link\]](#) Note that there is a different funding stream for treaty co-productions, with its own set of criteria.

- i. Score 10 points out of 10 on the scale;
- ii. Underlying rights must be owned as well as significantly and meaningfully developed by Canadians; and
- iii. The project must be set and shot primarily in Canada.¹³

In 2021-2022, global studios and streamers invested in Canadian television and film productions to the tune of \$874 million, which corresponds to 11% of that year's FIIP.¹⁴ Of that amount, an estimated \$519 million financed CRTC-certified Canadian content productions through pre-sales, advances and licensing agreements, an amount that is larger than the combined investment of Telefilm Canada and the CMF in Canadian content (i.e. \$367 million).¹⁵¹⁶

Figure 1: Share of financing for CRTC-certified Canadian content production, by source
2021-2022; millions of dollars (CAD)



Source: Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3 2023 [\[Link\]](#). Data compiled and estimated based on data received from CAVCO, the CMF and Telefilm Canada. Total financing of CRTC television productions based on estimates of historical CRTC certification volumes. KPMG has not certified the accuracy of this estimate.

3.1.3 Foreign location and services production

FLS productions broadly include the variety of international productions, primarily by foreign studios and streamers, that are shot or post-produced, or both, in Canada, and that do not meet the definition of Canadian content. FLS post-production work includes visual effects (VFX) carried out by Canadian technical studios in service of foreign productions, whether for productions filmed in Canada or work which is independently contracted.

¹³ The CMF allows certain exceptions depending on the type of production and genre. See: CMF "Definitions & Essential Requirements, April 2023. [\[Link\]](#)

¹⁴ Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3, 2023 [\[Link\]](#). This number corresponds to the portion of FIIP that includes foreign presales and distribution advances for all projects certified by CAVCO as well as estimates of presales and distribution advances for non-CAVCO-certified Canadian productions.

¹⁵ Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3, 2023 [\[Link\]](#). See also: Figure 1.

FLS productions qualify for the PSTC. They cannot be certified by the CRTC as Canadian Programs, nor are they eligible for funding from Telefilm Canada or the CMF. In 2021-2022, this segment accounted for 89% of FIIP, for a total of \$6.705 billion.¹⁶

3.2 Diversity of business models in today's global marketplace

According to the MPA, existing Canadian content criteria make it such that some productions with strong cultural connection to Canada may be excluded due to failing to score a minimum of six points in their above-the-line talent, or because the copyright is acquired by a foreign firm, or other connected reason. A few recent examples include *The Handmaid's Tale* (MGM Television), *Jusqu'au déclin* (Netflix), and *500 Days in the Wild* (Paramount+, upcoming). Conversely, the existing Canadian content criteria used by the CRTC and CAVCO do not impose any requirements as to the actual content of the qualifying productions. A film or series based on a novel by a foreign author, depicting a fictional world, filmed in a foreign language, and primarily aimed at a foreign audience could still qualify for the CPTC and count toward a domestic broadcaster's Canadian content licencing requirements.

Moreover, there is a broad range of business models that exist within the industry, which in turn have varying degrees of impact on the Canadian film, television, and streaming ecosystem. The following paragraphs thus outline the different activities of global studios and streamers in Canada, in addition to FLS production, and their contribution to the Canadian audiovisual sector. Importantly, the following categories are generally not mutually exclusive. In reality, a mix of several business models can co-exist within a single production and vary over time and distribution market.

3.2.1 Acquisitions of full intellectual property rights

The commissioning of original work by global studios and streamers from Canadians can lead to a variety of arrangements in terms of the intellectual property (IP). Based on interviews with industry representatives, full acquisition of IP is not the rule. Indeed, it comes with a significant level of risk, as there is no guarantee that a production will be successful. The decision to acquire some or all the copyright is therefore made on a case-by-case basis, after careful analysis.

In instances where global studios and streamers acquire full IP rights, they usually do so at a premium given the exclusivity that they gain and the higher return that they can expect on their investment. In return, the Canadian originating producer secures a higher budget for the production as well as a pathway to global distribution.

3.2.2 Short and long-term licensing of intellectual property

The Canadian originating producer may opt to retain the IP, notably to qualify for CAVCO and CRTC certification (see Section 3.1.2). In such a case, the producer negotiates exclusive and/or non-exclusive licensing agreements with one or several domestic and global distributors, for different time periods, platforms (big screen, streaming, traditional TV, video-on-demand), and geographical markets. That process is called “windowing” in the industry and its goal is to maximize viewership and thus the returns on the initial investment.

In the case of television series funded by the CMF, the first domestic window rights must be granted to a Canadian broadcaster for a period of 7 to 10 years. In such cases, global studios and streamers can only acquire the international distribution rights and/or enter into some form of co-licensing agreement (see Section 3.2.3 on “Co-licensing”).

Some producers may opt to grant a full license to a single distributor for a long period of time (typically the initial 5 to 7 years). Such an agreement is similar to full IP ownership as the licensee bears the risk of a commercial

¹⁶ Canadian Media Producers Association, “Profile 2022: Economic report on the screen-based media production industry in Canada”, May 3, 2023 [\[Link\]](#).

failure. Conversely, it is a lower risk option for the originating producer, who moreover preserves the prospect of a long-term revenue stream, given that even commercially unsuccessful series may attract a niche audience and generate revenues via video on demand or a streaming platform down the road (a “long-tail”). A late success may sometimes lead to sequels and remakes, in which case long-tail rights can generate substantial revenues. However, licensing agreements that exclude these long-term rights usually attract a smaller upfront payment to the originating producer compared to full IP acquisition, as the licensee forgoes a potential upside down the road.

3.2.3 Co-licensing

An emerging model of development which aids in distributing risk and benefits is that of co-licensing. This practice has been used by global studios in collaboration with traditional broadcasters or distributors to reap mutual benefits from a production. This typically involves assigning specific areas and/or timeframes for the distribution rights to the co-licensors. It is most commonly done in projects with less net investment as a means of helping the producer or director achieve their creative goals while providing tangible deliverables to the co-licensor in the form of distribution rights. IP rights are usually retained by the independent producer in this business model.

An example of this model is the upcoming untitled “Arctic Comedy”, a show depicting indigenous experiences in the Far North. The show was commissioned to a Canadian independent producer by CBC and Aboriginal Peoples Television Network (APTN), who jointly obtained first domestic window rights for traditional broadcasting and streaming. Netflix for its part secured second window rights in Canada and first window rights in the rest of the world.¹⁷

One of the most successful examples of co-licensing is *Schitt’s Creek*, where CBC and Pop TV acquired first window distributions rights, with Netflix later picking up further distribution rights.¹⁸ Thanks to the global reach of that platform, the series became a popular and critical success around the world, winning 115 awards, including 9 Emmys and 2 Golden Globes.¹⁹

While co-licensing often increases opportunities to both creators and partner companies, there is a degree of tension with regards to initial broadcasting rights, especially when one of the partners is a traditional Canadian broadcaster with its own online distribution channel.

3.2.4 Commercial co-productions

Commercial co-productions can come in many different forms.²⁰ As a commercial concept, the essence of “co-production” is a negotiated sharing of risk, rights, and revenues in which each party invests capital in proportion to the expected benefits associated with a given set of rights. Often the rights allocation is geographic. The rights may also be allocated temporally, with some partners taking only a fixed-term license. Commissioning entities often participate in these types of deals. Co-production arrangements give all the partners the ability to balance risks and rewards.

For example, the series *Reign* was a joint production effort between two Ontario-based production companies, Take 5 Productions and Whizbang Films, and Warner Bros. and CBS. Each partner made equal financial contributions and had equal say in the production process. The series qualified as Canadian content, with licensing and distribution in Canada carried out by domestic broadcasters. Outside of Canada, CBS maintained exclusive distribution rights.

¹⁷ As mentioned in by Stéphane Cardin and Tara Woodbury, both of Netflix Canada, in an interview with KPMG on October 5, 2023. For more information see: Netflix, “Netflix, CBC, and APTN Greenlight New Arctic Comedy Series”, [\[Link\]](#)

¹⁸ Vulture, “The Unlikely Rise of Schitt’s Creek”, April 7, 2020. [\[Link\]](#)

¹⁹ See awards on the Internet Movie Database (IMDb): [\[Link\]](#)

²⁰ Note that we use the term here in its looser commercial sense; an “official” co-production is defined in Canada as only involving specific countries with which it has signed a co-production film and television treaty, which does not include the United States.

3.2.5 Pre-buys and post-sales

Global studios and streamers active in the Canadian market often engage in film pre-buys as a means of meeting specific content objectives. Pre-buys involve the purchase of rights from an independent producer for a film or television series before shooting begins, or before post-production and finishing work is completed. Independent Canadian producers must secure pre-sales in order to finance their productions, and advances from international distributors can be a significant source of that funding. Pre-buy agreements can be universal or limited to certain territories. In the latter case, the independent producer has the ability to license the production for distribution in the markets that are excluded from the pre-buy agreement. Typically, a pre-buy involves settling domestic rights, but may extend to international distribution rights as well.

Post-sales, often after a production has been aired on television in Canada, are also common. Streaming platforms engage in content acquisition of Canadian television series or movies as a means of developing their country-based or international content catalogues, and marketing directly to consumers in a hosting territory. Critically acclaimed Canadian series that were acquired by streamers include *Kim's Convenience* and *Heartland*. Acquisition of distribution rights internationally thus brings additional revenues to domestic producers while showcasing Canadian stories and talent to a global audience.

4. BENEFITS OF FOREIGN INVESTMENT IN PRODUCTION

This section describes how investments in FLS and domestic productions represent key paths by which foreign capital contributes to the Canadian economy. Drawing parallels with the concept of foreign direct investment, the benefits of which have been widely studied in economic literature, it illustrates how, from both a quantitative and qualitative point of view, investments by global studios and streamers can boost the media content sector in Canada. Infrastructure, technology, training and other types of intangible benefits are also addressed.

4.1 The concept of foreign direct investment and its associated benefits

FDI is a recognized concept in economics which consists of the engagement of a multinational company in specific investments to establish a presence, via subsidiaries or other long-term investments, in another country as a means of increasing its international reach and revenues.²¹ FDI may involve the creation of a direct tiers division that hires and contracts locally, or transplantation of operations through a partner organization.

The media industry is distinct in its structure and societal importance from other industries, but FDI remains a useful lens of reference for analyzing the effects of FIIP in Canada. Global studios and streamers, as multinational corporations, usually develop the intellectual property, carrying out conception, scriptwriting and casting in the jurisdiction of their headquarters, before transferring ground production to Canadian partners. This offshoring of production activities triggers the benefits typically associated with FDI. In bringing management practices, operation processes, and technology used in their country of origin, global studios and streamers are able to create horizontal spillovers through demonstration and competition effects.

A notable distinction between traditional FDI and FIIP is that not all studios and streamers that produce content in Canada create a subsidiary governed by Canadian laws and establish a permanent location with dedicated employees in Canada. Often, the film, television and streaming business is intermittent, with significant investments made in a short period of time for one specific production, followed by a pause of activities until the next project. Some investments from foreign studios could more readily be classified as foreign portfolio investment, as is the case with acquisitions or other business models which focus on distribution rights rather than production. Nonetheless, as foreign productions have a decades-long recurring track record in Canada and that global studios and streamers have established long lasting partnerships with local workers and suppliers, FIIP investments involving the direction of production, or foreign location shooting are akin to FDI.

Furthermore, some MPA members have set up Canadian subsidiaries with permanent establishments in the country, which meet the standard definition of FDI.

²¹ Global Affairs Canada, "State of Trade 2021 – A Closer Look at Foreign Direct Investment (FDI)", September 6, 2023. [\[Link\]](#)

Table 2: Foreign studios with significant subsidiaries in Canada (non-exhaustive)

Studio	Subsidiary
Netflix	Netflix Canada
	Scanline VFX
Walt Disney Studios	Industrial Light & Magic Vancouver
	Disney Animation Vancouver
Sony Pictures	Sony Picture Imageworks
Paramount Pictures	Paramount+ Canada

4.1.1 Benefits of foreign direct investment generally

Most advanced economies are open and welcoming to FDI, as governments recognize their benefit for the economy and general welfare. Governments deploy a fair amount of resources to bring business activities from abroad, and most rely on dedicated economic development agencies with a mission to attract FDI.

There are several of those agencies in Canada, from Invest in Canada at the federal level to Invest Ontario, Investissement Québec and Trade and Invest British Columbia at the provincial level. They all dedicate, if not entirely, at least a large part of their mission and resources to the attraction of FDI. At the regional level, Montréal International, Québec International, Invest Ottawa and Invest Vancouver all share the same mission of bringing activities of multinational companies to their territory.

Around the world, economic development agencies such as World Business Chicago, Invest in France, Invest in Côte d'Azur, Germany Trade and Invest, Business Sweden and Invest in Finland are also highly involved in FDI attraction. According to the Organization for Economic Cooperation and Development (OECD), attraction of FDI is one of the main economic development activities of regional governments and development agencies.²²

Through targeted activities and policies such as marketing, promotion and investment incentives, governments and their economic development agencies try to influence the location decisions of foreign investors because they expect tangible benefits from FDI.²³ It is usually assumed that introducing further competition into domestic markets is generally beneficial for local workers who will see additional employment opportunities and income increases, while domestic businesses will be enticed to innovate to remain competitive and adopt the more advanced technologies deployed by foreign investors. Some will also benefit from new clients if they offer goods or services required by these investors.

FDI spillovers expected by governments can be subcategorized in two main clusters, depending on the direction through which the entry of a foreign firm impacts the domestic economy. **Horizontal spillovers** refer to the transfer of knowledge, best practices or technology to competitors and other firms that operate in the same realm as the foreign investing company. **Vertical spillovers** are defined as the boost to primary suppliers and other businesses up and down the value chain that provide inputs or services to the production process of the foreign firm or purchase their products. Both types of FDI spillovers will be further analyzed in the following paragraphs.

²² POTTER, J., OECD, "Embedding foreign direct investment", 2001. [\[Link\]](#)

²³ See for example the commercial mission of Quebec Premier François Legault to California in December 2019, when he offered financial benefits to Hollywood studios in exchange for increasing the number of productions that they film in the province. See: La Presse, "Legault fait une offre aux producteurs d'Hollywood", December 8, 2019. [\[Link\]](#)

4.1.2 Horizontal spillovers from foreign direct investment

Horizontal spillovers occur in the same economic sector as the business making the foreign investment. The economic literature shows that the arrival of a new foreign player in an industry tends to trigger emulation across businesses, which translates into tangible benefits at the sectoral level. FDI's horizontal spillovers occur through three channels.²⁴ First, demonstration and competition effects mean that domestic firms operating in the same industry are inclined to adopt technologies, learn management practices, and use operating processes from foreign firms. Second, as trained workers move from foreign businesses to domestic firms, the latter can benefit from the expertise built within the multinational and more sophisticated organization. Finally, workers from a domestic firm can start a new business connected to the foreign firm.

The common denominator of the three horizontal spillover channels is an increase in productivity at the sectoral level. Productivity refers to the value created for a determined amount of input. The adoption of new technologies enables local firms to either produce more efficiently, therefore reducing its inputs, or to increase the product quality, thus creating more value. The adoption of better management practices and lean operating processes, as well as the addition of experienced workers, are all associated with increased efficiency and productivity.

The economic literature suggests a strong presence of horizontal spillovers from FDI. The OECD supports the notion of horizontal effects through worker mobility and inter-industry collaboration,²⁵ and credible studies have measured a significant and positive impact of FDI on productivity. For example, in the United States, a study estimated the international technology spillovers to American-owned firms between 1987 and 1996 and concluded that FDI accounted for 14% of the productivity growth recorded during that period.²⁶ Authors outlined that the estimated FDI spillovers are larger in the relatively-high-technology industries than in the relatively-low-technology industries, and that their results are likely to generalize to other countries and periods. In a separate study conducted in the United Kingdom, it was estimated that a 10 percentage-point increase in foreign presence in an industry raises the total factor productivity of that industry by 0.5%.²⁷

4.1.3 Vertical spillovers from foreign direct investment

Vertical spillovers occur in other economic sectors than that of the investing business. There is conclusive evidence that foreign presence in a given economic sector spills over to others through buyer-seller linkages across industries.²⁸ These effects appear through two main channels.

First, as foreign firms enter a new market, they contract with local suppliers for a variety of goods and services, which increases demand and revenues. The entry of a large multinational firm may also boost demand enough to allow for economies of scale in goods manufacturing and tertiary businesses, boosting overall productivity among its suppliers. Second, multinational businesses generally set high procurement standards for their suppliers, which in turn may require local suppliers to generally improve the efficiency of their processes as well as the quality of the goods that they manufacture and services that they provide.

Evidence of positive spillover effects from the economic literature has tended to be more favourable in vertically related industries.²⁹ That is, industries in which some firms provide inputs for other firms, rather than firms that

²⁴ WORLD BANK GROUP, "Encouraging FDI spillovers", *New growth agenda*.

²⁵ OECD, "The social impact of foreign direct investment", *OECD Policy Brief*, 2003.

²⁶ KELLER, W. and YEAPLE, S. "Multinational enterprises, international trade, and productivity growth: firm level evidence from the United States", Working Paper 9504, National bureau of economic research, United States, 2003.

²⁷ HASKEL, J., PEREIRA, S. and SLAUGHTER, M. "Does inward foreign direct investment boost the productivity of domestic firms?", Working paper 8724, National bureau of economic research, United States, 2002.

²⁸ WORLD BANK GROUP, "Encouraging FDI spillovers", *New growth agenda*.

²⁹ ALFARO, L., and CHAUVIN, J. "Foreign direct investment, finance, and economic development", *Encyclopedia of International Economics and Global Trade*, September 2017.

compete directly with one another. As an example, a study provided evidence that the establishment of multinationals in Ireland has triggered positive effects on the development of local suppliers through the creation of linkages.³⁰ Entry of domestic firms in a given industry was positively influenced by the presence of multinationals in interconnected sectors.

4.2 Horizontal effects of foreign location and services production

There is reason to believe that given the structural setup of the Canadian film, television and streaming industry, horizontal effects from FLS productions are amplified compared to other industries, like manufacturing. The contract-based structure of work in that sector implies that technicians and other crew members are routinely engaged on short-term projects with a fixed end date and are involved in multiple projects a year. Many freely transition between foreign and domestic productions. Local talent hired to work on FLS productions, including actors, directors, special effects specialists and audiovisual technicians, are exposed to foreign experts using advanced techniques, cutting-edge technologies and streamlined operations. After ending work on a FLS project, these individuals may then deploy their newly acquired expertise on local productions. This is an important vector for spreading knowledge that is amplified by the structure of the industry.

To understand the magnitude of the potential horizontal spillover effects in the industry, one has to consider that 97% of the people employed in FLS productions by MPA members maintain their residence in Canada.³¹ The back-and-forth movement of these individuals between domestic and foreign productions represents a significant non-training avenue by which the best practices of global studios and streamers are transferred to the domestic industry.³²

Table 3: Workforce characteristics in film, television and streaming productions of MPA members in Canada

2021 and 2022; figures are an average of total MPA productions

Workforce characteristics	FLS films	FLS television
Workers' location of residence	97% Canada 3% Abroad	97% Canada 3% Abroad
Canadian labour expenditure	87% Below-the-line 13% Above-the-line	89% Below-the-line 11% Above-the-line
Gross wages in Canada	\$26.3M	\$42.9M (per season)
Average number of Canadian jobs supported	1,010	2,024

Source: Employment Canada 2021-2022 Data Sheet provided by the MPA. Data is estimated from a sample of 42 MPA productions during the 2021-2022 calendar years. KPMG has not independently reviewed the data and cannot certify that this sample is representative of all MPA productions over the time period.

³⁰ GÖRG, H. and STROBL, E. "Multinational companies and indigenous development: an empirical analysis", Research Paper, No. 2000,22, Centre for Research on Globalisation and Labour Markets, School of Economics, University of Nottingham, Nottingham, 2000.

³¹ Employment Canada 2021-2022 Data Sheet provided by the MPA

³² In a follow-up to an interview with KPMG on September 28, 2023, John Lewis, indicated that IATSE members enjoy free movement between domestic and foreign productions. In addition, during an interview with KPMG on October 5,^h 2023, Christian Lemay, President of AQTIS 514 IATSE, the union that represents below-the-line workers in Quebec, mentioned that about 10% of the 6,000 union members work on both foreign and domestic productions.

Interviews conducted with industry and union representatives for this study have tended to confirm the spillover effects from FLS productions on the Canadian audiovisual ecosystem. They testified to the significant evolution in the sophistication of the entire Canadian film and television industry in the last two decades, which they linked to the assimilation and application of valuable external knowledge and technology brought by global studios and

“In the last 22 years, I would say generally the capacity for production has increased exponentially in Canada: that is a reflection of deeply trained crews in multiple locations. [...] We’ve seen capacity growth, and not just in the crews, but in infrastructure: you see it with sound stages, you see it with equipment rentals, all of the ancillary industries that are necessary to support the industry are there. [...] We see big US shows coming up now, there’s fewer and fewer US crews coming up with them. [...] There isn’t a drop off in terms of capacity, in terms of quality, the effort, and the workers.”

- John Lewis, IATSE

streamers as a result of the expansion in FLS production, leading to a more independent domestic economy, with less and less need to bring in foreign workers.

John Weber, President and Chief Executive Officer of the Toronto-based drama series production company Take 5 Productions, expressed the view that local suppliers are now on par with the highest international standards. He added that massive production infrastructure investments due to increased demand caused by the growing popularity of streaming have led to the development of a “well-rounded” Canadian industry, with “world-class crews”. This is reflected by the fact that many international productions were almost exclusively produced and shot in Canada, such as *The Handmaid’s Tale* and *Star-Trek: Discovery*.

“Over the past few years, we have seen a significant investment in the expansion of studio facilities. In addition to studio infrastructure, we have suppliers that can support the industry and we have exceptional and highly experienced cast and crews who have worked on some of the most internationally successful projects.”

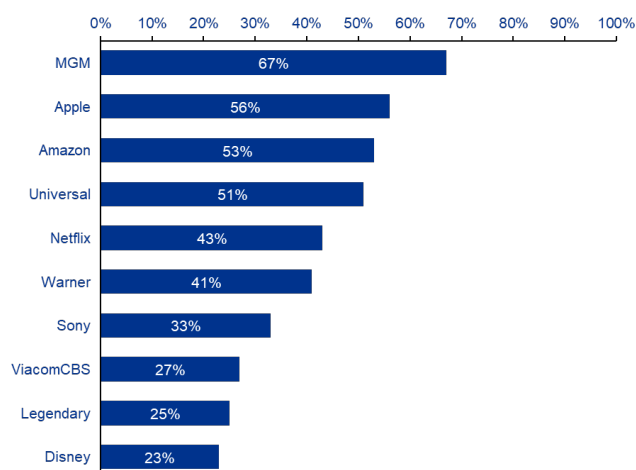
“There is ongoing expansion of the industry’s workforce and continued training. There are days where we have 300-400 people working on our set design and construction teams. Many of these crew members have transitioned from other trades to learn the specifics of the film industry.”

- John Weber, Take 5 Productions

Christian Lemay, of AQTIS, echoed this sentiment, noting that the Quebec film, television, and streaming industry has followed a similar trajectory. Lemay believes that domestic productions have reached the same level of productivity and quality as foreign productions, albeit with relatively smaller budgets.

The horizontal spillover effects of FIIP are not limited to the below-the-line category of workers. Above-the-line Canadian talent is frequently employed on FLS productions, with Canadian directors being staffed on a significant portion of episodic television production.

Figure 2: Percentage of television and streaming episodes filmed by US studios in Canada directed by Canadians
2021



Source: Reproduced from: Directors Guild of Canada, "2021 NATIONAL Director Statistics Report", November 2022. [\[Link\]](#)

The demonstration and competition effects are further illustrated by the heightened level of interest of Canadian creators in devising projects that are susceptible to reach an international audience and to pitch them to global studios and streamers for funding.

“Every writer out there wants to do a global serialised drama. They want to do the big, epic stuff. They want to tell big, rich stories. [...] The opportunity that Canadian writers now have to showcase their content work in Canada but also be attractive to other audiences around the world is extremely exciting. I always use the metaphor when I work with writers and anything I develop, I want that project to sort of kill two birds with one stone. I want it to work here in Canada for Canadians. [...] But I also want it to be of an aesthetic quality and creative ingenuity that it is of interest to others around the world, and that is where you have seen Canadian writers rise to the occasion.”

- Tom Hastings, Paramount+

Irrespective of where the productions are filmed, whether in Canada or abroad, global studios and streamers promote local talent involved in global productions. For instance, a Canadian creative who directed a major feature film, or acted in a popular television series, may be featured prominently in its promotion. One can think of Denis Villeneuve with *Arrival* and *Dune*, or Maitreyi Ramakrishnan with *Never Have I Ever*. Beyond benefiting the concerned individuals' career, such promotional activities may raise Canada's brand with international audiences, while helping to foster national awareness and pride at home.

4.3 Vertical effects of foreign location and services production

Vertical spillovers are another key outcome of global investments in film and television production. They stem from FLS expenditures on goods and services purchased from local businesses outside the audiovisual sector. Film and television productions require a plethora of inputs such as equipment, construction material for sets, props, fabrics for costumes, food and beverages for staff, and more. In addition to goods, productions generally involve expenditures on services (transport, design, health, and safety, etc.), including high value services, such as legal, accounting, tax, and information technology. Although this is not unique to FLS, there exists a high

potential that elevated technical standards for foreign productions bleed through via direct or non-direct engagements.

Vertical spillovers are the natural consequence of any FDI investment, and data from global studios and streamers shows that FLS productions have a significant impact on the local economy. A sample of 12 MPA television series filmed in Canada had labour expenditures ranging from 10.1 to 135.2 million dollars per production. Similarly, MPA members made direct purchases at 49,922 businesses throughout Canada in 2021 alone, supporting local businesses and their associated employment.

Table 4: Expenditures of a selection of MPA television series (non-exhaustive)
2016-2021; in millions of dollars (CAD), and businesses supported

Production	Host province	Labour expenditures	Goods and services expenditures	Direct production expenditures	Businesses supported
		\$	\$	\$	#
<i>Eyewitness</i>	Ontario	\$10.1	\$18.6	\$28.7	491
<i>A Million Little Things</i>	British Columbia	\$14.7	\$13.3	\$28.0	779
<i>The Umbrella Academy</i>	Ontario	\$45.0	\$32.0	\$77.0	980
<i>The Strain</i>	Ontario	\$26.9	\$50.8	\$77.7	632
<i>Star Trek: Discovery (Two Seasons)</i>	Ontario	\$135.2	\$122.0	\$257.2	158
<i>Superman & Lois</i>	British Columbia	\$55.0	\$40.0	\$95.0	1280
<i>Supernatural, season 10</i>	British Columbia	\$29.6	\$19.0	\$48.6	1082
<i>Suits, season 5</i>	Ontario	\$15.9	\$9.9	\$25.8	576
<i>Once Upon a Time</i>	British Columbia	\$24.0	\$61.7	\$87.7	884
<i>Arrow</i>	British Columbia	\$44.3	\$27.9	\$72.2	825
<i>Riverdale, season 1</i>	British Columbia	\$16.7	\$5.7	\$22.4	773

Source: various MNP and Oxford economic analyses for individual MPA television series. See: MPA, "What We Do". [\[Link\]](#).

Table 5: Direct purchases from MPA members to Canadian vendors, per province/territory
2022; millions of dollars (CAD)

Province/territory	Goods and services expenditures	Number of businesses
	\$	#
Alberta	\$121.4	1,797
British Columbia	\$1679.4	21,265
Manitoba	\$20.1	888
Maritime provinces	\$23.7	637
Newfoundland & Labrador	\$0.6	6
Ontario	\$1992.0	12,181
Quebec	\$879.8	2,073
Saskatchewan	\$0.3	18
Northwest Territories, Nunavut and Yukon	N/D	N/D
Total	\$4,813.49	38,965

Source: MPA data calculated based on submissions received from eight major studios covering calendar year 2022.
Note: Number of businesses supported in the Northwest Territories not disclosed.

4.4 Foreign investment in production as a means of diversification

Diversification is a strategy that consists of increasing the sources of revenues or capital gains to boost overall returns, maximize performance, and mitigate risks. Diversification may be achieved by broadening the range of market segments a business is invested in, thereby reaching a greater range of consumers. Geographical diversification may achieve similar objectives, in which a business will penetrate numerous regional markets to draw revenues from economies with different structures. The shocks experienced in one market are then absorbed by the gains made in others. Transposed to a country, a diversified and thereby more resilient economy is achieved by ensuring a diversity of businesses of variable sizes in multiple sectors, with a mix of domestic and foreign investors.

In that sense, FIIP acts as a vector of diversification in the sources of funding in Canadian film, television and streaming production, whether these investments originate from the United States or elsewhere.³³ Indeed, except in British Columbia, where FLS productions are clearly dominant, Canada's regional film, television and streaming industries are sustained in comparable proportions by domestic and foreign investments.

Table 6: FLS production volume versus domestic production volume, per province/region
2021-2022; millions of dollars (CAD) and percentage

Province	FLS production volumes	Domestic production volumes	FLS share of production volumes
	\$	\$	%
British Columbia	\$2,963	\$722	80%
Ontario	\$1,672	\$2,200	43%
Quebec	\$1,421	\$1,598	47%
Prairies and territories	\$549	\$320	63%
Atlantic Canada	\$99	\$150	40%
Total/Average	\$6,705	\$4,990	57%

Source: Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3 2023 [\[Link\]](#). Data compiled and estimated based on data received from CAVCO, the CRTC, CBC/Radio-Canada, and the Association of Provincial Television and Film Agencies.

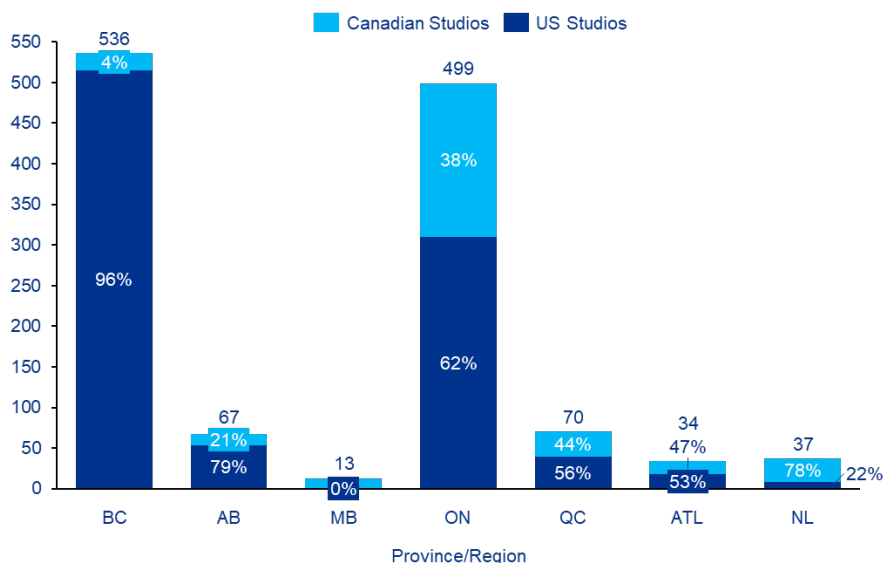
Note: Domestic production volumes include broadcaster in-house production in this table. Some discrepancies between data provided by provincial funding agencies and other data presented in the report. \$1M difference in figures from provincial and national levels for FLS. \$2M difference between provincial and national levels for domestic production. Weighted average used for average share FLS.

Note: 2021-2022 refers to the period from April 1, 2021, to March 31, 2022.

A comparison of the source of funding for English-language television shows across Canada further supports the notion that FLS and domestic productions play a distinct yet complementary role in supporting the sector in each province and region. As appears from figure 3 below, British Columbia leads the country in that category thanks in most part to FLS production, while Ontario maintains similar levels through a more even mix of FLS and domestic productions.

³³ Although a majority of FLS productions in Canada originate in the United States, a significant portion (24% in 2021-2022) had copyright lying elsewhere. See: Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3, 2023 [\[Link\]](#).

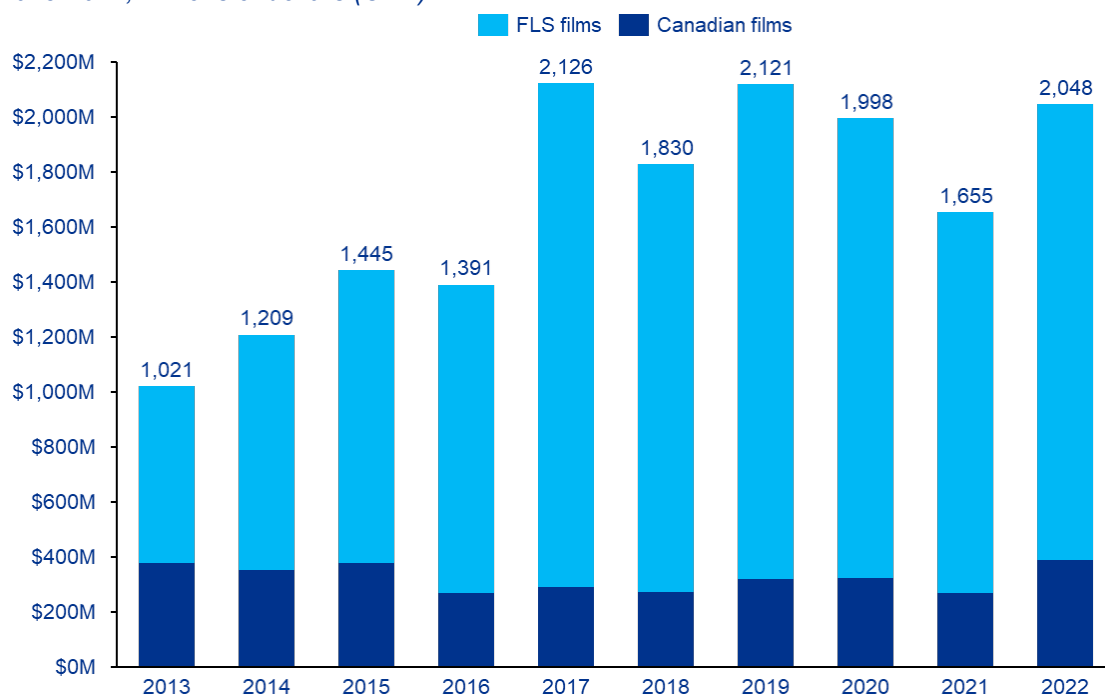
Figure 3: Volume of English-language television episodes funded by Canadian versus US studios, by province/region
2021; episodes produced



Source: Reproduced from: Directors Guild of Canada, "2021 NATIONAL Director Statistics Report", November 2022. [\[Link\]](#)

The complementary roles of foreign and domestic investments in sustaining the industry also transpire from the types of productions that are funded. For example, foreign investments in feature films over the last 10 years have followed an upward trajectory, while Canadian investments have remained generally stable. In other words, this increase in foreign investments has allowed the film sector to keep expanding despite the lack of additional domestic investments.

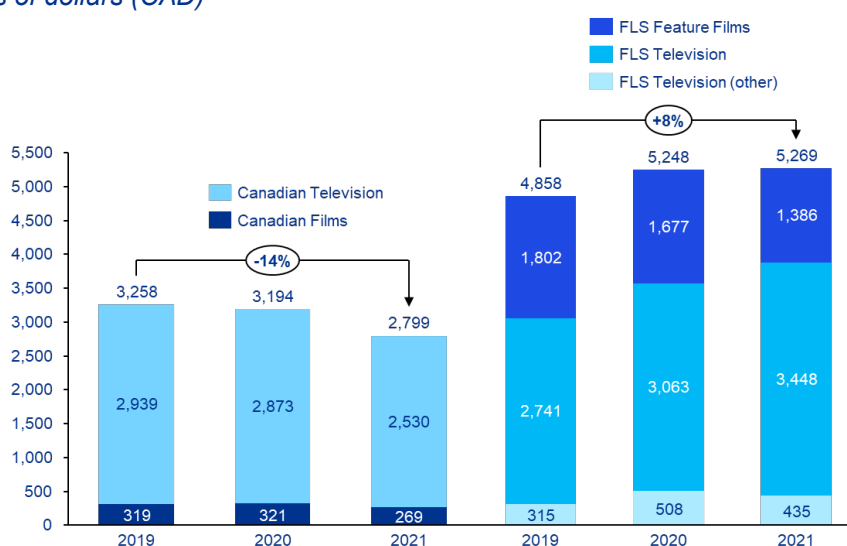
Figure 4: Evolution in volume of production of the film production industry, by type
2013-2022; millions of dollars (CAD)



Source: Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3 2023 [\[Link\]](#). Estimates based on data compiled by CAVCO, the CRTC, CBC/Radio-Canada, and the Association of Provincial Television and Film Agencies.
Note: Each year refers to the period from April 1st of the previous year to March 31st of the year indicated.

The benefits of geographically diversified funding sources, and their contribution to the stability of the industry, were made apparent during the COVID-19 pandemic, which placed enormous strain on the financial and mental wellbeing of workers in the industry as all productions came to a brutal halt in March 2020.³⁴ Yet given that global studios and streamers had the means to make the additional investments required to meet new public health rules, FLS productions were the first to resume once sanitary restrictions started easing up.³⁵ This enabled the Canadian audiovisual sector to quickly regain a high level of activity, despite a major contraction in Canadian investments. FLS investments, which actually increased by 8% compared to pre-pandemic levels,³⁶ were a key factor in securing workers' livelihood and preventing their exit from the industry, to the benefit of both foreign and local producers. Had FLS production volumes contracted as did domestic productions (-14%), the industry would have experienced a loss of \$680 million in production volume over the period.³⁷

Figure 5: Change in production volumes during the height of the COVID-19 pandemic: Canadian content versus FLS
2018-2022; millions of dollars (CAD)



Source: Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3 2023 [\[Link\]](#). Data compiled and estimated based on data received from CAVCO, the CRTC, CBC/Radio-Canada, and the Association of Provincial Television and Film Agencies.
Note: FLS TV (other) includes TV movies, specials, pilots, or other formats. Total financing of CRTC television productions based on estimates of historical CRTC certification volumes. KPMG has not certified the accuracy of this estimate.
Note: Each year refers to the period from April 1st of the previous year to March 31st of the year indicated.

The film, television and streaming industry was hit by another major crisis in 2023, with the concurrent strikes of Hollywood scriptwriters and actors, pausing filming on most American productions in the United States and Canada for several months.³⁸ As a direct consequence of the strikes, Canadian below-the-line workers experienced major wage losses, as is illustrated when comparing 2022 and 2023 IATSE members monthly gross wages in Toronto and Vancouver, both major FLS production hubs.³⁹ In addition, the months-long work stoppage

³⁴ As mentioned by John Lewis, of IATSE, in an interview with KPMG on September 28, 2023.

³⁵ The Globe and Mail, "Ottawa unveils \$50-million compensation fund for film, TV productions placed at risk due to COVID-19". September 25, 2020. [\[Link\]](#)

³⁶ Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3, 2023 [\[Link\]](#).

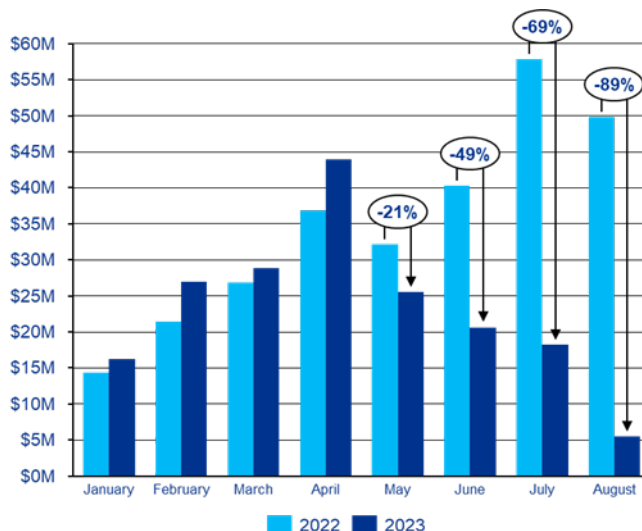
³⁷ Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3, 2023 [\[Link\]](#).

³⁸ NPR, "Actors and studios make a deal to end Hollywood strikes", November 8, 2023. [\[Link\]](#)

³⁹ In Quebec, Christian Lemay, of AQTIS 514 IATSE, mentioned during his October 5, 2023 interview with KPMG that union members had collectively lost between \$70M and \$80M in wages.

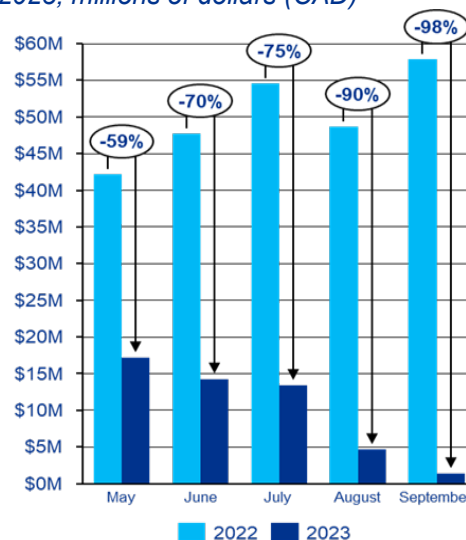
reportedly led to the permanent exit from the industry of numerous individuals who were unable to pivot to Canadian productions or other entertainment industry positions.⁴⁰

Figure 6: Decrease in gross wages for IATSE members, all production types, Toronto Local 873 2022-2023; millions of dollars (CAD)



Source: IATSE Local 873, internal data on gross wages.

Figure 7: Decrease in gross wages for IATSE members, all production types, Vancouver Local 891 2022-2023; millions of dollars (CAD)



Source: IATSE Local 891, internal data on gross wages, data not provided for January - April of 2023.

The strikes provide a counterfactual example of the potential impact of decreased FLS production, and how the robustness of the Canadian industry is dependent on a combination of both domestic and foreign investments in production.

“There’s this implicit notion that somehow when we have a lot of foreign service work, it is somehow taking away from the domestic industry... like there’s a limited amount of funding in the industry, and foreign service work somehow takes away from production possibilities for domestic producers... Other than tax credits, all the other funding sources don’t apply to foreign service work. There’s just a capacity issue on the domestic side.”

“Here we have a perfect example of a vacuum of production numbers, and it’s not being filled by the domestic industry because it just doesn’t have the capacity. You can’t just turn a switch on to do domestic work, but I do think these numbers tell that story, it’s not one taking from the other, these operate in silos, I think a strong industry needs both.”

- John Lewis, IATSE

⁴⁰ As mentioned by John Lewis, of IATSE, in an interview with KPMG on September 28, 2023.

4.5 Magnitude of FLS investments in Canada

In 2021-2022, FLS investments totaled \$6.705 billion, making up more than half of total film, television and streaming production investments in Canada. It is also the fastest growing one, recording an average annual growth of 16.2% between 2012 and 2022. As a result, while FLS investments accounted for 30% of total audiovisual production volume in Canada in 2011, they had reached 57% by 2022. On top of FLS, in 2022, global studios and streamers invested \$874 million in Canadian productions, meaning that total FIIP accounted for almost 65% of audiovisual production volume.⁴¹ In other words, global studios and streamers have become the driving factor behind the expansion of the entire sector. Yet it bears noting that the growth observed in FLS did not happen at the expense of Canadian content production, which also grew in absolute terms, but at smaller rates than FLS production.

“With the evolution of television streaming platforms, we have seen a significant increase in the volume of work here over the past decade. This growth is the result of larger projects/budgets, more streaming platforms choosing to produce in Canada, and an expansion in terms of US investment. These factors have contributed to an overall increase in the volume of production.”

- John Weber, Take 5 Productions”

Table 7: Volume of film and television production in Canada, by category
2022; millions of dollars (CAD), percentage and percentage point (p.p.)

Production type	Net volume	Share	10-year variation in share	Cumulative average growth rate (10 years)	10-year variation in volume
	\$	%	%	%	%
Canadian television*	\$3,514	30.1%	-10 p.p.	+4.8%	+52%
Canadian films*	\$387	3.3%	-3 p.p.	+0.2	+2%
FLS productions	\$6,705	57.3%	+28 p.p.	+16.2%	+285%
Broadcasters in-house	\$1,086	9.3%	-15 p.p.	-2.8%	-23%
Total	\$11,692	100%	0 p.p.	+8%	+100%

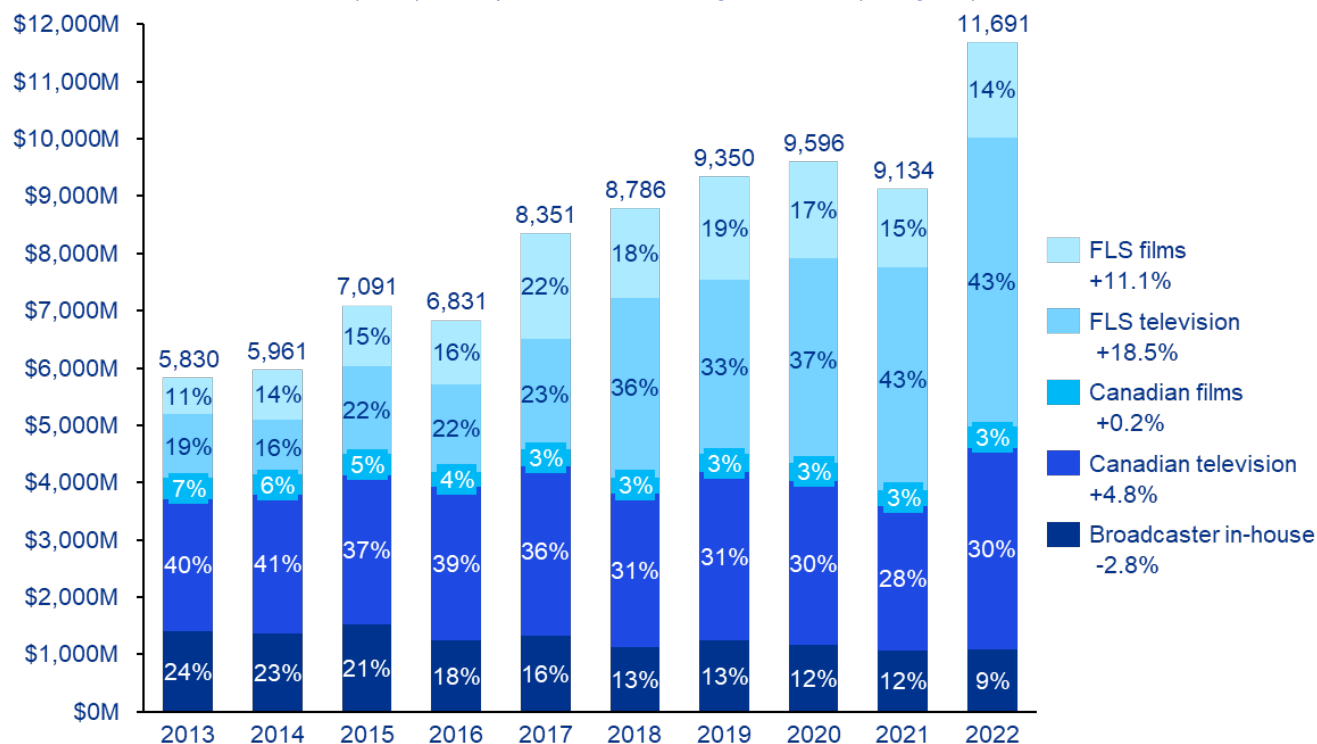
Source: Canadian Media Producers Association, “Profile 2022: Economic report on the screen-based media production industry in Canada”, May 3 2023 [\[Link\]](#). Data compiled and estimated based on data received from CAVCO, the CRTC, CBC/Radio-Canada, and the Association of Provincial Television and Film Agencies.

* The figures for Canadian television and films include the \$874M invested by global studios and streamers in domestic productions.

Note: 2022 refers to the period from April 1, 2021, to March 31, 2022.

⁴¹ Canadian Media Producers Association, “Profile 2022: Economic report on the screen-based media production industry in Canada”, May, 3 2023 [\[Link\]](#).

Figure 8: Evolution of net production volumes by source and type
 2013-2023; millions of dollars (CAD), Compound annualised growth rate (in legend)



Source: Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3 2023 [\[Link\]](#). Estimates based on data compiled by CAVCO, the CRTC, CBC/Radio-Canada, and the Association of Provincial Television and Film Agencies.
 Note: Each year refers to the period from April 1st of the previous year to March 31st of the year indicated.

These relatively large investments reflect different strategies pursued by global studios and streamers. Some streaming platform representatives interviewed for the purposes of this study mentioned a desire to develop a specifically Canadian offering to build their brand identity for the domestic market, and then eventually bringing successful films and television shows to other markets where they have potential to reach a local audience. Others reported favouring a global strategy where domestic content is cultivated and produced with the aim of eventually being marketed to a global audience. The industry representatives interviewed reported that culturally specific productions often have an unpredictable, but great potential for international popularity. This explains the prevalence of funding strategies oriented towards domestic productions as well as targeted marketing.

"Netflix was the first place to realise the meaning in doing local storytelling, and doing it really well, and how that could lead to global hits. [...] When we look at Canada, that's our first intent. To make stories from Canadian creators, by local producers, primarily set in here, leaning into the endless well of Canadian stories for Canadian audiences. We believe that if we do this really well, then these stories have the chance to really explode."

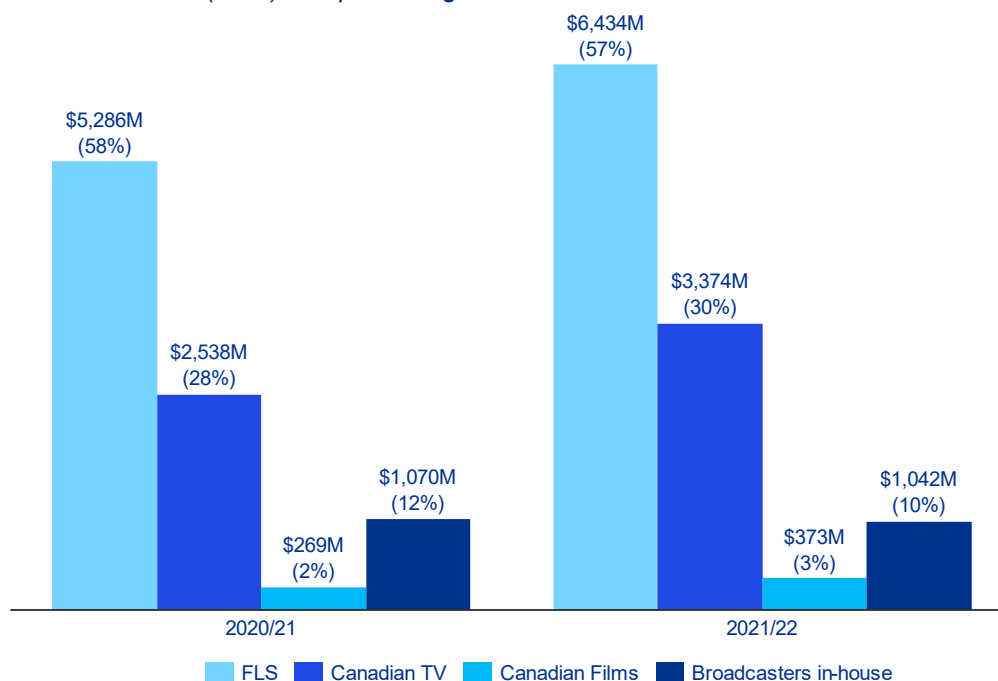
- Tara Woodbury, Netflix Canada

4.6 Employment opportunities

Although a detailed calculation of the direct and indirect jobs sustained by global studios and streamers in Canada is beyond the scope of this study, the existing data is supportive of the notion that FLS productions provide significant employment opportunities to Canadians. For example, using CAVCO data, the Canadian Media Producers Association estimated that in 2020-2021, FLS productions collectively generated \$5.286B in labour

income, with these numbers raising to \$6.434B in 2021-2022⁴². FLS productions were thus responsible for approximately 57-58% of income paid in the film and television sector in Canada.

Figure 9: Estimated labour income by production type
2020-2022; millions of dollars (CAD) and percentage of total



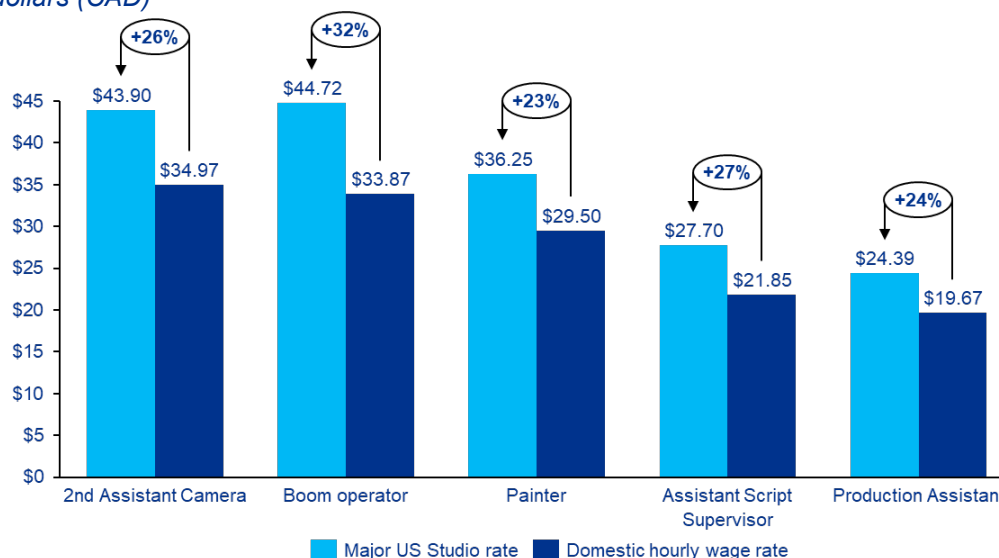
Source: Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May 3, 2023 [\[Link\]](#). Estimates based on data compiled by CAVCO, the CRTC, CBC/Radio-Canada, and the Association of Provincial Television and Film Agencies, industry unions, Statistics Canada and Conference Board of Canada. Note: According to the methodological approach utilised in Profile 2022, estimated labour income is computed by adding:

1. The product of the estimated number of direct full-time equivalent (FTE) jobs and the estimated average production-sector FTE cost. 2. The product of the estimated number of spin-off FTE jobs and the Canadian economic average for FTEs. Further information on estimation techniques can be found in the methodological annex of Profile 2022. KPMG does not certify the accuracy of this approach.

The presence of a robust FLS production sector in Canada also has an impact on the wages that are paid to workers in the entire sector. Established economic theory suggests that higher wages in a given industry increase the bargaining power of workers in situation of normal demand. As John Lewis, of IATSE, and Christian Lemay, of AQTIS 514 IATSE, explained during their interviews with KPMG, the remuneration paid to crew members by major US studios is usually higher than that of domestic production. This is illustrated by data provided by AQTIS 514 IATSE for Montreal wage rates showing a significant difference in scheduled rates for feature films.

⁴² Canadian Media Producers Association, "Profile 2022: Economic report on the screen-based media production industry in Canada", May, 3 2023 [\[Link\]](#).

Figure 10: AQTIS 514 IATSE rate differentials for domestic and major US studio feature films
2023 rates; dollars (CAD)



Source: AQTIS 514 IATSE internal wage rates based on production type.

Note: Domestic productions include coproductions. Rates for domestic productions determined with the AQPM, whereas US rates are determined via the union's promulgated agreement with the concerned studios. Rates are an average of overscale rates.

This in turn drives wages up for the entire industry, as domestic and global productions compete for the same workers. Although this constitutes a net positive for workers and their families, and as acknowledged by Mr. Lewis, the situation puts financial pressure on the domestic industry, which does not have access to the same financial levers as the global studios and streamers.

The film and television industry is not immune to recent labour shortages, and it has struggled to maintain a large enough labour pool to keep up with production demand, which in turn has pushed wages up. That said, according to Christian Lemay, such salary increases are helping to attract young people: IATSE 514 AQTIS welcomes up to a thousand new members every year (out of a total of approximately 6,000), which more than makes up for those who decide to leave the sector or retire. Moreover, there have been a number of recent public investments in training programs in the province to meet that demand.⁴³

4.7 Case studies of other potential structuring benefits of the presence of global studios and streamers

The following subsections present an overview of other potential structuring benefits of the presence of global studios and streamers in Canada through a few case studies. They are illustrative of investments made by MPA members beyond film and television production, although they are not meant to be exhaustive and their impact has not been measured for the purposes of this study.

4.7.1 Training and talent development

Global studios and streamers have become important sources of training for Canadian below-the-line workers. According to John Lewis, of IATSE, unions and studios, both foreign and domestic, play a bigger role than provincial governments in funding educational programs for the audiovisual industry.⁴⁴ Even in Quebec, where

⁴³ La Presse, "La pénurie de main-d'œuvre complique les tournages", November 8, 2023. [\[Link\]](#) See also : CVTM, "Québec accorde 1,3 M\$ à 2 organismes pour pallier la rareté de main d'œuvre du secteur de l'audiovisuel", May 2, 2023. [Link](#).

⁴⁴ The Calgary facility that John Lewis refers to is a \$6.5 million facility entirely financed by IATSE Local 212 that is currently under construction. See: Livewire Calgary, "Film training, education centre breaks ground in southeast Calgary", April 18, 2023. [\[Link\]](#)

provincial legislation requires all employers, including producers engaged by global studios and streamers, to invest the equivalent of 1% of the gross wages (that exceed \$2M) that they pay in professional training programs,⁴⁵ studios and unions form direct financial partnerships with vocational schools.⁴⁶

“As an industry, a lot of training is on the job, but there is more and more classroom and formal training required. [...] even in Québec (with a 1% training tax), a large proportion of the training is being financed by our local unions and by our employers.”

“Our local union in Calgary was holding a ground-breaking ceremony for a big modern sophisticated training centre recently. It was 100% financed by ourselves, with contributions through our collective agreement with our employers (both global studios and local production companies).”

- John Lewis, IATSE

Some MPA members have also put in place their own talent development initiatives, in many cases aiming to address the lack of diversity in the industry. For instance, Warner Bros. Discovery's “Access to Action” program provides access to below-the-line jobs to individuals from underrepresented communities, which has led to over 40 placements since its launch in Canada in 2021.⁴⁷ The studio has also partnered with the Canadian Digital Supercluster, three universities, the Vancouver Film School and a few other domestic organizations to create the first Indigenous-led virtual production filmmaking program, with 30 spots available for emerging media professionals from urban, remote, and rural Indigenous communities in British Columbia.⁴⁸

Netflix is investing a portion of its global \$100 million (USD) Fund for Creative Equity in Canada.

Announced in August 2023 in partnership with IATSE Local 873, the fund offered paid internships to three Indigenous below-the-line creators.⁴⁹

For its part, Paramount recently partnered up with the National Screen Institute and Toronto Metropolitan University to launch ELEVATE, a business development incubator designed to provide targeted financial, marketing, operational and entrepreneurial resources, mentorship, and networking opportunities to enhance the growth and success of BIPOC-owned production companies in Canada. The program runs for 13 months, on a part-time basis, and includes an academic component as well as investment of \$20,000 to \$50,000 from Paramount towards the expansion of participating producers' companies.⁵⁰

⁴⁵ *An Act to promote workforce skills development and recognition, Consolidated Statutes of Quebec*, RSQ chapter D-8.3. [\[Link\]](#) This was also mentioned by Christian Lemay, of IATSE 514 AQTIS, during his interview of October 5, 2023.

⁴⁶ For example, IATSE 514 AQTIS, Union des artistes, the Directors' Guild of Canada – Quebec and Netflix are major sponsors of the Institut national de l'image et du son, Quebec's leading vocational school in the audiovisual sector. See: L'inis, “Partenaires”. [\[Link\]](#)

⁴⁷ Warner Bros. Discovery, “Access to Action Canada”, [\[Link\]](#)

⁴⁸ Digital Technology Supercluster, “Virtual Production Innovation Studio”. [\[Link\]](#)

⁴⁹ Netflix, “Training the next generation of indigenous creatives on the set of ‘You Are So Not Invited To My Bat Mitzvah’”, August 25, 2023. [\[Link\]](#)

⁵⁰ National Screen Institute, “ELEVATE”. [\[Link\]](#)

The stated goal of these programs is to help talent acquire the skills that will position them for success. For example, as explained by Melanie Nepinak Hadley during her interview, Warner Bros. Discovery's Writers' Program provides writers from underrepresented backgrounds with leadership skills training. The same program also supports those who have a desire to write but have no experience outside of acting to bridge the gap.

"You immediately go into a writer's room, and you are now the CEO of your show. But you have been alone writing in your room, you may have no managerial skills. Some of our other investments focus on: what are things outside of talent that you need, what are some of those conflict resolution skills [...] We try to take a look at the full picture of what it means to be a show runner, or to be a department head, and how we can make it so that they are building that skillset in addition to their craft."

- Melanie Nepinak Hadley, Warner Bros. Discovery Access Canada

4.7.2 Investment in VFX and virtual production hubs and training

As highlighted in the discussion of horizontal spillovers from FDI, one of the largest benefits that has come to Canada from foreign investment in the audiovisual sector is technological sophistication. The increased complexity of international projects, especially those coming from Hollywood, has led to major investments in VFX and other techniques for the completion of production. In fact, demand from FLS has led to a major expansion of that segment of the industry in Canada. In turn, dedicated curriculum at various art and film schools around Canada have sprung up, providing future workers with the relevant technical training.⁵¹

For example, recent advancements in what is referred to as "virtual production" have emerged and made their way to Canada. Virtual production refers to the use of large facilities equipped with sound stages surrounded by an LED wall to simulate non-local or fictional locations. By reducing the need to shoot on location, they reduce travel (and related GHG emissions) and costs, but the upfront capital investment is large. During his interview, John Weber indicated that investments from global studios have in certain cases made the difference in the realisation of such investments.

"There are many demands on the technical and visual effects side of the filmmaking process. As such, the industry continues to attract and retain top-tier artists to facilitate continued growth in visual effects."

"Investments by our Studio partners have resulted in significant investments in infrastructure. In the past few years, we have worked alongside CBS in securing the funding to invest in the buildout of a 260,000 square foot production studio, alongside a substantial investment in Canada's largest virtual production wall. This virtual production technology has been at the forefront of elevating the creative possibilities for the Star Trek franchise. There is no doubt that ongoing investments by foreign studios have contributed to the continued growth of the film and television industry in Canada."

- John Weber, Take 5 Productions

After a period of initial development, there has been an acceleration in the construction of virtual production facilities across Canada by both foreign and domestic industry leaders, and they can now be found in Vancouver,

⁵¹ As mentioned by John Weber, of Take 5 Productions, in an interview with KPMG on September 27, 2023.

Toronto and Montreal. For example, Québecor's subsidiary MELS built its own virtual production facility in Montreal to offer a competitive solution for international projects, while also serving the domestic industry, and has notably already produced or been engaged on several high impact projects.⁵² Similarly, Bell Canada and Investissement Québec have invested in Montreal's Grandé Studios, which also has a virtual production sound stage and has similarly enjoyed success in high profile projects.⁵³

Table 8: List of Canadian virtual production/special effects facilities and examples of recent productions

Studio	Location	Examples (blue = Canadian production)
MELS	Montreal, Quebec	<i>Transformers 7</i> <i>Arlette !</i> <i>Les Trois Accords : Live dans le plaisir</i> <i>Via Mare</i> <i>Five Roses</i>
Pixomondo (Sony)	Toronto, Ontario Vancouver, British Columbia Montreal, Quebec	<i>Star Trek: Discovery</i> <i>House of the Dragon</i>
Grandé Studios	Montreal, Quebec	<i>Moonfall</i> <i>X-Men: Dark Phoenix</i> <i>The Song of Names</i> <i>Génial !</i>
Industrial Light & Magic StageCraft	Vancouver, British Columbia	<i>Percy Jackson and the Olympians</i>
DNEG	Montreal, Quebec Toronto, Ontario, Vancouver, British Columbia	<i>Dune: Part One, Dune: Part Two</i> <i>Blade Runner 2049</i> <i>Scott Pilgrim vs. The World</i> <i>The Shepherd</i> <i>No Way Up</i>

Sources: Websites of MELS, Grandé Productions, DNEG, Pixomondo, and Industrial Light & Magic

Heightened interest in virtual production presents an opportunity for the Canadian economy, notably through spillover effects. First, they sustain well-paid jobs in the information technology sector. Second, whereas many such facilities are being developed specifically with the goal of attracting FLS productions, they are also used to develop video games, another key driver of economic growth in certain Canadian cities, notably Montreal and Vancouver. Third, having originally been built to serve global studios and streamers, these state-of-the-art facilities are now being used by Canadian productions, increasing their quality and sophistication years before the domestic market alone could have justified building that type of technological capacity.

Moreover, these new technologies require specialised skills. Studios, both domestic and global, have thus been investing to develop the VFX and virtual production segment of the workforce. For instance, Technicolor and DNEG both provide entry level training programs for their VFX businesses, and Sony, owner of Pixomondo, has recently partnered with Seneca Polytechnic through its Virtual Production Academy program to offer training to

⁵² Journal de Montréal, "Le futur des tournages", October 13, 2020. [\[Link\]](#)

⁵³ La Presse, "Grandé Studios voit grand", May 21, 2021. [\[Link\]](#)

industry members in virtual production techniques.⁵⁴ Provinces have made their own investment to upskill workers to meet industry demands, such as British Columbia's "StrongerBC Skills Grant", which are directly applied to industry training programs like DigiBC's micro-credential initiative,⁵⁵ and Quebec's partnership with its Film and Television Council and Synthèse,⁵⁶ as well as subsidised learning programs provided through the NAD-UQAC professional training program.⁵⁷

4.7.3 Targeted investments and partnerships

When Netflix set up its Canadian subsidiary in 2017, it made commitments under the *Investment Canada Act*,⁵⁸ including to fund original productions in Canada to be distributed across Netflix's global platform and to develop the next generation of creators.⁵⁹ The latter included pitch days, recruitment events, and support for local cultural events to ensure that Netflix Canada reaches production communities across the country, including the French-language community in Quebec.⁶⁰ Despite the end of its statutory commitment, Netflix has maintained its investment programs.⁶¹

Similarly, following the acquisition by AT&T of Time Warner, the parent company of Warner Bros. Entertainment Canada, a commitment was made to support different pathways for individuals from traditionally underrepresented groups to access above-the-line and below-the-line work in the film, television and streaming industry, including by launching a Canadian version of their Access to Action program.⁶²

Table 9: MPA member commitments pursuant to the *Investment Canada Act*

Studio	Engagement
Netflix ^{1,2}	Program categories: Investment in Canadian productions (English and French) Investment in Canadian talent development Specific initiatives (non-exhaustive): ImagineNATIVE below-the-line mentorship program Women in Animation Vancouver's ACE program Advancing Voices program
Warner Bros. Discovery ³	Program categories: Above-the-line: 1. Writers' Program: Mock-development for mid-tier writers (Academy of Canadian Cinema & Television partnership) 2. Directors' Program: Roster of directors subsidised on any series in Canada (Academy of Canadian Cinema & Television partnership) Below-the-line: 3. Access to Action (BTL placement program): Entry level, department head training Back Half investments:

⁵⁴ Seneca Polytechnic, "Pixomondo and Seneca to provide state-of-the-art training in virtual production", April 20, 2023. [\[Link\]](#)

⁵⁵ DigiBC, "Creative Technology Micro-Credential Programs", [\[Link\]](#)

⁵⁶ BCTQ, "Visual Effects and Animation", [\[Link\]](#)

⁵⁷ École des arts numériques, de l'animation et du design, "Formations Professionnelles". [\[Link\]](#)

⁵⁸ Pursuant to the *Investment Canada Act*, FDI and acquisitions in the cultural sector worth \$5 million or more are subject to review and approval by the Government of Canada. Proponents must demonstrate that their investment brings a net benefit to Canada and often commits to specific measures to meet that test. See: Government of Canada, "Thresholds for Review", September 29, 2023. [\[Link\]](#)

⁵⁹ Canadian Heritage, "Launch of Netflix Canada: a recognition of Canada's creative talent and its strong track record in creating films and television", September 28, 2017. [\[Link\]](#)

⁶⁰ Netflix Canada, "Industry Partnerships to develop the next generation of Canadian creators", November 2023.

⁶¹ According to Stéphane Cardin, of Netflix Canada, in interview with KPMG on October 5, 2023.

⁶² WarnerMedia, "WarnerMedia's Thriving Access to Action Program Expands to Canada", July 20, 2021. [\[Link\]](#). Some of the initiatives mentioned in this media release are detailed in Section 4.6 of the report.

Studio	Engagement
	4. Vocational training funding 5. Film festival diversity initiative 6. Special projects diversity initiative Other: 7. Charitable donations

Sources: 1. Internal document – Netflix Canada, "Industry Partnerships to develop the next generation of Canadian creators", November 2023. 2. Netflix Canada, "Alumni Lookback: Netflix Marks 1,000 Training Program Graduates in Canada with \$25,000 Indigenous Filmmaker Grant", October 10, 2023. [Link](#). 3. Women in Animation Vancouver, "ACE Program – About", [Link](#). 4. The Globe and Mail "Netflix launches development program for diverse Canadian writers", June 16, 2022, [Link](#). 3. According to Melanie Nepinak Hadley, of Warner Bros. Discovery Access Canada in interview with KPMG on October 10, 2023. See also: Warner Bros. Discovery Access, "Access to Action Canada", [Link](#), and "Programs" [Link](#)

Film festivals offer an opportunity to Canadian creatives to meet with studios, while studios also use them to establish their presence in a market. Tom Hastings thus explained Paramount's decision to release their development slate at Banff Film Festival as a means of drawing attention to their recent establishment in Canada and proactively communicating the company's interest in Canadian stories.⁶³ Netflix and Warner Bros. Discovery both sponsor several film festivals across regions, genres, and communities.

Table 10: Film festival partnerships of select global studios (non-exhaustive)

Studio	Festivals
Netflix ¹	Inside Out Banff World Media Festival (Diversity of Voices Initiative) Whistler Film Festival Festival du nouveau cinéma ImagineNATIVE Film + Media Arts Festival Hot Docs Canadian International Documentary Festival RIDM: Montréal International Documentary Festival
Warner Bros. Discovery ²	Available Light Film Festival Yellowknife International Film Festival Calgary International Film Festival Ottawa International Film Festival St. John's Women's Film Festival Reel Asian Film Festival Toronto International Film Festival Vancouver Asian Film Festival Reelworld Film Festival+Summit

Sources: 1. Internal document – Netflix Canada, "Industry Partnerships to develop the next generation of Canadian creators", November 2023. 2. Warner Bros. Discovery Access, "Partnerships", [Link](#)

A majority of the non-production initiatives of Netflix and Warner Bros. Discovery in Canada are aimed, at least in part, at the Indigenous, Black, POC, Francophone or 2SLGBTQ+ communities, whether at the talent development or production stage.

⁶³ Interview of Tom Hastings, of Paramount+ Canada, on October 6, 2023.

It has been observed that given their size, international reach, and access to a larger pool of capital, global studios and streamers have been more inclined to take risks on emerging talent. Melanie Nepinak Hadley, herself an Ojibway woman, related to KPMG her experience when working with CBC, how oftentimes mid-tier creatives and

“I saw firsthand that some decisions were being made because you were evaluating risk. You were evaluating, is this person going to make their day are they going to be on budget, are they going to be able to get in and get out and just be part of this machine that is already working. I saw this gap as where if they hadn’t been part of this machine, they don’t get the relevant opportunities.”

- Melanie Nepinak Hadley, Warner Bros. Discovery Access Canada

directors would not be considered for contracts due to the perceived risk involved. Her experience at Warner Bros. Discovery has been different, in that she was able to explore new avenues to sponsor lesser known, more diverse creatives for projects, sometimes through alternative financing models. She mentioned as an example the Directors’ Program that provides subsidies to any producer that will have recourse to a less experienced director from an underrepresented community in order to cover the associated production risk. The program achieved 6 director placements in its first year.

Global studios and streamers operating in Canada have placed emphasis on engaging with Indigenous creators to bring their own stories, as told by them, to the screen. For example, Inuit film and television

writer and producer Stacey Aglok MacDonald took part in Netflix-sponsored Indigenous Screen Office’s Cultural Mentorships program. Coming full circle, her upcoming untitled “Arctic Comedy” will now be co-produced by Netflix, CBC and APTN. Netflix is also funding a documentary project on female First Nations chiefs produced by Jaime Wescoup, which aims to expand the public’s understanding of the history and culture of indigenous people.⁶⁴ Warner Bros. Discovery, for its part, recently became a key donor to Telefilm Canada’s Talent to Watch program that directly supports indigenous filmmaking.⁶⁵ Netflix has also made recent moves to augment its contributions to indigenous creatives in a \$25K grant to indigenous filmmakers in addition to its existing partnerships and grants.

⁶⁴ The Hollywood Reporter, “Netflix Backs Indigenous Filmmakers as Streamer Hits Milestone in Canadian Content Support”, October 19, 2022. [\[Link\]](#)

⁶⁵ Telefilm Canada, “Telefilm Canada and the Talent Fund announce 18 projects funded through the Talent to Watch Program”, September 28, 2023. [\[Link\]](#)

5. CONCLUSION

The data reviewed by KPMG and the interviews it conducted for the purposes of this study indicate that the financial and non-financial contribution of global studios and streamers to Canada's audiovisual sector have played a significant role in the development of this sector in the country, as well as benefiting the Canadian economy overall. This was achieved through different vectors such as direct employment, production volumes, and purchase of goods and services from domestic suppliers. Although FLS productions account for a majority of investments from global studios and streamers in Canada, a sizeable portion of their expenditures are allocated to funding Canadian content productions, supporting Canadian creators in telling Canadian stories.

FIIP constitutes a major source of employment in the Canadian film, television and streaming industry. The vast majority of individuals employed in such productions reside in Canada, while in many regions, FIIP supports a significant portion of local employment and production output in the sector, providing further opportunities to industry participants.

Beyond production volumes, testimonials provided to KPMG and projects reviewed for the purposes of this study point to the technical sophistication that the domestic industry has experienced thanks to the horizontal and vertical knowledge transfer brought upon by FIIP. Industry leaders have also noted how FIIP has led to investments in advanced technologies, such as VFX and virtual production facilities, which are positioning Canada for the future of the industry.

Additional benefits from the activities of global studios and streamers in Canada include contributions to developing Canadian talent via training programs. Testimonials from industry participants suggest that such initiatives have contributed to the development of emerging talent and providing new opportunities to members of historically disadvantaged groups.

In sum, global studios and streamers contribute meaningfully to the development and robustness of the Canadian audiovisual sector, while providing the domestic industry and the individuals who work in it a global platform to showcase their talent.

Annexes

Annex A – Glossary

Term	Definition
Above-the-line	It refers to the individuals who guide and influence the creative direction, process, and voice of a given narrative in a film or television show, as well as the related expenditures and compensation. These roles include, but are not limited to, the screenwriter, producer, director, and principal cast. The term originates from the early studio days when the budget top-sheet would literally have a line separating the above-the-line and below-the-line costs.
Below-the-line	The remaining production crew (camera operation, sound recording, stage and decors, background acting, art and makeup, costumes, transportation, post-production, etc.). This category encompasses anything regularly involved in producing a film or television show.
Foreign investment in production (FIIP)	Blanket category for all foreign investments in film, television and streaming. It includes FLS and foreign investment in Canadian productions, whether certified as Canadian content or not.
Foreign location and services (FLS)	Productions funded by a non-Canadian entity, where the intellectual property is owned outside the country.
Post-production	The process by which raw footage is assimilated into a final media product, often through heavy editing and implementation of special effects.
Production volume	Production volume, when referring to CMPA data, describes the total sum of a production budget.
VFX	Visual/special effects. This can include anything from light post-processing to heavy uses of 3D animation to simulate certain visual effects or objects in a film.
PSTC/CPTC	Film or Video Production Services Tax Credit/Canadian Film or Video Production Tax Credit
Subscription video on demand (SVOD)	Streaming services which are provided in exchange for a fixed fee from the user. Typically, it does not involve advertisements, or has very minimal advertisements.
Advertisement-based video on demand (AVOD)	Streaming services which do not require a payment to obtain access, but rather supports their business model from advertising revenues, which are interposed in the programming in a fashion similar to traditional broadcast television.
Transactional video on demand (TVOD)	Streaming or downloading services which allow the user to watch a given piece of media via a one-time exchange.
Gross domestic product (GDP)	The total value of finished goods produced within a country during a given time period.
Canadian films and television	All films, television shows and series that are produced by Canadian entities, whether they meet the definition of Canadian content or not.
Broadcaster in-house productions	Any program produced internally by a broadcaster or on-demand service. This content does not necessarily meet the definition of Canadian content as per tax credit eligibility structures.

Certified Canadian content

Canadian productions that have been certified by the Canadian Audio-Visual Certification Office to be eligible for tax credit benefits, CRTC Canadian programming and funding by Telefilm and the CMF.

Annex B – Interviewed Individuals

John Weber – President & CEO – Take 5 Productions

Weber is a founder of Take 5 Productions, having previously worked on several film and television series productions in Canada. He joined Dufferin Gate Productions in 1999, later going on to sell the company in 2007. He has worked as executive producer on a number of high-profile international series such as “The Handmaid’s Tale,” “Vikings” and “Star Trek: Discovery”. Take 5 Productions is one of the leading independent Canadian production firms to engage in co-productions and FLS.

Christian Lemay – President – IATSE 514 AQTIS

Starting in the production industry as an assistant camera operator, Christian became the director of regional affairs of the AIEST, local 667 in 2006, and served in the role until the AIEST’s fusion with the AQTIS in 2020. He also helped pioneer the fusion of the AQTIS with the IATSE to give Quebec technicians a more centralised and internationally recognized negotiating unit.

John Lewis – Director of Canadian Affairs – International Alliance of Theatrical Stage Employees (IATSE)

John has a long history with IATSE, joining as the Director of Canadian Affairs in 2002, after serving on the Ontario Labour Relations Board. He is a labour lawyer by trade. The IATSE is the largest North American union representing technicians, artists, and other specialists within the entertainment industry. It has members in both Canada and the United States.

Stéphane Cardin – Director, Public Policy – Netflix Canada

Stéphane has extensive experience in strategic development of the entertainment industry within Canada. Before joining Netflix Canada, Stéphane was Vice President of the Canada Media Fund for almost a decade, and prior to that Director of Tax Credits at the Société de développement des entreprises culturelles (SODEC), the Quebec government agency that funds movies in the province.

Tara Woodbury – Director, Content – Netflix Canada

Formerly a Vice President and Head of Development at Sphere Media, with other production experience at Bell Media and NBCU, Tara has been involved with both production and content cultivation in the Canadian film, television and streaming industry. She is recognized for several productions, chief among them “Night Raiders”, a critically acclaimed Canadian film.

Tom Hastings – Head of Originals – Paramount+ Canada

Tom Hastings has spent nearly 22 years in the media industry in Canada, having previously served as the Director of Original Programming at Bell Media, and the Head of Drama, TV Arts & Entertainment at the Canadian Broadcasting Corporation (CBC). He has extensive experience in program development and production and has supervised the selection of media slates for Paramount+.

Susan Makela – Senior Director, Acquisitions, Rights and Inventory – Paramount+

Susan has been in the Canadian media industry, especially in domestic broadcasting, for over 24 years. Among her work experience, she served as Director of Network Content and Director of Program Funds & Policy at Corus Entertainment, and as Director of Strategic Planning for Independent and Original productions at Bell Media.

Melanie Nepinak Hadley – Senior Director, Equity and Inclusion – Warner Bros. Discovery Access Canada

Melanie has occupied several roles within the Canadian media industry, in which she was tasked with overseeing development and production of original Canadian media productions, as well as making key decisions around the funding of original Canadian series. She has been Manager of Programming at the Aboriginal Peoples Television

Network (APTN), and a Production Executive at the Canadian Broadcasting Corporation (CBC). She now dedicates her professional life to advancing diversity within the Canadian media industry through Warner Bros. Discovery Access Canada.



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Appendix C

APPENDIX C

CULTURAL ELEMENTS IN THE DEFINITION OF A “CANADIAN PROGRAM”

Government Statements re: why cultural elements and Canadian stories must be considered in determining what constitutes a “Canadian program”

1. Official Publications Issued by the Government of Canada

a. Canadian Heritage News Release (February 2, 2022)

Today, the Honourable Pablo Rodriguez, Minister of Canadian Heritage, introduced the Online Streaming Act (Bill C-11), which would require online streaming services to contribute to the creation and availability of Canadian stories and music.

...

The legislation would ensure that online streaming services showcase Canadian music and stories and support our creators and producers.

...

Our proposed approach is flexible, fair and modern. It will lead to increased investments in Canadian culture and support jobs in the industry, while ensuring Canadian stories continue to be shared for generations to come in Canada, and across the world.¹ [emphasis added]

b. Canadian Heritage Backgrounder (February 2, 2022)

Today, the Government of Canada introduced the Online Streaming Act. The proposed bill would update broadcasting policy for Canada and require online streaming services to contribute to the creation and availability of Canadian stories and music in an equitable way. [emphasis added]

Key features of the proposed bill include:

...

Creating a more flexible approach to regulation and sustainable funding for Canadian stories² [emphasis added]

2. Statements by the Minister of Canadian Heritage

a. Post on X (formerly Twitter) entitled “Later today, I’ll appear at the Canadian Heritage committee on #C11. This is why it matters—Canadian stories matter!” (June 6, 2022)

¹ M. De Rosa and M. Burgess, Communications MDR, “Defining Canadian Content: Approaches Taken in Other Jurisdictions and Lessons Learned for Canada”, <https://www.mpa-canada.org/wp-content/uploads/2023/05/MDR-Report-ENG-3.pdf>.

² Canadian Heritage, News Release, [Government of Canada Introduces Legislation to Support the Next Generation of Canadian Artists and Creators](#), dated February 2, 2022.

*Canadian stories are who we are. Stories of the unshakable, of the brilliant, of the brave, of those who fought for peace and worked hard to keep it. Stories of welcoming strangers into our homes of being among the first to say that love means love, and at the same time Canada, why it's complex. We have deeply tragic stories of love and of perseverance. Our stories, the good and the bad, they make us who we are. They were told by our artists, our musicians, our actors, our storytellers, they remind us why we're proud to be Canadian. Our stories matter, and when we choose to support and protect Canadian arts and culture, what we're really choosing is for our kids to learn our stories and to let them be as proud as we are of the country we call home.*³ [emphasis added]

b. Standing Senate Committee on Transport and Communications, Study on Bill C-11 (November 22, 2022)

Senator Cormier: *Welcome, minister and Mr. Ripley. My question is about Canadian content. At the National Culture Summit back in May, you said that the definition of Canadian content needed to be reviewed and that you were consulting with ministers of other countries on the issue. As you are no doubt aware, producers and other members of the industry have been clear that, under the definition, intellectual property must stay in Canadian hands and the use of Canadian human resources cannot be less than what is already set out in the definition.*

Where in the process of reviewing the definition are you? When will you issue an order giving direction to the CRTC?

Mr. Rodriguez: *Thank you for your question, senator. I was glad to see you at the summit, by the way. We had people from all over Canada, and I think it was a pivotal moment for the cultural sector.*

...

*Proposed subsection 10(1.1) calls on the CRTC to come up with a new definition. The bill already provides for certain considerations, including whether Canadians have copyrights, whether Canadians hold key creative positions such as director or screenwriter, and whether the content furthers Canadian cultural expression — our stories. The CRTC has to take all of those factors into account. Equally important, honourable senators, are public consultations. The CRTC is also going to consult Canadians. Each of you will get the chance to have your say during the consultation process.*⁴ [emphasis added]

³ Pablo Rodriguez (@pablorodriguez), "Later today, I'll appear at the Canadian Heritage committee on #C11. This is why it matters—Canadian stories matter!" (6 June 2022, 12:28pm), X (formerly Twitter), <https://x.com/pablorodriguez/status/1533848349945827328?lang=en>.

⁴ Canada, Senate, Standing Committee on Transportation and Communications, Proceedings, 44th Parl, 1st Sess (22 November 2022), <https://sencanada.ca/en/Content/Sen/Committee/441/TRCM/32EV-55835-E>.

c. CMPA's Prime Time 2023 Conference (February 2, 2023)

...at the end of the day the objective is to have those big companies, those streamers who do great stuff, they have to contribute to Canadian content and invest in us as Canadian – how we tell our stories...

*...this Bill is at the end of the day about Canadians accessing more Canadian stories. That's what the objective, that's what the intent is and that's what we want to do.*⁵ [emphasis added]

3. Statements by Officials from Canadian Heritage

a. Standing Senate Committee on Transport and Communications, Study on Bill C-11 (November 22, 2022)

Mr. Ripley: ... But this starts from a premise that many of these streaming services already have a deep production footprint in Canada. They are producing a variety of programs here, and the bill is fundamentally about saying to them in that production footprint moving forward, we expect a portion of that to be Canadian programs, where you use Canadian creative talent and tell Canadian stories. That relates to the discussion we were having about the definition of what Canadian program will be moving forward.

...

Mr. Ripley: ... On your second question, the \$900 million is not money coming out of the system. It is about how that money is to be used in the system. This is not taking \$900 million away from those streaming services and saying the government is now going to use that for alternate purposes. In the modelling, the vast majority of that are expenditure requirements where those companies will continue to have decision-making power over how that is used with the understanding that those investments go into Canadian programs because that's what this bill is about — making sure that those streaming services are investing in television, film and music that involves Canadian creators and tells Canadian stories. It's about, as I kind of characterized, shifting the ambition on their investment footprint here in Canada and making sure that an important part of it goes toward those objectives.⁶ [emphasis added]

*****End of Document*****

⁵ CPAC, [Heritage Minister Discusses Online Streaming Bill at Prime Time Conference](#) (2 February 2023).

⁶ Canada, Senate, Standing Committee on Transportation and Communications, Proceedings, 44th Parl, 1st Sess (22 November 2022), <https://sencanada.ca/en/Content/Sen/Committee/441/TRCM/32EV-55835-E>.

Appendix D

APPENDIX D

PROPOSED CHANGES TO KEY CREATIVE POSITIONS TEST

As set out in our submission, the following proposals apply to both Live Action and Continuous Action Animation Productions and Animation Productions (excluding Continuous Action Animation) productions:

1. the key creatives position test should be expanded to recognize more Canadian creative workers whose skills and talent enrich productions in meaningful ways – we have set our proposed additional positions below, along with the rationale for their inclusion;
2. foreign online undertakings should be eligible to attain certification at 51% rather than 60% of the total points;
3. there should be no mandatory Canadian key creative positions for foreign online undertakings;
4. foreign online undertakings should be entitled to use a percentage test for any position that can be shared between Canadians and non-Canadians, and obtain the point(s) if at least 50% of those persons are Canadian where two people are sharing the role, or at least 51% are Canadian where more than two people are sharing the role;
5. the showrunner role should not be included as a key creative position; at most, it could be considered as a non-mandatory bonus after the application of the key creatives test (or alternatively, as a CPE credit) if the showrunner is Canadian;
6. ensemble casts used frequently in scripted productions, and those with more than two lead roles, should be recognized by not limiting lead performers to first and second leads only; and
7. after the key creative positions test has been applied, there should be the potential for bonus points (i.e., without increasing the denominator of the key creatives test) (or alternatively, these can be CPE credits) if:
 - a. Canadians own the IP (in whole or in part) (2 points)
 - b. the program contains one or more Canadian cultural elements, such as those: (4 points)
 - i. based on underlying Canadian creative, artistic or historical material (e.g., a novel or story written by a Canadian);
 - ii. has a story or narrative based on a Canadian setting (in whole or in part);
 - iii. includes Canadian characters, subject matter, or themes; or
 - iv. demonstrates Canadian creativity, heritage and/or diversity (i.e., through the inclusion or reflection of equity-deserving groups, OLMCs and Canadians of diverse backgrounds)
 - c. 50% or more of all lead performers are Canadian (recognizing the increasing use of ensemble casts) (2 points)
 - d. 75% or more of the total cast and crew in Canada are Canadian (1 point)

LIVE ACTION AND CONTINUOUS ACTION ANIMATION PRODUCTIONS

CRTC Proposal¹		MPA-Canada Proposal	
Positions	Points	Positions	Points
Canadian Showrunner*	2		
		Line Producer	2
Director*†	2	Director	2
		First Assistant Director	2
Screenwriter*†	2	Screenwriter	2
First and Second Lead Performers (performer or voice)*	1 each	Lead Performers (performer or voice)	1 each
		Production Manager	1
Production Designer or Art Director	1	Production Designer or Art Director	2
Director of Photography or Chief Camera Operator	1	Director of Photography or Chief Camera Operator	2
Picture Editor	1	Picture Editor	1
Head of Costume Design	1	Costume Design	2
Key Make-up/Hair Artist	1	Makeup Head of Department	1
		Hair Head of Department	1
Music composer or the rights holders of the pre-existing or pre-recorded music for which the rights were purchased must be Canadian, rather than requiring an original composed song for the production	1	Music composer or the rights holders of the pre-existing or pre-recorded music for which the rights were purchased must be Canadian, rather than requiring an original composed song for the production	2
Visual Effects Director or Special Effects Director	1	Visual Effects Director	1
		Special Effects Director	1
		Casting Director	1
		Stunt Coordinator	1
		Sound Mixer	2
		Sound Editor	2
Minimum Total Points	9/15	Minimum Total Points (for foreign online undertakings)	15/29[#]
Notes: * Mandatory Canadian Positions: Showrunner; Director or Screenwriter; First or Second Lead Performer † Shared Positions: If Director and Screenwriter positions occupied by more than 1 person, points assigned if at least 80% are Canadian		Notes: - No mandatory Canadian positions for foreign online undertakings. - For any shared position, points assigned to foreign online undertakings if at least 50% are Canadian if there are 2 people, or at least 51% are Canadian if there are more than 2 people. [#] denominator subject to change give the lead performer proposal above. - See rationale below for the positions added.	

¹ Bolding represents CRTC's proposed changes from its existing key creative positions test.

Rationale for Positions Added to the Key Creatives Test - Live Action and Continuous Action Animation Productions

Position	Description of the Position	Why Position is a “Key Creative Position”
Line Producer	CEO of the production, facilitates all aspects of the production.	Figures out how to take what is on the page and make it happen. Decides the approach to achieve the look of the show and where to allocate the money to achieve the best show.
First Assistant Director	Plans both the daily schedule and long-term production timeline, creating and managing the shooting schedule and shot lists.	Directly in charge of overseeing all department heads and ensuring that the entire cast and crew executes from pre-production through post-production.
Production Manager	Hires and manages the entire crew.	Helps keep the production on schedule to afford, and have time, to film what is needed. A bad Production Manager hurts the show creatively and vice versa.
Casting Director	Brings in actors for the show.	Narrows down the pool of actors for a specific role and presents them to producers to cast in the show.
Stunt Coordinator	Designs and executes all stunts on the show.	Figures out how to execute all dangerous activities on the show, cast stunt people, train actors and, at times, directs the actual stunt.
Sound Mixer	Controls how the sound is captured on the show.	The work they do sets up the basis for how the show sounds, everything builds off of their work.
Sound Editor	Controls how the sound is captured on the show in post-production.	Responsible for the finished sound in movie television and shows in post-production.

ANIMATION PRODUCTIONS (EXCLUDING CONTINUOUS ACTION ANIMATION)

- The Commission's proposed key creatives test for Animation Productions is outdated. A single animation project involves hundreds of individuals across approximately 16 different teams. The Commission's proposed key creative positions test captures only three teams.
- In addition, the Commission's proposal relates primarily to 2D feature animation and is not reflective of modern animation productions, techniques and formats, including TV animation.
- For instance, the position of camera operator should be removed from the key creatives test. Camera operators that photograph physical cels are no longer a significant part of modern animation productions.
- Key animation positions have been overlooked in the Commission's proposed test such as the animation director and visual effects supervisor. In addition, there are creative roles that significantly impact the final look of an animated production that we recommend be included.
- Animation entails a collaborative, democratic approach, where Canadians creators have creative agency and their invaluable contributions should be recognized.
- MPA-Canada's proposal expands the scope of the test to better capture the teams and key individuals involved in modern animation projects.

CRTC Proposal²		MPA-Canada Proposal	
Positions	Points	Positions	Points
Canadian Showrunner*	2		
		Associate Producer/Line Producer	1
Scriptwriter and Storyboard Supervisor*†	2	Scriptwriter	2
		Storyboard Supervisor	2
		Story Editor	2
Director*†	2	Director	2
		Storyboard Artist/Storyboard Revisionist	1
		Layout Lead or Supervisor	1
		Compositing Supervisor or Lighting/Compositing Supervisor	1
		Computer Graphics (CG) Supervisor	1
		Animation Director/Animation Supervisor	1
		Visual Effects Supervisor	1
		Head of Characters	1
		Head of Environment/ Background Supervisor	1
		Technical Director	1
		Director of Cinematography Camera/Lighting	1
		Lighter/Compositor or Compositor	1
Picture Editor	1	Picture Editor	1
		Animatic Editor	1

² Bolding represents Commission's proposed changes from its existing key creative positions test.

CRTC Proposal ²		MPA-Canada Proposal	
Positions	Points	Positions	Points
Design Supervisor	1	Design Supervisor/Art Director/ Production Designer	1
		Designer	1
First and Second Voice (or First and Second Lead Performer or voice)*	1 each	Lead Performers (performer or voice)	1 each
		Sound Mixer	1
		Sound Editor	1
		Voice Director	1
Camera Operator and Operation or Virtual Camera Operator*	1		
Music composer or the rights holders of the pre-existing or pre-recorded music for which the rights were purchased must be Canadian, rather than requiring an original composed song for the production	1	Music composer or the rights holders of the pre-existing or pre-recorded music for which the rights were purchased must be Canadian, rather than requiring an original composed song for the production	2
Functions performed by a Canadian		Functions	
Key Animation function*	1	Key Animation function	1
Layout Artist and Background function	1	Layout Artist and Background function	1
Assistant Animation/In-betweening function	1	Assistant Animation/In-betweening function	1
Minimum Total Points	9/15	Minimum Total Points (for foreign online undertakings)	17/33[#]
Notes: * Mandatory Canadian Positions: Showrunner; Scriptwriter/Storyboard Supervisor or Director; First or Second Lead Voice/Performer; Camera Operator/ Virtual Camera Operator; and Key Animation function must be performed by a Canadian † Shared Positions: If Director and Scriptwriter/ Storyboard Supervisor positions are occupied by more than 1 person, points assigned if at least 80% are Canadian		Notes: • No mandatory Canadian positions for foreign online undertakings. • For any shared position, points assigned to foreign online undertakings if at least 50% are Canadian if there are 2 people, or at least 51% are Canadian if there are more than 2 people. • [#] denominator subject to change give the lead performer proposal above. • See rationale below for the positions added.	

Rationale for Positions Added to the Key Creatives Test – Animation Productions (Excluding Continuous Action Animation)

Position	Description of the Position	Why Position is a “Key Creative Position”
Associate Producer/Line Producer	Responsible for delivery schedule, budget and day-to-day crew management and reporting.	In charge of aligning all production departments around budget and schedule.
Story Editor	Supervises (and often hires) the writing team to ensure timely delivery of premise, outline, and script drafts managing iteration based on EP/executive feedback.	Highest ranking writer (next to EP) In charge of all writers and writing deliverables.
Storyboard Artist/Storyboard Revisionist	Storyboard artist interprets the script in the form of drawings that become the template for animation production: camera angles, character blocking and expressions, timing and gags.	Storyboard artist is responsible for translating the script into the visual language of filmmaking.
Layout Lead or Supervisor	Leads the layout team through the process of establishing camera and background placement and character blocking.	Highest ranking Layout artist, leads the deliver of the camera related cinematography and shot composition for the project.
Compositing Supervisor or Lighting/Compositing Supervisor	The role that assembles the final picture is more commonly referred to a compositor, and they report to a Compositing Supervisor.	Ensure that all the visual elements of a project come together cohesively, delivering the final image that audiences see on screen.
Computer Graphics (CG) Supervisor	Oversees the creation and integration of all computer-generated elements in an animation production.	They manage teams across modeling, rigging, texturing, lighting, and visual effects shape the visual identity of the project by overseeing the creation of all computer-generated assets.
Animation Director/ Animation Supervisor	Bring characters, creatures, and objects to life. They oversee the quality, style, and performance of animation, ensuring it aligns with the project's creative vision and storytelling goals.	Defines the movement, personality, and emotional impact of characters and scenes, directly shaping the audience's connection to the story.
Visual Effects Supervisor	Works with the show runners, directors, art directors, technical directors and technology team to establish the best software, hardware and workflows needed to achieve the visual aspects of the animation project.	Highest ranking CG artist, responsible for establishing the filmmaking tools and standards for all animation production craft groups.
Animation Director / Head of Animation / Animation Supervisor	Leads animation team, reviews shots and gives feedback, makes animation fixes based on creative vision of executive producers.	Highest ranking animator, in charge of the quality of character (acting) performances in service of the story.
Head of Characters	Supervises designers to ensure character designs meet creative needs and that reference packets are	Highest ranking character artist, leads character design team and is

Position	Description of the Position	Why Position is a “Key Creative Position”
	provided to all production departments so that character performance and look are consistent and of the desired quality.	responsible for appeal, look and production readiness of characters.
Head of Environment/ Background Supervisor	Supervises layout/background designers and painters who create all the necessary locations included in the script.	Highest ranking Environments artist, leads artist team responsible for delivering the visible world.
Technical Director	Responsible for directing/supervising departments such as lighting, crowds, character effects (CFX), the animation pipeline, and software development.	Design and oversee the technical workflows and tools that enable artists to achieve the creative vision of the project by ensuring seamless collaboration between departments.
Director of Cinematography Camera/Lighting	For CG animation, leads the team that brings together all the final elements of the scenes (animated characters, props, effects, environment) and applies lighting (including filter, blur and other digital effects) to the final scene and ensures that it renders out properly.	Highest ranking Lighter/Compositor, leads the team that ensures the final look of each frame meets the Art Director’s intent.
Lighter/Compositor or Compositor	Responsible for applying lighting to scenes and combining various visual elements—such as characters, backgrounds, and effects—into a seamless, final image.	They finalize the visual look of each scene, enhancing mood, atmosphere, and storytelling. Their work ensures all elements blend seamlessly, delivering the polished, cinematic quality that captivates audiences.
Animatic Editor	Editor who converts the story boards, dialogue tracks, temp sound effects and temp score into a timed movie to be used as reference for the animation production teams. Partners with Director on delivering storytelling intention through filmmaking choices.	Editor who delivers rough cut of project to be used as blueprint that bridges creative with animation production.
Design Supervisor/Art Director/Production Designer	Artist responsible for the look of picture, supervising all design teams and providing visual reference to all animation production teams (layout, animation, effects, lighting).	Oversee the overall visual identity of the production, ensuring consistency across all design elements. By guiding design teams and providing visual references to production departments, they unify the artistic vision, shaping the look and feel of the animation.
Designer	Responsible for directing/supervising departments such as character design, prop design, colour design, visual development and look development.	Responsible for executing the visual style that was established by the Design Supervisor/Art Director/Production Designer for the character, settings, props, color, and look development, to ensure all visual elements align with the creative vision of the animation.

Position	Description of the Position	Why Position is a “Key Creative Position”
Sound Mixer	Controls how the sound is captured on the show.	The work they do sets up the basis for how the show sounds, everything builds off of their work.
Sound Editor	Editor responsible for locating/design sound effect and integrating the final audio elements (dialogue, music, effect) into the final picture.	Responsible for the audience’s audio experience.
Voice Director	Directs (and sometimes casts) the performance of voice actors in the recording studio and helps select which takes to use.	Responsible for delivering the desired vocal performance from all actors.

*****End of Document*****

Appendix E



Defining Canadian Content: Approaches Taken in Other Jurisdictions and Lessons Learned for Canada

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Important Notice

This document contains the original report *Defining Canadian Content: Approaches Taken in Other Jurisdictions and Lessons Learned for Canada* (February 2023) and its subsequent addendum (December 2024). The addendum, which provides updated information about developments in national content definitions and certification systems, can be found following the original report. Page 1 of the Addendum can be found after page 67 of the original report.

The addendum reinforces and updates the original findings while maintaining the report's core recommendations for modernizing Canadian content definitions. Readers are encouraged to review both the original report and its addendum for complete context.

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Executive Summary

Purpose and Methodology

The purpose of this study was to examine approaches to selected jurisdictions' national content systems, with the aim of illustrating how a broader range of policy objectives can be achieved by taking a modern approach to defining a "Canadian production."

The findings of this report are based on a review of primary and secondary web-based literature, documents and information with respect to the national content systems as these pertain to production incentives, tax credits and automatic funding programs in the ten following foreign jurisdictions: the United Kingdom (UK), France, Germany, Italy, Spain, the Netherlands, Portugal, the Czech Republic, Australia, and New Zealand (NZ). Where needed, funders were contacted for clarifications.

Scope

The study is focused on definitions of national content as evidenced by the national certification systems as applied to tax credit programs, production incentives and national funding programs. This focus is explained by the fact that in the jurisdictions examined, national content definitions exist in the certification systems associated with public support programs (i.e., tax credits, production incentives and direct funding programs). The legislative regimes governing the national broadcasting systems in the jurisdictions examined are, on the other hand, focused on supra-national objectives.¹

Findings

The national content systems in the jurisdictions examined recognize both the cultural and economic value of screen content.

Each jurisdiction's system for establishing the national character of a production involves a cultural test comprised of three types of criteria, relating to the cultural contribution of the production, the nationality of the cast and crew members, as well as the extent to which the production is produced or post-produced in the jurisdiction. In fact, the jurisdictions examined place a significant emphasis on the cultural character of the content, allocated from 20% to 70% of available points in points-based cultural tests to cultural criteria, while others require productions to meet cultural criteria as a condition of funding.

1. Each jurisdiction's national content system affords producers with flexibility in satisfying requirements

The jurisdictions examined provide producers with flexibility in satisfying requirements by including in their cultural tests a wide range of criteria, flexibility within individual criteria, a high number of available points, graduated points scales and partial points, and in some jurisdictions more subjective overall analysis. These approaches allow jurisdictions to balance the needs of productions against larger policy objectives.

Seven of the ten jurisdictions examined are members of the European Economic Area (EEA) trade bloc, which includes all 27 members of the European Union, as well as Iceland, Lichtenstein and Norway.

¹ For example, the Audio Visual Media Services Directive (2018) of the European Union and the bilateral Closer Economic Relations (or CER) Trade Agreement between Australia and New Zealand.

These jurisdictions share a flexible approach to nationality, supporting the larger objective of encouraging trade and the mobility of labour across the trading bloc.

Half the jurisdictions examined afford producers the possibility of earning partial points. Australia weighs the degree to which productions help the country to achieve its cultural and industrial objectives in an overall assessment, while New Zealand reserves the right to waive some requirements when productions are meeting other policy objectives.

Significantly, most jurisdictions do not require the production company to own the copyright in the production beyond the production stage. Where ownership requirements exist, they are limited.

With the exception of New Zealand, all of the jurisdictions allow foreign companies with a locally registered office to have their productions recognized as national content and thereby participate in their national content system.

These approaches are discussed in detail in the report.

2. Flexible approaches in the cultural tests of the jurisdictions examined are aligned to global production trends

By recognizing the cultural value of screen-based content, the jurisdictions examined may be better positioned to seize opportunities afforded by the growing trend in high budget production evidenced by the local production strategies of Netflix, HBO, Amazon, Disney, Paramount Plus, and others. Their flexible approaches are designed to support the mobility of labour. They are better aligned to the internationalization of production financing, through which productions are creating new opportunities for writers, cast and crews to work internationally.²

Large-scale investment in local content by global companies is contributing positively to local production ecosystems, increasing the capacity and sustainability of local production companies. The approaches taken in the jurisdictions examined are supporting their local production ecosystems by affording producers with the needed flexibility to work internationally, driving economic benefits and building the capacity of local production and post-production infrastructure.

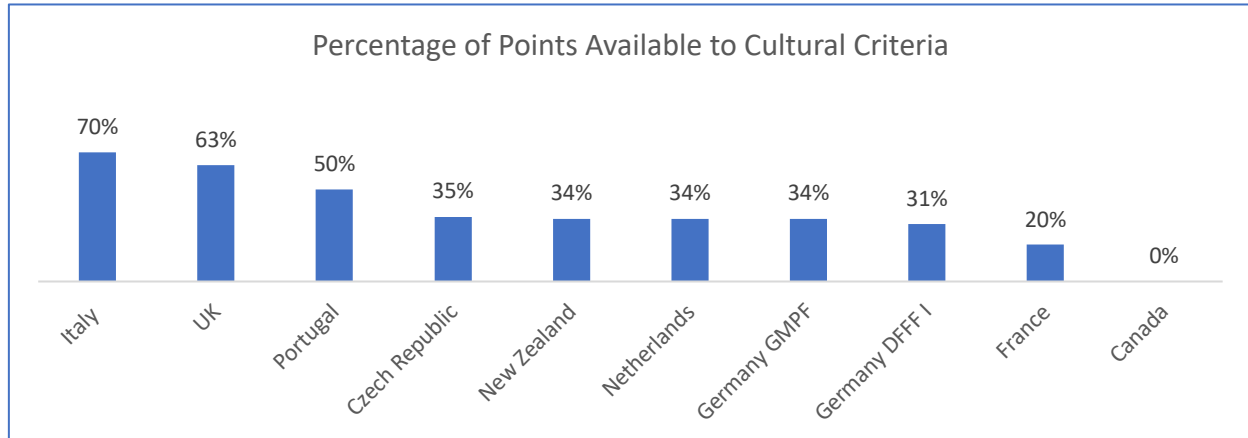
The report provides examples of international productions that provide Canadian talent with high-profile work opportunities, contributing to wider industrial benefits for Canada, but that do not qualify as Canadian content under the current system.

3. The Canadian content system does not reflect the maturity and world-class excellence of the Canadian production sector

Created half a century ago to support a nascent production sector, the Canadian content system does not reflect the maturity of the industry and its competitiveness with other production industries around the world. The Canadian content system is poorly adapted to the realities of global production trends, difficult to reconcile with international models of high budget production that must be attractive to audiences in many markets, and not well suited to the increased production opportunities afforded by the global market. The national content system in Canada is based on a restrictive test based on a 10-point scale without consideration for cultural criteria. The Canadian points-based system also excludes the contributions of the majority of Canadian industry workers. This is completely out of step with jurisdictions examined, as shown in Figure 1, below.

² Gilles Fontaine, Marta Jiménez Pumares, *European high-end fiction series: State of play and trends*, European Audiovisual Observatory, 2020.

Figure 1: Percentage of Points Available to Cultural Criteria, by Jurisdiction



The Canadian system imposes onerous ownership requirements: the producer must own 100% of the copyright in the production for a minimum of 25 years and be guaranteed at least 25% of net profits from the exploitation of the production in markets outside Canada. Expenditure requirements are also very high: at least 75% of the production budget and at least 75% of the post-production budget must be expended in Canada. By comparison, the jurisdictions examined required between 10% and 50% of the total production budget to be expended in their jurisdiction.

The current Canadian content system is out of step with how Canadian producers are working now. Canada has a mature production sector, home to sophisticated production companies that are experienced in working internationally. Many have strong partnerships with global players. In a mature industry, producers can decide with their financing partners how best to structure the best business deals for their respective companies. There is evidence of this in the fact that global studios and streamers are said to be the second largest source of financing for Canadian-owned content production.³

The current Canadian content system fails to encourage wider economic and cultural benefits. The report provides examples of recent productions featuring Canadian stories, characters and locations, made in Canada by Canadians, such as *The Lake* (Amazon Prime Video), *The Handmaid's Tale* (Hulu), *Turning Red* (Pixar/Disney) and *Jusqu'au Déclin* (Netflix). While these productions promote Canadian culture and identity to Canadians and the world, employing Canadians in high profile key creative positions and hundreds more as cast and crew, and raising the profile of the Canadian production and post-production infrastructure, they are not considered Canadian under the current terms of the Canadian content system.

4. Modernizing the Canadian content system based on lessons learned in other jurisdictions

Government and regulatory reviews in the past decades have received repeated calls to modernize the Canadian content system.

Flexibility in the Canadian content system would support the evolution of business and financing models, in keeping with the maturity of the sector and would support Canadian storytelling, promote

³ Canadian Media Producers Association, *Profile 2021: An Economic Report on the Screen-based Production Industry in Canada*, 2022, Exhibit 2-10, page 32.

Canadian culture and soft power, as well as the ongoing development of its world-class production sector.

The following measures, drawn from lessons learned in other jurisdictions, would align the Canadian content system to current global production models and enable Canadians to seize the never-before-seen opportunities to shine a light on Canadian culture and industry through high-budget, internationally competitive Canadian content for the enjoyment of Canadians and the world. Each of the following changes would better align the Canadian content system to the realities of global production and to the systems in other jurisdictions:

- expand the Canadian points-base system to include a significantly larger number of available points and graduated scales that are aligned to the realities of the global production environment;
- include recognition of cultural criteria in an expanded point system, with particular emphasis on meeting Canada's cultural objectives;
- recognize all Canadian cast and crew in an expanded Canadian points-based system;
- reduce the current thresholds of minimum production expenditures on par with international jurisdictions (i.e., between 10% and 50% of production budgets); and
- remove current copyright ownership requirement as a determinant factor, providing Canadian producers with the flexibility to decide with financing partners the best business deals for their respective companies.

Introduction

1. Overall Context

The screen production sector is increasingly regarded by governments as not only culturally important, but as a powerful driver for economic development and soft power. The Government of Canada has indicated its intention to modernize the *Broadcasting Act*. It is anticipated that a modernized act could require all audiovisual services operating in Canada to contribute to the production and distribution of Canadian content. The Government has also expressed its intention to review the definition of Canadian content. Within this context, Communications MDR was commissioned to undertake a study to examine how a broader range of policy objectives can be accelerated and achieved by taking a modern approach to defining what may qualify as a “Canadian production”.

1.1 Objectives

The objectives of this study were threefold:

1. Document modern, flexible approaches to the definition of national film and audiovisual productions in selected jurisdictions’ national content systems, as evidenced by their national certification systems, tax incentive schemes, national funding programs and/or production incentives.
2. Provide an analysis of the expanded opportunities for national talent and creative ecosystems afforded by systems that allow a broad range of factors to be considered in their definitions.
3. Apply lessons learned to illustrate how a modern, more flexible approach to defining Canadian film and audiovisual content could accelerate the achievements of a broad range of policy objectives.

2. Approach and Methodology

Jurisdictions around the world have developed an array of incentives and programs to encourage the production of screen-based content within their borders, as a means to achieve cultural and economic policy objectives. Productions that qualify as “national” productions have access to these direct and indirect forms of support and can be used to satisfy broadcaster obligations. In some jurisdictions, the qualification requirements differ by type of program and for film and audiovisual productions. Ten foreign jurisdictions were included for analysis in this study: the United Kingdom (UK), France, Germany, Italy, Spain, the Netherlands, Portugal, the Czech Republic, Australia, and New Zealand (NZ).

The report is based on a review and analysis of primary and secondary web-based literature, documents and information on each jurisdiction’s national content systems as these pertain to production incentives, tax credits and national funding programs that provide automatic funding schemes.⁴ Findings from the review of literature were in some cases clarified through consultation with representatives of the different funding organizations.

Considerations

The study is focused on definitions of national content as evidenced by the national certification systems as applied to tax credit programs, production incentives and national funding programs. This focus is

⁴ Automatic funding programs provide experienced producers with automatic access to funds based on their prior success in the market. These programs strive for an objective, predictable funding process, which is typically supported by a transparent cultural test or other test of nationality.

explained by the fact that in the jurisdictions examined, national content definitions exist in the certification systems associated with public support programs (i.e., tax credits, production incentives and direct funding programs). The legislative regimes governing the national broadcasting systems in the jurisdictions examined are, on the other hand, focused on supra-national objectives.⁵

In the European Union, broadcasting is governed first at the European level through the Audio Visual Media Services Directive (AVMSD), which governs the coordination of national legislation across the EU with regard to all audiovisual media. The European Union promotes European works on TV and VOD through quota and financing provisions contained in the AVMSD. Broadcasters and other audiovisual services based in the European Union are subject to investment obligations. The AVMSD is focused on supporting European works, which per definition originate in a Member State of the EU, or in States party to the Council of Europe's Convention on Transfrontier Television (ECTT), which includes the UK.⁶

Some EU member states have implemented the provisions of the AVMSD in their national law, with the aim of encouraging the production of "national" works, i.e., European works as defined by the AVMSD that are produced in a national language. For example, some jurisdictions have provided sub-quotas in their legislation to promote European films and audiovisual works, which must have as their original language of expression a language or dialect commonly spoken in the country.⁷

It is in the funding regimes of each member jurisdiction that definitions of national content come into play. National content definitions are the domain of national funding programs, which are supported by national content certification regimes that help to determine who may access these national funding programs. For example, the promotion of cinema works is achieved through individual nations' state aid for the production and distribution of national films. In addition, national funding programs may support the production of national audiovisual works.

The approach taken in Canada is different to these approaches, in that both the funding system and the broadcasting regulatory regime employ the same approach to defining national content. A single Canadian content certification system is used by both the federal public funding programs and the Canadian broadcasting system. A points-based cultural test, coupled with minimum expenditure and ownership requirements, are the foundation for defining and certifying Canadian content. To be certified as Canadian content, productions must obtain a minimum of 6 out of a possible 10 points, solely focused on key creative positions. Points are allocated only if all persons occupying a position are Canadian. To access the Canada Media Fund, productions must obtain ten out of ten available points. The threshold for accessing film funding through Telefilm Canada is eight points.⁸

Certification as a Canadian production grants access to federal tax credits through the Canadian Audio-Visual Certification Office (CAVCO) and to national production funding from the Canada Media Fund and Telefilm Canada.⁹ Certification also allows broadcasters to meet regulatory obligations established

⁵ For example, the Audio Visual Media Services Directive (2018) of the European Union and the bilateral Closer Economic Relations (or CER) Trade Agreement between Australia and New Zealand.

⁶ DAC Beachcroft, "UK Government publishes draft of post-Brexit Audiovisual Media Services Regulations," March 11, 2021, retrieved from <https://www.dacbeachcroft.com/es/gb/articles/2021/march/uk-government-publishes-draft-of-post-brexit-audiovisual-media-services-regulations/>.

⁷ See page 67, and Chapter 3, IRIS Plus 2022-2 Investing in European works: the obligations on VOD providers European Audiovisual Observatory, Strasbourg, 2022.

⁸ Canadian Audio Visual Certification Office (CAVCO), Application Guidelines - Canadian Film or Video Production Tax Credit (CPTC), October 27, 2021; Canada Media Fund website: <https://cmf-fmc.ca/program/performance-envelope-program/>; Telefilm Canada, Canada Feature Film Fund Production Guidelines, November 4, 2021, retrieved from <https://telefilm.ca/wp-content/uploads/guidelinesproductionnov4.pdf>.

⁹ Canadian Audio Visual Certification Office (CAVCO), Application Guidelines - Canadian Film or Video Production Tax Credit (CPTC), October 27, 2021; Canada Media Fund website: <https://cmf-fmc.ca/program/performance-envelope-program/>; Telefilm Canada, Canada Feature Film Fund Production Guidelines, November 4, 2021, retrieved from <https://telefilm.ca/wp-content/uploads/guidelinesproductionnov4.pdf>.

by the Canadian Radio-Television and Telecommunications Commission (CRTC) as regards Canadian content.¹⁰ (CRTC-licensed broadcasters must broadcast and finance a certain percentage of certified Canadian content).¹¹ Domestic productions certified as Canadian by CAVCO are automatically recognized as Canadian by the CRTC. For the purpose of this report, this is referred to as the Canadian content system.

Programs Examined

In all, the study examined 19 programs originating from the 10 jurisdictions as follows:

1. United Kingdom

Film Tax Relief
High-end TV Tax Reliefs
British Film Institute (BFI) Production Fund

2. France

National Centre for Cinema and Animation (CNC) Automatic Film Production Fund
CNC Automatic Audiovisual Production Fund
Film and Audiovisual Tax Credit

3. Germany

German Federal Film Fund (DFFF I)
German Motion Picture Fund (GMPF)
German General Film Board (FFA) Reference Funding

4. Italy

Film and Audiovisual Tax Credit
Ministry of Cultural Heritage and Activities (MiBAC) Production Subsidy

5. Netherlands

Netherlands Film Production Incentive

6. Spain

Film and Audiovisual Tax Credit
Institute of Cinematography and Audiovisual Arts (ICAA) General Aid Program

7. Portugal

Portugal Production Incentive
Institute of Cinema and Audiovisual (ICA) Automatic Production Funding

8. Czech Republic

Czech Republic Production Incentive

9. Australia

Australia Producer Offset

10. New Zealand

New Zealand Screen Production Grant

3. Structure of the Report

This study is divided into the following sections:

- Section I presents the key findings of an international review of approaches to the definition of national film and audiovisual productions in ten jurisdictions;
- Section II examines the lessons learned for modernizing the Canadian content system; and
- Section III provides a concluding overview.

¹⁰ Canadian Radio Television and Telecommunications Commission (CRTC) website: https://crtc.gc.ca/eng/can-con/c_cdn.htm.

¹¹ Canadian Radio Television and Telecommunications Commission (CRTC) website: <https://crtc.gc.ca/canrec/eng/guide1.htm#2.1>.

I. Analysis of the Approaches Taken by Selected Jurisdictions in Defining National Content

1. Definitions of National Content Include Both Cultural and Industrial Criteria

The jurisdictions examined provide assistance to productions that qualify as national content in the form of production incentives, tax credits and/or automatic funding programs. Automatic funding programs provide experienced producers with automatic access to funds based on their prior success in the market. Similarly to how tax credits and production incentives are administered, automatic funding programs strive for an objective, predictable funding process, which is typically supported by a transparent cultural test or other test of nationality. As is shown in Figure 2, half of the jurisdictions examined – Germany, Netherlands, Czech Republic, Portugal and New Zealand, offer a production incentive in the form of cash rebate or grant to productions that qualify as national content, while the other five jurisdictions – the UK, France, Italy, Spain and Australia - offer a tax credit. Six jurisdictions provide automatic support to recognized national productions in the form of grants and contributions.

Figure 2: Overview of Programs Examined

	Production Incentives (Cash Rebates and Grants)		Tax Credits (Credits, Refundable Credits/Rebates)		Automatic Funding Programs (Grants, Contributions)	
	Film	Television/ Streaming Service	Film	Television/ Streaming Service	Film	Television/ Streaming Service
UK			✓	✓	✓	
France			✓	✓	✓	✓
Germany	✓	✓			✓	
Italy			✓	✓	✓	✓
Netherlands	✓	✓				
Czech Republic	✓	✓				
Spain			✓	✓	✓	✓
Portugal	✓	✓			✓	✓
Australia			✓	✓		
New Zealand	✓	✓				
Canada			✓	✓	✓	✓

Each of the jurisdictions examined require that a certain number of conditions be met in order for productions to qualify as national content. These requirements are both cultural and industrial and are contained in the eligibility requirements that productions must satisfy, including a cultural test.

2. Flexibility Is a Guiding Principle in the Design of the Cultural Tests

All of the tests examined are flexible and productions have many ways of satisfying the requirements to pass the tests. Cultural tests are generally organized around three categories: the cultural content of the production, the nationality or permanent residence of personnel and the proportion of the production budget spent locally, for example, on production and post-production facilities. (See Figure 3.)

Figure 3: Cultural Test Categories

Cultural Content Requirements	•National or cultural content (characters, settings, stories, themes, etc.), language of production
Nationality of Personnel	•Expenditures on citizens or residents employed on the production: Key creatives, crew and cast
Local Expenditures	•Local expenditures on shoots and production or post-production facilities

In the majority of cases the cultural tests are points-based. Overall, the many criteria, the high number of points available and low minimum thresholds required to pass these tests afford producers with flexibility. Numerous points-based tests employ sliding scales, allowing producers to earn partial points in relation to some criteria. Many tests also afford flexibility in the required nationality of personnel or location of production and post-production. These are explained below.

Australia's cultural test is unique amongst those examined in that no single element of the test is determinant. In lieu of mandatory minimum thresholds, the test of Significant Australian Content examines all of the cultural and industrial elements of the production, weighing the extent to which productions involve Australian content, personnel and production activities, in what Screen Australia refers to as a "holistic" test.¹²

2.1 Cultural Tests Range From 18- to 210-Point Scales

Points-based cultural tests are built on a wide range of scales, from 18 possible points for audiovisual productions in France, to 210 possible points for film production in the Netherlands. The majority of points-based tests require productions to meet half or fewer of available points to pass.

Figure 4: Analysis of Points-based Cultural Tests

	Available Points				Minimum Points Required
	Total Points	Content Requirement	Personnel Requirement	Production Requirement	
Netherlands Film Production Incentive	210	3 of 8 mandatory criteria	115/210	95/210	75 (42%)
Germany Motion Picture Fund (GMPF)	109	37/109	34/109	38/109	40 (42%)
France CNC Automatic Film Production Fund	100	20/100	60/100	20/100	25 excluding language (31%)
France Film and Audiovisual Tax Credit	100	20/100*	60/100	20/100	61 (51%)
Italy Film and Audiovisual Tax Credit	100	70/100	3/100	27/100	50 (50%)
Italy MiBAC Production Subsidy	100	0	74/100	26/100	70 (70%)
Germany Federal Film Fund (DFFF I)	96	30/96	35/96	31/96	48 (50%)
Portugal Production Incentive	60	30/60	20/60	10/60	15 (25%)

¹² Screen Australia website: <https://www.screenaustralia.gov.au/funding-and-support/producer-offset/guidelines/eligibility/significant-australian-content>.

Czech Republic Production Incentive	46	16/46	18/46	12/46	23 (50%)
UK Film Tax Relief	35	22/35	8/35	5/35	18 (51%)
UK BFI Production Fund	35	22/35	8/35	5/35	18 (51%)
UK High-end TV Tax Relief	35	22/35	8/35	5/35	16 (46%)
New Zealand Screen Production Grant	32	11/32	13/32	8/32	20 (63%)
France CNC Automatic Audiovisual Production Fund	18	0	16/18	2/18	13 (72%)

2.2 Inclusion of Cultural Content Requirements

The inclusion of cultural content requirements within the cultural tests both affords greater flexibility to obtain national certification, while also supporting the cultural policy objectives of the jurisdictions examined, in particular the promotion of national culture. Producers can pass their cultural tests by obtaining points based on a variety of cultural criteria. The most common cultural criteria include the setting, characters, language, contribution to culture or history, the underlying literary, artistic or historical material on which the production is based, and cultural content of a more general nature (i.e., about the arts or social issues).

Figures 5 and 6 illustrate the flexibility afforded by cultural content criteria in the points-based systems of the cultural tests applied to tax credits. Detailed cultural tests are provided in Annex II.

Figure 5 shows that 63% of points in the UK cultural test are available for cultural content criteria. Film producers can pass the cultural test by obtaining the minimum required 18 points entirely from the cultural content section of the test. These productions must also expend a minimum of 10% of their production budget in the UK to access the tax relief (tax credit).

Figure 5: Distribution of Cultural Points in Cultural Tests of High-end TV and Film Tax Credits: UK

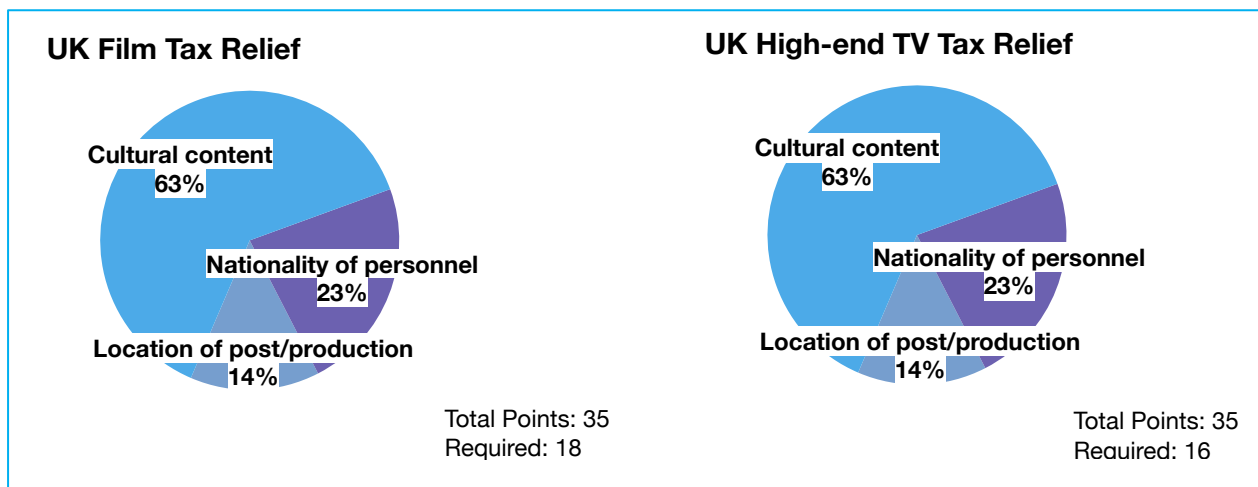
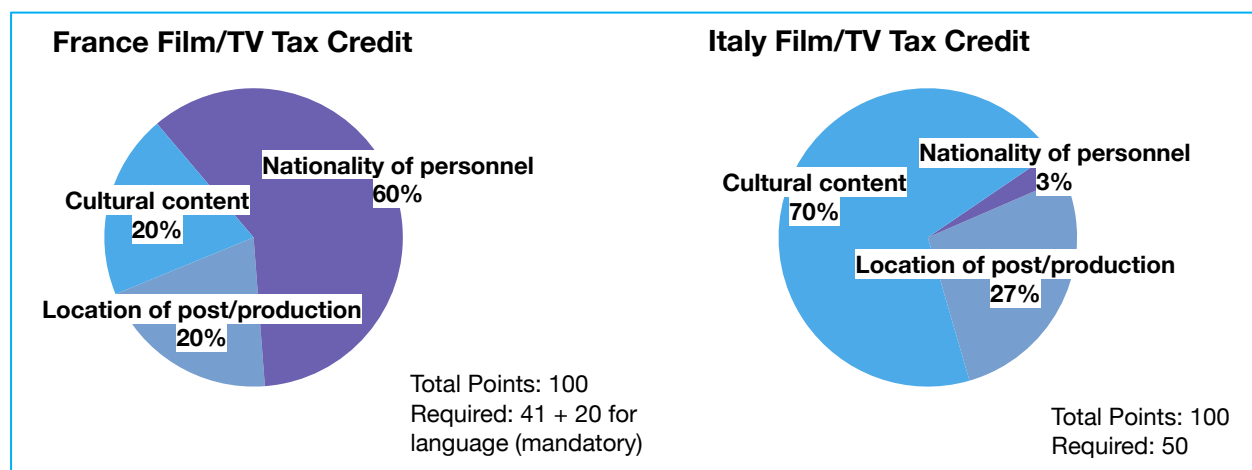


Figure 6 shows that France allocates 20% of points to cultural content (i.e., French language) for its cultural test. Producers need only obtain 41 of the remaining 80 points to obtain their national certification. Figure 6 also shows that in Italy, 70% of available points (70 points out of a possible 100) are allocated to cultural criteria. To access a tax credit, companies must obtain a minimum of 50 points, including 35 points from the cultural content section of the test.

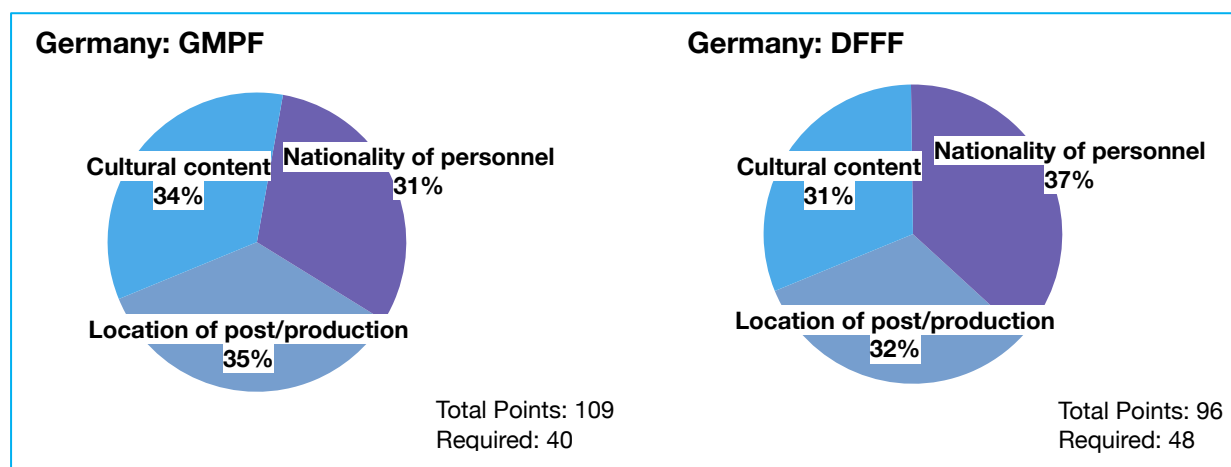
Figure 6: Distribution of Cultural Points in Cultural Tests of Film and TV Tax Credits: France and Italy



Figures 7 and 8 show that Germany, the Czech Republic and New Zealand allocate about a third of available points to cultural criteria in the cultural tests of their production incentives. Detailed cultural tests can be found in Annex II.

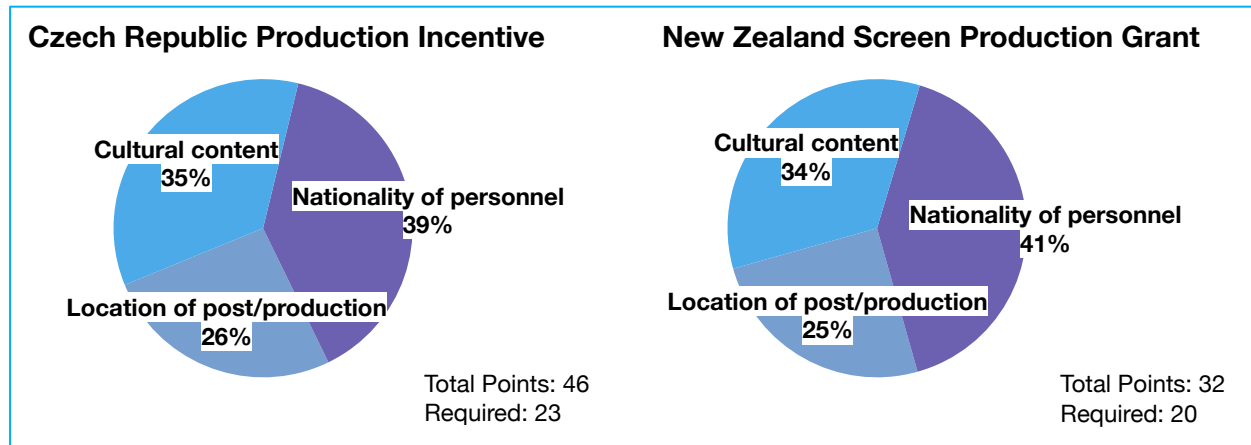
Germany's two production incentives are shown in Figure 7. The GMPF allocates 34% of available points to cultural content, while the DFFF I allocates 31% of points to cultural content. The German Federal Film Fund (DFFF I) cultural test is based on a 96-point scale, of which productions must obtain at least 48 points, with minimum thresholds for each section of the test. In addition, productions must expend a minimum of 25% of their production budget in Germany (20% for projects with production budgets of €20 million (CAD \$26.8 million)). The German Motion Picture Fund requires productions to obtain only 40 points on a scale of 109 nine points.

Figure 7: Distribution of Cultural Points in Cultural Tests: Germany GMPF and DFFF I



The Czech Republic's production incentive allocates 35% of points to cultural content, as shown in Figure 8. Figure 8 also shows that the New Zealand Production Incentive allocates 34% of available points to culture. Annex II provides more detailed information on their cultural tests.

Figure 8: Distribution of Cultural Points in Cultural Tests: Czech Republic and New Zealand



2.3 Some Countries Have Mandatory Cultural Requirements

In some programs, productions must satisfy cultural requirements by meeting a minimum number of cultural criteria. These are shown in Figure 9. In some cases, language is a cultural criterion amongst others that can be used to satisfy cultural requirements. In other cases, language is a mandatory requirement. More detailed information is provided in Annex II.

Figure 9: Some Programs Have Mandatory Cultural Criteria

Program	Content Requirement	Language Requirement
Spanish Film and Audiovisual Tax Credit	Must meet at least 2 of 10 content criteria	Must be shot in a language of Spain
Spanish ICAA General Aid Program	Must meet at least 2 of 10 content criteria	Must be shot in a language of Spain
Portuguese ICA Production Funding	Must meet at least 3 of 9 content criteria	Must be shot in Portuguese
German FFA Reference Funding	Must meet at least 2 of 7 content criteria	
Netherlands Film Production Incentive	Must meet at least 3 of 8 cultural criteria	
French Film and Audiovisual Tax Credit	(See language requirement)	Must be shot in French or a language of France

In Spain, where a production is shot in a language other than a language of Spain, access to funding may still be available, but reduced by 10%.

2.4 Industrial Requirements Consist of Nationality of Personnel and Location and Use of Facilities

Industrial requirements consist of the nationality of personnel and the location and use of industry facilities for the production and post-production of the project. Location of filming, location of post-production, including audio, visual and VFX post, are the most common criteria for the production category.

In the jurisdictions that are member states of the EEA, personnel from the host jurisdiction and those from any other member country of the EEA are treated interchangeably. This allows producers to staff their productions with skilled labour from across the EEA. Some extend the flexibility to non EEA states, such as Switzerland and the UK.

Points-based cultural tests allocate between 3% and 89% of available points for the nationality of the key personnel and crew (“nationality of personnel”). See Figure 10. Half of the jurisdictions examined, the UK, Germany, Czech Republic, Portugal and New Zealand, allow producers to earn partial points on some criteria based on sliding point scales. In Spain, productions not meeting the cultural or language, personnel or production criteria may still access funding at a reduced rate of 10% for each of the three criteria not met.

Figure 10: Points-based Requirements for Nationality of Personnel

Program	Total Available Points	Points Available for Personnel	Percentage Available Points
Netherlands Film Production Incentive	210	85	41%
Germany GMPF	109	34	31%
France CNC Automatic Film Production Funding	100	60	60%
France Film and Audiovisual Tax Credit	100	60	60%
Italy Film and Audiovisual Tax Credit	100	3	3%
Italy MiBAC Production Subsidy	100	74	74%
Germany DFFF I	96	35	36%
Portugal Production Incentive	60	20	33%
Czech Republic Production Incentive	46	18	39%
UK Film Tax Relief	35	8	23%
UK BFI Production Fund	35	8	23%
UK High-end TV Tax Relief	35	8	23%
New Zealand Screen Production Grant	32	13	41%
France CNC Automatic Audiovisual Production Fund	18	16	89%

The cultural tests examined allocate between 11% and 45% of available points for the proportion of the production budget expended on production and post-production facilities located in their jurisdiction. See Figure 11. The flexibility afforded to productions taking place in a member State of the EEA extend to these criteria.

Figure 2: Points-based Requirements for Location of Production and Post-production Facilities

Program	Total Points Available	Points Available for Facilities	Percentage Available Points
Netherlands Film Production Incentive	210	95	45%
Germany GMPF	109	38	35%
France CNC Automatic Film Production Fund	100	20	20%
France Film and Audiovisual Tax Credit	100	20	20%
Italy Film and Audiovisual Tax Credit	100	27	27%
Italy MiBAC Production Subsidy	100	26	26%
Germany DFFF I	96	31	32%
Portugal Production Incentive	60	10	17%
Czech Republic Production Incentive	46	12	26%
UK Film Tax Relief	35	5	14%
UK BFI Production Fund	35	5	14%
UK High-end TV Tax Relief	35	5	14%
New Zealand Screen Production Grant	32	8	25%
France CNC Automatic Audiovisual Production Fund	18	2	11%

As shown in Figure 12, some programs apply minimum thresholds to industrial criteria. Each of these jurisdictions is a member state of the EEA, with the flexibilities afforded to them as described above (i.e., nationality of personnel and location of facilities can be from any member state of the EEA). In Portugal, minimum thresholds may be waived, in consideration of other criteria met or exceeded by the production. In Spain, productions not achieving minimum requirements may access funding reduced by 10%.

Figure 3: Minimum Thresholds for Industrial Requirements (non points-based systems)

Program	Personnel Requirement	Production Requirement
Spanish Film and Audiovisual Tax Credit	75% EEA personnel	Primarily EEA
Spanish ICAA General Aid Program	75% EEA personnel	Primarily EEA
Portuguese ICA Automatic Production Funding	50% Authors EEA 75% personnel EEA	n/a
German FFA Reference Funding	Director, Writer, 2 lead actors EEA 100% personnel EEA	n/a

3. Few or No Ownership Requirements

3.1 Flexible Approach to Ownership of Copyright in the Production

There is no expectation that the production company own the copyright in the production in order to access production incentives and tax credits in the UK, Germany, Spain, the Netherlands, Portugal and the Czech Republic.

Neither in its overall requirements nor in its cultural test does the UK consider the ownership in the copyright of the production.¹³

In Germany, there is no requirement that the producer own the copyright in the production. The DFFF I and the FFA require producers to make minimum financial contributions to their projects. This rule is intended to stimulate the local production sector and there is no requirement that the investment be made directly by the producer. It could be in the form of German broadcaster license fees.¹⁴ The FFA also limits broadcast license periods to a maximum of seven years.

There is no copyright ownership requirement to access the German Motion Picture Fund. It is expected that productions undertaken with a global streamer will result in a total buyout once the project is delivered. Participation by a German broadcaster is limited to 60% of the project's total production budget.¹⁵

In New Zealand, the ownership of the copyright is not a requirement, but rather is integrated into the cultural test, for which a producer could earn one point, providing flexibility.

Figure 4: Production Incentives, Tax Credits and Automatic Funds Without a Requirement of Producer Ownership of the Production

Fund	Ownership Requirement
UK Film and High-end Television Tax Relief (tax credit)	n/a
UK BFI Automatic Funding	n/a
Germany Automatic Funding	n/a
Germany GMPF	n/a
Germany DFFF I	n/a
Spain Film and Audiovisual Tax Credit	n/a
Netherlands Film Production Incentive	n/a
Portuguese Production Incentive	n/a
Czech Republic Production Incentive	n/a
New Zealand Screen Production Grant (incentive)	n/a

¹³ BFI staff.

¹⁴ FFA staff.

¹⁵ FFA staff.

A few jurisdictions require that the producer have an ownership stake in the production commensurate with their financial participation. The tax credit programs of France and Australia require that production companies own a stake in the copyright to their projects commensurate with their financial participation. Screen Australia also considers the extent to which there is recoupment and profit participation for Australian nationals or residents and the extent to which that is commensurate with ownership.¹⁶ The same requirement for ownership commensurate with financial participation is true for the automatic production funds of France and Portugal, as shown in Figure 14.

Spain is unique in establishing a minimum threshold of producer ownership in the production. Spain's automatic production funding requires that producers own a minimum of 15% of the copyright in the project. Producers must also own the exploitation rights to the project for at least three years. Non-independent companies, (i.e., those that are not arm's length from a broadcaster) may not own more than 60% of the production.

It is worth noting that in Italy, an Italian production is one that is owned by an Italian producer, which can be any EEA-based company paying tax in Italy. There is no defined minimum period of ownership.

Figure 5: Limited, Flexible Ownership Requirements of Production Incentives, Tax Credits and Automatic Production Funds

Fund	Details of Requirement
France Film or Audiovisual Tax Credit	Producers must own rights to the production commensurate with their financial participation in the project.
France CNC Automatic Production Fund	Producers must own rights to the production commensurate with their financial participation in the project.
Portuguese ICA Production Fund	Producers must own the rights to the work in proportion to their respective participation in the total production budget.
Australia Producer Offset	Ownership commensurate with Australian participation in the production budget.
Spanish ICAA General Aid	- Producer must have an ownership stake in the production of at least 15% and retain the exploitation rights for at least three years (unless shared with co-producers) - A non-independent company participating in the production may not own more than 60% of the work.
Italy Film or Television Tax Credit	Italian production company, or EEA production company with a registered office in Italy owns the copyright to the production (no minimum period of ownership is defined).
Italy MiBAC Automatic Funding	Italian production company, or EEA production company with a registered office in Italy owns the copyright to the production (with no minimum period of ownership is defined).

4. Jurisdictions Have Flexible Requirements Regarding the Location in Which Production Companies are Based

With the exception of New Zealand, all of the jurisdictions have flexible requirements as regards the nationality (base of operations) of production companies seeking certification of their productions as national content. In each jurisdiction, irrespective of the type of program examined (tax credit, production incentive or national funder), foreign companies with a locally registered office or permanent establishment (i.e., where some of the company's business is carried on) may have their production certified as national content.

As noted above, within the EEA, rules are in place that allow companies from all Member States to compete without undue barriers. For this reason, EEA-based companies may have their productions

¹⁶ Screen Australia, *Producer Offset Guidelines*, March, 2022.

certified as national content in all Member States in which they have a registered office. The UK, Czech Republic and Australia allow foreign companies with a registered office in their jurisdiction to have their productions certified as national content. We note that France requires that eligible production companies be controlled by French or European citizens or residents. New Zealand requires that production companies be both based in and controlled by New Zealand by residents.

Figure 6: Requirements on Jurisdiction in Which the Production Company is Established

Jurisdiction*	Details of Requirement
UK	Production company must have a permanent establishment (registered office where business is carried on) in the UK.
Germany	Production company must be based in EEA member state, with an office in Germany.
France	Production companies must be based in EEA member state and have a subsidiary based in France.
Italy	Production company must be based in EEA member state, with an office in Italy.
Netherlands	Producer must be based in EEA member state, or in Switzerland, with an office in Netherlands for at least two years.
Czech Republic	Production company must have a permanent establishment (carrying on some of its business) in Czech Republic.
Spain	Production company must be based in EEA member state, with an office in Spain.
Portugal	Production company must be based in EEA member state, with an office in Portugal.
Australia	Producer must have a registered office in Australia.
New Zealand	Production company must be based in New Zealand: a New Zealand company incorporated and carrying on business in New Zealand.

*The requirement is the same for the production incentive or tax credit and the national production funding program.

5. Expenditure Requirements Range from Ten Percent to Fifty Percent of Production Budgets

Typically, in the cultural tests examined, the amount expended by productions in a particular jurisdiction is a factor in the respective cultural tests. In particular, the cultural tests take into account the amount expended by productions on personnel and on production and post-production costs expended in the jurisdiction. In addition, there exist minimum expenditure requirements.

Minimum expenditure requirements vary by jurisdiction and by type of funding. Minimum expenditure requirements are most common for production incentives and tax credit programs, with the minimum expenditure thresholds ranging from 10% to 50% of total production costs. For example, the UK requires that 10% of the total production budget be expended in the UK. Spain's minimum expenditure threshold is 50% of the total production costs and will reduce the amount of funding where this percentage is lower.

In some cases, the minimum expenditure is expressed as a monetary amount. These range from approximately CAD \$200K to CAD \$2 million for a feature fiction film and about CAD \$400K to CAD 635K per hour of television drama.

Spain and Portugal require a portion or all of their production subsidy to be expended in their jurisdiction. Germany's automatic Reference Funding requires that projects be produced and post produced in a member state of the EEA.

Figure 7: Expenditure Requirements by Production Incentive or Tax Credit

Incentive	Details of Requirement
UK Film and High-end TV Tax Relief	10% of the production budget
Netherlands Film Production Incentive	15% of the total production budget for high-end series
Germany DFFF I	• 25% of the production budget expended in Germany • 20% of the production budget expended in Germany for production budgets > €20 million (CAD \$26.6 million)
Germany GMPF	• 40% of the production budget for production budgets > €25 million (CAD \$33.3 million) • 20% of the production budget production budgets > €35 million (CAD \$46.6 million), cap of €7 million (CAD \$9.3 million)
Spanish Film and Audiovisual Tax Credit	50% of total production costs
ICAA General Aid for Film	50% of subsidy (penalty applied to funding if less)
ICA Film Production Funding	100% of subsidy
Germany FFA Film Reference Funding	Production and post-production facilities, studios and services in Germany or in an-other EEA member state or Switzerland

Six jurisdictions have programs that do not impose minimum expenditure requirements but rather include local expenditure as a factor in their cultural test. See Figure 17.

Figure 8: Programs where Production Expenditure is Factored into Cultural Test

Programs Where Production Expenditure is Factored into the Cultural Test	
✓	UK BFI Production Fund
✓	France Film and Audiovisual Tax Credit
✓	France CNC Film and Audiovisual Automatic Production Fund
✓	Italy MiBAC Automatic Film Production Subsidy
✓	Italy Film and Audiovisual Tax Credit
✓	Australia Producer Offset

6. Concluding Summary

16.1 Jurisdictions Recognize the Cultural and Economic Value of Screen Content

Each of the jurisdictions examined require productions to meet minimum eligibility criteria and to pass a cultural test in order to be certified as national content, which is required to access tax credits, production incentives and automatic national funding. Certification also supports national content obligations of broadcasters. The cultural tests are aimed at establishing the national character of the production, and its cultural and economic value. They include three categories of criteria: the cultural contribution of the production, and the economic contribution as measured by the nationality of key personnel and crew, and the degree to which the production is shot and/or post-produced in the jurisdiction. This approach supports enhancing the jurisdiction's image internationally, ensures the creation of highly skilled jobs and drives innovation.

The jurisdictions examined recognize that the screen sector generates significant cultural as well as economic benefits. Screen productions provide domestic and foreign audiences with opportunities to experience and share the stories and values that define the cultures of individual countries. These are among the benefits underpinning the policy orientation towards culture found in each jurisdiction's approach examined in this report.

6.2 International Models Provide Flexibility

In all of the jurisdictions examined, cultural tests are flexible and afford producers multiple avenues by which to satisfy requirements. This flexibility is afforded through a wide range of criteria and availability of points as well as through criteria that are themselves flexible, as we have seen with respect to the nationality of personnel or location of production. Significantly, EEA member countries share in a flexible approach to nationality, where member states are treated interchangeably. This helps these countries to meet the broader policy objectives of the EEA, to encourage trade and the mobility of labour across the trade bloc and at the same time recognizes and supports cultural diversity within the EEA.

Some jurisdictions afford the possibility for productions that only partly satisfy criteria to earn partial points towards their certification. Half the jurisdictions examined use sliding scales in allocating to their industrial criteria. These provide a flexible solution that balances the needs of productions with the policy objectives of the jurisdiction.

The assessment of significant Australian content considers the production's contribution to Australian policy objectives as a whole, such that no single criterion is determinant.

New Zealand reserves the right to waive some requirements when productions are meeting other policy objectives. The guidelines and points framework for accessing the New Zealand Screen Production Grant are not fixed policy rules. The NZSPG may bring its judgment and discretion to bear in assessing a production's level of significant New Zealand Content.

6.3. Ownership is Not a Determinant Factor in Defining National Content

Most jurisdictions do not require the production company to own the copyright in the production beyond the production stage. Where ownership requirements exist, they are limited.

With the exception of New Zealand, all of the jurisdictions allow foreign companies with a locally registered office to have their productions recognized as national content and thereby participate in the national content system. New Zealand may apply discretion on this point. In EEA member states examined for this report, the rule applying to foreign-based companies applies to companies based in other EEA member states.

II. Lessons Learned for Modernizing the Canadian Content System

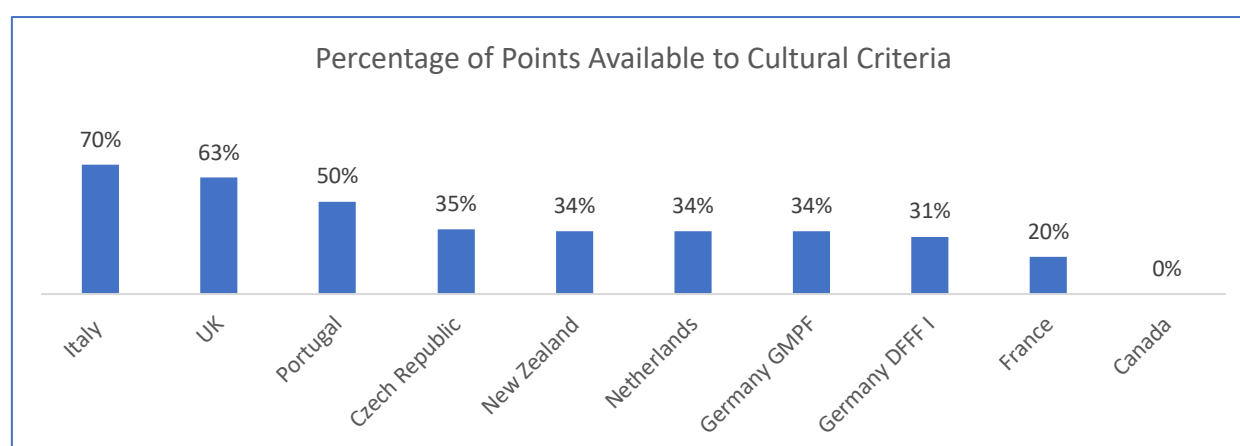
In the context of an upcoming review of the definition of Canadian content, it is timely to consider the opportunities that could accrue to Canada from a modernized approach that is adapted to the current production landscape.

1. Modern National Content Systems Recognize Cultural Contributions

1.1 The Canadian System is Not in Step with International Jurisdictions

When international points-based systems are compared to Canada, we note that the Canadian point system is restricted to a 10-point scale without consideration for cultural criteria (0 points). Other jurisdictions place a significant emphasis on the cultural character of the content, as can be seen in Figure 18.

Figure 9: Percentage of Points Available to Cultural Criteria, by Jurisdiction



As one report notes, “culture is the heart of a nation.”¹⁷ The jurisdictions examined recognize the many benefits of the cultural contributions made by films and series to their national cultures and economies. The contributions made by screen productions include their intrinsic cultural value, their ability to promote national branding, screen tourism and soft power. They connect global audiences to the stories, way of life, locations and language(s) of a jurisdiction. They provide spill-over effects in other sectors such as tourism, where globally popular screen productions strongly influence the destinations chosen by travellers. One example is the international success of UK films and series in stimulating screen tourism in England, which was estimated to be worth USD \$733.6 million in 2016, generating 13,550 FTEs.¹⁸

Beyond economic spin offs, the intrinsic cultural value of screen productions provide other benefits, such as allowing jurisdictions around the world seek ways to strongly assert their domestic cultures and cultural expression in the face of increasing global trade. By promoting shared stories and identification with characters, screen productions can contribute to the promotion of cultural diversity.

¹⁷ Global Film Production Incentives, a White Paper, Olsberg SPI, June 4th, 2019, page 39.

¹⁸ Global Film Production Incentives, a White Paper, Olsberg SPI, June 4th, 2019, page 59.

It has been noted in Canada that screen content allows Canadians to assert their cultural sovereignty and express their identity and culture, their ideas and values.¹⁹

Some Canadian stories about diversity are getting made with the involvement of foreign streaming services. The all-Black production *The Porter*, which tells the story of a group of African-Canadian railway workers in St. Antoine, Quebec (known, at the time, as the “Harlem of the North”) was made possible by the involvement of US streamer BET Plus.²⁰ Produced (and owned) by Winnipeg-based Inferno Pictures and Sienna Films, and originated by Canadian actors Arnold Pinnock and Bruce Ramsay, the all-Black creative team included showrunners Marsha Greene and Annmarie Morais.²¹

The Porter

- ✓ Written, directed and produced by Black Canadians
- ✓ Canadian cast and crew
- ✓ Canadian story and setting
- ✓ Based on Canadian Black history featuring Black Canadian characters

Created by Canadian showrunner Julie Puckrin, the medical drama series *Sky Med* features nurses and pilots, many Indigenous, working for an air ambulance service in remote northern Manitoba, with the series partially filmed in Winnipeg. Developed with the CBC, the show was greenlit for production by Paramount Plus and became one of its top-streamed programs when it premiered on the platform. The show and its writer’s room reflect Canada’s diversity, with writers such as Meegwun Fairbrother and Jessica Meya, while the main cast includes Vancouver-based Jamaican and Ojibwe actor Aason “Ace” Nadjiwon, Calgary-born Praneet Akilla and Vancouver-based Jamaican actor Kheon Clarke.²² As Julie Puckrin has observed, the Canadian TV industry has been a little slower than the U.S. in bringing in less established writers to lead their own original concepts. She notes, “I think when there are young voices that are coming out that have something to say, I think we have to trust them a little bit more.”²³

Sky Med

- ✓ Written, directed and produced by Canadians
- ✓ All-Canadian writer’s room
- ✓ Story is Canadian, based on Canadian history
- ✓ Shot and set in Canada
- ✓ Canadian characters
- ✓ Canadian cast and crew

1.2 Examples of Canadian Stories Not Officially Recognized as Canadian Content

Investments in local content point to the high level of interest in, and value of local stories with audiences. Numerous recent examples exist of exemplary productions featuring Canadian stories,

¹⁹ Janet Yale cited in, “Broadcasting & Telecommunications Panel releases Canada’s Communications Future: Time to Act,” New Release, Innovation, Science and Economic Development Canada, January 29, 2020, Ottawa, Ontario.

²⁰ Made Nous website: <https://made-nous.ca/made-recommends/the-porter/>; “CBC and BET Plus partner on ‘The Porter’ depicting 1920’s Little Burgundy in Montreal,” in *The Toronto Star*, December 10, 2020, retrieved from <https://www.thestar.com/entertainment/television/2020/12/10/cbc-and-bet-plus-partner-on-the-porter-depicting-1920s-little-burgundy-in-montreal.html>.

²¹ Samantha Chizanga, “Black women are leading a new era in Canadian film and television,” in *Now Toronto*, August 14, 2022, retrieved from <https://nowtoronto.com/movies/black-women-are-leading-a-new-era-in-canadian-film-and-television>; CBC website: <https://www.cbc.ca/mediacentre/program/the-porter>.

²² Kelly Townsend, “How SkyMed took flight as ‘top streamed’ Paramount+ original,” in *Playback*, July 26, 2022, retrieved from <https://playbackonline.ca/2022/07/26/how-skymed-took-flight-as-top-streamed-paramount-original/#ixzz7h59587DY>.

²³ Kelly Townsend, “How SkyMed took flight as ‘top streamed’ Paramount+ original,” in *Playback*, July 26, 2022, retrieved from <https://playbackonline.ca/2022/07/26/how-skymed-took-flight-as-top-streamed-paramount-original/#ixzz7h59587DY>.

characters and locations, made in Canada by Canadians. While they clearly promote Canadian culture and identity to Canadians and the world, they would not pass the current Canadian content test.

The Handmaid's Tale

- ✓ Based on the novel by Canadian literary icon Margaret Atwood
- ✓ Story partially set in Canada
- ✓ Shot in Hamilton
- ✓ Canadian crew

The Handmaid's Tale, an Emmy Award-winning series produced in Ontario for Hulu, is based on the novel of the same name by Canadian literary icon Margaret Atwood and features Canada-centric plotlines, with Canada explicitly portrayed in the story as a nation that accepts refugees from the dystopian Gilead.

The award-winning *Turning Red* promotes cultural diversity from a Canadian perspective. Directed and co-written by Canadian animator Domee Shi, the film is set in Toronto and features Toronto as a character.²⁴ As the Academy Award-winning director has explained, "I'm so inspired by how diverse Toronto is. From Chinatown to Kensington Market to the Greater Toronto Area, I feel lucky that I grew up in this city, and I never felt othered in the way of being Chinese... I really just wanted to celebrate that on the big screen because you don't see that very often, and you don't see

Turning Red

- ✓ Co-written and directed by a Canadian
- ✓ Tells a Canadian story
- ✓ Set in Canada, featuring Canadian characters
- ✓ Lead character voiced by Canadian actor Sandra Oh

Toronto depicted very often in movies."²⁵ The film was produced by Pixar Animation Studios and is distributed by Walt Disney Studios Motion Pictures.

Barkskins

- ✓ Shot and set in Quebec
- ✓ Features Canadian characters
- ✓ Based on Canadian history
- ✓ Canadian crew

The historical documentary series *Barkskins*, produced by National Geographic, follows two French families over a 300-year period, beginning with their arrival in "New France." Quebec creatives from the production team built an entire 17th century village for the production, working closely with the Wendat Nation to ensure historical accuracy and respect.²⁶ Based on the Pulitzer Prize-winning author Annie Proulx's New York Times best seller, *Barkskins* promotes a unique Quebec story.

Created, written and produced by Canadian showrunner Julian Doucet, and executive produced by Canadian company Amaze Films, *The Lake* is Amazon Prime Video's first scripted original Canadian series. The comedy, which premiered on the platform in June 2022, was renewed for a second season a month later. Shot in North Bay and set in Ontario's cottage country, the show brings the unique Canadian cottage experience to the forefront. The majority of the ensemble cast is Canadian, including series star Jordan Gavaris, and cast members Terry Chen, Natalie Lysinska, Travis Nelson, John Dore, Lauren Holly and Jhaleil Swaby. The show features an all Canadian writer's room and is directed by Canadians Jordan Canning and Paul Fox.²⁷

The Lake

- ✓ Created and produced by Canadian showrunner Julian Doucet
- ✓ Canadian production company Amaze
- ✓ Shot and set in Ontario and featuring unique Canadian cottage experience
- ✓ Features Canadian characters
- ✓ Canadian cast, including series star Jordan Gavaris
- ✓ Canadian directors and writers

²⁴ Isabelle Docto, "'Turning Red' director Domee Shi on Toronto's diversity, Honest Ed's, and geese poop," in *Daily Hive*, March 10, 2022, retrieved from <https://dailyhive.com/toronto/domee-shi-turning-red-toronto-director>.

²⁵ Isabelle Docto, "'Turning Red' director Domee Shi on Toronto's diversity, Honest Ed's, and geese poop," in *Daily Hive*, March 10, 2022, retrieved from <https://dailyhive.com/toronto/domee-shi-turning-red-toronto-director>.

²⁶ "Small Quebec town goes back to the 17th century, thanks to an American film crew," CBC News online, July 16, 2019, retrieved from <https://www.cbc.ca/news/canada/montreal/barkskins-filming-quebec-1.5225973>.

²⁷ Nellie Andreeva, "Amazon Orders *The Lake* Starring Jordan Gavaris, Julia Stiles & Madison Shamoun as First Scripted Canadian Series," in *Deadline*, August 5, 2021, retrieved from <https://deadline.com/2021/08/amazon-orders-the-lake-starring-jordan-gavaris-julia-stiles-madison-shamoun-as-first-scripted-canadian-series-1234809508/>; Tom Tapp, "Prime Video Jumps Back Into 'The Lake' With Season 2 Order as Production Begins in Canada," in *Deadline*,

Amazon Prime Video released its first scripted drama locally produced in Canada, *Three Pines*, in December 2022. The series is based on award-winning Canadian author Louise Penny's series of mystery novels featuring the fictional Sûreté du Québec Chief Inspector Armand Gamache. Like the novels on which it is based, the show is set in Quebec, where it was shot. Canadian company Muse Entertainment is one of the four production companies involved, along with Amazon Studios, Left Bank Pictures (producers of *The Crown*), and Sony Pictures Television.²⁸

Two Canadians are amongst the series' directors: Tracey Deer, also serving as one of the program's Indigenous consultants, and Daniel Grou.

Three Pines

- ✓ Shot and set in Quebec
- ✓ Features Canadian characters
- ✓ Canadian cast, including numerous Indigenous actors
- ✓ Canadian directors, including Indigenous director
- ✓ Based on award-winning novels by best-selling Canadian author Louise Penny

Starring Alfred Molina in the title role, the cast is largely comprised of Canadian actors, many Indigenous: Rossif Sutherland, Elle-Máijá Tailfeathers, Tantoo Cardinal, Clare Coulter, Sarah Booth, Julian Bailey, Frédéric-Antoine Guimond, Pierre Simpson, Tamara Brown, Marie-France Lambert, Frank Schorpion, Marcel Jeannin, Crystle Lightning, Isabel Deroy-Olson, and Anna Lambe.²⁹

The series has an international reach, premiering on the Amazon Prime platform in Canada, U.S., UK, Ireland, Australia, New Zealand, Norway, Sweden, Denmark, Finland, and Greenland.³⁰

Jusqu'au Déclin

- ✓ Written, directed and produced by Québécois key creatives
- ✓ Based on a Québécois story with Québécois characters
- ✓ Shot and set in Quebec
- ✓ All Quebec cast and crew
- ✓ Produced in French language of Quebec

Jusqu'au Déclin is Netflix's first original feature in the province of Quebec. This all-Québécois production was written, directed and acted by Québécois talent, shot in Quebec, in French, and telling the story of a Montreal man who joins a survivalist training program in rural northern Quebec. The film was dubbed and subtitled into 31 different languages and has been watched by audiences around the world with 95% of viewers (subscribers) located outside Canada. The film was viewed by over 21 million subscribers in the first four weeks of its release to global audiences.³¹

1.3 Lost Opportunities to Promote Canadian Stories and Culture to the World

While these productions' cultural contributions to Canada are not recognized in the Canadian content system, other jurisdictions do recognize the cultural contributions of screen productions through their cultural tests. As such, they may be better able to seize opportunities afforded by the growing trend in

July 13, 2022, retrieved from <https://deadline.com/2022/07/amazon-prime-video-the-lake-season-2-order-1235060171/>; 'The Lake' Season 2 Officially Wraps Up Filming at Prime Video, in Midgard Times, October 2, 2022, retrieved from <https://moviesr.net/p-the-lake-season-2-officially-wraps-up-filming-at-prime-video/>; "Canadian cottage country the backdrop of new Amazon series *The Lake*," CBC News, April 15, 2022, retrieved from <https://www.cbc.ca/news/entertainment/amazon-cancon-the-lake-1.6420535>; IMDB Pro website: https://pro.imdb.com/name/nm0134112/?ref_=search_search_search_result_s_1.

²⁸ Jenna Busch, "Three Pines: Everything we know so far about Amazon's new series starring Alfred Molina," in Film, October 17, 2022, retrieved from https://www.slashfilm.com/1051647/three-pines-everything-we-know-so-far-about-amazons-new-series-starring-alfred-molina/?utm_campaign=clip.

²⁹ Amazon Canada, "Amazon Prime Video and Left Bank Pictures begin production on the scripted Canadian Amazon original drama series *Three Pines*," Press Release, in *Cision*, September 2, 2021, retrieved from <https://www.news-wire.ca/news-releases/amazon-prime-video-and-left-bank-pictures-begin-production-on-the-scripted-canadian-ama-zon-original-drama-series-three-pines-804152475.html>.

³⁰ "Left Bank calls action on Amazon crime drama," in Televisual, September 2, 2021, retrieved from <https://www.televisual.com/news/left-bank-calls-action-on-amazon-crime-drama/>.

³¹ "Analysis: How foreign streamers might come to pick, and own, our Cancon," in Cartt.ca, May 15, 2021, retrieved from <https://cartt.ca/analysis-how-foreign-streamers-might-come-to-pick-and-own-our-cancon/>.

high budget local production by international companies evidenced by the local production strategies of Netflix, HBO, Amazon, and others.

In the last five years, the global streaming services have invested in significantly in local content production in markets around the world.³² In 2021, Netflix accounted for more than half of the global streamers' investments in European original content, down from 92% in 2019, as other streamers, notably Amazon Prime, were increasing their own investments.³³ The trend is ongoing. Walt Disney Company's plans to invest USD \$14 billion (CAD \$19.4 billion) to USD \$16 billion (CAD \$22.2 billion) per year in global VOD content by 2024; and ViacomCBS's plans to ramp up investment in VOD content to USD \$5 billion (CAD \$6.9 billion) in 2024.³⁴ For its part, Paramount Plus' plans to greenlight 150 international originals by 2025.³⁵

With their global distribution reach, international streamers can promote Canada and Canadian productions to Canadians and to the world. A recent industry report has noted that, "the film sector has much to learn from the global streamers' deep understanding of their audiences, connecting niche content from around the world with global audiences."³⁶ French producer and Gaumont Vice CEO Christophe Riandée said of working with Netflix on their hit series *Lupin* that, "Wherever you are, whatever language you speak, you have access to a global audience and I think it's a great sign for all the creators and all the producers of the world that they can reach a fanbase audience...."³⁷

The many cultural contributions made by the examples above would score significant points in the cultural tests of most jurisdictions examined. In spite of their strong emphasis on Canadian stories, they are not recognized as Canadian, with the exception of *The Porter*, which became a reality after twelve years in development thanks to the partnership of BET Plus.

2. Modern National Content Systems Are Guided by the Principle of Flexibility

2.1 Flexibility Supports Current Trends in the Mobility of Labour

The Canadian content system, based on a restrictive 10-point scale, is difficult to reconcile with international models of high budget production that must be attractive to audiences in many markets. With financing having become more internationalized, productions are opening up international opportunities for writers, cast and crews.³⁸ More productions are casting globally, such as *White Lines*, produced by Netflix and the UK company Left Bank Pictures, featuring Spanish showrunner Alex Pina (*Money Heist*) and starring actors from the UK, Spain and Portugal.³⁹

Canadian producers have long sought ways to attach international marquee talent that will attract foreign investment and sales. The jurisdictions with more flexible content systems recognize the need

³² https://www.europacreativamedia.cat/rcs_auth/convocatories/NostradamusRep22ES.pdf

³³ Johanna Koljonen, *Nostradamus Report: Imagining a Sustainable Industry*, Goteborg Film Festival and Film i Väst, September 2022.

³⁴ Frontier Economics, *The Economic Impact of Video-On-Demand Services in Korea*, 2021.

³⁵ Nick Vivarelli, "Paramount+ launches in Italy with slate including Roberto Benigni, Carlo Verdone and Sylvester Stallone's 'Tulsa King,'" in *Variety*, September 14, 2022, retrieved from <https://variety.com/2022/digital/global/paramount-plus-italy-shows-1235372177/>.

³⁶ Johanna Koljonen, *Nostradamus Report: Imagining a Sustainable Industry*, Goteborg Film Festival and Film i Väst, September 2022.

³⁷ Nancy Tartaglione, "'Lupin' producer on how to make a global hit as language barriers fall – Berlin," in *Deadline*, March 3, 2021, retrieved from <https://deadline.com/2021/03/lupin-netflix-omar-sy-gaumont-streaming-1234705813/>.

³⁸ Gilles Fontaine, Marta Jiménez Pumares, *European high-end fiction series: State of play and trends*, European Audiovisual Observatory, 2020.

³⁹ John Hazelton, "Left Bank, Alex Pina and Octavia Spencer set for Netflix series," in *Screen Daily*, July 30, 2018, retrieved from <https://www.screendaily.com/news/left-bank-alex-pina-and-octavia-spencer-set-for-netflix-series/5131315.article>; Justin Lawrence, "White Lines Cast: Who starts in Netflix's New drama," in *The Sun*, May 15, 2020, retrieved from <https://www.thesun.co.uk/tvandshowbiz/11518189/white-lines-netflix-cast/>.

for high budget productions to be competitive in multiple markets and afford greater opportunities for skilled talent to seize international work opportunities.

2.2 Canadian Cast and Crews Want More Opportunities to Work with Global Services

Canadian key creatives are very interested in increased opportunities to work with the global studios and streamers. Global studios and streamers are said to now be the largest employers of Canadians working in film production, accounting for 60% of jobs for Canadians (129,180 jobs in total).⁴⁰

The contributions of the majority of Canadian screen industry workers are not factored into the Canadian points system, nor are the contributions to world-class skills development afforded by international productions recognized or rewarded in the Canadian content system. Through their more flexible approaches to national content definitions, for example, by providing a greater number of points for the participation of local casts and crews, other jurisdictions recognize the opportunities afforded by international production models to advance the careers of talented individuals, increasing their jurisdiction's capacity for world-class local production, and positively enhancing their national branding.

2.3 Examples of Award-Winning Productions Made by Canadians Not Recognized as Canadian Content

High profile, award-winning productions made in Canada by Canadians provide significant opportunities to enhance the careers of Canadian talent. *The Shape of Water*, directed by Guillermo Del Toro, and produced by Del Toro and Canadian producer J. Miles Dale, promoted Canada's skilled talent to the world. The film employed Canadian talent from top to bottom, including Canadians in the positions of costume designer, production designer, and sound department. In a 2017 ET Canada interview on *The Shape of Water*, del Toro enthused, "I wanted to show the world that the heads of departments in this movie were all Canadian, all in Toronto, and you can make an A-class film with a Canadian crew. And not just a Canadian crew, but with Canadian heads of departments."⁴¹

The film was nominated for 13 Oscars and won Best Picture and Best Production Design. According to the film's Toronto-based producer, J. Miles Dale, "this is a high-water mark for Toronto filmmaking. In 90 years of Academy Awards, not even close to this number of Canadians have ever been nominated for one movie."⁴² "It's a huge win for Canada's film community, proving that as a nation, we can compete with the best in the world. ...And the Oscar wins are recognition that Canada's film culture has matured and has hit a point where we're really as good as anyone else in the world."⁴³

The Shape of Water

- ✓ Produced by J. Miles Dale (Canadian) and Guillermo Del Toro
- ✓ Shot in Toronto and Hamilton
- ✓ Visual effects by Toronto company Mr. X
- ✓ Oscar-winning Canadian crew, including heads of departments:
 - ✓ costume designer
 - ✓ production designer and
 - ✓ sound department.

⁴⁰ John M. Lewis, "What does 'Canadian' mean when we're talking film?", in *The Hill Times*, June 1, 2022, retrieved from <https://www.hilltimes.com/2022/06/01/what-does-canadian-mean-when-were-talking-film/364407>; Canadian Media Producers Association, *Profile 2021: An Economic Report on the Screen-based Production Industry in Canada*, 2022, Exhibit 2-10, page 4.

⁴¹ "Del Toro Talks 'The Shape of Water'", *ET Canada*, 2017, <https://etcanada.com/video/1102542915718/guillermo-del-toro-on-filming-in-toronto/>.

⁴² Jordan Pinto, "How J. Miles Dale helped sculpt *The Shape of Water*", in *Playback*, January 28, 2018, retrieved from <https://playbackonline.ca/2018/01/26/how-j-miles-dale-helped-sculpt-the-shape-of-water/#ixzz7h4qa1ejr>.

⁴³ Canadian Media Producers Association website: <https://cmpa.ca/indiescreen/the-shape-of-canada/>.

Jusqu'au Déclin's Canadian film editor, Arthur Tarnowski, was recognized for his work on the production, with award nominations including a Gala Québec Cinéma Prix Iris Award for Best Editing as well as a Canadian Screen Award for Achievement in Editing.⁴⁴

Umbrella Academy

- ✓ Starring Canadian actors Colm Feore and Eliot Page
- ✓ Co-created by Canadian Steve Blackman
- ✓ Four Emmy Award nominations for Canadian special visual effects
- ✓ Three Emmy Award nominations for Canadian costume designers
- ✓ Shot in Toronto

The Ontario filmed series, the *Umbrella Academy* starring Canadians Colm Feore and Elliot Page and co-created by Canadian Steve Blackman, is another successful series promoting Canadian talent to the world.⁴⁵ Canadians Jesse Kawzenuk, Jeff Campbell, Laurent Spillemaecker and Ryan Freer were nominated for an Emmy Award for outstanding special visual effects for their work on the Netflix series, while Canadians Christopher Hargadon, Heather Crepp and William Ng received Emmy nominations for costume design.⁴⁶ The city of Toronto itself is once again featured in the show, from the Scarborough Bluffs to the historic Lakeview Restaurant built in 1932.

Canadians working on the *Handmaid's Tale*, earned Emmy Award nominations in categories for sound mixing, production design, contemporary makeup, single-camera picture editing and casting for a drama series.⁴⁷

3. Modern National Content Systems Support Local Production Ecosystems

3.1 Canadian System Could Better Support Local Production Ecosystem

The jurisdictions examined support their local production ecosystems through flexible approaches that offer greater opportunities for producers to create high-budget productions, which drive economic benefits and build the capacity of local production and post-production infrastructure. Investments by screen productions are invaluable in growing local industries: procuring pre- and post-production services; investing in skills and talent development; and growing production capacity. All these activities significantly contribute to a healthy local content production ecosystem.

Industry players have pointed to the positive contributions of large-scale investment in local content by global companies, whose commissioning power is increasing the capacity and sustainability of local production companies. Screen productions create a host of benefits, including job creation and skills development.⁴⁸ In commenting on the French hit *Lupin*, producer Gaumont Vice CEO Christophe Riandée has said that, “As with Amazon and Netflix, they are commissioning a lot of local shows in all of their local branches. That has a huge impact on us, and on the industry, which is good.”⁴⁹

Canada's minimum expenditure requirement - that 75% be spent in production and that 75% be spent in post-production - is more restrictive than any of the 10 jurisdictions examined. Figure 18 shows how

⁴⁴ Kelly Townsend, “How SkyMed took flight as ‘top streamed’ Paramount+ original,” in *Playback*, July 26, 2022, retrieved from <https://playbackonline.ca/2022/07/26/how-skymed-took-flight-as-top-streamed-paramount-original/#ixzz7h59587DY>.

⁴⁵ Made Nous website: <https://made-nous.ca/made-recommends/the-umbrella-academy/>.

⁴⁶ Nathan Sager, “Hamilton-shot *Umbrella Academy*, *The Handmaid's Tale* earn Emmy nominations, in *insauga*, July 13, 2021, retrieved from <https://www.insauga.com/hamilton-shot-umbrella-academy-the-handmaids-tale-earn-emmy-nominations>.

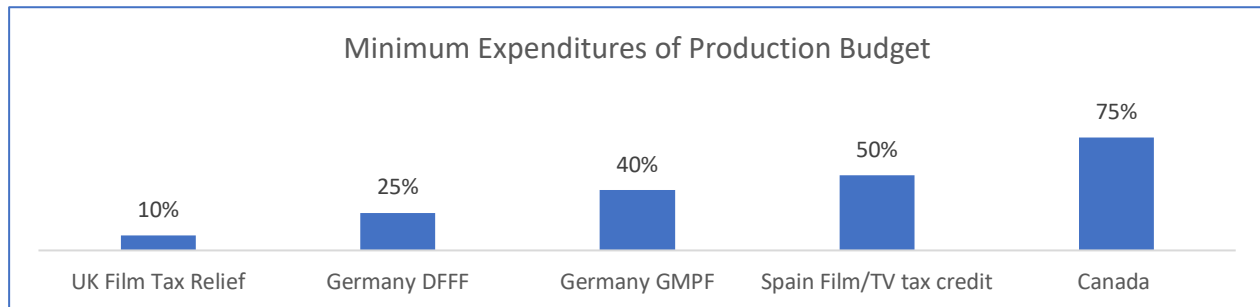
⁴⁷ Nathan Sager, “Hamilton-shot *Umbrella Academy*, *The Handmaid's Tale* earn Emmy nominations, in *insauga*, July 13, 2021, retrieved from <https://www.insauga.com/hamilton-shot-umbrella-academy-the-handmaids-tale-earn-emmy-nominations>.

⁴⁸ Olsberg SPI, Global Film Production Incentives, a White Paper, June 4th, 2019, page 28.

⁴⁹ Nancy Tartaglione, “‘Lupin’ producer on how to make a global hit as language barriers fall – Berlin,” in *Deadline*, March 3, 2021, retrieved from <https://deadline.com/2021/03/lupin-netflix-omar-sy-gaumont-streaming-1234705813/>.

Canada compares to other jurisdictions examined that impose minimum expenditure requirements expressed as a percentage of the production budget.

Figure 10: Minimum Expenditure Requirements as a Percentage of the Production Budget



The constraints of this approach result in a Canadian system that is poorly adapted to the realities of global production trends. Where other jurisdictions provide producers with the flexibility needed to create globally competitive larger-scale productions, the Canadian content system with its high level of both production and post-production expenditures, is not well suited to these increased opportunities. France and Germany both have lower production expenditure requirements. In addition, both jurisdictions have adapted their cultural tests in recent year to add new special effects positions, providing added flexibility for producers.⁵⁰ By ignoring the local character of productions made by Canadians and how they strengthen local production ecosystems, the Canadian content point system falls short in an evolving industry where international productions are fueling sustainability and growth of production companies and sectors and promoting the world-class skills of local industries.

The shows described in this chapter were produced in Canada, creating jobs for Canadians. The *Umbrella Academy*, *The Shape of Water* and *Handmaid's Tale* were filmed in Ontario. For its part, *Barkskins* was shot in Quebec. Also shot in Quebec, *Jusqu'au Déclin* was filmed in the Laurentians with an all-Quebec cast and crew, resulting in \$5.8 million in direct investment in the province.⁵¹ It's a huge success story in promoting Canada to the world. *The Willoughbys* is yet another example. An animated film written, directed, voiced and fully animated by Canadians, the film was produced in Canada, and distributed to the world by Netflix, where it found 97% of its audience.⁵² The shows described above have employed hundreds of Canadians in highly skilled jobs, working alongside international talent.

The Willoughbys

- ✓ Written and directed by Canadians
- ✓ Original novel adapted by Canadian writers
- ✓ Produced in Canada and fully animated by Canadians
- ✓ Key characters voiced by Canadians actors Alessia Cara and Martin Short

⁵⁰ CNC, "Réforme de l'agrément des films : une nouvelle pierre angulaire pour la politique cinématographique en France," December 5, 2017, retrieved from https://www.cnc.fr/cinema/communiqués-de-presse/reforme-de-lagrément-des-films--une-nouvelle-pierre-angulaire-pour-la-politique-cinematographique-en-france_111668; Ed Meza, "Germany Expands Rebate System for VFX Sector" in *Variety*, October 18, 2018, retrieved from <https://variety.com/2018/film/news/germany-rebates-expanded-vfx-1202982921/>.

⁵¹ "Analysis: How foreign streamers might come to pick, and own, our Cancon," in *Cartt.ca*, May 15, 2021, retrieved from <https://cartt.ca/analysis-how-foreign-streamers-might-come-to-pick-and-own-our-cancon/>.

⁵² Marina Hanna, "Dark comedy 'The Willoughbys' a serious statement about the family we choose (and the family we're stuck with)," *Toronto Star*, April 16, 2020, <https://www.thestar.com/entertainment/movies/opinion/2020/04/16/dark-comedy-the-willoughbys-a-serious-statement-about-the-family-we-choose-and-the-family-were-stuck-with.html>.

4. Modern National Content Systems Align with Global Production Business Models

4.1 Canada is Out of Step with Evolving Financing Models

For half a century, Canada has required Canadian production companies to own the copyright of productions where Canadian content recognition is sought, and for a period of not less than 25 years. This factor is determinant, meaning that, even where all other requirements are met, productions that do not satisfy this requirement cannot qualify as Canadian content. The current system was developed in an earlier analog environment when broadcasting was largely a closed system. But the broadcasting system is no longer closed. High-quality television programming has been available from the Internet for many years. As it has been noted:

“Canada came by the IP misunderstanding honestly. Historically, the policy requiring IP ownership by independent producers as a prerequisite for public financing was driven by the need to develop a nascent production industry. That goal has been spectacularly achieved. Not only does Canada now boast a world-class, in-demand TV workforce and infrastructure, a slew of Canadian production companies — Boat Rocker, eOne, Halfire, Nomadic, Thunderbird, and more — have been producing premium TV for the global market. Yet, they are not incentivized by policy to take on the role of studios. Other producers focus mostly on making a business of so-called service productions. Meanwhile producers who haven’t reached global scale have unrealistic expectations of how the industry works.”⁵³

In its submission to the *Panel Review on the Broadcasting Act*, Canadian broadcaster Corus best described the implications of not having a modern approach to the definition of Canadian content:

“For too long, the Canadian broadcasting system has been filled with regulatory disincentives to investment in Canadian content...“The Canadian Radio-television and Telecommunications Commission (“Commission” or “CRTC”) has recognized this in recent years. To build a truly competitive Canadian media sector, all media companies must be permitted to fully monetize their investments in content.”⁵⁴

By comparison, no other jurisdiction examined imposes such a restriction.

The majority of programs in jurisdictions examined have no ownership requirements at all, while others have limited and far more flexible requirements. The majority of the jurisdictions examined do not consider the ownership of the production in their national content systems. Those that do have limited requirements that balance the ownership of the production against other characteristics that can help jurisdictions achieve a wide range of policy objectives. Ownership in these jurisdictions is relativized, such as by requiring that ownership be proportional to investment, and balancing its weighting in the points system against other benefits brought by the production. These approaches are aligned to changes in the industry.

The market is increasingly seeing a new kind of “hybrid” production — fully financed by international streamers and produced locally, in local languages, to generate subscription sales in local markets. These productions tend to have cost and quality levels of much larger international productions.⁵⁵ In

⁵³ Berkowitz, Irene S., *Mediaocracy: Why Canada hasn’t made global TV hits and how it can*, Pressbooks, 2021. BFI, British Film Certification Schedule 1 to the Films Act 1985 Cultural Test Guidance Notes, September 2022.

⁵⁴ Corus, *Broadcasting and Telecommunications Legislative Review: Call for Comments*, Comments of Corus Entertainment Inc., January 11, 2019.

⁵⁵ Elsa Keslassy, “Netflix, Amazon Must Invest 20-25% of French Revenues in Local Content, France Government Decrees,” in *Variety*, June 30, 2021, retrieved from <https://variety.com/2021/streaming/global/avms-france-netflix-new-rules-streamers-1235008364/>.

Europe, Netflix, Hulu, Disney, and others recognize the enormous potential reach of European-produced shows. Some of these have been major international successes as well.

Lupin (2021), produced by Gaumont Television France, is one such example. Based on the novels of French author Maurice Leblanc and set in Paris, the series was produced in France and in the French language, employing highly skilled French directors, cinematographers, composer, key cast, including Omar Sy in the lead role, and crew. Isabelle Degeorges, head of Gaumont Television France, has said that Netflix, which fully financed the series, “gave Gaumont the resources to make the ambitious series with the scope we had envisioned and give it a strong French DNA; it would have been a different series if we had had multiple partners involved.” The series quickly became the most popular French show on Netflix following its release on the platform, as well as one of Netflix’s top 10 shows in most countries around the world.⁵⁶

Money Heist (2017) is another example, where the first season was produced by Spanish production company Vancouver Media, helmed by Alex Pina, the show’s creator and showrunner, for Spanish broadcaster Atres Media, before being sold to Netflix, which commissioned four more seasons. The series is produced in Spain, in Spanish, by a Spanish production company, with Spanish key creatives in the positions of directors, writer, cast and crew. By 2018, *Money Heist* had become the most watched program on the platform in a language other than English and was in the top five for most watched series overall.⁵⁷

Under the current Canadian content system, productions like *Lupin* and *Money Heist*, which have made many cultural and economic contributions to their home jurisdictions, would not qualify for certification as Canadian productions as the copyright is owned by Netflix.

Most recently, Paramount Plus announced a new slate of original local productions at the launch of its Italian service. To attract Italian audiences, Paramount Plus is investing in local content and talent with Italian original productions such *Francesco Il Cantico* hosted by Roberto Benigni, and a new season of *Vita Da Carlo*, in which comedian and actor Carlo Verdone plays himself, revealing his difficult relationship with Italy’s capital Rome.⁵⁸ A new feature film, *Ti Mangio Il Cuore*, based on Carlo Bonini and Giuliano Foschini’s novel-investigation of the mafia in Foggia is also in the works. Starring Italian pop singer Elodie, the film is directed by Italian director Pippo Mezzapesa and produced by Italian production company Indigo Films.⁵⁹

The COVID-19 pandemic has accelerated structural changes that were already underway throughout the industry. The impact of the ongoing pandemic on the film and television industry is expected to, “change production practices, re-shape the exhibitor sector, transform distribution and expand global opportunities for...producers over the next five years.”⁶⁰ These changes have profound implications for the financing and investment in independent productions.⁶¹ Streaming is now firmly established in the

⁵⁶ Sheen Scott, “‘Lupin’ is Netflix’s Most Popular French Series, in *Forbes*, January 14, 2021, retrieved from <https://www.forbes.com/sites/sheenascott/2021/01/14/lupin-is-netflixs-most-popular-french-series-ever/?sh=7b3fbe2b5de1>.

⁵⁷ Gabriella Paiella, “How Netflix’s ‘Money Heist’ became a worldwide phenomenon,” in *GQ*, September 7, 2021, retrieved from <https://www.gq.com/story/money-heist-netflix-profile>.

⁵⁸ Jesse Whittok, “Robert Benigni to host Paramount+ original ‘Francesco Il Cantico’ on eve of streamer’s Italian launch, in *Deadline*, September 14, 2022, retrieved from <https://deadline.com/2022/09/roberto-benigni-paramount-plus-francesco-il-cantico-streamer-launch-1235118629/>.

⁵⁹ Nick Vivarelli, “Paramount+ launches in Italy with slate including Roberto Benigni, Carlo Verdone and Sylvester Stallone’s ‘Tulsa King,’ in *Variety*, September 14, 2022, retrieved from <https://variety.com/2022/digital/global/paramount-plus-italy-shows-1235372177/>.

⁶⁰ Jennifer Wolfe, “Nostradamus Report Foresees a Transformed Landscape/Source: Variety,” in *NAB Amplify*, February 19, 2021, updated March 18, 2021.

⁶¹ Johanna Koljonen, *Nostradamus Report: Imagining a Sustainable Industry*, Goteborg Film Festival and Film i Väst, September 2022.

screen ecosystem and may become the cornerstone of a new normal.⁶² The very stringent and determinant ownership requirements in the Canadian content system do not reflect the reality of the current production landscape and how Canadian production companies actually work now.

4.2 Examples of Canadian Producers Leveraging Opportunities with Global Partners

Canada has a mature production sector, home to sophisticated production companies that are experienced in working internationally. Many have strong partnerships with global players, such as Toronto-based Take5 Productions, which together with Whizbang Productions, have produced *Star Trek: Discovery*, *Beauty and the Beast*, *Reign* and *American Gothic* for CBS alone in Toronto.⁶³ The two producers, John Weber (Take5) and Frank Siracusa (Whizbang), oversaw the development and management of a new 260,000 square foot facility in Mississauga, established to support CBS's growing slate of productions in Ontario.⁶⁴

Ottawa-based animation studio Mercury Filmworks has worked on at least 10 Disney productions, while Vancouver-based Omnifilm Entertainment has worked on a least five live-action productions for the global company.⁶⁵ Thunderbird Entertainment, also based in Vancouver, has produced projects for Netflix, Amazon Prime Video, Hulu, Apple TV Plus, and HBO Max.⁶⁶ It's Ottawa-based subsidiary Atomic Cartoons has produced animated programs for Netflix and Universal Animation Studios.⁶⁷ For its part, Hamilton-based Pipeline Animation Studio has produced an impressive 1500 minutes of animation each year for companies like Disney, PBS Kids, Netflix and CBC Kids. Launching in 2007 with a staff of 15 people, the company had ballooned to a staff of 218 people in Canada by 2019.⁶⁸

Global studios & streamers, like Warner Bros, CBS-Paramount Global and Netflix are said to be the second largest source of financing for Canadian-owned content production, with foreign pre-sales and advances accounting for 15% of total financing. By comparison, the Canada Media Fund accounts for 10%, and Telefilm accounts for 1%.⁶⁹ Following Netflix's pledge to spend at least \$500 million dollars over 5 five years to fund original Canadian production, CRTC Chair Ian Scott stated in January 2020 that Netflix was "probably the single largest contributor to the (Canadian) production sector." At the same time, Thunderbird CEO Jennifer Twiner McCarron noted that the company had "to say 'no' to more work than we'd like to, because we can't do it all."⁷⁰ In 2021, the value of foreign production activity reached USD \$1.91 billion (CAD \$2.65 billion) in Ontario alone, on shows like Guillermo de Toro's *Nightmare Alley*, Hulu's *The Handmaid's Tale* and Apple's *See*.⁷¹

⁶² Michael Gubbins, "Streaming giants and public film funding," *Analysis Report*, Film I Vast, 2022, retrieved from <https://analysis.filmivast.se/wp-content/uploads/2022/04/Streaming-Giants-and-Public-Film-Funding.pdf>.

⁶³ CMPA, Indiescreen website: <https://cmpa.ca/indiescreen/blueprint-studio-city/>.

⁶⁴ Tony Wong, "Why CBS set its sights on Toronto area for new TV production hub," in *The Toronto Star*, September 26, 2018, retrieved from <https://www.thestar.com/business/2018/09/26/cbs-plans-production-hub-in-canada-to-satisfy-demands-of-peak-tv.htm>.

⁶⁵ Victoria Ahearn, 'Kind of a scary time': Canadian creators face uncertainty in the streaming era," in *CBC News*, December 11, 2019, retrieved from <https://www.cbc.ca/news/canada/toronto/canadian-streaming-services-1.5392231>.

⁶⁶ Victoria Ahearn, 'Kind of a scary time': Canadian creators face uncertainty in the streaming era," in *CBC News*, December 11, 2019, retrieved from <https://www.cbc.ca/news/canada/toronto/canadian-streaming-services-1.5392231>.

⁶⁷ Lauren Malyk, "Atomic Cartoons moves into phase two of Ottawa expansion," in *Playback*, June 20, 2019, retrieved from <https://playbackonline.ca/2019/06/20/atomic-cartoons-moves-into-phase-two-of-ottawa-expansion/>.

⁶⁸ Adam Carter, "Hamilton animation studio producing some of the world's most popular cartoons," in *CBC News*, January 2, 2019, retrieved from <https://www.cbc.ca/news/canada/hamilton/pipeline-studios-1.4949542>.

⁶⁹ Canadian Media Producers Association, Profile 2021: An Economic Report on the Screen-based Production Industry in Canada, 2022, Exhibit 2-10, page 32.

⁷⁰ "Thunderbird sees marked 2020 growth," in *Cartt.ca*, October 15, 2020, retrieved from <https://cartt.ca/thunderbird-sees-marked-2020-growth/>.

⁷¹ Ontario Creates, "Ontario's Film and Television Production Soars with Record-Breaking Year," News Release, March 24, 2022, retrieved from <https://www.ontariocreates.ca/news-releases/ontarios-film-and-television-production-soars-with-record-breaking-year#:~:text=Ontario's%20film%20and%20TV%20industry,industry%20shut%20down%20in%202020>; Etan Vlessing, "How Hollywood's

Recent examples of hybrid local productions provide further evidence of how Canadians are leveraging new opportunities afforded by the global production environment. *Turning Red* (Disney), *The Lake* (Amazon Prime Video), *Three Pines* (Amazon Prime Video) and *Jusqu'au Déclin* (Netflix) are authentic local stories told by Canadians for Canadians and the world, leveraging Canada's world-class talent and production facilities, promoting Canadian ideas and values to the world. Ironically, these productions don't qualify as Canadian under the current rules.

Canada's approach to copyright ownership is highly restrictive as compared to other jurisdictions and does not reflect the sophistication of Canada's mature production sector. Rooted in another time the Canadian content system was designed to support a nascent industry in an industry affording far fewer possibilities. But while this system has remained relatively unchanged for decades, the film and television production and broadcast industries have grown and changed considerably.

The Canadian production system requires a more flexible national content system that reflects how Canadian companies and talent are actually working now, to ensure the sector can seize the multitude of opportunities created by the evolving global production landscape. There is no single model of production deals for creating local productions. With flexibility, production companies can leverage the benefits of global platforms, including access to global audiences and a variety of production models, including commissioned content and co-production partnerships.

streaming boom drives Ontario's production juggernaut: 'We're Incredibly Busy' in *The Hollywood Reporter*, May 20, 2022, retrieved from <https://www.hollywoodreporter.com/tv/tv-news/ontario-production-hollywood-streaming-boom-toronto-1235128754/>.

III. Conclusion

1. Modernizing the Definition of Canadian Content

As noted by Entertainment Partners, “there is a booming demand for new content...transformation in where and how we work...we are entering a new age of entertainment.”⁷² International approaches to defining national content are modern, flexible and adapted to this changing global production landscape. They attach both cultural and economic value to screen-productions, apply flexible tests to achieve a wider array of policy objectives, and do not impose ownership restrictions that are not aligned to the changing screen-based production value chain.

Canada, by comparison, continues to use an antiquated definition of Canadian content and risks becoming uncompetitive at a time of increasing global demand for new content. Focused exclusively on industrial considerations, the Canadian content system continues to be based on a stringent and exacting definition of ownership, considering only a limited number of key creative positions, which must entirely be staffed by Canadians, and requiring a high level of Canadian expenditures. The requirements that the Canadian producer own the copyright for 25 years and that 75% of the production budget as well as 75% of the post-production be expended in Canada are more restrictive than any of the 10 jurisdictions examined. Unlike other jurisdictions, Canada also requires producers to have a guaranteed access to at least 25% of the net profits from the exploitation of the production in foreign markets.⁷³ No other jurisdiction establishes such a threshold.

The narrow 10-point scale is exclusionary. The contributions of the majority of Canadian industry workers are not factored into the test, nor are the wider economic benefits to the sector and the country. Investments in any production at any point in the production cycle, and regardless of the specific content, are also important contributions to strengthen the overall production industry. This is how the industry can grow the pool of talent, expertise, and capital available to produce more content.

Some government and regulatory reviews in the past decades have revealed the limitations of the definition of Canadian content. Through these reviews, observations have been put forward that a more flexible Canadian content system would allow the achievement of both cultural and economic goals, encouraging more large-scale productions that capture a larger share of international markets, promoting Canadian culture and supporting a more vibrant Canadian production sector. These observations are as valid today as they were years ago.

1.1 Limitations of Current Canadian Content Definition Noted in Government and CRTC Reviews

- **Provide Flexibility and Support Cultural Goals on Par with International Community**
(*Government Task Force on the Review of Canadian Content*)

As far back as 20 years ago, a review of the definition of Canadian content found that the ten-point system was not responding to production realities in Canada and that Canada was not on par with the international community.⁷⁴ The study also noted that the current Canadian content definition confounds both cultural and economic goals: “There are three main tests under the current Canadian content definition (key creative talent, production expenditures and post-production expenditures). In our view, the three tests confound both cultural and economic goals. More

⁷² Entertainment Partners, “The future of film and television production,” corporate blog entry, Entertainment Partners, January 4, 2022, retrieved from <https://www.ep.com/blog/the-future-of-film-and-television-production/>.

⁷³ Canadian Film or Video Production Tax Credit (CTPC) Application Guidelines, Canadian Audio-Visual Certification Office (CAVCO), March 3, 2020.

⁷⁴ François Macerola, Canadian Content in the 21st Century in Film and Television Productions: A Matter of Cultural Identity”, Canadian Heritage, June 2003.

specifically, they impart a certain degree of ambiguity to the main objectives the federal government is attempting to achieve.”

- Provide Flexibility to Support Large-Scale Production, Risk-Taking and Content Attractive in International Markets

(CRTC Consultation *Let's Talk TV: A Conversation with Canadians on the future evolution of the television system*)

In this 2015 public consultation, the CRTC noted that the future television environment may require new approaches to what constitutes Canadian programming and pointed out the flexibility that is available for the certification of international co-ventures:

“In the current system, programs are recognized as Canadian based on the various creative and other roles played by Canadians and Canadian companies in the production of a program. Productions are certified as Canadian by either the Commission or the Department of Canadian Heritage through the Canadian Audio-Visual Certification Office (CAVCO). CAVCO certification recognizes only treaty co-productions as Canadian, whereas the Commission also recognizes international co-ventures. In recent years, this flexibility has enabled large-scale productions such as “Beauty and the Beast” and “Reign.” Large pre-sales to foreign networks (generally U.S. networks) are the way in which some of these co-venture productions can be made.”⁷⁵

For its part, Canadian distributor, eOne called for a more flexible point system, pointing out that this would act as an incentive to Canadian producers, broadcasters and distributors to take more creative and financial risk to create Canada content attractive to international audiences.

“While the government has a role to play in the Canadian content production, distribution and broadcast ecosystem, we no longer live in an analog three channel universe where the regulations and policies currently ruling the Canadian production and broadcasting sectors can have the same level of impact they once had. Unfortunately, the current Canadian content funding regime supports a one-off production infrastructure where copyright ownership is more important than distribution ownership.”⁷⁶

- Include Cultural Elements in Definition of Canadian Content
(Government Consultation on *Canadian Content in a Digital World*)

This 2016 federal government consultation found that “there was near unanimous agreement that Canada should revisit and update what qualifies as Canadian content and who qualifies as a Canadian creator.”

In its submission, the CMPA proposed expanding the definition of Canadian content to include Canadian cultural elements, such as awarding new points to encourage adaptations of bestselling Canadian-authored books and novels, or productions based on recognized Canadian figures or historical events. As the CMPA argued, “given the government’s overall goal of capturing a greater share of global markets, the participation of a minority of non-Canadians on a writing team that is

⁷⁵ Canadian Radio-television and Telecommunications Commission (CRTC), *Broadcasting Regulatory Policy CRTC 2015-86*, March 12, 2015, retrieved from <https://crtc.gc.ca/eng/archive/2015/2015-86.htm>.

⁷⁶ Oral remarks by Entertainment One (eOne) delivered by John Morayniss, Broadcasting Notice of Consultation Hearing – CRTC 2014-190-4, *Let's Talk TV*, September 19, 2014.

supervised by a Canadian lead writer or showrunner should not disqualify a production from earning a point for the writer.”⁷⁷

- Definition Too Restrictive to Produce Content Attractive in International Markets
(CRTC’s Consultation on a *New Policy Framework for Certified Independent Funds*)

The CRTC’s introduction of a new policy framework for certified independent production funds (CIPF) allowed CIPFs to extend their funding to productions obtaining six Canadian certification points instead of eight. As was pointed out: “the current criterion requiring eight out of ten Canadian content certification points to qualify for CIPF funding is restrictive and excludes many productions that could otherwise be of high quality and qualify as Canadian. Moreover, a reduced requirement could help smaller and perhaps more innovative projects to qualify for funding.” It was noted that requiring only six points could facilitate the hiring of non-Canadian actors or creators, who might increase a project’s attractiveness and visibility in international markets.

- Support a Vibrant Domestic Market by Reflecting New Realities of Digital Production
(CRTC *Policy Review of the Future of Programming Distribution*)

This 2018 examination by the CRTC examined how the future distribution environment could support a vibrant, internationally competitive, domestic market. The Commission noted as one option updating current definitions of Canadian content to “reflect the new realities of digital production and ensuring that they provide the best combination of supports and incentives for the future environment.”⁷⁸

1.2 A Modernized Approach to Defining Canadian Content

International jurisdictions provide lessons learned for Canada when it comes to the need to modernize. Of critical importance is the need to add flexibility to the current system, in line with the approaches taken in other jurisdictions, to ensure that Canadians enjoy the full array of possible benefits flowing from screen-based production in Canada. Flexibility in the Canadian content system would support the evolution of business and financing models, in keeping with the maturity of the sector and at the level of its sophisticated production companies. A modernized definition of Canadian content would support Canadian storytelling, promoting Canadian culture and soft power and the ongoing development of its world-class production sector.

In its review of the definition of Canadian content, Canada could consider the following measures, which have been implemented in other jurisdictions

- Expand the Canadian points-base system to include a significantly larger number of available points and graduated scales that are aligned to the realities of the global production environment,
- Include recognition of cultural criteria in an expanded point system, with particular emphasis on meeting Canada’s cultural objectives,
- Recognize all Canadian cast and crew in an expanded Canadian points-based system,
- Reduce the current thresholds of minimum production expenditures on par with international (i.e., between 10% and 50% of production budgets), and

⁷⁷ CMPA, *Submission to the Department of Canadian Heritage, Canadian Content in a Digital World*, November, 2016, retrieved from https://cmpa.ca/wp-content/uploads/2018/04/CMPA_Submission-CanadianContentInADigitalWorld-ONLINE.pdf.

⁷⁸ CRTC, *Conclusions and potential Options, Harnessing Change: The Future of Programming Distribution in Canada*, retrieved from <https://crtc.gc.ca/eng/publications/s15/pol1.htm#c4>.

- Remove current copyright ownership requirement as a determinant factor, providing Canadian producers with the flexibility to decide with financing partners the best business deals for their respective companies.

Each of these changes would better align the Canadian content system to the realities of global production and to the systems in other jurisdictions.

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Annex II: Background Information on the Jurisdictions Examined

1. The United Kingdom

The British Film Institute (BFI) Certification Unit is responsible for assessing applications for the certification of British television programs and feature films on behalf of the Secretary of State. Qualification for the UK's tax reliefs is based on the certification of a project through a sector-specific cultural test. The certification of a film or television program as "British" is also the gateway for accessing the national funding programs for film that are administered by the BFI. Production Fund awards are recoupable by the BFI. Some of these recouped funds are reserved for filmmakers through automatic access to a BFI Locked Box for use in future filmmaking activities by producers.⁷⁹

1. Requirements to Access UK Film and High-End Television Tax Credit⁸⁰

Requirements to Access UK Film and High-End Tax Reliefs	
Ownership Requirements	No requirement for the rights to be owned by the production company applying for the tax credit.
Eligible Production Companies	- Production company must be permanently established in the UK and pay corporation tax in the UK - Production company must be actively involved in planning and decision-making of production, and responsible to delivery completed film, negotiations and contracts and expenditures.
Eligible Projects	- Feature films must be intended for theatrical release - High-end television productions must be intended for broadcast on television or the Internet.
Expenditure Requirements	Minimum expenditure of 10% of the production budget in the UK
Cultural Test	Minimum of 18 out of 35 points Fiction Productions: - Cultural content (22 points) - Nationality of personnel (8 points) - Local of Production/Post-production (5 points)

1.1 UK Cultural Test for Accessing the BFI Production Funding and Tax Reliefs⁸¹

The following cultural test applies to all productions seeking direct funding from the BFI, as well as those seeking film or high-end television tax relief. Productions must achieve a minimum of 18 out of 35 points. High-end television productions must achieve 16 out of a possible 31 points.

Cultural Test to Access BFI Production Fund and Tax Reliefs	
Cultural content: up to 18 points	
Film set in the UK or EEA (up to 4 points) 4 points will be awarded if at least 75% of the film is set in the United Kingdom or another EEA state. 3 points will be awarded if at least 66% of the film is set in the United Kingdom or another EEA state 2 points will be awarded if at least 50% of the film is set in the United Kingdom or another EEA state. 1 point will be awarded if at least 25% of the film is set in the United Kingdom or another EEA state.	Up to 4 points
Lead characters British or EEA citizens or residents (up to 4 points) 4 points if two or more of the three lead characters/participants are British or EEA citizens or residents, or if there are only one or two characters/participants and all are British or EEA citizens or residents.	Up to 4 points

⁷⁹ BFI, Making an application to the BFI Production Fund, December 2021.

⁸⁰ UK Trade and Investment, *Creative Sector Tax Reliefs*, April 2014; BFI, "About UK creative industry tax reliefs", BFI website: <https://www.bfi.org.uk/apply-british-certification-tax-relief/about-uk-creative-industry-tax-reliefs>; See also detailed guidance on film tax relief: <https://www.gov.uk/hmrc-internal-manuals/film-production-company-manual>, and detailed guidance on high-end television tax relief: <https://www.gov.uk/hmrc-internal-manuals/television-production-company-manual>.

⁸¹ BFI, British Film Certification Schedule 1 to the Films Act 1985 Cultural Test Guidance Notes, September 2022.

• 2 points if one of the two lead characters/participants is British or an EEA citizen or resident, or if only one of three lead characters/participants is British or an EEA citizen or resident and that character/participant is the first or second lead; and • 1 point if one of the three lead characters/participants is British or an EEA citizen or resident and that character/participant is the third lead.	
Film based on British or EEA subject matter or underlying material	4 points
• Original dialogue recorded mainly in English or UK indigenous language or EEA language (up to 6 points) • 6 points will be awarded if at least 75% of the original dialogue is recorded in the English language or in an officially recognized regional or minority language of an EEA state. • 4 points will be awarded if at least 66% of the original dialogue is recorded in the English language or in an officially recognized regional or minority language of an EEA state. • 2 points will be awarded if at least 50% of the original dialogue is recorded in the English language or in an officially recognized regional or minority language of an EEA state. • 1 point will be awarded if at least 25% of the original dialogue is recorded in the English language or in an officially recognized regional or minority language of an EEA state.	Up to 6 points
Cultural contribution: maximum of 4 points	
The film demonstrates British creativity, British heritage and/or diversity: up to 4 points. • 1 point will be awarded for a significant representation of British creativity, British heritage or diversity. • 2 points will be awarded for an outstanding representation of British creativity, British heritage or diversity.	Up to 4 points
Cultural hubs: up to 5 points out of 7 available points	
• At least 50% of the principal photography or SFX takes place in the UK	2 points
• At least 50% of the VFX takes place in the UK	2 points
• An extra 2 points can be awarded if at least 80% of principal photography or VFX or SFX takes place in the UK	2 points
• Music Recording/Audio Post-Production/Picture Post-Production	1 point
Cultural practitioners (UK or EEA citizens or residents): up to 8 points	
Up to 8 points, with • one point for key roles (director, scriptwriter, producer composer, etc.) and • one point for lead actors, majority of cast, key staff (1 of the following roles – lead cinematographer, lead production designer, lead costume designer, lead editor, etc.) and majority of crew.	Up to 8 points
Total Available Points	35 points
Minimum Points Required: 18 points	

2. Requirements to Access BFI Direct Funding for Film (Production Fund - Locked Box)

Requirements to Access BFI Direct Funding for Film	
Ownership Requirements	No requirement for the rights to be owned by the production company applying for the Production Fund
Eligible Production Companies	Production company must be based in the UK, OR any foreign company with a production office in the UK
Eligible Projects	Films must be intended for theatrical release
Expenditure Requirements	No minimum expenditure
Cultural Test	Minimum of 18 out of 35 points <u>Fiction Productions:</u> • Cultural content (22 points) • Nationality of personnel (8 points) • Location of Production/Post-production (5 points)

2.1 Cultural Test for Accessing the BFI Production Funding

This is the same test as shown in 1.1, above. Films must score a minimum of 18 out of a possible 35 points. Receiving 100% of the points in the cultural content section (18 points in all) is enough to achieve certification.

2. France

The National Centre for Cinema and the Moving Image (CNC) is the principal funding body in France. The CNC administers an automatic funding envelope to producers of accredited French productions as well as the French film and audiovisual production tax credits.⁸² To access a tax credit, productions must meet the requirements for national certification. In addition, they must be entirely or principally shot in French or in a regional language used in France (with appropriate exceptions for artistic reasons and for digital animation films). All film productions seeking direct financing from the CNC must be accredited as national films on the basis of points earned on a cultural test. To access direct funding from the CNC audiovisual productions must be accredited as “European” productions, based on points-based cultural test comprising artistic and technical elements.

1. Requirements for Accessing the Film or Audiovisual Tax Credit⁸³

Requirements for Access to French Film or Audiovisual Tax Credit	
Ownership Requirements	• Corporate control of the production company must rest with French or European citizens or residents. • Producers must own rights to the production commensurate with their financial participation in the project. • Television production companies may not be in any way controlled or under the influence of a broadcaster.
Eligible Production Company	• Production companies must be based in France or Europe and have a subsidiary based in France. • Producers must be meaningfully involved in the financing, technical and artistic aspects of the production and guarantee its completion.
Eligible Production	• Films must be produced for theatrical release. • Television projects must have a French broadcaster or streaming service attached.
Expenditure Requirements	• No minimum expenditure but a factor in the cultural test
Cultural Test	• Minimum of 41 out of 100 points excluding any points for language of production (feature film and audiovisual fiction and documentary productions) • Minimum of 51 out of 100 points (animated feature films and audiovisual productions) <u>Fiction Productions:</u> • Cultural content (0 points) • Nationality of personnel (60 points) • Location of Production/Post-production (20 points)

1.1 Cultural Test for Accessing the French Film or Audiovisual Tax Credit

The allocation of the 100 points on the cultural test varies by type of production, whether fiction, documentary or animation. To access the tax credit, producers of feature films or audiovisual productions must obtain a minimum of 41 points, excluding any points for the language of production. Animation films

⁸² CNC, “Agrément des films de long métrage,” CNC website: <https://www.cnc.fr/professionnels/vos-demarches/agrement-des-films-de-long-metrage>.

⁸³ The production company’s president, directors or managers must be French nationals or residents, or nationals of a member state of the European Union (EU), or a European signatory state - party to the EU convention on cinema coproduction, the Television Without Frontiers Directive of the Council of Europe, or a third party (non-European) nation having concluded audiovisual agreements with the European community. The production company may not be controlled by any individual or corporation of any nation other those mentioned here. Foreigners qualifying as resident in France are treated as French citizens. See also *Code du cinéma et de l’image animée* 2014, Articles 211-5 and 311-4, retrieved from https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000020908868/LEGISCTA000031348624/#LEGISCTA000031348624; CNC, “Agrément des films de long métrage,” CNC website: <https://www.cnc.fr/professionnels/vos-demarches/agrement-des-films-de-long-metrage>; and CNC, “Crédit d’impôt cinéma,” CNC website : https://www.cnc.fr/professionnels/aides-et-finance-ments/cinema/production/credit-dimpot-cinema_132769.

or audiovisual productions must obtain a minimum of 51 points on the national cultural test for animation films.⁸⁴ For fiction films, the 100-point scale is distributed as follows:

Cultural Test for Accessing the French Film or Audiovisual Tax Credit	
Language of production - Majority of film shot in French – 20 points - At least one-third of film shot in French – 10 points - Less than one-third of film shot in French – 0 points	20 points
Production company and authors - Production company – 9 points - Authors – 11 points - Points are allocated to French or European authors - Director – 5 points - Authors of underlying IP, screenwriter, adaptation writer, dialogues – 5 points - Composer – 5 points	20 points
Performers - The category includes first and second principal performers as well all other performers who are paid professional fees for a minimum of three days - Allocation of points is proportional, based on the share of all days for which professional fees are paid that are paid to French or European performers⁸⁵	20 points
Heads of Departments ("key creative collaborators"), Technicians and Skilled Workers - Heads of Departments – 9 points - Production Manager – 1.5 points - Director of Photography – 1.5 points - Chief Sound Recordist/Engineer/Mixer – 1.5 points - Costume Designer or costume supervisor – 1.5 points - Set Designer, or Designer-decorator – 1.5 points - Chief Picture Editor – 1.5 points - Technicians and skilled workers - 11 points - Allocation of points is proportional, based on share of salaries paid to technicians and skilled workers who are French or European⁸⁶	20 points
Production and Post-Production (locations, technical materials and post-production) - Production locations – 5 points - Technical materials and production – 4.5 points - Shooting – 2 points - Lighting – 1.5 points - Equipment and other materials – 1 point - Post-production – 10.5 points - Image – 3.5 points - Sound – 3.5 points - Digital visual effects – 3.5 points If a film has few digital visual effects, the points for these positions are allocated to matching points to those obtained in the categories of image and sound.	20 points
Total Available Points	100 points
Minimum Required: 41/80 points + mandatory language	

2. Requirements to Direct Automatic Funding from the CNC⁸⁷

⁸⁴ Bulletin Officiel des Finances Publiques – Impôts, IS - Réductions et crédits d'impôt - Crédit d'impôt pour dépenses de production cinématographique (Crédit d'impôt cinéma) - Champ d'application, retrieved from <https://bofip.impots.gouv.fr/bofip/5740-PGP.html/identifiant=BOI-IS-RICI-10-20-10-20220608>; Bulletin Officiel des Finances Publiques – Impôts, IS - Réductions et crédits d'impôt - Crédit d'impôt pour dépenses de production déléguée d'œuvres audiovisuelles (Crédit d'impôt audiovisuel) - Champ d'application, retrieved from <https://bofip.impots.gouv.fr/bofip/5833-PGP.html/identifiant=BOI-IS-RICI-10-30-10-20220608>.

⁸⁵ Sébastien Lachaussée and Elisa Martin-Winkel, "La réforme de l'agrément : synthèse," in *L'actualité*, April 1, 2018, retrieved from <https://avocatl.com/news/la-reforme-de-lagrement-synthese/>.

⁸⁶ Sébastien Lachaussée and Elisa Martin-Winkel, "La réforme de l'agrément : synthèse," in *L'actualité*, April 1, 2018, retrieved from <https://avocatl.com/news/la-reforme-de-lagrement-synthese/>.

⁸⁷ The production company's president, directors or managers must be French nationals or residents, or nationals of a member state of the European Union (EU), or a European signatory state - party to the EU convention on cinema coproduction, the Television Without Frontiers Directive of the Council of Europe, or a third party (non-European) nation having concluded audiovisual agreements with the European community. The production company may not be controlled by any individual or corporation of any nation other those mentioned here. Foreigners qualifying as resident in France are treated as French citizens. See also *Code du cinéma et de l'image animée* 2014, Articles 211-5, Article 311-

Summary of Requirements Access Automatic Funding for Film and Audiovisual Productions from the CNC	
Ownership Requirements	• Corporate control of the production company must rest with French or European citizens or residents. • Producers must own rights to the production commensurate with their financial participation in the project. • Television production companies may not be in any way controlled or under the influence of a broadcaster.
Eligible Production Companies	• Production companies must be based in France or Europe and have a subsidiary based in France. • Producers must be meaningfully involved in the financing, technical and artistic aspects of the production and guarantee its completion.
Eligible Projects	• Films must be produced for theatrical release. • Television projects must be intended for dissemination via television broadcast or streaming service.
Expenditure Requirements	• No minimum expenditure but a factor in the cultural test
Cultural Test – Film Production	• Minimum of 25 out of 100 points (excluding any points for language of production) • Minimum or 20 out of 100 points for foreign productions • Minimum of 15 out of 100 points for international coproductions involving countries deemed to have a fragile film industry. <u>Fiction Productions:</u> • Cultural content (20 points) • Nationality of personnel (60 points) • Location of Production/Post-production (20 points)
Cultural Test – Audiovisual Production	• Minimum of 14 out of 18 points (fiction films intended for television) • Minimum or 13 out of 18 points (audiovisual fiction productions) <u>Fiction Productions:</u> • Cultural content (0 points) • Nationality of personnel (16 points) • Location of Production/Post-production (2 points)

2.1 Cultural Test for Accessing Automatic Production Funding for Film from the CNC

The cultural test to access automatic film funding is the same as shown above, in 1.1. To be certified for the purpose of accessing automatic production funding, productions must earn a minimum of 25 points, excluding any points related to the language of production. Exceptionally, the 25-point threshold can be lowered to 20 points for foreign productions and to 15 points for international coproductions involving countries deemed to have a fragile film industry. There is no language requirement for films accessing financing from an automatic funding envelope.

2.2 Cultural Test to Access Automatic Funding for Audiovisual Productions from the CNC

The points-based scale of the cultural test for this European accreditation varies by platform and genre. Audiovisual fiction productions must achieve 13 of the 18 points. Documentaries must achieve at least 9 points on a 14-point scale, and animations must obtain 14 of 21 points. The points scale for the European accreditation does not factor in the language the production is shot in. The cultural test for accreditation as

4 and Article 311-8, retrieved from https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000020908868/LEGISCTA000031348624/#LEGISCTA000031348624; CNC, “Agrément des films de long métrage,” CNC website: <https://www.cnc.fr/professionnels/vos-demarches/agrement-des-films-de-long-metrage>; and CNC, “Crédit d’impôt cinéma,” CNC website : https://www.cnc.fr/professionnels/aides-et-finance-ments/cinema/production/credit-dimpot-cinema_132769; *Fonds de soutien audiovisuel Plaque de présentation générale*, CNC, January 2022; European Audiovisual Observatory, Mapping of national rules for the promotion of European works in Europe, Strasbourg 2019, retrieved from <https://rm.coe.int/european-works-mapping/16809333a5>; CNC, *L’agrément des films de long métrage*, corporate website: https://www.cnc.fr/professionnels/aides-et-finance-ments/cinema/production/agrement-de-production-pour-les-films-dont-lagrement-des-investissements-a-ete-demande-a-compter-du-1er-janvier-2018-ou-pour-les-films-sans-agrement-des-investissements_190846.

a European fiction production to access the automatic funding from the CNC for audiovisual productions is as follows:

Cultural Test for Accessing Automatic Audiovisual Production Funding from CNC	
Authors and directors - 6 points	
Director	3 points
Screenwriter, dialogues writer	2 points
Other authors (original IP, adaptation writer, music)	1 point
Performers - 6 points	
First principal performer	3 points
Second principal performer	2 points
50% of all days for which performer fees are paid	1 point
Heads of Departments - 4 points	
Image	1 point
Sound (engineer, first assistant)	1 point
Editing (chief editor, first assistant)	1 point
Set Decorating (chief decorator, 1st assistant)	1 point
Technical industries – 2 points	
- Laboratories (filming and finishing); Editing/Sound (editing room and auditorium); Shooting studio - For audiovisual productions: materials rentals; shooting studios; laboratories; video post-production, sound auditorium	2 points
Total Available Points	18 points
Minimum Required : 13/18 points	

3. Germany

The Reference film funding program of the German Federal Film Board (FFA) provides automatic support to German films. Films must pass a cultural test in order to access automatic funding provided by the FFA. The FFA also administers two production rebates: the DFFF I for feature films (DFFF I) and the German Motion Picture Fund (GMPF), for high budget films and series with a high German spend.⁸⁸ To be eligible for the DFFF I or GMPF rebates, productions must satisfy the requirements of two respective points-based cultural tests.

1. Requirements for Access to the German Federal Film Fund I (DFFF I)⁸⁹

Requirements to Access the DFFF I	
Ownership Requirements	No ownership requirement
Eligible Production Company	- Eligible producers must be based in Germany or in another EU or EEA member state, with an office in Germany. - The producer is the person responsible for production of the film up to delivery of the answer print or a coproducer actively involved in producing the film.
Eligible Production	Films must be distributed theatrically in Germany.
Expenditure Requirements	25% of the production budget 20% of the production budget for projects with production budgets of €20 million (CAD \$26.8 million)
Cultural Test	- Minimum of 48 out of 96 points excluding any points for language of production (fiction) - Minimum of 27 out of 52 points (documentary) - Minimum of 42 out of 84 points (animation) <u>Fiction Productions:</u> - Cultural content (30 points) - Nationality of personnel (35 points) - Location of Production/Post-production (31 points)

⁸⁸ Dentons, *Producing in Germany: A guide to German film, television and interactive digital media incentive pre-funding grants*, 2020; Martin Blaney, "German Motion Picture Fund increases budget by 50% to meet series demand," in *Screen Daily*, March 18, 2022, retrieved from <https://www.screendaily.com/news/german-motion-picture-fund-increases-budget-by-50-to-meet-series-demand/5168784.article>.

⁸⁹ Olswang Germany LLP, *The German Federal Film Fund*, January 2014.

1.1 Cultural Test to Access the DFFF I

Fiction films must achieve a minimum of 48 out of 96 points, animated films must obtain at least 42 points out of a possible 84, while documentaries must obtain 27 points out of a possible 52. Fiction features must satisfy at least four out of 10 cultural content criteria, while animated films and documentaries must satisfy at least 2 cultural content criteria.

The following cultural test is aimed at fiction films and is based on a total of 96 points.

Cultural Test to Access the DFFF I	
Section A. Cultural Content - 30 points	
Film (fictional content/underlying material) is set mainly in Germany or in the German cultural area or in a fictional place	2 points
Uses German motifs (i.e., motifs that can be attributed to Germany, e.g., German architecture or landscapes, such as "Black Forest cottage") or fictional motifs	3 points
Uses German locations	3 points
Lead character(s) of the underlying material is/was German or is associated with the German-speaking or German cultural area	2 points
Story/material is German	2 points
Storyline/underlying material is based on literary material traditional fairy tales, myths or legends	2 points
Storyline/underlying material deals with artists or an art genre (e.g., composition, dance, performance, painting, architecture, Pop Art, comics)	2 points
A contemporary artist from a field other than filmmaking makes a significant contribution to the film	2 points
Storyline/underlying material is based on a historical figure (e.g., Gandhi) or a fictional figure familiar from cultural history (e.g., Hercules, Siegfried, Hansel and Gretel)	2 points
Storyline/underlying material refers to a historical event in world history or a similar fictional event (e.g., the conquest of Troy)	2 points
Storyline/underlying material deals with religious or philosophical beliefs or issues of current social or cultural relevance (e.g., Muslim headscarf, refugees, etc.), addresses different ways of life (e.g. nomads) or deals with scientific topics or natural phenomena	2 points
One final version is in German	3 points
Film is set mainly in another EU Member State, another EEA contracting state, Switzerland or the United Kingdom	1 point
Film uses other European motifs (in the absence of German motifs or locations) or European motifs (in addition to German motifs or locations)	1 point
Lead character of the underlying material from another EU Member State, another EEA contracting state, Switzerland or the United Kingdom	1 point
Sub-total of Available Points	30 points
Creative Talents – 35 points	
Film artists of international standing from Germany in an important role – "German stars" (meaning the persons listed below who have participated in a film which was entered in a festival according to section 75 subsection 2 of the Film Promotion Act or won an award as defined in section 75 subsection 2 of the Film Promotion Act)	4 points
Film artists of international standing from another EU Member State, another EEA contracting state, Switzerland or the United Kingdom – "European stars" (meaning the persons listed below who have participated in a film which was entered in a festival according to section 75 subsection 2 of the Film Promotion Act or won an award as defined in section 75 subsection 2 of the Film Promotion Act)	2 points
Actors from Germany, another EU Member State, another EEA contracting state, Switzerland or the United Kingdom (unless already covered under the "stars" definition)	
Leading actor	1 point
Leading actor	1 point
Two supporting actors	1 point
Creative talents from Germany, another EU Member State, another EEA contracting state, Switzerland or the United Kingdom:	
Director	3 points
Scriptwriter	3 points
(Co-)producer (natural person) or line producer	3 points
Composer	2 points

Director of Photography	2 points
Editor	2 points
Costume designer / lead animation artist	1 point
Make-up artist / lead FX artist	1 point
Sound / sound designer	1 point
Production designer / environment / digital matte painting artist	1 point
Art director / lead shading / texturing artist	1 point
Lead Compositing Artist	1 point
VFX producer	2 points
VFX supervisor	2 points
Post-production supervisor	1 point
Sub-total of Available Points	35 points
Sub-total of Available Points in Block A	65 points
Section B. Production	
Location shooting or studio shooting in Germany – 31 points in total	
- At least 50% of the total costs of shooting (studio and location) and at least 70% of the total costs of any studio shooting spent in Germany – 12 points - At least 25% of the total costs of shooting (studio and location) and at least 70% of the total costs of any studio shooting spent in Germany – 6 points	Up to 12 points
Points for VFX and SFX in Germany - If a real shoot is done in Germany for which points can be acquired based on the above requirements regarding location or studio shooting in Germany, the following applies: 25% of digital effects (VFX) in Germany, based on the overall cost of digital effects (VFX) - 1 point, maximum 4 points - If no real shoot is done in Germany or a real shoot does not accrue points based on the above requirements regarding location or studio shooting in Germany, and either the VFX budget spent in Germany amounts to at least EUR 2 million and at least 20% of the total VFX budget, or 80% of the total VFX budget is spent in Germany – 8 points - At least 25% of special effects (SFX) in Germany, based on the overall cost of special effects (SFX) – maximum 4 points	Up to 8 points
80% of music recording in Germany	2 points
80% of sound editing and mixing in Germany	2 points
80% of laboratory work up to answer print in Germany	1 points
80% of post-production during shooting of the film in Germany	3 points
80% of final editing in Germany	3 points
Total Available Points	31 points
Total Points	96 points
Minimum Points Required: 48/96 points	

2. Requirements to access the GMPF⁹⁰

Requirements to Access the GMPF	
Ownership Requirements	There are no ownership requirements to access the GMPF.
Eligible Production Company	Producers or co-producers must be based in or have a registered office or branch in Germany, another Member State of the European Union (EU), another contracting state of the Agreement on the European Economic Area (EEA) or Switzerland.
Eligible Production	The film or series must be released on German television or by video-on-demand services accessible in Germany.
Expenditure Requirements	40% of the budget - film productions with budgets > 25 million Euros 20% of the budget, to a cap of 7 million Euros for production budgets > 35 million Euros
Cultural Test	- Minimum of 48 out of 96 points excluding any points for language of production (fiction) - Minimum of 27 out of 52 points (documentary) - Minimum or 42 out of 84 points (animation) <u>Fiction Productions:</u>

⁹⁰ “German Motion Picture Fund,” German Federal Film Board website: <https://www.ffa.de/german-motion-picture-fund-gmpf.html>

- Cultural content (37 points)
- Nationality of personnel (34 points)
- Location of Production/Post-production (38 points)

2.1 Cultural Test to Access the GMPF

The cultural test is adapted by genre for fiction, documentary and animation. Fiction projects must achieve a minimum of 40 points out of a total of 109. At least three cultural criteria must be met, and a minimum of 7 points must be obtained from each of the three categories: cultural content, creative talents, and production. Animation projects must achieve at least 28 points out of a possible total of 69, including at least two criteria met from the cultural content category and at least four from the creative talent and four from the production category. Documentary films or series must achieve at least 23 points out of a possible total of 52. At least two criteria must be met from the “cultural content” category, and at least one criterion each must be met from both the “creative talents” and “production” category.

In order to access the maximum grant of 10 million euros, fictional series must have German production costs of at least 24 million Euros and achieve 70 points in the cultural test.

In addition, all productions must meet the following language requirement: that at least one final version must be produced in the German language. This may be a sub-titled version.

Cultural Test to Access the GMPF	
Cultural content – 37 points	
The majority of scenes (fictional content/material) are set in Germany or in German-speaking areas	4 points
The majority of scenes (fictional content/material) are set in another EU another EEA Member State, Switzerland or the United Kingdom	3 points
The majority of scenes (fictional content/material) are set in a fictional place, not a real place	2 points
The project refers to subjects of current social or political relevance	3 points
The project refers to German/European history/politics	3 points
The project is especially oriented towards a young target group	3 points
The project uses German motifs or uses other European motifs (in the absence of German motifs)	3 points
A lead character in the underlying material on which the film or series is based is/was German or from another EU Member State, another EEA contracting state, Switzerland or the United Kingdom	3 points
German or European locations are used	2 points
The storyline/underlying material is based on a book, a computer game, a play, an opera, a comic	3 points
The final version is in German/has German subtitles	3 points
The storyline/underlying material is Germany or from another EU Member State, another EEA contracting state, Switzerland or the United Kingdom	2 points
Sub-total of Available Points	37 points
Creative Talents – 34 points	
One leading actor or actress - 2 points; or at least two leading actors or actresses	4 points
One supporting actor or actress - 1 point; or at least two supporting actors or actresses	2 points
Director - 2 points	2 points
Scriptwriter	2 points
Producer/co-producer (natural person)	2 points
Cameraman/-woman	1 point
Digital image technician (DIT)	1 point
Composer	1 point
Costume designer	1 point
Lead animation artist	1 point
Make-up artist	1 point
Lead FX artist	1 point
VFX supervisor/producer	2 points
Animation Supervisor	2 points
Post-production supervisor	2 points
Editor	1 point
Colour correction/colour grading	1 point

Sound editing/sound designer	1 point
Line producer	1 point
Set designer (analogue and digital)	1 point
Art director/lead shading artist/texturing artist	1 point
Dubbing artists (one point each for the first three lead roles)	Up to 3 points
Sub-total of Available Points	34 points
Production – 38 points	
Development and/or use of innovative technologies which have not/hardly been used before in the film industry	5 points
Studio shooting in Germany	3 points
Location filming in Germany	3 points
VFX modelling in Germany	2 points
VFX animation in Germany	4 points
VFX compositing in Germany	4 points
SFX costs spent in Germany	3 points
Music recording in Germany	2 points
Sound editing in Germany	3 points
Picture editing (without VFX) in Germany	2 points
Post-production during shooting in Germany	3 points
Final editing in Germany	2 points
Film processing work through to the answer print in Germany	2 points
Sub-total of Available Points	38 points
Total Points Available	109 points
Minimum Points Required: 40/109 points	

3. Requirements for Access to the FFA's Automatic Reference Film Fund⁹¹

Requirements to Access the FFA	
Ownership Requirements	Broadcast license periods may not exceed seven years.
Eligible Production Company	Producers must have a business established in Germany or have a branch in Germany
Eligible Production	Films must premiere at a film festival in Germany, in the German language, or at an internationally significant festival, for example, Cannes, Berlin, or Venice.
Expenditure Requirements	There are no minimum spending requirements. However, production and post-production facilities, studios and services must be obtained in Germany or in another member state of the EU, EEA or in Switzerland.
Cultural Test	- Not points-based <u>Fiction Productions:</u> - Cultural content (2 of seven criteria must be met) - Nationality of personnel (at least the director, or writer, or up to 2 lead roles and all other personnel must be citizens or residents of EEA member state)

3.1 Cultural Test to Access Direct Funding from the FFA

The FFA does not use a points-based analysis, but rather makes a case-by-case decision. As a minimum requirement, productions must fill the positions of director, or writer, or up to 2 lead roles, as well as all other positions with citizens or residents of Germany or another member state of an EEA. In addition, the film must have a subject that is cultural, historical or about social issues and at least two of seven cultural content criteria must be met.⁹²

⁹¹ European Commission, State aid N 477/2008 – Germany German Film Support Scheme, Brussels, December 12, 2008.

⁹² "Funding," German Federal Film Board website: <http://www.ffa.de/funding.html>.

Cultural content

Two of the following seven cultural content criteria must be met by the film:

- the original screenplay on which the film is based primarily uses German film locations or film locations in another member state of the European Union, in another contracting state of the Agreement on the European Economic Area or in Switzerland;
- the act or the original material is from Germany, from another member state of the European Union, from another contracting state of the Agreement on the European Economic Area or from Switzerland;
- the film uses German motifs or motifs from another member state of the European Union, from another contracting state of the Agreement on the European Economic Area or from Switzerland;
- the plot or the subject matter is based on a literary source or comes from traditional fairy tales or legends;
- the plot or artwork deals with minority life forms, scientific subjects or natural phenomena;
- the plot or the material deals with social, political or religious questions of social coexistence or the reality of children's lives;
- the plot or the subject matter deals with artists or art genres.

Nationality of Personnel

- Director or writer or up to 2 lead roles must be filled by citizens or residents of Germany or another Member State of EEA
- All other positions must be filled by citizens or residents of Germany or another member state of an EEA

4. Italy

MiBAC is the National cultural agency responsible for administering Automatic production funding for films as well as the Italian film or television tax credit. Italian nationality is the fundamental requirement for the purposes of accessing funding from Italy. To access automatic funding, productions must pass a points-based test of Italian nationality. To access the tax credit, film and audiovisual productions must pass a points-based cultural test of Italian nationality. Certification of Italian nationality is undertaken by MiBAC.⁹³

1. Requirements to Access the Italian Tax Credit for Film and Audiovisual Productions⁹⁴

Requirements to Access the Italian Tax Credit for Film or Audiovisual Productions	
Ownership Requirements	• Production is owned by an eligible Italian production company (see below). • There is no defined period for ownership.
Eligible Production Companies	• Production companies with a registered office in Italy or registered in the European Economic Area (EEA) with an office (branch, agency, subsidiary) established in Italy. • The producer is responsible for overseeing the production of the audiovisual work.
Eligible Productions	• Italian films • Italian audiovisual productions
Expenditure Requirements	There are no minimum expenditure requirements.
Cultural Test	• Minimum of 50 out of 100 points (feature fiction film or audiovisual production) <u>Fiction Productions:</u> • Cultural content (70 points) • Nationality of personnel (3 points) • Location of Production/Post-production (27 points)

⁹³ "Film Production," Italian Ministry of Culture, Directorate General Cinema and Audiovisual, website: <https://cinema.cultura.gov.it/cosa-facciamo/sostegni-economici/linee-di-sostegno/tax-credit/produzione-film/>; "TV and Web Production," Italian Ministry of Culture, Directorate General Cinema and Audiovisual, website: <https://cinema.cultura.gov.it/cosa-facciamo/sostegni-economici/linee-di-sostegno/tax-credit/produzione-tv-e-web/>.

⁹⁴ Susanne Nikotchev et al, *Mapping of national rules for the promotion of European works in Europe*, European Audiovisual Observatory, 2019, page 385; MiBAC staff member; Article 2.3, Italy, Ministerial Decree (DM) 31 July 2017, n. 342, Implementing provisions on automatic contributions pursuant to art. 23, 24 and 25 of Law no. 220 of 14 November 2016.

1.1. Cultural Test to Access Italian Film and Audiovisual Tax Credit⁹⁵

The test is adapted to fiction, documentary and animation productions. To pass, productions must achieve a minimum of 50 out of a possible 100 points. All productions must obtain at least half of the available points for the content of the production.

Cultural Test to Access Italian Film and Audiovisual Tax Credit	
A) Content – 70 points (minimum of 35 points must be obtained from this section)	
A.1 Subject / script of the audiovisual work taken from a published Italian literary or theatrical work or European	5 points
A.2 Subject / script of the audiovisual work concerning historical, mythological and legendary, religious, social, fantastic, artistic or cultural (Themes)	30 points
A.3 Subject / script concerning a personality / character of historical, mythological e legendary, religious, social, fantastic, artistic or cultural (Character/Person)	25 points
A.4.1 Territorial setting of the subject of the audiovisual work in Italy or Europe (minimum 15 per one hundred of the scenes of the screenplay set in Italy or Europe) ¹	5 points
A.4.2 Outdoor shooting of the audiovisual work on the Italian territory (minimum 15 percent of the scenes in contained in the script) ²	
A.5 Direct sound recording wholly or mainly in Italian or in Italian dialects: (minimum of 30 percent of the scenes contained in the script) ³ . As an alternative the production should be subtitled or dubbed in Italian.	5 points
Subtotal of Available of Points	70 points
B) PRODUCTION – 30 points	
B.1 Italian or EEA creative talent - production designer, set dresser, art director, key make-up artist, costume designer, director of photography, line producer, editor	3 points
B.2 Shooting on Stage/Studio in Italy (minimum 20% of interior scenes contained in the script shot in Italian stages/studios) ⁴	5 points
B.3 Digital effects in Italy	4 points
B.4 Special effects in Italy	4 points
B.5 Music recording in Italy	3 points
B.6 Sound editing and mix in Italy	3 points
B.7 Post-production lab work in Italy	5 points
B.8 Final editing in Italy	3 points
Subtotal of Available of Points	30 points
Total Available Points	100 points
Minimum Score : 50/100 points	

2. Requirements to Access Automatic Production Subsidy⁹⁶

Requirements to Access the Automatic Production Subsidy of MiBAC	
Ownership Requirements	Production is owned by an Italian production company, defined as a company based in Italy or an EEA based company with a branch established in Italy.

⁹⁵ Italy, Application provisions on tax credit for film and audiovisual production companies referred to in Article 15 of Law no. 220, retrieved from https://cinema.cultura.gov.it/wp-content/uploads/2021/06/di_70_4-febbraio_2021.pdf

⁹⁶ Article 2.3, Italy, Ministerial Decree (DM) 31 July 2017, n. 342, Implementing provisions on automatic contributions pursuant to art. 23, 24 and 25 of Law no. 220 of 14 November 2016; Susanne Nikotchev et al, *Mapping of national rules for the promotion of European works in Europe*, European Audiovisual Observatory, 2019, pages 374, 378 and 383. Italy, Law 14 November 2016, no. 220 – *Discipline of Cinema and Audiovisual* (16G00233), Articles 5 and 6, retrieved from <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2016;220~art39>; *Decree of the President of the Council of Ministers, July 11, 2017: Provisions for the recognition of the Italian nationality of cinematographic and audiovisual works. (17A05686) (OJ General Series No. 192 of 18-08-2017*, retrieved from <https://www.gazzettaufficiale.it/eli/id/2017/08/18/17A05686/sg>.

	• Exceptions may be made to grant Italian nationality to international projects with particular elements of artistic, cultural, industrial and commercial interest, where: • The share of ownership held by participating Italian producers must be equivalent to share of expenses incurred by these.
Eligible Production Companies	• Production companies with a registered office in Italy or registered in the European Economic Area (EEA) with an office (branch, agency, subsidiary) established in Italy. • The producer is responsible for overseeing the production of the audiovisual work from start to finish
Eligible Productions	• Film and audiovisual productions
Expenditure Requirements	• There are no minimum expenditure requirements
Cultural Test	• Minimum of 70 out of 100 points (feature fiction film or audiovisual production) <u>Fiction Productions:</u> • Cultural content (0 points) • Nationality of personnel (74 points) • Location of Production/Post-production (26 points)

2.1 Cultural Test for Films and Audiovisual Productions Seeking Access to Automatic Funding

There are three tests, differentiated by genre: fiction, documentary and animation. All productions must earn a minimum of 70 points out of a possible 100. Fiction productions must achieve at least 18 points for key creative personnel (directors, authors, screenwriters and principal performers).

Cultural Test for Films and Audiovisual Productions Seeking Access to Automatic Funding from MiBAC	
a) Citizens or residents of Italy or of another country of the European Union:	
director or most of the co-directors	10 points
author of the subject or the majority of authors	8 points
screenwriter or the majority of screenwriters	10 points
the majority of main interpreters	8 points
three quarters of secondary interpreters	5 points
director of cinematography	7 points
editor	7 points
composer	7 points
set designer	6 points
costume designer	6 points
Sub-total of Available Points	74 points
b) Realization of the work on the Italian territory of at least 50% of the activities	10 points
c) Direct sound recording wholly or mainly in Italian language or in Italian dialects	5 points
d) At least 50% of the members of the troupe subject to taxation in Italy as a result of tax residence	5 points
e) Filming mainly in Italy	2 points
f) Use of soundstage located in Italy	2 points
g) Post-production mainly carried out in Italy	2 points
Sub-total of Available Points	26 points
Total Available Points	100 points
Minimum Requirement: 70/100 points	

5. Netherlands

The Netherlands Film Fund Foundation (provides a production incentive for film and high-end series in the genres of fiction, documentary and animation productions. To be eligible for the production incentive, projects must pass a points-based cultural test of Dutch nationality.

1. Requirements to Access the Netherlands Film Production Incentive⁹⁷

Requirements to Access the Netherlands Film Production Incentive	
Ownership Requirements	No ownership requirements
Eligible Production Companies	Independent production companies based in EEA or Switzerland for at least two years
Eligible Productions	- Feature Films must have a 12-week theatrical release in the Netherlands - High-end series in fiction, documentary and animation.
Expenditure Requirements	- Feature film - €150K (CAD \$203K) - High-end series - at least 15% of the total production budget
Cultural Test	3 of 8 cultural criteria, plus - Cultural Test: 75 out of a possible maximum of 180 points (all projects) <u>Fiction productions:</u> - Cultural content (00 points) - Nationality of personnel (85 points) - Location of Production/Post-production (95 points)

1.1 Cultural Test to Access Netherlands Film Production Incentive

Productions must achieve a minimum of points on the test, the number of which is determined annually, to a maximum of 75 points out of a possible 210 points.

Netherlands Cultural Test – Cultural Criteria

At least two positions functions amongst the director, screenwriter, first and second lead performer are required.

- In addition to the points system, films must satisfy a minimum of 3 out of a possible 8 criteria for cultural content:
- the screenplay on which the film production is based is mainly set in the Netherlands, or in another member state of the European Union, or in a state that is party to the Agreement on the European Economic Area, or in Switzerland;
- the director or screenwriter is based in the Netherlands, or in another member state of the European Union, or in a state that is party to the Agreement on the European Economic Area, or in Switzerland;
- at least one of the main characters or two of the supporting characters has a special bond with Dutch culture on the basis of the scenario;
- the original screenplay on which the film production is based is largely written in the Dutch language and the main characters express themselves largely in the Dutch language; the screenplay is based on an original literary work or is inspired by another copyrighted work;
- the main theme of the film production is art or one or more (performing) artists; the film production deals with historical persons or events;
- the film production deals with current social or cultural themes that are relevant to the Netherlands;
- the film production contributes to the cross-border promotion of Dutch landmarks;
- the film production contributes to the opening up and cross-border promotion of Dutch or European film culture and its diversity.

1. Creative talent and heads of departments (maximum of 75 points)	
Points are awarded to personnel residing in the Netherlands and/or that have demonstrable strong ties to the Dutch film culture.	
Director	8 points
Screenwriter	Up to 6 points
3 points where a Dutch co-author is associated with the project from development	
6 points in case of full Dutch authorship	

⁹⁷ Switzerland has a series of bilateral agreements with the EU which allow it to participate in the internal market; “Netherlands Film Production Incentive reopens for high-end series,” July 6, 2022, Netherlands Film Fund website: <https://www.filmfonds.nl/page/11557/netherlands-film-production-incentive-reopens-for-high-end-series>.

Leading role by actor/actress 6 points if 2 leading roles with min. 10 days of shooting a person 3 points for 1 leading role	Up to 6 points
Supporting role actor/actress 4 points if 2 roles with min. 5 days of shooting a person 2 points for 1 role with min. 5 days of shooting	Up to 4 points
Director of Photography	4 points
Editor	4 points
Production Designer	4 points
Sound recordist/Production sound mixer (on set)	3 points
Sound Designer and/or Re-recording mixer	
sound designer	3 points
re-recording mixer	2 points
Visual Effects Supervisor and/or Colorist	
3 points for visual effects supervisor if budget item 5000 is at least 7.5% of the total budget	3 points
2 points for colorist for grading the film, not the dailies	2 points
Composer	3 points
Orchestra/musicians if majority of them applies to criteria	1 point
Costume Designer	3 points
Make Up & Hair Artist	3 points
First Assistant Director	3 points
Line Producer and/or Post-production Supervisor	
line producer	3 points
post-production supervisor	3 points
Other crew during the production and post-production max. 10	Up to 10 points
Sub-total of available points	75 points
2. Production and Financing (maximum 30 points)	
Points are awarded for post-production and production take place in the Netherlands.	
Image post-production 75% or more of the image post-production budget is spent in the Netherlands	15 points
Sound post-production 75% or more of the post-production budget for sound is spent in the Netherlands	15 points
Sub-total of available points	30 points
3. International Standing (Maximum 10 points)	
Director, screenwriter Award-winning director and/or screenwriter in the previous 10 years	5 points
Leading role of international standing If the leading actor / actress in the previous 10 years played a leading part in or was part of the principle cast of a film that has been selected by one of the internationally acclaimed film festivals or had received one of the international awards mentioned in the Financial & Productional Protocol Incentive	5 points
Sub-total of available points	10 points
4. Impact (maximum 20 points)	
The impact on the Dutch film industry (20 points)	
Cash rebate creates significant additional value for both technical and creative film professionals and film companies in the Netherlands	20 points
Diversity behind and in front of the camera is a crucial element and/or the independent film production received funding from a (inter)national film fund based on creative excellence	10 points
The transborder cultural and promotional impact through international coproduction and distribution (20 points)	
Theatrical and/or non-theatrical distribution is guaranteed in more than two countries through minimum guarantees or pre-sales.	10 points
Cross-border visibility of Dutch landmarks and/or creative talent and/or leading crew members (head of department)	10 points
Sub-total of available points	40 points
Additional Points Available for International Coproductions	55 points
Total points available	210 points
Minimum Required Points: 75/210	

6. Czech Republic

The Czech Film Fund administers the Czech Production Incentive for feature films and television fiction and animation productions. To access the production incentive, projects must pass a cultural test intended to establish the European character of production.

1. Requirements to Access the Production Incentive⁹⁸

Requirements to Access the Czech Film Fund Production Incentive	
Ownership Requirements	n/a
Eligible Production Companies	Permanently established in the Czech Republic or be tax residents.
Eligible Productions	- Feature films intended for theatrical release or broadcast, - Fiction and animated series.
Expenditure Requirements	- Feature, animation and TV films - CZK 15 million (CAD \$824K) - Fictional TV series - CZK 8 million (CAD \$439K) per episode
Cultural Test	23 out of a possible 46 points (all projects) <u>Fiction productions:</u> - Cultural content (16 points) - Nationality of personnel (18 points) - Location of Production/Post-production (12 points)

1.1 Cultural Test to Access the Czech Republic Production Incentive⁹⁹

All productions must achieve a minimum of 23 out of 46 points on the test. Of these, at least 4 points must be achieved from amongst the cultural criteria of the test. The allocation of points for each production is reviewed by a Czech Film Fund.

A. Cultural criteria (maximum 16 points)	
• Story is based on events that are part of European culture	0 to 2 points
• Story is based on a personality from European culture	0 to 2 points
• Storyline is connected with a European setting points	0 to 2 points
• Film is based on a work of cultural importance	0 to 2 points
• Film focuses on current themes in European society	0 to 2 points
• Film reflects important European values	0 to 2 points
• Film focuses on European culture, customs or traditions	0 to 2 points
• Film is based on events affecting European society	0 to 2 points
B. Production criteria (maximum 30 points)	
• Film contributes to the development of its genre	0 to 3 points
• Filmmakers are Czech or citizens of EEA member states	0 to 7 points
• Final version of the film is in any language of the EEA	0 to 4 points
• At least 51% of the crew are citizens of EEA countries	0 or 4 points
• Shooting takes place in the Czech Republic	0 to 4 points
• Production uses Czech service providers in the Czech Republic	0 to 4 points
• Post-production takes place in the Czech Republic	0 to 4 points

7. Spain

The Institute of Cinematography and Audiovisual Arts (ICAA) in Spain provides direct funding to feature film productions and tax credits for film and audiovisual productions. Productions financed through the General Aid program must pass two cultural tests: a cultural test of Spanish nationality and a test of cultural relevance,

⁹⁸ Czech Film Commission, *Czech Republic Production Incentives*, retrieved from https://filmcommission.cz/wp-content/uploads/2021/07/CZ_Production_Incentives_2021_st2.pdf

⁹⁹ Czech Film Commission, *Czech Republic Production Incentives*, retrieved from https://filmcommission.cz/wp-content/uploads/2021/07/CZ_Production_Incentives_2021_st2.pdf; Czech Film Fund, *Statute of the State Cinematography Fund*, retrieved from <https://fondkinematografie.cz/english/>.

for which a Cultural Certificate is issued.¹⁰⁰ The two tests are also required to obtain the film or audiovisual tax credit.

1. Requirements for Accessing the Tax Credit for Film and Audiovisual Productions¹⁰¹

Requirements to Access the Tax Credit for Film and Audiovisual Productions	
Ownership Requirements	n/a
Eligible Production Companies	Production companies with a registered office in Spain or the EEA, with a registered office in Spain
Eligible Projects	Feature films and audiovisual productions.
Expenditure Requirements	At least 50% of total production costs expended in Spain.
Cultural Test	<u>Cultural Test of Spanish Nationality</u> 75% of all personnel from Spain or EEA - Production shot in any language of Spain - Shooting and post-production do be undertaken in Spain or another EEA member state. <u>Cultural Certificate Test</u> - Productions must meet a minimum of two out of 10 cultural criteria - Funding reduced by 10% for shoots in a language other than a language of Spain

Cultural Test of Spanish Nationality¹⁰²

Productions must primarily employ citizens or residents of Spain or another EEA country, the original version of the film must be in a language of Spain, and the shooting and post-production must be primarily undertaken in Spain or another EEA member state.

¹⁰⁰ In accordance with Article 22 of the Spanish Royal Decree No. 1084/2015.

¹⁰¹ "Tax Incentives," Spain, Ministry of Culture and Sport website: <https://www.culturaydeporte.gob.es/en/cultura/areas/cine/industria-cine/coproducir-espa/incentivos-fiscales.html>; "Certificate of Spanish Nationality for Films," Spain, Ministry of Culture and Sport website: <https://www.culturaydeporte.gob.es/en/cultura/areas/cine/industria-cine/certificado-nacionalidad-espanola.html>; "Cultural Certificate," Spain, Ministry of Culture and Sport website: <https://www.culturaydeporte.gob.es/en/cultura/areas/cine/industria-cine/certificado-cultural.html>; Spain, State Agency Official State Gazette, *Law 27/2014, of November 27, on Corporation Tax*, retrieved from https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-12328; Spain, Official State Newsletter, Number 180, *Section III. Other Dispositions, Ministry of Culture and Sport*, June 30, 2020, retrieved from <https://www.boe.es/boe/dias/2020/06/30/pdfs/BOE-A-2020-6921.pdf>; Spain, Ministry of Culture and Sport, *Provisional resolution: Proposal of the sub-directorate general for the promotion of the film and audiovisual industry, which corrects the provisional resolution proposal dated August 30, 2022 of the second selection procedure for the General Aid for the production of feature film projects of 2022*, retrieved from <https://www.culturaydeporte.gob.es/dam/jcr:13b8f602-c4b4-48e0-8598-92ab7a66c724/correccion-propuesta-resolucion-provisional-ayudas-generales-2022-segundo-procedimiento.pdf>; "Production Funding," Spain, Ministry of Culture and Sport website: <https://www.culturaydeporte.gob.es/en/cultura/areas/cine/ayudas/produccion.html>.

¹⁰² Spain, *Law 55/2007, of 28 December, on Film*, retrieved from <https://www.global-regulation.com/translation/spain/1444897/law-55-2007%252c-of-28-december%252c-the-film.html>

Test of Spanish Nationality

This test on Spanish nationality is not points-based. To obtain the certificate of Spanish nationality, the ICAA considers the extent to which productions meet the following criteria:

1. At least 75% of the personnel employed by the production must be either people of Spanish nationality or of a member state of the European Economic Area. This includes:
 - At least 75% of the key creative positions of director, screenwriter, cinematographer and music composer. At a minimum, the director is always required to comply with this requirement.
 - At least 75% of the principal and other actors.
 - At least 75% of the technical personnel, including creative technical positions
2. The production is produced in any of the official languages of Spain.
3. The shooting (with exceptions required by the script), the post-production and lab work are carried out in Spain or in other Member States of the European Union. In the case of animation works, the production processes must also be carried out in these territories.

Productions not meeting any of the above criteria may still access the tax credit at a reduced rate of 10% for each of the three criteria not met.

While there are no language requirements to access support through the General Aid program, projects that do not use any official language of Spain as per point a), above, will have their funding reduced by 10%.

1.2 Test of Cultural Relevance¹⁰³

Test of Cultural Relevance

To satisfy the requirements of the test of cultural relevance, productions must meet at least two of the following criteria:

- Its original version is in any of Spain's official languages. In the case of co-productions with foreign companies, the feature film may have as its original version any European Union official language.
- The setting is mainly in Spain.
- The content is directly related to literature, music, dance, architecture, painting, sculpture and, in general, creations of artistic expression.
- The script is an adaptation of a pre-existing literary work.
- The content is biographical or, in general, reflects historical events or characters, without prejudice to the free adaptation inherent to a cinematographic script.
- The content mainly includes mythological or legendary stories, events or characters that may be considered to belong to world heritage or cultural tradition.
- It provides further knowledge of cultural, social, religious, ethnic, philosophical or anthropological diversity.
- The content provides a better understanding of is related to matters or topics that belong to Spain's social, cultural or political reality, or has an incidence on them.
- One of the main characters or several of the secondary characters are directly linked to the Spanish social, cultural or political reality.
- It is specifically directed at children or young spectators and contains values in line with educational principles and purposes.

¹⁰³ Spain, State Agency Official State Gazette, Order CUD/582/2020, of June 26, Order CUD/582/2020, of June 26, which establishes the regulatory bases for state aid for the production of feature films and short films and regulates the structure of the Administrative Registry of Cinematographic and Audiovisual Companies, retrieved from https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-6921; "Cultural Certificate," Spain, Ministry of Culture and Sport website: <https://www.culturaydeporte.gob.es/en/cultura/areas/cine/industria-cine/certificado-cultural.html>; Spain, Law 55/2007, of 28 December, on Film, retrieved from <https://www.global-regulation.com/translation/spain/1444897/law-55-2007%252c-of-28-december%252c-the-film.html>.

2. Requirements for Accessing Financing from the General Aid Program¹⁰⁴

Requirements to Access the General Aid Program	
Ownership Requirements	- Producers must possess at least 15% of the ownership of the work and hold exploitation rights for at least three years, except where these are shared with coproducers. - Non-independent production companies may not hold more than 60% of the ownership of the project.
Eligible Production Companies	- Production companies must be based in Spain or in the EEA with a registered office in Spain. - Independent production companies - Non-independent production companies coproducing with an independent company
Eligible Projects	Films must have theatrical release in Spain.
Expenditure Requirements	- At least 50% of the production budget should be expended in Spain. - Penalty applied if less than 50%.
Cultural Test	<u>Test of Spanish Nationality</u> - Productions must satisfy all requirements (or have funding reduced by 10% for each of the three criteria not met): 75% of all personnel from Spain or EEA - Original version of the production shot in a language of Spain - Shooting and post-production do be undertaken in Spain or another EEA member state. <u>Cultural Certificate Test</u> - Productions must meet a minimum of two out of 10 cultural criteria - Funding reduced by 10% for shoots in a language other than a language of Spain and for each of the industrial requirements not met.

2.1 Cultural Test to Access General Aid Program

There are the same tests as in 1.1, above.

8. Portugal

In Portugal the Insitituto do Cinema et do Audiovisual (ICA) is the national agency mandated to support the development of the Portuguese film and audiovisual industry. The ICA provides direct funding in the form of non-repayable grants for feature film and audiovisual productions and administers the Portuguese Production Incentive, a cash rebate intended for productions shooting in Portugal.

To access the Portuguese Production Incentive, projects must pass a points-based cultural test. To access financing from the ICA through direct funding programs, productions must also pass a cultural test satisfy at least three of a possible nine cultural requirements. The ICA is responsible for the cultural test.¹⁰⁵

¹⁰⁴ Spain, Official State Newsletter, Tuesday, June 30, 2020 Number 180. *Section III. Chapter I General Disposition*, retrieved from <https://www.boe.es/boe/dias/2020/06/30/pdfs/BOE-A-2020-6921.pdf>; Spain, Official State Newsletter, Tuesday, June 30, 2020 Number 180. *Section III, Article 19*, retrieved from <https://www.boe.es/boe/dias/2020/06/30/pdfs/BOE-A-2020-6921.pdf>.

¹⁰⁵ Portugal, *Law No. 55/2012 of September 6*, retrieved from <https://dre.pt/dre/detalhe/lei/55-2012-174871>.

1. Requirements to Access the Portuguese Production Incentive^{106 107}

Requirements to Access the Portuguese Production Incentive	
Ownership Requirements	n/a
Eligible Production Companies	Production companies established in Portugal or another EEA member state and registered with the ICA in Portugal.
Eligible Projects	- Feature film for theatrical release - Audiovisual production for television or VOD - Released in multiple territories, at least one which is non-Portuguese speaking
Expenditure Requirements	- Fiction and animation: €500K (CAD \$675K) - Documentary: € 250K (CAD \$338) - Post-production: € 250K (CAD \$338)
Cultural Test	- Cultural test (minimum of 15 out of 60 points) <u>Fiction productions:</u> - Cultural content (30 points) - Nationality of personnel (20 points) - Location of Production/Post-production (10 points)

1.1 Cultural Test to Access the Portuguese Production Incentive

Productions must obtain a minimum of 15 points out of a total of 60 points.¹⁰⁸ At least 10 points must be obtained in sections A1 and A2 on cultural content, with at least 5 points obtained in section A2. Alternatively, at least 3 points must be obtained in section A1, at least 4 points in section A2 and at least 4 points in sections B and C combined.

Projects whose activities in Portugal do not include shooting must achieve a minimum of 8 points in the cultural test, of which at least 4 points must be obtained in sections A1 and A2 combined.

Cultural Test to Access Portuguese Production Incentive	
<u>Content and cultural nature</u>	
SECTION A – 30 points	
Section A1 (Maximum 12 points)	
A1.1 The action takes place: - Partly in Portugal - 3 points - Partly in a European or Portuguese-speaking country, or in official co-producing countries - 2 points	2 to 3 points
A1.2 More than half of the original dialogues are in Portuguese or in Creole languages with a Portuguese base or in a language spoken in Europe	2 points
A1.3 At least one of the main characters is a national or resident in a Portuguese-speaking territory, or has a strong connection to the Portuguese culture or language, or to Portuguese, European or co-production cultures in the case of official co-productions under co-production treaties of which Portugal is a part	1 point
A1.4 The script is an adaptation of an original Portuguese, Portuguese language or European literary work or of a co-production country, in the case of official co-productions - 2 points or a relevant universal literature work - 1 point	1 to 2 points
A1.5 The project has as its main theme the arts or one or more artists, of any artistic area and of any period	1 point
A1.6 The project essentially involves characters or historical events or events of historical relevance, of any age, or relevant mythical or fictional characters in universal cultural history	1 point
A1.7 The project deals mainly with topics relevant to cultural or societal issues, such as current event, cultural, social or political issues	1 point
A1.8 Animation project or intended for children or teenagers or documentary	1 point

¹⁰⁶ Portugal, Ministerial Ordinance [establishing the rules for the application of the incentive regime for cinematographic and audiovisual production], retrieved from https://www.ica-ip.pt/fotos/editor2/Ordinance_490_2018.pdf.

¹⁰⁷ Portugal, Ministerial Ordinance [establishing the rules for the application of the incentive regime for cinematographic and audiovisual production], retrieved from https://www.ica-ip.pt/fotos/editor2/Ordinance_490_2018.pdf.

¹⁰⁸ Portugal, Ministerial Ordinance [establishing the rules for the application of the incentive regime for cinematographic and audiovisual production], retrieved from https://www.ica-ip.pt/fotos/editor2/Ordinance_490_2018.pdf.

Section A2 - Cultural and heritage promotion, artistic excellence and diversity (Maximum 18 points)		
A2.1 Importance of sites, aspects and emblematic characters of the Portuguese territory and culture, identifiable as: - maximum 3 points	0 to 3 points	
• Clear presence in at least 20% of the duration of the project (3 points) • Clear presence in at least 10% of the duration of the project (2 points) • Clear presence in at least 2% of the duration of the project (1 point)		
A2.2 International accolades of the director or scriptwriter (not cumulative): - Maximum of 3 points	1 to 3 points	
• a) Awarded more than once with distinctions of best film, best director or best script, relating to feature films, in the Academy of Motion Arts and Sciences Awards, European Film Academy Awards, Golden Globes, Emmy Awards, Competitions of international film festivals - maximum of 3 points • b) Awarded once or nominated more than once - 2 points • c) Awarded at least once, for a feature film, for Best Film or Best Director or Best Script award, in an official competitive section of festival - 1 point		
International accolades of producers (not cumulative with points obtained through the directors or scriptwriters): according to paragraph (a) above (2 points) / according to paragraph (b) above (1 point)		
A2.3 Percentage of music (original, recorded or reinterpreted) sung in Portuguese, or Portuguese-speaking composers, of the film's soundtrack	1 point	
A2.4 The project is headed by a woman, produced predominantly by women or its production includes more than 40% of women among the elements mentioned in sections B1.3, B1.4 and B1.5 of section B1	1 point	
A2.5 International dissemination – maximum of 8 points	4 to 8 points	
• Cinema premieres, television broadcasts or launch on on-demand audiovisual in national markets with: ○ More than 500 million inhabitants - 8 points ○ More than 300 million inhabitants - 6 points ○ More than 100 million inhabitants - 4 points		
A2.6 Co-production (maximum 2 points)	1 to 2 points	
• Co-production with official recognition under international co-production treaties - 2 points • Production of foreign initiative with a contractual co-production relationship with a Portuguese co-producer - 1 point		
SECTION B Creative Cooperation – maximum 20 points		
Section B 1 - Key Persons (Creative and Technical) – maximum 15 points		
• B1 Key creative and technical Portuguese staff or residents in Portugal or in an EEA Member State: ○ B1.1 Director – 3 points ○ B1.2 Producer (or executive producer, only in the case of foreign productions) ○ B1.3 Scriptwriter, Adaptation Author, Dialogue Writer, Composer, Cinematographer, Animation Director ○ B1.4 Art Director, Production Director, Author of the Characters (in Animation) ○ B1.5 Costume Designer, Assembler, Head make-up artist, First Camera Operator, Sound Director, Head of Wardrobe, First Assistant Director, Head of Unit, Special Effects Supervisor, Author of Backgrounds (Animation), Lead Modeller, Director of research or expert/Principal consultant (for documentaries) ○ B1.6 Lead roles/voices – maximum 1 point • At least 1 actor/actress in lead role (voice for animation) • At least 2 actors / actresses in secondary roles (voice for animation)		
	3 points	
	3 points	
	1 to 3 points	
	1 to 2 points	
	1 to 3 points	
	1 point	
Section B 2 - Other Technical Personnel – maximum 5 points		
• B2. Total number of artistic and technical personnel involved in production activities in Portugal, with the exception of those who generated points in section B1 and of the extras: ○ B2.1 At least 50% or a minimum of 40 people ○ B2.2 From 20% to 49% or a minimum of 15 people ○ B2.3 From 10% to 19% or a minimum of 8 people		
	5 points	
	4 points	
	2 points	
SECTION C Promotion of Local Resources – maximum 10 points		
Section C1 – Filming in Portugal		
• C.1 Filming in locations or studios in Portugal ○ Percentage of days of filming in Portugal relative to the total number of days of filming: ○ The number of minutes of the finished animation produced in Portuguese studios. • C1.2 At least 50% or a minimum of 20 days • C1.3 From 20% to 49% • C1.4 From 10% to 19%		
	5 points	
	4 points	
	3 points	

2. Requirements to Access the Direct Funding Programs of the ICA¹⁰⁹

Requirements to Access the Direct Funding Programs of the ICA	
Ownership Requirements	- Producers must own the rights to the work in proportion to the respective participation in the total production budget. - Producers of audiovisual works must not be owned or controlled by one or more broadcasters.
Eligible Production Companies	Company have its activity in Portugal or other member state of the EEA
Eligible Projects	Audiovisual productions must have a Portuguese broadcaster attached and have secured 20% of the budget.
Expenditure Requirements	Support obtained from ICA must be expended in Portugal.
Cultural Test	<u>Cultural test</u> - At least 50% of authors, 75% of technical teams and 75% of actors must be from Portugal or EEA member state - Original language of production is Portuguese - Animation - all production must take place in Portugal <u>Additional cultural criteria</u> - Productions must meet 3 of a possible 9 requirements

2.2 Cultural Test to Access Direct Funding from ICA

At least half of key author positions and at least 75% of performer and technical positions must be filled by Portuguese or European nationals (EEA). Shooting must take place in Portugal. There is no similar requirement for post-production.

Cultural Test to Access Direct Funding from ICA

Films and audiovisual productions must meet all the following requirements:

- At least 50% of the authors, namely the director, the author of the script, the author of the dialogues and the composer must have Portuguese nationality or nationality of any Member State of the European Economic Area (EEA);
- Productions must be Portuguese productions or official co-productions;
- At least 75% of the technical teams must be of Portuguese nationality or of any Member State of the EEA;
- At least 75% of the protagonists and the main and secondary roles must be played by Portuguese actors or nationals of any Member State of the EEA, except where the script does not allow it majority international co-productions;
- The original version of the production is in Portuguese, with appropriate exceptions imposed by the script;
- In the case of animation works, the production processes must be carried out in full in national territory, except for co-production or script requirements, even if post-production is carried out in any Member State of the EEA;

Productions seeking access to automatic aid must meet additional cultural requirements.

Additional Cultural Criteria

To access support through the Automatic program, film productions must meet at least three of the following requirements:

- The action is set essentially in Portugal, or in another member state of the European Union or the European Economic Area;
- More than two-thirds of the dialogues are in Portuguese or basic Creole languages;
- At least one of the protagonists has a strong connection with Portuguese culture or language;
- The original script is in Portuguese;
- The script is an adaptation of an original Portuguese literary work;
- The main theme of the work is the arts or one or more artists of any artistic discipline;
- The work is essentially about characters or historical events or events;
- The work deals mainly with themes relevant in cultural or societal terms, including current issues, or cultural, social or political aspects;
- The work contributes to enhancing the Portuguese or European audiovisual heritage.
- These requirements are waived in the case of films having received selective financing from the ICA for development or production, from Creative Europe or other comparable European or international programs, or if the production is a treaty co-production.

¹⁰⁹ Portugal, *Law No. 55/2012 of September 6*, Article 2 Definitions, retrieved from <https://dre.pt/dre/detalhe/lei/55-2012-174871>.

9. Australia

The Producer Offset is Australia's domestic film and television production incentive. To access the Producer Offset projects must pass a test of significant Australian content, or SAC test, administered by national funding body Screen Australia.

1. Requirements to Access Producer Offset (Refundable Tax Rebate) for Film and Television¹¹⁰

Requirements to Access the Producer Offset	
Ownership Requirements	n/a
Eligible Production Companies	Production companies based in Australia or with a registered office in Australia
Eligible Projects	Feature film intended for theatrical release in Australia Audiovisual production for television or subscription streaming service available to Australians in Australia
Expenditure Requirements	• Feature films (fiction, documentary and animation): AUD \$500K (CAD \$430K). • Television series (of at least two episodes): AUD \$1 million (CAD \$861K) total and AUD \$500K (CAD \$430K) per hour.
Cultural Test	<u>Holistic (not points-based) test of Significant Australian Content:</u> • Cultural content • Nationality of personnel • Location of Production/Post-production

1.1 Cultural Test of Significant Australian Content¹¹¹

Cultural Test to Access Production Offset

The Significant Australian Content (SAC) test involves an overall analysis of the extent to which productions involve any of the five following elements:

- subject matter of the production (including origination of the project in Australia by Australians, and creative control over the project exercised by Australians, and whether the story reflects, is about or is set in Australia)
- nationalities and places of residence of personnel. Particularly important are the executive producer, producer, writer and director, lead cast members and heads of department; proportion of cast and crew also considered. Exceptions on residency may be made for residents who are not permanent residents.
- extent of production and post-production in Australia
- the details of the production expenditure incurred and its contribution to the Australian film industry
- any other matters that Screen Australia considers to be relevant.

The SAC test is not points-based. No single factor is determinant, particularly if other factors such as the subject matter of the project, the place where the project was made, nationalities of personnel and location of production and post-production, are strongly "Australian".

10. New Zealand

The New Zealand Film Commission administers the New Zealand Screen Production Grant (NZSPG) for New Zealand Productions on behalf of the Ministry for Culture and Heritage. To access the

¹¹⁰ Government of Australia, *Modernising Australian screen content settings*, 2021, retrieved from <https://www.infrastructure.gov.au/media-technology-communications/television/modernising-australian-screen-content-settings>. Screen Australia, *Producer Offset Guidelines*, March, 2022.

¹¹¹ Screen Australia, *National Cultural Policy submission*, August, 2022, retrieved from <https://www.screenaustralia.gov.au/getmedia/105b3683-56ef-46f2-81b1-695c8505994b/Screen-Australia-Submission-National-Cultural-Policy.pdf>; *Producer Offset Guidelines*, Screen Australia, Australian Government.

production incentive, productions must have significant New Zealand content as determined by a points-based cultural test.¹¹²

1. Requirements for Accessing the New Zealand Screen Production Grant for New Zealand Productions¹¹³

Requirements to Access the NZ Production Incentive	
Ownership Requirements	NZ producer must have equity share in production similar to that of other investors
Eligible Production Companies	Producer must be a New Zealand company incorporated in New Zealand and carrying on business in New Zealand. The central management and control of the company must be by New Zealand residents.
Eligible Projects	Feature films intended for theatrical release. Television and other formats intended for public dissemination.
Expenditure Requirements	Feature films - NZ\$ 2.5 million (CAD \$1.9 million). Scripted television series - NZ\$ 500K (CAD \$387K) per hour and NZ\$1 (CAD \$773K) in total.
Cultural Test	Minimum of 20 out of 32 points for feature film. <u>Cultural content (11 points)</u> • Nationality of personnel (13 points) • Location of Production/Post-production (6 points) • Ownership and financing (2 points)

1.1. Cultural Test of Significant New Zealand Content to Access the NZ Screen Production Grant

Productions must achieve 20 out of a possible 32 points. In addition, film productions are generally expected to obtain a minimum of 3 points related to the New Zealand cultural content of the project and at least 3 out of a total of 6 points for New Zealanders in the positions of director, producer and scriptwriter. Television projects must achieve 15 out of 32 points. In addition, television productions must obtain a minimum of 2 points related to New Zealand cultural content of the production and to receive at least 3 out of the total of 6 points available for the positions of director, producer and scriptwriter. The guidelines and points framework are not fixed policy rules and the NZSPG will in all cases bring to bear its judgment and discretion in assessing a production's level of significant New Zealand content.

Significant New Zealand Content Test	
A. New Zealand Subject Matter (maximum of 11 points)	
A1 – Setting	0 to 3 points
A2 – Lead Characters <i>Documentaries, reality, lifestyle etc.</i> : presenter, narrator, subject	0 – 3 points
A3 – Creative Material	0 – 3 points
A4 – Contribution to New Zealand Culture/History:	0 to 2 points
B. New Zealand Production Activity (maximum 6 points)	
B1 – Shooting – Location/Studio (50% for 1 point, 75% for 2 points)	0 to 2 points
B2 – Visual Post-Production, Digital or Visual Effects (50% for 1 point, 75% for 2 points)	0 to 2 points
B3 – Music Recording, Voice Recording, Audio Post-Production (50% plus)	1 point
B4 – If applicable, Concept Design & Physical Effects (Period/Genre) (50% plus)	1 point
C. New Zealand Personnel (maximum 13 points)	
New Zealand Citizen or New Zealand Permanent (a Qualifying Person).	
C1 – Director - 2 points if the director is a Qualifying Person / 1 point if more than 33% of directors / 2 points if more than 66% of directors or majority of episodes	0 to 2 points
C2 – Producer (2 points if at least one of the producers is a Qualifying Person or if there are more than three, one of the three lead producers is a Qualifying Person)	0 or 2 points

¹¹² New Zealand Screen Production Grant Criteria for New Zealand Productions, New Zealand Film Commission, July 1, 2017.

¹¹³ “The New Zealand Screen Production Grant for New Zealand Productions”, New Zealand Film Commission website: <https://www.nzfilm.co.nz/incentives-co-productions/nzspg-nz>.

C3 – Scriptwriter (2 points if the writer is a Qualifying Person or where there are multiple writers, 1 point if more than 33% and 2 points if more than 66% or majority of episodes written by a Qualifying Person)	0 to 2 points
C4 - Music Composer/Source Music (1 point if the composer is a Qualifying Person or if more than 50% of the source music is by Qualifying Persons)	1 point
C5 – Lead Actors (1 point if one of the lead actors is a Qualifying Person, 2 points if 2 of the lead actors are Qualifying Persons) <i>Documentaries, reality, lifestyle etc.:</i> actors only (if significant dramatic recreations) <i>Animation:</i> voice actors	0 to 2 points
C6 – Majority of Cast (50% plus) (1 point if 50% of the cast are Qualifying Persons) <i>Documentaries, reality, lifestyle etc.:</i> presenters, narrators actors (if there are significant dramatic recreations)	1 point
C7 – Key Production Roles (1 point if 2 of the key production roles are Qualifying Persons, 2 points if 3 of the key production roles are Qualifying Persons) <i>Drama:</i> lead cinematographer, lead production designer or art director, lead editor, lead digital/visual/special effects supervisor <i>Documentaries, reality, lifestyle etc.:</i> lead camera, lead editor, lead researcher and one of lead/field sound recordist or sound designer or sound mixer or sound editor <i>Animation:</i> animation director, lead layout supervisor, lead production designer, lead character designer, lead editor, lead sound designer, lead visual effects supervisor, lead modelling supervisor	0 to 2 points
C8 - Majority of Crew (50% plus)	1 point
D – New Zealand Businesses (maximum of 2 points)	
D1 – Ownership of Intellectual Property	1 point
D2 – Business development outcomes including ownership of applicant company, rights of recoupment and sources of financing.	1 point
Total Points Available	32 points
Minimum Required (Film): 20/32 points	

11. Canada

The Canadian Audio-Visual Certification Office (CAVCO) is responsible for certifying film and television productions as Canadian for the purpose of accessing the Canadian Film or Video Production Tax Credit (CPTC) and national funding through the Canada Media Fund (CMF) and Telefilm Canada. The Performance Envelope Program of the CMF provides automatic funding to Canadian broadcasters. Funds are paid directly to producers.¹¹⁴ Telefilm Canada provides development and production financing to Canadian feature films, including automatic funding to “pre-qualified” production companies who meet performance-based criteria.

To be certified as Canadian, productions must meet a number of mandatory requirements described above and achieve a minimum number of points on a ten-point scale, solely focused on key creative positions.¹¹⁵

The points-based test and mandatory requirements are also used by the Canadian Radio Television and Telecommunications Commission (CRTC) to certify Canadian productions used by broadcasters to satisfy their Canadian content regulatory obligations.¹¹⁶

¹¹⁴ Canada Media Fund website: <https://cmf-fmc.ca/program/performance-envelope-program/>.

¹¹⁵ Canadian Audio Visual Certification Office (CAVCO), *Application Guidelines - Canadian Film or Video Production Tax Credit (CPTC)*, October 27, 2021.

¹¹⁶ Canadian Radio Television and Telecommunications Commission (CRTC) website: https://crtc.gc.ca/eng/can-con/c_cdn.htm.

1. Requirements to Access Canadian Film or Video Production Tax Credit, the Canada Media Fund and Telefilm Canada¹¹⁷

Requirements to Access Canadian Tax Credit, Canada Media Fund and Telefilm Canada	
Ownership Requirements	• Copyright in the production must be owned by the Canadian production company and held for a minimum of 25 years following the completion of the production. • The Canadian production company must retain at least 25% of the net profits earned from the exploitation of the production in foreign markets.
Eligible Production Companies	• Prescribed taxable Canadian corporation that is controlled by Canadian citizens or permanent residents • Canadian production company must have and maintain full control over the development and full responsibility and control over all creative aspects, expenditures and financing of the production, as well as control over the negotiation of initial exploitation agreements.
Eligible Projects	• Feature films must be intended for theatrical release in Canada. • Convergent television productions intended for broadcast on Canadian television and a digital platform (interactive or streamed content).
Expenditure Requirements	Minimum expenditure of: • 75% of the production budget in Canada, and • 75% of the post-production budget in Canada
Cultural Test	Minimum of 6 out of 10 points (8 points for Telefilm, 10 points for Canada Media Fund) <u>Fiction Productions:</u> • Cultural content (0 points) • Nationality of personnel (10 points) • Local of Production/Post-production (0 points)

1.1 Canadian Content Test for Accessing the Canadian Film or Video Production Tax Credit, and National Funding Program (Canada Media Fund, Telefilm Canada and Canadian Certified Independent Funds)¹¹⁸

In addition to mandatory ownership and expenditure requirements, productions seeking certification as a Canadian production must pass a points-based test, which varies slightly for live action (fiction), documentaries and animation. There are a total of 10 points in the test, available only for key creative positions. Points are allotted only if all individuals occupying the position are Canadian.¹¹⁹

To be certified as Canadian for the purpose of accessing the CPTC, live action productions must achieve a minimum number of six points. Either the director or the screenwriter must be Canadian, and at least one of the two highest paid lead performers must be Canadian.

To access funding from Telefilm Canada, productions must achieve a minimum of 8 out of 10 possible points. Projects must be solely written and directed by Canadian citizens or permanent residents of Canada.¹²⁰

To access funding from the Canada Media Fund, productions must achieve all 10 points on the 10-point scale. Television projects must also be shot and set in Canada.¹²¹

¹¹⁷ Canadian Audio Visual Certification Office (CAVCO), Application Guidelines - Canadian Film or Video Production Tax Credit (CPTC), October 27, 2021.

¹¹⁸ Canadian Audio Visual Certification Office (CAVCO), Application Guidelines - Canadian Film or Video Production Tax Credit (CPTC), October 27, 2021.

¹¹⁹ Canadian Audio Visual Certification Office (CAVCO), Application Guidelines - Canadian Film or Video Production Tax Credit (CPTC), October 27, 2021.

¹²⁰ Telefilm Canada, *Canada Feature Film Fund Production Guidelines*, November 4, 2021, retrieved from <https://telefilm.ca/wp-content/uploads/guidelinesproductionnov4.pdf>, and *Canada Feature Film Fund Production Development Guidelines*, June 23, 2022, retrieved from <https://telefilm.ca/wp-content/uploads/guidelines-development-program-august2022.pdf>.

¹²¹ Canada Media Fund, *Performance Envelope Program Guidelines 2022-2023*, retrieved from <https://cmf-fmc.ca/document/performance-envelope-guidelines/>.

Canadian Content Points-based Test	
Key creative position	
Director	2 points
Screenwriter	2 points
At least two points must be obtained from Director and Screenwriter categories	
Lead performer for whose services the highest remuneration was payable	1 point
Lead performer for whose services the second highest remuneration was payable	1 point
At least one point must be obtained from Lead performer categories	
Director of photography	1 point
Art Director	1 point
Music Composer	1 point
Picture Editor	1 point
Total Available Points	10 points
Minimum Points Required: 6 points	

Addendum to the Study: *Defining Canadian Content: Approaches Taken in Other Jurisdictions and Lessons Learned for Canada*

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Executive Summary

This addendum provides an information update to the report, *Defining Canadian Content: Approaches Taken in Other Jurisdictions and Lessons Learned for Canada*, commissioned by MPA-Canada, originally published in March 2023. This comprehensive study examined definitions of national content found in the national certification systems of selected jurisdictions. In keeping with the original study's methodology, research for this addendum was focused on definitions of national content as found in the national certification systems pertaining to tax credit programs, production incentives and automatic funding programs.¹²²

Since the report was published, we observe a general trend towards maintaining flexibility for producers in the jurisdictions examined. Most of the jurisdictions examined have brought minor changes to their programs, resulting in almost all cases in enhanced flexibility for producers to qualify as national productions for the purpose of participating in these programs.

The key findings put forward in the report continue to hold true. The jurisdictions examined continue to provide producers with flexibility in satisfying requirements by including in their cultural tests a wide range of criteria, flexibility within individual criteria, a high number of available points, graduated points scales and partial points, and in some jurisdictions more subjective overall analysis.

As noted in the original report, “international approaches to defining national content are modern, flexible and adapted to this changing global production landscape. They attach both cultural and economic value to screen-productions, apply flexible tests to achieve a wider array of policy objectives, and do not impose ownership restrictions that are not aligned to the changing screen-based production value chain.”¹²³ The original report concluded that Canada, by comparison, continues to use an antiquated definition of Canadian content within a content system that is poorly adapted to the realities of global production trends, difficult to reconcile with international models of high budget production that must be attractive to audiences in many markets, and not well suited to the increased production opportunities afforded by the global market.

The recommendations put forward in the original report also continue to hold true:

- expand the Canadian points-base system to include a significantly larger number of available points and graduated scales that are aligned to the realities of the global production environment;
- include recognition of cultural criteria in an expanded point system, with particular emphasis on meeting Canada's cultural objectives;
- recognize all Canadian cast and crew in an expanded Canadian points-based system;
- reduce the current thresholds of minimum production expenditures on par with international jurisdictions (i.e., between 10% and 50% of production budgets); and
- remove current copyright ownership requirement as a determinant factor, providing Canadian producers with the flexibility to decide with financing partners the best business deals for their respective companies.

As drawn from lessons learned in other jurisdictions examined in the original report, flexibility in the Canadian content system would support the evolution of business and financing models, in keeping with the maturity of the sector and at the level of its sophisticated production companies. A modernized definition of Canadian content would support Canadian storytelling, promoting Canadian culture and soft power and the ongoing development of its world-class production sector. Each of the recommended

¹²²This focus is explained by the fact that in the jurisdictions examined, national content definitions exist in the certification systems associated with public support programs (i.e., tax credits, production incentives and direct funding programs). The legislative regimes governing the national broadcasting systems in the jurisdictions examined are, on the other hand, focused on supra-national objectives.

¹²³ Maria De Rosa and Marilyn Burgess, *Defining Canadian Content: Approaches Taken in Other Jurisdictions and Lessons Learned for Canada*, prepared for the Motion Picture Association Canada, 2023, page 33.

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changes would better align the Canadian content system to the realities of global production and to the systems in other jurisdictions.

Introduction

1. Overall Context

This addendum provides an information update to the report, *Defining Canadian Content: Approaches Taken in Other Jurisdictions and Lessons Learned for Canada*, originally published in March 2023. It reports on material changes brought to approaches to defining national content in the selected jurisdictions of the United Kingdom (UK), France, Germany, Italy, Spain, the Netherlands, Portugal, the Czech Republic, Australia, and New Zealand (NZ). In keeping with the original study's methodology, research for this addendum was focused on definitions of national content as found in the national certification systems pertaining to tax credit programs, production incentives and automatic funding programs.

In all, research on this addendum examined 19 programs, as follows:

1. United Kingdom

Audio Visual Expenditure Credit
Independent Film Tax Credit
British Film Institute (BFI) Production Fund

2. France

National Centre for Cinema and Animation (CNC) Automatic Film Production Fund
CNC Automatic Audiovisual Production Fund
Film and Audiovisual Tax Credit

3. Germany

German Federal Film Fund (DFFF I)
German Motion Picture Fund (GMPF)
German General Film Board (FFA) Reference Funding

4. Italy

Film and Audiovisual Tax Credit
Ministry of Culture (MiC) Automatic Production Subsidy

5. Netherlands

Netherlands Film Production Incentive

6. Spain

Film and Audiovisual Tax Credit
Institute of Cinematography and Audiovisual Arts (ICAA) General Aid Program

7. Portugal

Pic Portugal Cash Rebate
Institute of Cinema and Audiovisual (ICA) Automatic Production Funding

8. Czech Republic

Czech Audiovisual Fund

9. Australia

Australia Producer Offset

10. New Zealand

New Zealand Screen Production Rebate

Findings

1. United Kingdom

Audio Visual Expenditure Credit

The Film Tax Relief and the High-End TV Tax Relief have been renamed the Audio Visual Expenditure Credit (AVEC). Within the AVEC, a new stream has been introduced, the Independent Film Tax Credit (IFTC) aimed at supporting lower budget films with budgets of £15 million (CAD \$26.6 million) or less, which provides a tax credit at an enhanced rate (53% as compared to 34% for the standard AVEC).

The introduction of the standard AVEC has not affected the [Cultural Test](#), which determines whether a production qualifies as British and is therefore eligible for a credit. To access the enhanced AVEC (IFTC), productions must meet the conditions of the same cultural test as is used for the AVEC, with one additional requirement. These productions must have either a lead director or a lead scriptwriter who is a British citizen or a resident of the UK. These positions will provide a weight of one point out of 35 points available to a film under the Cultural Test.

British Film Institute (BFI) Production Fund

No changes have been brought to how national content is defined to access the BFI Production Fund.

2. France

National Centre for Cinema and Animation (CNC) Automatic Film Production Fund

Changes have been brought to how national content is defined to access the CNC Automatic Film Production Fund. Specifically, the changes were brought to the Film and Audiovisual Tax Credit, described below, requirements for which must be met to access the Production Fund.

CNC Automatic Audiovisual Production Fund

There are no material changes to how national productions are defined for the purpose of accessing the CNC Automatic Audiovisual Production Fund other than the change to the Film and Audiovisual Tax Credit (for which eligibility is a requirement to accessing the program), described below.

Film and Audiovisual Tax Credit

The cultural test for accessing the French film or Audiovisual Tax Credit for works in the fiction and documentary genres was slightly modified. While the total number of points needed to pass the cultural test remains the same at 41 out of a total of 100 available points, excluding the language of production, it is now easier for producers to obtain the minimum number of points. Three new positions have been introduced into the category of Heads of Departments (Chief Sound Editor, Sound Engineer, and Sound Mixer). Each of these positions contributes one point to the total number of points obtained. To accommodate these three new positions within the total points available in the cultural test, the weighting of other Heads of Department positions, as well as the category of Technicians and Skilled Workers were modified slightly.

3. Germany

German Federal Film Fund I (DFFF I)

No changes were brought to the definition of national content for the purpose of accessing the DFFF 1.

German Motion Picture Fund (GMPF)

Greater flexibility has been brought to the minimum expenditure requirements to access the GMPF. The minimum spend requirement of 40% of the production budget in Germany has been replaced with the requirement to spend the lesser of 40% of the production budget or 13 million Euros (CAD \$19.2 million) in Germany. These requirements may be waived for productions spending at least 3 million Euros (CAD \$4.4 million) on digital filmmaking in Germany.

FFA Reference Funding

The Federal Government of Germany has approved a draft amendment to the *Act on Measures to Promote German film – FFG-E (Gesetz über Maßnahmen zur Förderung des deutschen Films)*. The draft legislation does not bring any changes to the national content system, outlined in the FFG-E. The government has announced that with the new legislation it will increase the number of performance-based automatic production subsidies administered by the German Federal Film Board (FFA). The drafted amendment is scheduled to come into force at the beginning of 2025, following approval by the German parliament (Bundestag).

4. Italy

Italian Film and Audiovisual Tax Credit

There are no material changes to the Film and Audiovisual Tax Credit for productions of Italian nationality.

One clarification has been brought to the requirements to access the tax credit for productions of Italian nationality regarding eligible production companies. In addition to being based in Italy or another country of the EEA, an eligible production company must be a joint-stock company with a minimum fully paid-up share capital of no less than 40,000 Euros (CAD \$59,156). Other requirements, including the cultural test of Italian nationality, remains the same.

Ministry of Culture (MiC) Automatic Production Subsidy

No changes have been brought to the definition of national content or other requirements originally reported for the purpose of accessing the Automatic Production Subsidy of the MiC (Ministero della cultura), formerly MiBAC.

5. The Netherlands

No material changes have been brought to the definition of national content or other requirements reported in the original study for the purpose of accessing the Netherlands Film Production Incentive.

6. Czech Republic

Czech Production Incentive

The Czech Film Fund, which administers the Czech Production Incentive, has been renamed the Czech Audiovisual Fund in recognition of productions for broadcast or commercial streaming.

The Czech Republic has introduced a new Audiovisual Act that will extend funding from the Czech Production Incentive to audiovisual productions. The Czech Ministry of Culture has reached agreement with all distribution platforms to move forward on the Act. Under the new law, the reformed Czech Production Incentive will provide a production rebate for feature films and television fiction and animation productions. The reform will not change the definition of national content nor modify other requirements for the purpose of accessing the program.

7. Spain

Spanish Film and Audiovisual Tax Credit

There are currently no changes to the eligibility requirements for the Spanish Film and Audiovisual Tax Credit.

With respect to the Test of Spanish Nationality, the Ministry of Culture has clarified that, cinematographic films or audiovisual works will be deemed as Spanish if jointly produced with foreign companies and approved as such, which may provide greater flexibility to producers.

Institute of Cinematography and Audiovisual Arts (ICAA) General Aid Program

There are currently no changes to the requirements to access the General Aid Program.

Draft Law on Cinema and Audiovisual Culture currently before the Italian Parliament

In June 2024, the Spanish government approved the *Proyecto de Ley del Cine y de la Cultura Audiovisual* (Draft Law on Cinema and Audiovisual Culture), which is now progressing through the parliamentary process and is expected to enter into force before 2025 as part of the government's Recovery, Transformation and Resilience Plan.

The main changes undertaken with this new draft law aim at updating the current framework to better align to the transformation that has occurred in the audiovisual industry since the original Cinema law came into force in 2007. The proposed bill promises increased flexibility in the definition of a work's Spanish nationality with regard to how much of a production's budget is spent on equipment, services and supplies in Spain or another EU country. The bill also intends to expand the scope of national aid beneficiaries to include television series.

8. Portugal

Pic Portugal Cash Rebate

In 2024 Portugal introduced a new production incentive, the Pic Portugal Cash Rebate, with a more flexible Cultural Test for producers.

The criteria to access the new production cash rebate are the same as they were to access the Portuguese Production Incentive described in the original report, *Defining Canadian Content: Approaches Taken in Other Jurisdictions and Lessons Learned for Canada*, as regards all criteria examined, with the exception of the Cultural Test.

To access the new Pic Portugal Cash Rebate, producers must obtain a minimum of 40 points out of a total of 81 points in a new cultural test (compared to 60 in the previous test), with minimum thresholds of points established for cultural content (10 points), nationality of personnel (13 points), and location of production/post-production services (2 points).

The test provides more available points in the cultural content category (51 vs 30 in the previous test), providing greater flexibility to producers:

- Up to 6 additional points are available for action that takes place in “low population density locations in Portugal.
- One additional point is available if most of the main characters are nationals or residents of Portuguese speaking territory, (or have a strong connection with Portuguese culture or language, or with Portuguese-speaking, European or co-producing countries cultures, in the case of official co-productions under co-production treaties to which Portugal is a party).
- Three points for animation or documentary genres as compared to one 1 point in the previous test.
- Up to six points (over the previous 3) for the international accolades awarded to key creative personnel, to which the main actor and actress have been added.
- The points available for the musical score have been doubled, from 1 to 2, with a new minimum requirement that at least 20% of the score be sung in Portuguese or be written by Portuguese-language authors.
- Two points (over the previous one point) for women in lead producing and technical roles.
- Up to 12 points for cultural reach/internationalization of previous works by the production company, which is a new category added to the test.
- Four points (over the previous 2 points available) for coproductions.

Within the new category covering the location of technical services, the test provides significant flexibility for producers to achieve the required minimum two points:

- Two points for productions that use technical service providers (i.e. equipment rentals, audio and visual post- production) for a minimum of 10% of the total services provided during production, and up to 5 points for 50% of services used in Portugal.

The points obtained are augmented by 20% for productions that shoot or post-produce at least 50% of their time in a low population density territory.

Institute of Cinema and Audiovisual (ICA) Automatic Production Funding

There have been no changes brought to Automatic Production Funding available through the ICA.

9. Australia

Australia Producer Offset

In 2024, the Australian Government made some changes to the Producer Offset requirements for film and television production in Australia aimed at increasing access to, as well as the value of, the Offset for producers. These changes have resulted in greater flexibility for producers.

The cap on above-the-line expenditures (ATL Cap) which was set at 20% of total qualifying production expenditures has been removed, providing producers with greater flexibility when using major creative talent. Also removed were the minimum length requirements (i.e. run times) for television or film productions.

10. New Zealand

New Zealand Screen Production Grant

In 2023, the New Zealand government introduced some changes to its Production Grant rebate scheme, following a major review of the country's incentive programs.

The New Zealand's Screen Production Grant (NZSPG) is now called the Screen Production Rebate (NZSPR). There is a new 25% budget cap on 'above-the-line' expenses for productions qualified as domestic New Zealand productions. Exceptions to this limit may be allowed in exceptional circumstances, with guidance from the New Zealand Film Commission to ensure fair and consistent application.

The cultural test of Significant New Zealand Content necessary to access the rebate has not changed and is the same test as was reported on in the original study.

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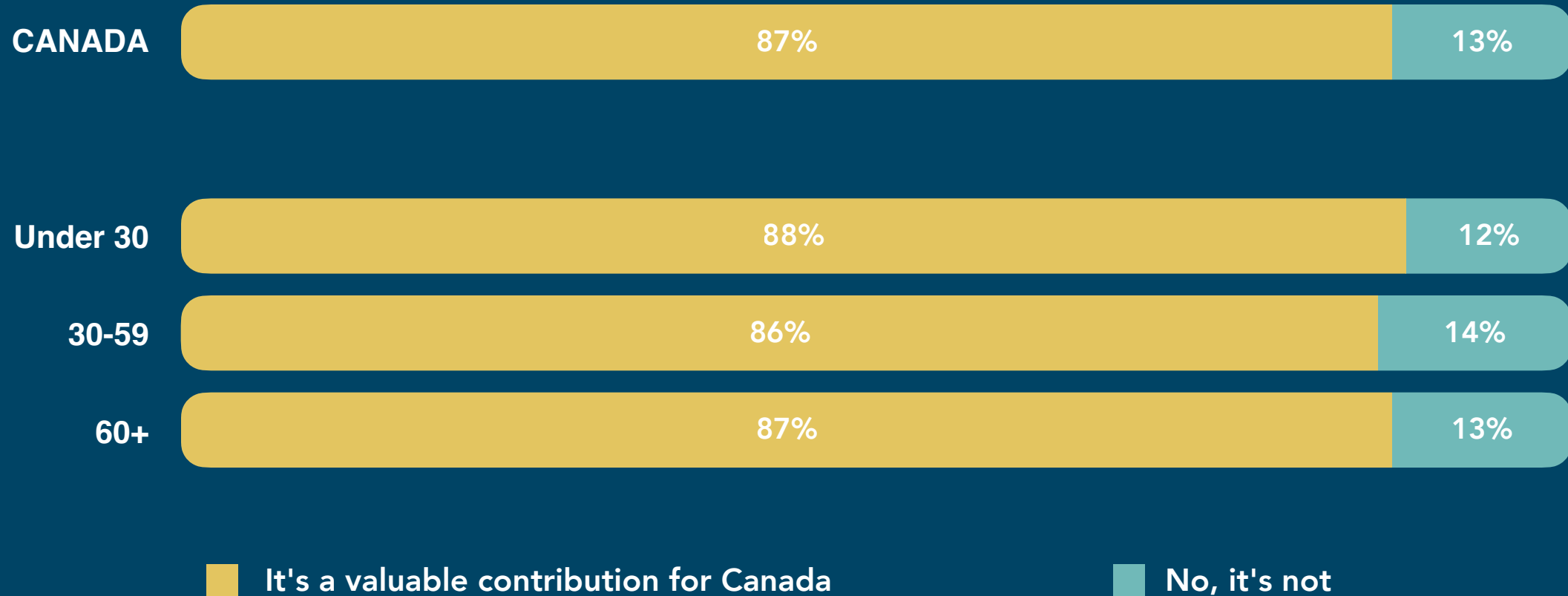
Appendix F

Attitudes towards Canadian content and streaming services

Review of data gathered on behalf of
Motion Picture Association - Canada
By Spark Insights and Abacus Data
Surveys conducted between 2022-2024

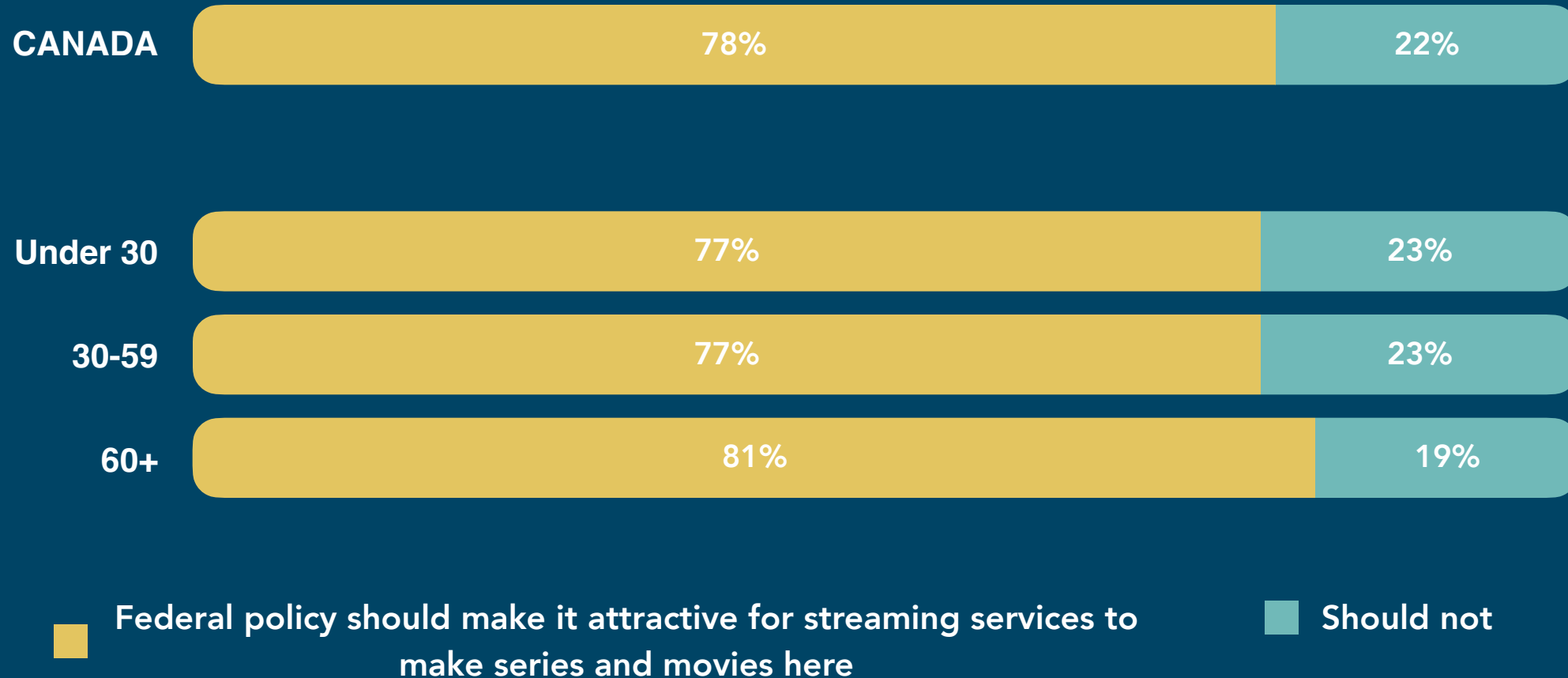
Is it valuable for Canada when streaming services make movies and shows here and show them to global audiences?

Do you believe it is a valuable contribution to Canada and to the career opportunities for Canadian film and TV workers, when streaming services like Netflix, Disney +, Paramount +, Amazon Prime Video, and others produce films and series in Canada and make them available to global audiences?



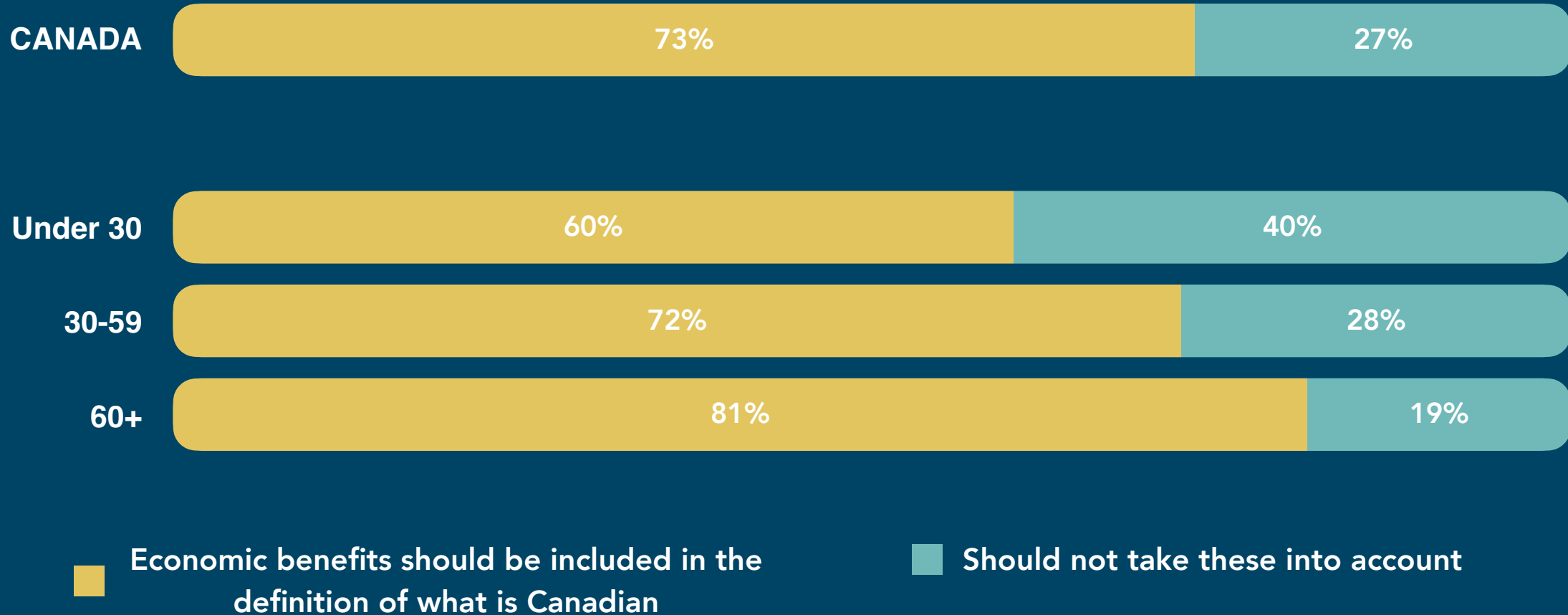
Should Canada make it attractive for streaming services to make movies and series here employing Canadians?

In terms of the federal government policy you would like to see for the future, which of these two approaches would you prefer



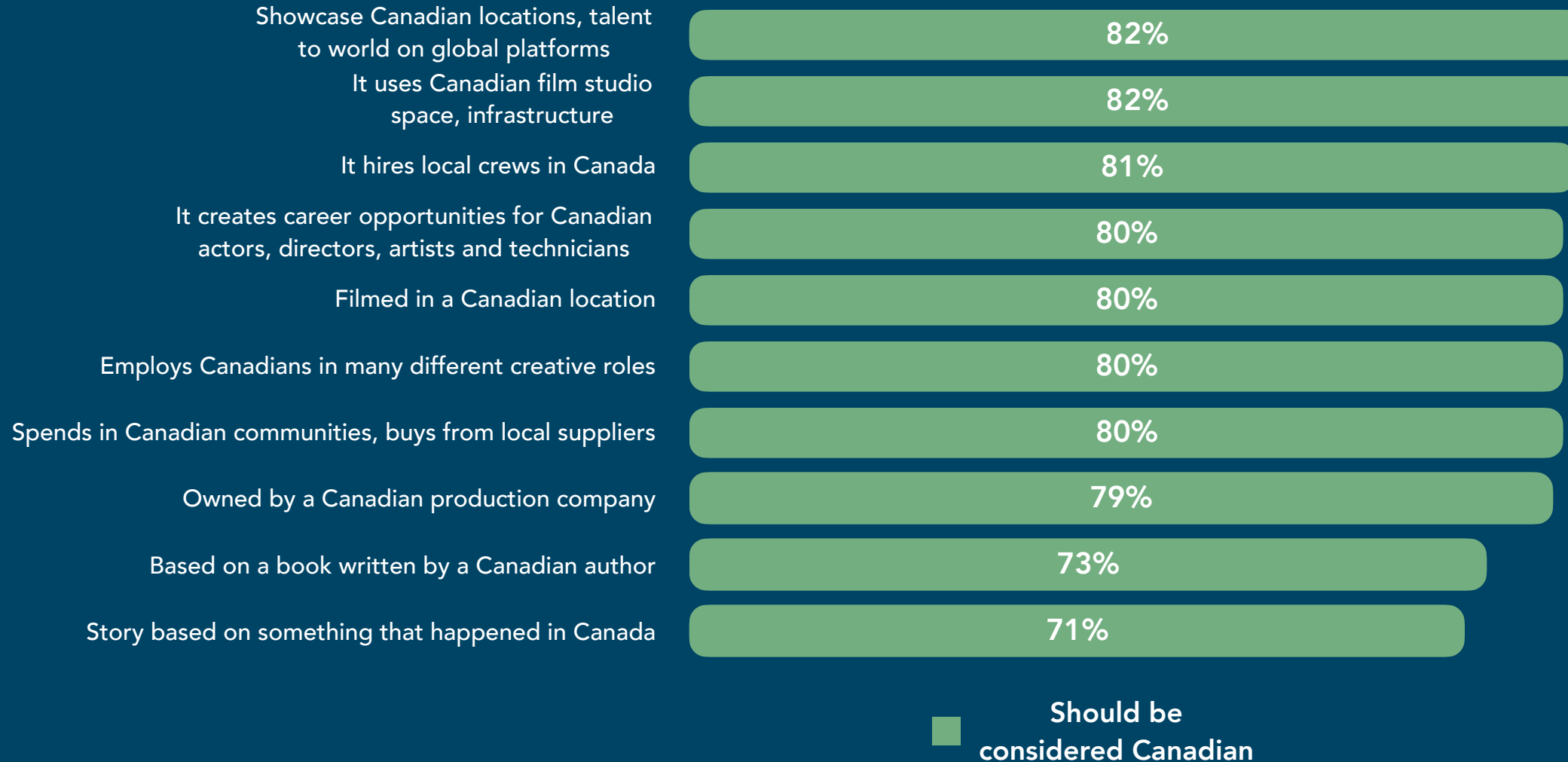
Should the definition of “Canadian” take into account economic benefits and worker opportunities?

Should the definition of what is Canadian include whether a production creates significant economic benefits and opportunities for Canadian film and TV workers, or should federal policy not take those things into account?



What should be considered Canadian?

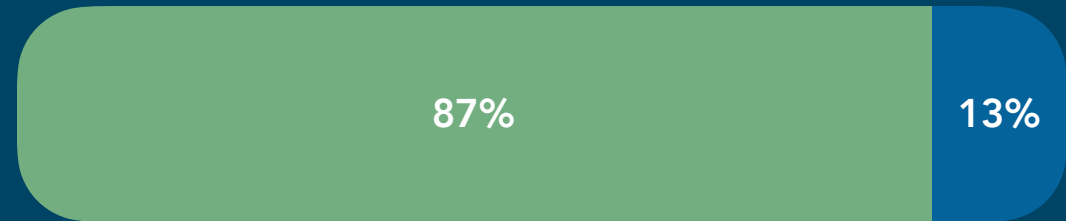
Should a film or TV series made by a global streaming service be considered Canadian if...



Feelings surrounding these issues

■ Agree ■ Disagree

Canada is home to many creative people who can gain great experience by working on projects with global Hollywood streaming studios.



I'd rather see as little government rules and regulations in this sector as possible, let people choose what they want to watch, and let companies make what they prefer to make.

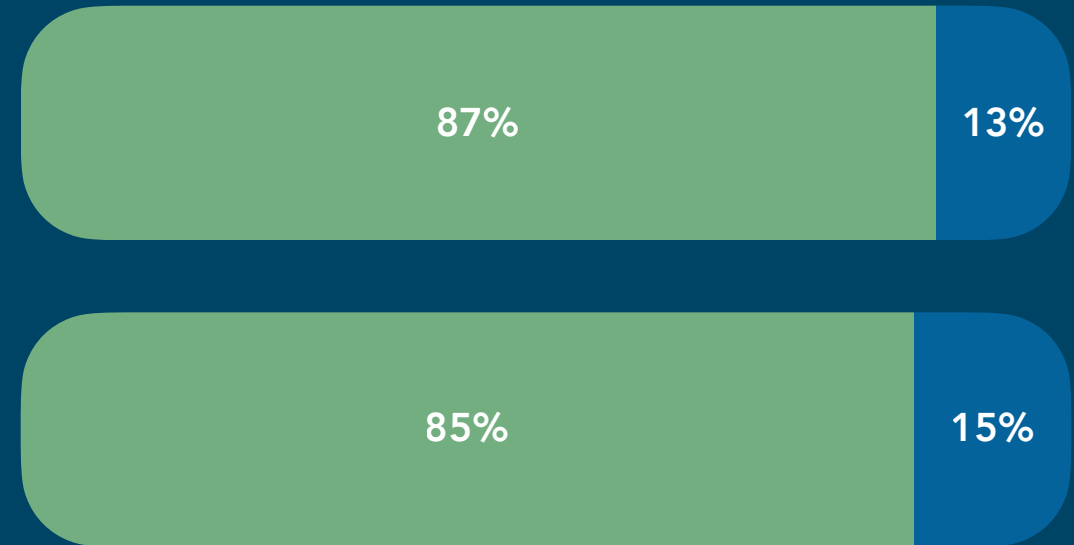


Feelings surrounding these issues

Especially given the trade questions surrounding Canada US relationship it is important to try to attract global studio investment to Canada, not make it harder to do that.

Canada has a competitive strength in making films and shows and every effort should be made to hold onto and strengthen that competitive advantage.

■ Agree ■ Disagree

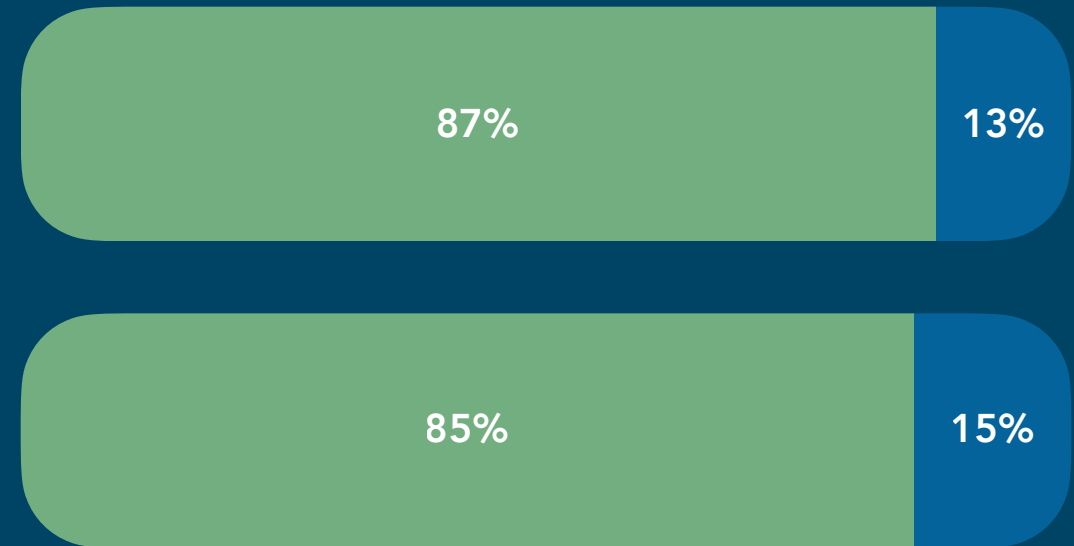


Feelings surrounding these issues

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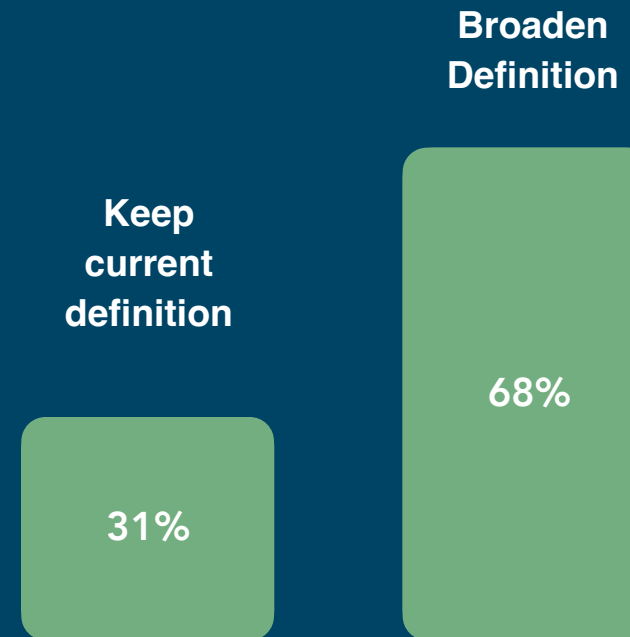
■ Agree ■ Disagree



Should CRTC take a new approach?

The old CRTC rules use narrow criteria and require that a TV show or movie is owned by a Canadian production company to be considered Canadian.

Would it be better if...the CRTC continues to use that narrow definition of what is Canadian or includes a broader list of criteria, including the items listed above, when deciding on the obligations of streaming services?



IF IT WERE UP TO YOU TO SET PUBLIC POLICY FOR THE FILM AND TV SECTOR IN CANADA WHICH WOULD BE YOUR HIGHER PRIORITY?



- MORE FILMS/SERIES FEATURING CDN LOCATIONS/STORIES/TALENT SHOWN GLOBALLY
- MORE FILMS/SERIES OWNED BY CDN PRODUCTION COMPANIES

CAN A PROJECT BE VALUABLE TO CANADA WITHOUT CANADIAN OWNERS?



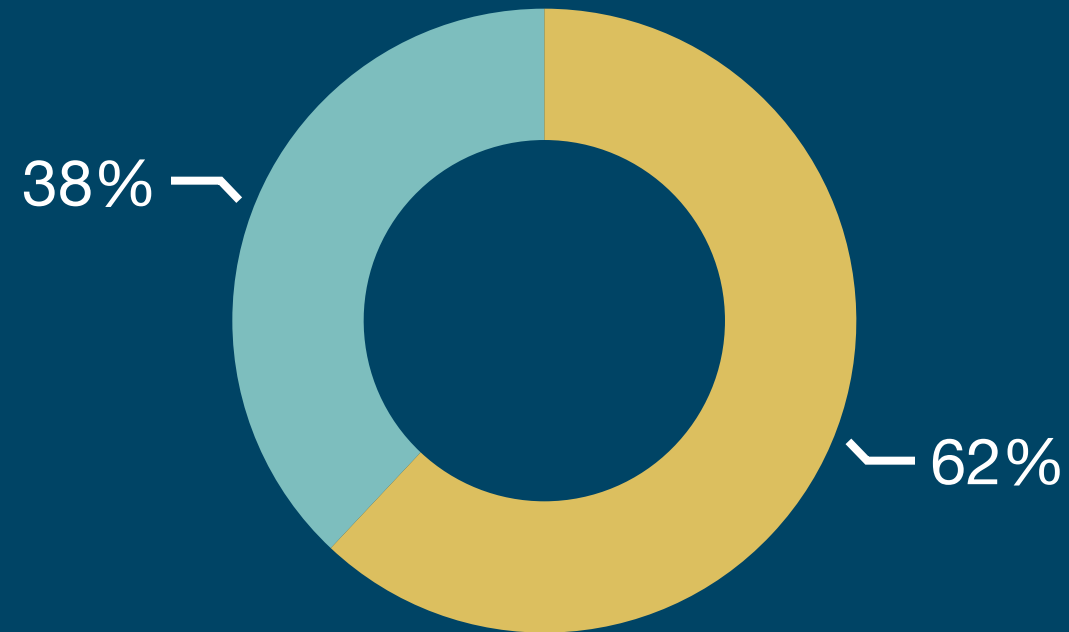
- TO BE VALUABLE TO CANADA'S GOALS, A FILM/SHOW MUST BE OWNED BY CANADIAN COMPANY
- FILMS/SHOWS BASED ON CDN STORIES/BOOKS, SHOT IN CANADA, WITH LOCAL WORKERS ALSO SHOULD BE CONSIDERED VALUABLE TO CANADA

Is it better for streaming companies to use their expertise to choose the ways they help contribute or pay into a fund that makes those decisions?



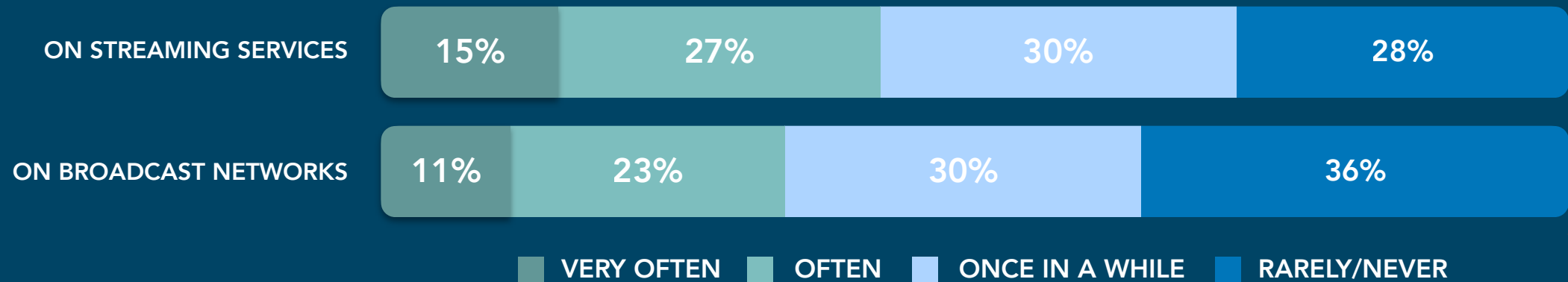
- USE THEIR EXPERTISE TO DEVELOP PROJECTS WITH CREATIVE CDN TALENT AND MARKET THESE GLOBALLY
- PAY INTO A FUND MANDATED BY FED GOV'T AND LET THE FUND MANAGERS CHOOSE HOW TO SPEND

Do streaming companies expose people to international content or crowd out international content with American films and series?



- STREAMING SERVICES EXPOSE PEOPLE TO CONTENT FROM**
- **AROUND THE WORLD, INCLUDING CANADA, GIVING CREATORS MORE OPPORTUNITY**
 - **PROMOTE SO MUCH AMERICAN CONTENT IT CROWDS OUT CONTENT FROM ELSEWHERE, MAKING IT HARDER FOR CREATORS FROM OTHER PLACES**

HOW OFTEN DO YOU WATCH CONTENT FROM ANOTHER COUNTRY OTHER THAN THE US?



WHICH IS THE BETTER BENEFIT FOR CANADA

IF GLOBAL STUDIOS PUT MONEY INTO A FUND THAT IS THEN GIVEN TO CANADIAN PRODUCERS TO MAKE SHOWS AND FILMS

29%

IF GLOBAL STUDIOS MAKE SHOWS AND FILMS IN CANADIAN LOCATIONS INVOLVING LOTS OF CANADIAN FILM AND TV WORKERS AVAILABLE TO THE WORLD VIA STREAMING PLATFORMS

71%

PREFERENCES FOR PUBLIC POLICY

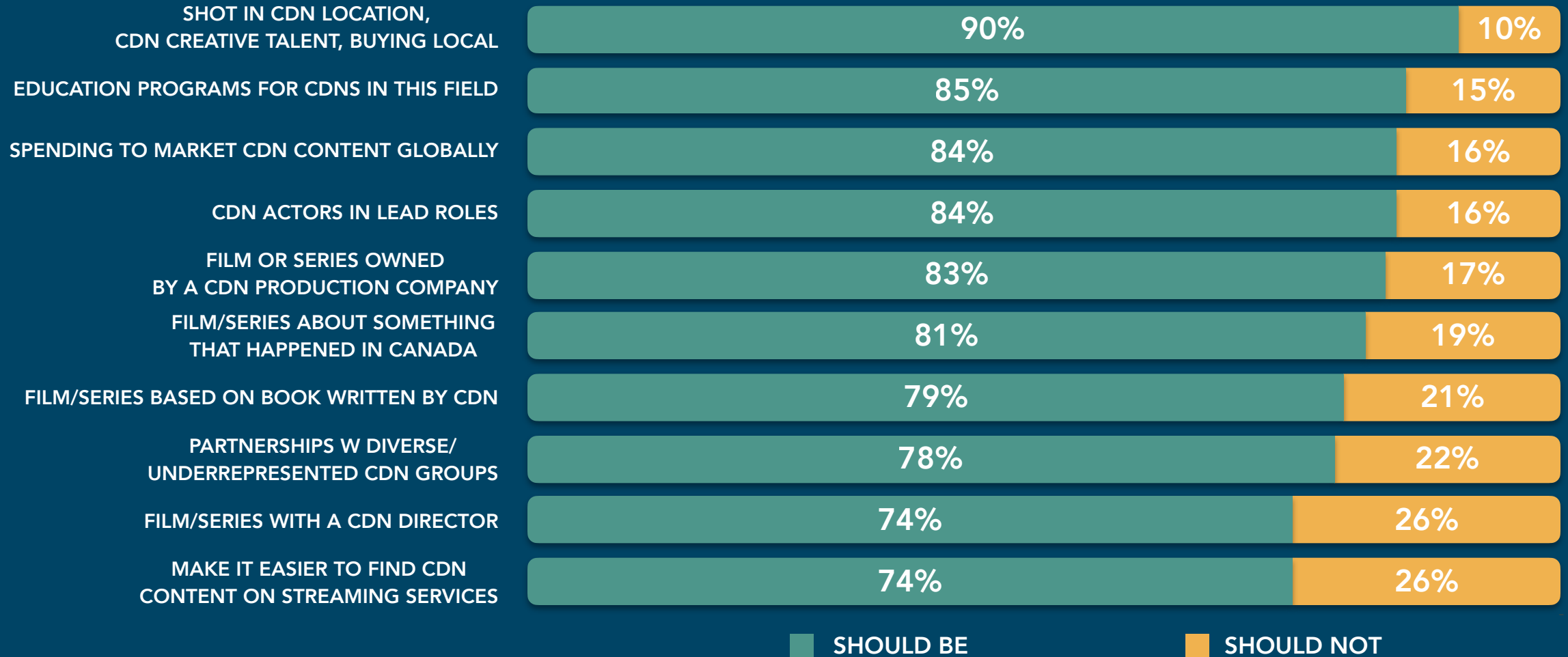
HAVE THE GOVERNMENT SET RULES ABOUT WHAT SHOWS AND FILMS STREAMING SERVICES MAKE AVAILABLE IN CANADA TO AS TO MAKE SURE THERE IS ENOUGH CANADIAN CONTENT

28%

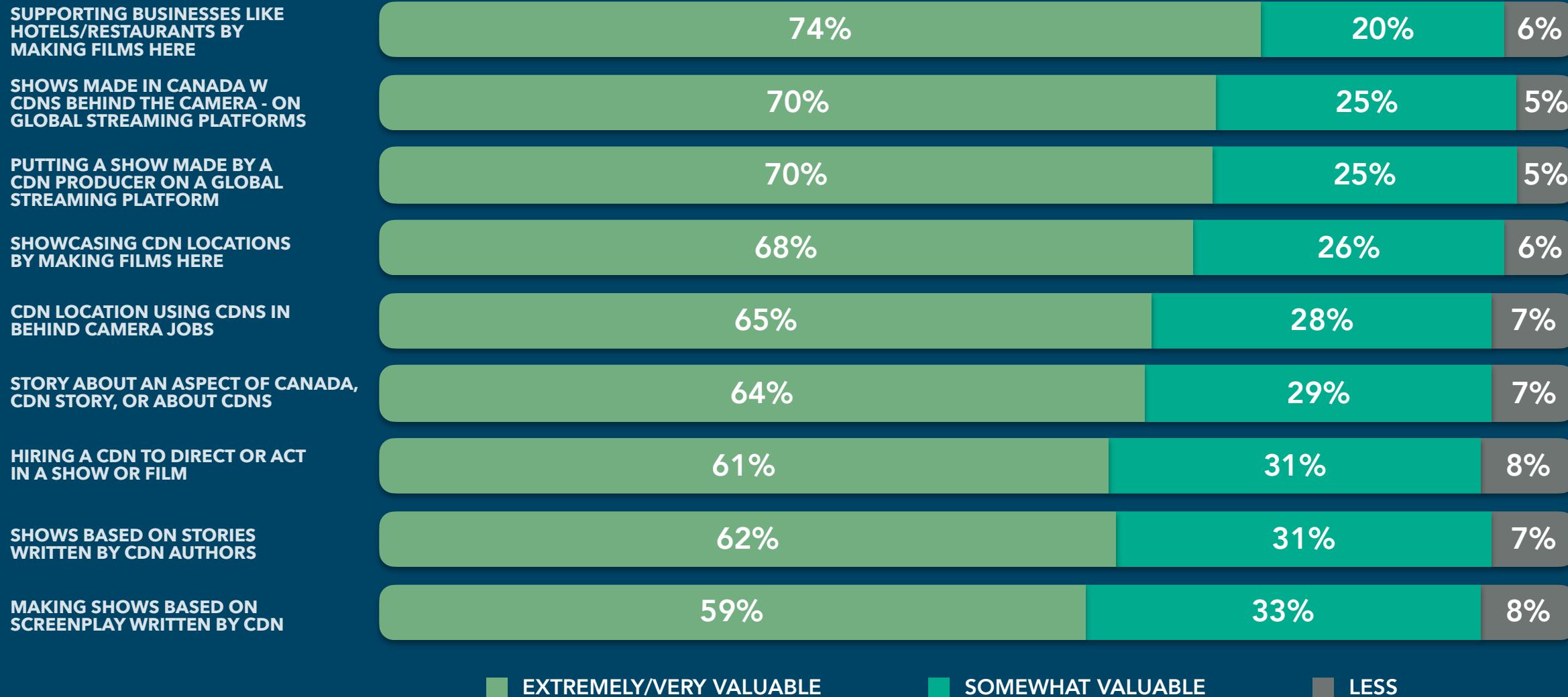
REQUIRE STREAMING SERVICES TO SUPPORT CANADIAN CREATIVE TALENT BUT IN WAYS THAT DO NOT AFFECT WHAT IS AVAILABLE TO CANADIAN CONSUMERS

72%

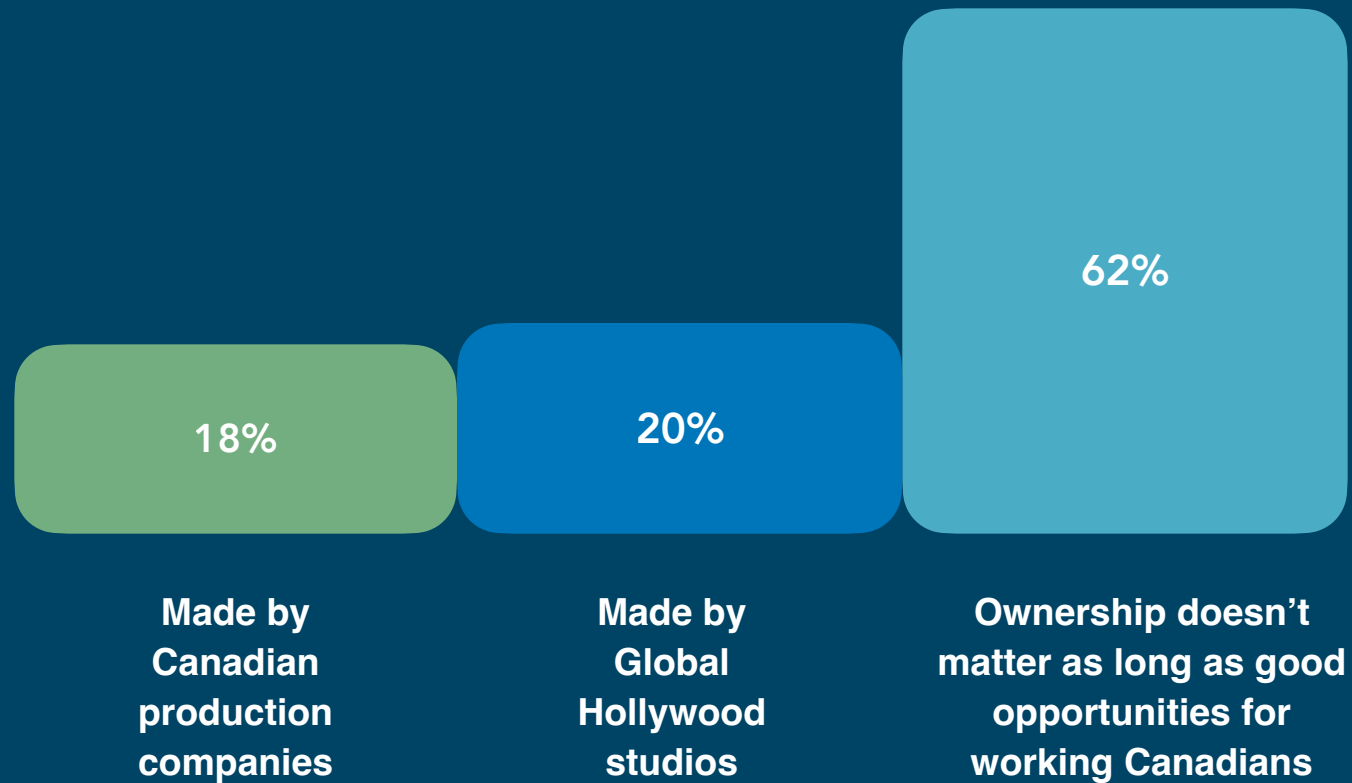
IF STREAMING COMPANIES ARE ALLOWED TO MAKE CHOICES ABOUT HOW BEST TO SUPPORT CANADA'S GOALS IN FILM AND TV SHOULD THESE BE CONSIDERED VALUABLE OR NOT



HOW VALUABLE IS EACH OF THE FOLLOWING FOR CANADA



Should national policy favour film and TV projects ...



How Canadians View the Contributions of Global Studios & Defining Canadian Content

On behalf of the Motion Picture Association – Canada, Bruce Anderson (formerly Chairman of Abacus Data, currently Partner, spark*advocacy) has conducted several public opinion studies over recent years, including a major survey of 2500 adults in December 2024. This report is intended to describe the most recent results as well as to bring forward relevant data points from earlier studies.

Defining “Canadian content”: What Canadians Value

Canadians are proud of Canadian content and want to see these productions supported, but they also feel the definition of what should be considered “Canadian content” is dated and should be broadened.

Roughly three in four (73%) say the definition of “Canadian” should take into account economic benefits and worker opportunities. *(December 2024, 2500 adults, Spark Insights nationwide survey)*

When provided with a list of possible criteria that should be taken into account when considering what is Canadian and the obligations on streaming companies, ownership was not considered more important than many other factors, such as hiring Canadians, showcasing Canada to the world, and buying locally. *(December 2024, 2500 adults, Spark Insights nationwide survey)*

The large majority (79%) believe that the policy which stipulates that a movie or TV show that has more than 90% Canadian cast and crew can be considered not Canadian unless owned by a Canadian production company should be changed. *(February 2020, 1500 adults, Spark Insights)*

The role of ownership

Over different surveys we have explored how people feel about the current way in which Canadian content has been defined. In every instance the results indicate Canadians feel that “ownership” should not play an overarching role.

The large majority (79%) believe the policy which stipulates a movie or TV show that has more than 90% Canadian cast and crew is considered not Canadian unless owned by a Canadian production company should be changed. *(February 2020, 1500 adults nationwide, Spark Insights)*

By a 3:1 margin (76%-24%), people reject the idea that to be valuable to Canada a film or series must be owned by a domestic production company. *(August 2023, 3000 adults nationwide, Spark Insights)*

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By a roughly 3:1 ratio (73%-27%), Canadians think the priority for public policy should be on having more films/series shot in Canada, using Canadian talent, and exposed to global audiences, rather than more films and series owned by Canadian production companies. *(August 2023, 3000 adults nationwide, Spark Insights)*

When it comes to the approach of public policy, only 18% think the priority should be to back projects of Canadian production companies. Most (62%) say whether a project is backed by a Canadian or global Hollywood studio should matter less in federal policy terms than the opportunities for working Canadians. And 20% say preference should be placed on attracting Global studio projects. *(February 2022, 1500 adults nationwide, Abacus Data)*

When asked if the CRTC should continue to require Canadian ownership for a production to be considered Canadian or broaden the definition, two-thirds (67%) feel the definition should be broadened. *(December 2024, 2500 adults, Spark Insights nationwide survey)*

Contributions of Streaming Companies

The large majority of Canadians believe that global Hollywood studies make meaningful contributions to Canadian cultural and economic goals, including *(February 2020, 1500 adults nationwide, Spark Insights) by:*

- Sharing stories about Canada and Canadians around the world (93% say this is helpful or good for Canada)
- Hiring a wide range of Canadian talent behind the cameras (94%)
- Building creative excellence in Canada through skills development and training initiatives (94%)
- Expanding filmmaking capacity in Canada by investing in new infrastructure such as studio space or innovative technologies (93%)
- Creating jobs and buying from businesses in Canadian places where shows and films are made (95%)

Fully 87% believe it is valuable for Canada when streaming companies make movies and series here and show them to global audiences. *(December 2024, 2500 adults, Spark Insights nationwide survey)*

A large majority (78%) say Canada should make it attractive for streaming services to make movies and series in Canada, employing Canadians. *(December 2024, 2500 adults, Spark Insights nationwide survey)*

Regulation of Streaming Services

Canadians favour a freer market regarding content production in Canada, with 79% stating they prefer “limiting government regulation to allow people to make their own decisions about what to watch and companies to make their own decisions about production”. *(December 2024, 2500 adults, Spark Insights nationwide survey)*

Most people believe the best way to help Canada's creative workers is to have streaming companies use their own expertise to develop projects with Canadian talent and market them globally rather than have them contribute to a federally mandated fund that chooses where the funds should go. *(August 2023, 3000 adults nationwide, Spark Insights)*

A similar question from a 2022 survey saw a strong majority preference for global studios making their own choices about how to involve and showcase Canadians (71%). *(February 2022, 1500 adults nationwide, Abacus Data)*

Most people (62%) think streaming companies do more to promote content from Canada around the world, rather than crowding out international content with US content. This is the majority view across party lines, generations, and linguistic groups. *(August 2023, 3000 adults nationwide, Spark Insights)*

Almost three-quarters (72%) of Canadians say they watch international content on streaming services, higher than the amount who say they watch non-US content on broadcast networks (64%). *(August 2023, 3000 adults nationwide, Spark Insights)*

Most prefer (68%) that federal regulations be flexible to ensure that smaller niche services can thrive and make a unique contribution that is sensible given their size and business model. *(August 2023, 3000 adults nationwide, Spark Insights)*

There is a strong preference for policies that support Canadian content without affecting what is made available to consumers (72%) over policies that control what content is available in Canada in order to ensure Canadian products have higher profile. *(February 2022, 1500 adults nationwide, Abacus Data)*

Conclusions

In survey after survey, Canadians express significant appreciation for the production work that streaming services and global Hollywood studios do in Canada. People see both economic and cultural benefits and want policies that encourage more of these projects as a result.

Canadians believe the definition of Canadian content should not hinge on whether a film or show is owned by a Canadian production company – they prefer to see a broader set of benefits for Canadians used to frame policy in this area, including recognizing productions that hire locally, feature Canadian locations and use Canadian studios.

Canadians are skeptical of the argument that streaming services push American products at the expense of Canadian and international productions – more Canadians now say they watch international content on streaming services than on broadcast television.

If streaming companies are required to do more to contribute to Canadian goals, most believe this is best done by letting streamers pick the projects to invest in, based on their expertise. They believe that the contributions required should include the sorts of activities that streaming companies have routinely been undertaking as part of their work in Canada, and they feel the government's policy approach should be flexible to allow smaller streamer companies to continue to operate in Canada.

Canadians do not believe the definition of "Canadian content" should impinge upon consumers having the choice to choose the content they want to watch.

Sources:

August 2023 – Spark Insights - "How Canadians see contributions to Canada in the film and TV sector" - https://www.mpa-canada.org/wp-content/uploads/2023/11/MPA-Canada-Survey_Fall-2023_Public_ENG.pdf

February 2022 – Abacus Data - "Contributing to Canadian Success in Film and TV" - <https://www.mpa-canada.org/wp-content/uploads/2023/07/Abacus-Final-2022.pdf>

January 2021 – Abacus Data - "Canadians Keen to See More Investment in Film & TV Production in Canada, Welcome Global Hollywood Studio Projects" - https://www.mpa-canada.org/wp-content/uploads/2024/11/ENG_LongVersion_Abacus-Film-and-TV-Investment-in-Canada-.pdf

Appendix G

APPENDIX G

METRICS TO MEASURE SUCCESS OF A MODERNIZED “CANADIAN PROGRAM” DEFINITION

A measurement approach should be guided by the following core principles:

- protect financial and commercially sensitive data by publishing aggregated data;
- reduce duplicative reporting by leveraging existing data collection by the CRTC, the Canadian government, and other industry sources;
- focus on high-level industry indicators and streamline reporting;
- ensure flexibility and limit mandatory elements to core data requirements;
- minimize administrative burden; and
- metrics should recognize and build on established patterns of industry development rather than potentially disrupting them.

Proposed factors for the Commission to consider with respect to a measurement approach include but are not limited to:

1. Economic Impact Measurements

- Leverage existing industry and government reporting on key economic indicators:
 - Total direct investment in production in Canada.
 - Contribution of the film and television production industry to GDP and employment.
 - Flow-through economic benefits including support for local businesses across the supply chain, or spin-off economic benefits such as screen tourism, and hospitality.
 - The number of Canadian programs and titles produced by broadcasting undertakings.
 - Value of international investment in Canadian programs.
 - Value of foreign investment in production in Canada.

2. Talent Development Impact

- Consider any training programs and development initiatives, including:
 - Support for development programs in partnership with organizations that represent diverse communities and creative organizations across Canada.
 - Support for training programs in conjunction with unions and guilds.
 - Support of Canadian talent on global productions.

3. Innovation and Infrastructure

- Consider any investment in production facilities, animation studios, visual effects houses, and post-production facilities.

4. Diversity and Representation

- Consider any of the following:
 - Initiatives designed with and for Indigenous peoples, equity-deserving groups,¹ and official language minority communities (“OLMCs”) supported by broadcasting undertakings.

¹ As defined in BNC 2024-288, footnote 27 as “Racialized people, people with disabilities, individuals who identify as 2SLGBTQ+ and women.”

- o How broadcasting undertakings bring diverse Canadian stories to international audiences.
- o Partnerships with organizations supporting diverse creative communities across Canada.

5. Export and Global Reach

- Consider any of the following:
 - o Canadian programs showcased on broadcasting undertakings, domestically and internationally.
 - o International recognition and awards for Canadian talent working on Canadian programs and productions made in Canada.
 - o The number of Canadian programs and titles produced by broadcasting undertakings in Canada and total investment dollars.

6. Range of Competitive Online Undertakings Available to Canadian Audiences

- CRTC data can be used to demonstrate the plurality of available online undertakings available to Canadians, including the range of types of services (e.g., FAST, SVOD, AVOD, HVOD, other hybrid, etc.), content offerings, and undertakings that serve diverse communities or thematic interests.

7. Capture and Measure Existing Contributions

- Any measurement framework should be designed to capture the existing contributions of global streaming services while allowing them to continue evolving their engagement with the Canadian industry in response to market opportunities rather than rigid requirements.²
- Existing activities of global streaming services already advance the Commission's goals through market-driven initiatives. Rather than creating new requirements, metrics should capture the full scope of current contributions - both direct production investment and broader ecosystem benefits like infrastructure development, training, and global market access.
- This approach would recognize that streaming services' business models inherently support many of the Commission's objectives for high-quality and exportable Canadian programs through:
 - o Large-scale, consistent investment that builds sustainable production capacity.
 - o Global distribution that maximizes audience reach.
 - o Resources that enable high production values and innovation.
 - o Flexibility to support different business models and creative approaches.

*****End of Document*****

² KPMG Report (Appendix B to MPA-Canada submission).

B

This is Exhibit "B" referred to in the
affidavit of Sydney Grieve
affirmed before me, this 17th
day of December, 2025



A Commissioner for taking affidavits



MOTION PICTURE ASSOCIATION CANADA

June 12, 2025

Filed Electronically

Mr. Marc Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Gatineau, Québec
K1A 0N2

Dear Mr. Morin:

Re: Reference 1011-NOC2024-0288 - Requests for information regarding the proceeding initiated by *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector*, Broadcasting Notice of Consultation CRTC 2024-288, 15 November 2024 (“BNC 2024-288”)

1. These responses to the above-noted requests for information (“**RFIs**”) are submitted by Motion Picture Association - Canada (“**MPA-Canada**”) on behalf of the operating companies (“**MPA Companies**”) of the online undertakings (“**MPA Services**”)¹ affiliated with the global studios that are members of the Motion Picture Association (the “**MPA Studios**”).² The MPA Companies that have received RFIs will also be filing separate responses. As requested, we have repeated the RFIs addressed to MPA-Canada, followed by our responses.

Question

***Q.3** Please comment on the possibility that if the Commission were to require programming services to be distributed pursuant to paragraph 9.1(1)(i)³ of the Act that any rates paid to those Canadian programming services would be considered eligible for CPE credits.*

¹ The MPA Services (and their Canadian operating MPA Companies) include: Crunchyroll (Crunchyroll, LLC); Discovery+ (Discovery Digital Ventures, LLC); Disney+ (Buena Vista International, Inc.); Hayu (Universal Pictures Subscription Television Limited); Netflix (Netflix Services Canada ULC); Paramount+ (Paramount Streaming Canada, a division of Paramount Entertainment Canada ULC); Pluto TV (Pluto Inc.); Prime Video (Amazon.com.ca ULC); and SonyLIV (Sony Pictures Networks India Private Limited).

² Amazon Studios LLC; Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment Inc.

³ 9.1 (1) The Commission may, in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting (i) a requirement, without terms or conditions, for a person carrying on an online undertaking that provides the programming services of other broadcasting undertakings in a manner that is similar to a distribution undertaking to carry programming services, specified by the Commission, that are provided by a broadcasting undertaking;

Response

2. Subsection 9.1(1)(i) of the *Broadcasting Act* (the “**Act**”) has a very narrow application to only “online undertakings that provide the programming services of other broadcasting undertakings *in a manner that is similar to a distribution undertaking*” (emphasis added). As MPA-Canada noted in our February 24, 2025 submission to the Commission’s Market Dynamics and Sustainability consultation,⁴ we are unaware of any foreign online undertaking in Canada today that can be classified as falling within that category. General entertainment streaming services make available audiovisual programs that they have produced, commissioned or acquired for their services. They do not distribute programming services of other broadcasting undertakings as part of their services.
3. That said, if the Commission were to require that certain Canadian programming services be distributed in the future pursuant to s. 9.1(1)(i) of the Act by online undertakings that are legally determined to be providing the programming services of other broadcasting undertakings in a manner that is similar to a distribution undertaking, then any rates paid to those Canadian programming services should be counted in full towards any required contributions to the Canadian broadcasting system by the applicable online undertaking, whether this takes the form of a Canadian programming expenditure (“**CPE**”) credit or another form of attribution.

Question

Q.6 *Most foreign streaming services argue that publishing certain types of data would cause them commercial harm. The Commission publishes data on its website, not only to inform the public, but also to foster accountability and transparency throughout the broadcasting system. This practice is in the public interest as different parties in the system have access to relevant data and broadcasters are held accountable in meeting their requirements.*

- a. *How can the public interest in access to data about the Canadian broadcasting system be balanced with concerns raised by some foreign streaming services about potential commercial harm? Why do you believe that the balance either supports making such data public, or keeping it confidential?*
- b. *Should any data from foreign streaming services be made public, what measures could mitigate these potential risks of harm while still ensuring interested persons have access to relevant data?*
- c. *Regarding the public release of information about revenues, individual production budgets, and acquisition expenditures, certain interveners proposed that this information could be made publicly available in aggregated form. Do you support such an aggregated approach, and if not, why? If yes, what level of aggregation do you support?*

Response

4. MPA-Canada has previously made extensive submissions to the Commission on the subject of data sharing and the importance of maintaining the confidentiality of financial data of

⁴ Broadcasting Notice of Consultation CRTC [2025-2](#): *The Path Forward – Working towards a sustainable Canadian broadcasting system*, 9 January 2025.

individual online undertakings, including revenues, expenditures and financial contributions of individual undertakings, as well as production budgets and acquisition expenditures related to individual programs.⁵

5. As set out in our previous submissions, in at least four recent decisions, *the Commission has determined* that there would be commercial harm by publicly disclosing the financial information of individual online undertakings and therefore granted confidential treatment to such information.⁶ The Commission has acknowledged that it is reasonable for online undertakings to seek assurance on the preservation of confidentiality of their financial information, “given that such information is *fundamental to the preservation of their competitive positions*”.⁷ The Commission has also recognized that online undertaking data at the individual level “is commercially sensitive, is consistently treated in a confidential manner by the parties, and *could reasonably be expected to prejudice the competitive positions of the respondents if disclosed*”.⁸ There has been no change in facts or law since the issuance of those final and conclusive decisions⁹ that would warrant the Commission reversing its position in this regard.
6. Moreover, just three days ago, the Commission indicated it “acknowledges the concerns related to confidentiality” that MPA-Canada expressed “about submitting reports containing sensitive and confidential financial information to the CAB” and indicated that this issue has been addressed since “[p]arties were expected to enter into and submit their agreements to the Commission with a third-party administrator that would distribute aggregated amounts to the CAB by the end of November 2024”.¹⁰
7. Generally, the Commission has found that “*the more the information is disaggregated or the greater the degree of competition, the more likely it is that the direct harm will outweigh the public interest and that the information should not be disclosed*”.¹¹ Therefore, it “routinely collects documents and data that it presumptively treats as confidential”.¹² This includes, but is not limited to, production budgets and acquisition expenditures related to individual programs filed by traditional Canadian broadcasters.

⁵ This includes (but is not limited to) in our [January 20, 2025](#) submission to BNC 2024-288 and our [May 5, 2025](#) submission to Broadcasting Notice of Consultation CRTC 2025-52: *The Path Forward – Supporting Canadian and Indigenous audio content*, which we incorporate by this reference.

⁶ Broadcasting Regulatory Policy [2022-47](#): *Annual Digital Media Survey*, 23 February 2022 (“**BRP 2022-47**”); Broadcasting Decision [2023-34](#): *Publication of aggregate data collected in response to the Annual Digital Media Survey*, 15 February 2023 (“**Decision 2023-34**”); Broadcasting Regulatory Policy CRTC [2024-65](#): *Broadcasting Fees Regulations*, 21 March 2024 (“**BRP 2024-65**”); and Broadcasting Regulatory Policy CRTC 2024-121-1 and Broadcasting Order CRTC [2024-194](#): *The Path Forward – Supporting Canadian and Indigenous content through base contributions – Finalization of conditions of service*, 29 August 2024 (“**BRP 2024-121-1**”).

⁷ BRP 2024-65, para. 203, emphasis added.

⁸ BRP 2022-47, para. 143, emphasis added.

⁹ Pursuant to s. 31(1) of the Act, decisions of the Commission are “final and conclusive”.

¹⁰ Broadcasting Decision CRTC [2025-133](#): *Review of the Independent Local News Fund*, 9 June 2025, para. 64.

¹¹ Broadcasting and Telecom Information Bulletin [2010-961](#): *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*, para. 17, emphasis added.

¹² Decision 2023-34, para. 15.

8. Consistent with the Commission's recent decisions recognizing the importance of confidential treatment of such information, the financial information (including, but not limited to, revenues, expenditures and financial contributions) of individual online undertakings and production budgets and acquisition expenditures related to individual programs should continue to be granted confidentiality. This financial and competitively sensitive information is consistently treated in a confidential manner and the disclosure of this information on the public record would reasonably be expected to: (i) result in material financial loss or gain, (ii) prejudice the competitive position, and/or (iii) affect contractual or other negotiations¹³ of the individual online undertaking.¹⁴
9. In light of the above, MPA-Canada objects to the public disclosure of information about revenues, individual production budgets, and acquisition expenditures, or any other confidential or competitively sensitive information. However, in the event the Commission orders such disclosure, then such data must be disclosed on an aggregated basis. There is no public policy reason for the disclosure of information at the individual-level that could not be addressed by the disclosure of aggregated data. The Commission has previously determined that "[a]ggregating the data by industry segment would ... *serve the public interest by allowing members of the public and industry stakeholders to better understand the Canadian broadcasting system, make informed decisions and submit informed submissions to the Commission on matters of policy*".¹⁵ Thus, the Commission has determined that "the publication of data aggregated by industry segment would preclude the disclosure of confidential ... microdata, mitigate the risk of harm to ... respondents [and] serve the public interest".¹⁶
10. The Commission has also previously determined that "given the similarities between these undertakings",¹⁷ the data of hybrid video-on-demand ("**HVOD**") services should be aggregated and reported with online undertakings in order to preserve confidentiality for both groups. Therefore, we recommend that any published data should be aggregated across all online undertakings and HVOD services and not by ownership group (which may consist of only one online undertaking). Any published data must not result in the disclosure of the data of an individual online undertaking or production.
11. For foreign online undertakings, the potential harm that they would incur by the release of confidential and competitively sensitive information on the public record would not just be limited to Canada as their international competitors could also look to these figures as a way to approximate expenditures in other jurisdictions. This is very different from Canadian companies that operate only in Canada. However, to be equitable and limit the administrative

¹³ Act, s. 25.3(1)(c).

¹⁴ Indeed on June 10, 2025, in considering submissions with respect to the appeal and judicial review of BNC 2024-121 and BNC 2024-121-1, the Federal Court of Appeal acknowledged the "irreparable harm" that would result from the disclosure of financial information of individual entities filed with the Commission and agreed to in-camera submissions on such information.

¹⁵ Decision 2023-34, para. 23, emphasis added.

¹⁶ *Ibid.*, para. 24.

¹⁷ *Ibid.*, para. 44.

burden for all, we believe our recommendations should apply to *all* broadcasting undertakings and not just foreign online undertakings.

Question

Q.7(a) *In Notice of Consultation 2024-288, the Commission indicated it has moved away from exhibition-based regulation. As such, it is the Commission's preliminary view to discontinue the time credits, including for dubbed productions. Nonetheless, the Commission also indicated that it recognized the value of dubbing in Canada, in particular in Quebec.*

- a. *Considering the above, how should the Commission incentivize the dubbing of content in Canada by Canadian human resources, including Canadian content? Are there other ways to support this?*
 - i. *Currently, the Commission credits dubbing as a CPE contribution if the dubbing is done in Canada by Canadians. Should foreign online undertakings also be allowed to claim dubbing as a CPE contribution?*
 - ii. *Should there be a cap (e.g. limit) on dubbing as a CPE contribution? If so, why?*

Response

12. As set out at paragraph 99 of our January 20, 2025 submission, MPA-Canada believes that continuing to incentivize the dubbing of any content (Canadian and foreign) in Canada by Canadians is consistent with the Commission's goal to support creativity and employment in the industry. It may also encourage investment in French-language productions.
13. To be equitable, foreign online undertakings should also be allowed to claim dubbing as a CPE contribution if the dubbing is done in Canada by Canadians. We do not believe there should be a cap but if one is put in place, it should be applied equitably to Canadian and foreign broadcasting undertakings.

Question

Q.7(b) *In regard to content that is dubbed into French, English and Indigenous languages, what incentives could the Commission introduce to ensure that broadcasters and online streamers distribute Canadian content instead of foreign content?*

Response

14. We understand the question to be addressing the issue of how best to incentivize online undertakings and programming undertakings to choose to distribute Canadian programs that have been dubbed in Canada over foreign content that has been dubbed in Canada or elsewhere. As noted in our above response, the dubbing expenses of any Canadian or foreign program that has been dubbed in Canada using Canadian resources should count as eligible CPEs. However, to encourage both online broadcasting undertakings and Canadian programming services to broadcast more Canadian programs that have been dubbed in Canada using Canadian resources over foreign dubbed programs, we recommend an additional CPE credit should be provided to incentivize the dubbing and broadcast of Canadian programs as opposed to foreign content.

15. MPA-Canada supports the use of incentives (as contemplated in this question) to encourage traditional broadcasters and online steaming services to distribute Canadian programs, including content that has been or will be dubbed into French, English, or Indigenous languages. This is consistent with s. 8(d) of the Policy Direction, which directs the Commission to “where appropriate, use tools that are based on incentives and outcomes” and the Commission’s stated objective to adopt an incentives and outcomes-based approach over a prescriptive model.¹⁸
16. We agree with the Commission’s position that a flexible, incentives-based approach to regulation would “ensure that incentives and other regulatory measures are introduced to better support the creation and distribution of Canadian content by communities that are currently under-represented in the broadcasting system, while also ensuring that this content is reflective of and relevant to these communities”.¹⁹ As such, the Commission currently provides CPE credits to Canadian broadcasters to incentivize the creation of Canadian programming by Indigenous producers (50% credit) and OLMC producers (25% credit) and such CPE credits should also be extended to foreign online undertakings.

Question

Q.12 *In the public record for this proceeding, numerous interveners state that the following types of **Canadian programming** are at risk: long-form documentaries, drama/feature films, children’s/youth programs, music and dance programs as well as variety programs.*²⁰

- a. *Please provide the Commission with the following trends data regarding these five types of programming on your services in Canada. Please indicate total:*
 - i. *Availability of these five types of programs throughout the past four years (2020-2024).*
 - ii. *Availability of these five types of programs which are certified as Canadian throughout the past four years (2020-2024).*
 - iii. *Audience measurement data throughout the past four years (2020-2024) in relation to the five types of programs noted above.*
 - iv. *Financial investments in Canadian programming throughout the past four years (2020-2024) in relation to the five types of programs noted above.*

Response

17. MPA-Canada is an industry association that does not operate any broadcasting undertakings and is not privy to any confidential, competitively sensitive and/or operational data with

¹⁸ International Institute for Communications, “[15 minutes with... Vicky Eatrides](#)”, InterMEDIA December 2023, Vol 51 Issue 4: Chairperson Eatrides indicated “We want to develop an approach that is **prospective rather than prescriptive** and to create a system that is robust in the face of change”. [emphasis added]

¹⁹ Broadcasting Notice of Consultation CRTC [2023-138](#): *The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content*, 12 May 2023 (“**BNC 2023-138**”), para. 19.

²⁰ Programs containing primarily (i.e. more than 50%) performances of mixed character (e.g. not exclusively music or comedy performances) consisting of a number of individual acts such as singing, dancing, acrobatic exhibitions, comedy sketches, monologues, magic, etc.

respect to the online undertakings operated by the MPA Companies. Therefore, MPA-Canada cannot provide the data requested in this question.

18. However, as set out in our response to Q.23 below, the onus should be on the party making the argument that a programming category is “at risk” to prove that claim with verifiable, long-term data. Simply because there may be insufficient demand (and hence supply) for a certain category of programming provided by certain Canadian broadcasters at a moment in time does not necessarily mean that programming category is “at risk”, as audiences may be choosing to watch those types of programs via other means, including online undertakings.
19. If the Commission determines in light of the evidence described above, that any of the above categories of programming is “at risk”, then as described in our response to Q.23 below, in accordance with the Act and Policy Direction, any requirement to support such programming should be consistent with the nature of services and business models of the broadcasting undertakings in question and should be incentives-based, rather than prescriptive.
20. We understand that the Commission has received submissions expressing concern that specific categories of Canadian programming – such as long-form documentaries, children’s/youth content, drama/feature films, and music/variety programs – may be at risk. We appreciate the importance of ensuring a healthy, diverse Canadian content ecosystem. However, we believe it is critical to underscore that prescribing the creation or prioritization of particular genres or formats as a regulatory objective is inconsistent with how content is developed, financed, and consumed in the modern global production landscape.
21. The creative process is driven by ideas, storytelling opportunities, audience demand, and market dynamics, not by pre-determined content categories. Creative development does not begin with a policy classification – it begins with compelling stories. Enshrining specific genres as a policy focus risks creating a rigid, one-size-fits-all model that can stifle innovation, force artificial market distortions, and ultimately diminish the impact of Canadian creators both at home and abroad.
22. Furthermore, such a prescriptive approach is not consistent with international standards. In leading audiovisual markets around the world, public support and regulatory frameworks focus on enabling the conditions for local production – through talent development, infrastructure, investment incentives, fair market access and more – without dictating the type of content that must be created. These systems recognize that creative excellence and cultural impact emerge from the bottom up, not the top down.

Question

Q.13 *Please quantify your financial investments in total programming and in certified Canadian programming throughout the past four years (2020-2024). Please disclose separately acquisitions of programming and production of programming (please separate total programming from certified Canadian programming).*

Response

23. MPA-Canada is an industry association that does not operate any broadcasting undertakings of its own and is not privy to this confidential and competitively sensitive financial

information with respect to the online undertakings operated by the MPA Companies. Therefore, MPA-Canada cannot respond to this question.

Question

Q.14 *Can you specifically outline what you believe would be missed opportunities for using Canadian creative talent on projects where Canadians have creative control? If so, can you cite your experience in commissioning content in other countries as examples of what the implications for Canada could be?*

Response

24. As MPA-Canada described during the public hearing, global spending on scripted content has significantly slowed and global competitive pressures have increased.²¹ Global streaming services typically invest in bigger budget productions to attract domestic and international audiences. This creates more jobs and opportunities for creative talent – such as larger crews, more available positions at all levels of experience, training, skills-development, international exposure and promotion – than a production produced only for a domestic market, which generally has a lower production budget and distribution footprint. It is in the best interests of Canadian creative talent, and the Canadian broadcasting system in general, if foreign online undertakings are permitted to own the IP and equity in Canadian programs, as this will incentivize them to create large scale productions in Canada.
25. Restricting the creative control of Canadian programs to Canadians would result in many missed opportunities for Canadian creative talent:
 - As MPA-Canada has previously noted,²² when global online undertakings commission original content in Canada, it allows Canadian creative talent to benefit from the expertise of their teams, and from the significant investments they make in promoting that content to the world. This includes the commissioning of diverse and inclusive original content, and original content made with Canadian creative talent, including those from underrepresented communities and equity-deserving groups.
 - Given the nature of their business models and international target markets, global online undertakings are naturally incentivized to invest in the discoverability and promotion of the content over which they have creative control. This not only benefits streaming services and viewers -- it also benefits the creative personnel that make that content possible, by allowing their creative talents to be enjoyed by viewers around the world, who they would not otherwise be able to reach without incurring exorbitant costs.
 - Global online undertakings employ a wide variety of traditional and non-traditional marketing and promotional tools, both on- and off-screen and on- and off-service, to enhance the discoverability of content and creative talent:

²¹ MPA-Canada, Transcript of Public Hearing, May 16, 2025, paras. [2573-2574](#).

²² See MPA-Canada's [July 11, 2023](#) submission to BNC 2023-138, which is incorporated by this reference.

- o On-service/on-screen tools used to promote a wide range of programs and creative talent include: themed catalogues; hero images, banners, and boosted content; search functions; content recommendations based on viewer preferences.
 - o Off-service/off-screen marketing and promotional initiatives used by global online undertakings as powerful content marketing strategies for promoting content and creative talent include: premieres, press junkets, media interviews, set visits, microsites, global fan events, partner promotions and contests, creating promotional channels across social media platforms, posts on website newsrooms about content and local events, participation in local conferences and festivals, promotional stunts ranging from branded content, advertising on-ground activations, and more.
 - Together with local and national partners, global streaming services lead and support a range of programs and initiatives that provide meaningful opportunities to train, engage, and uplift Canadian creative talent, with the hope of engaging such talent in future productions:
 - o Examples of training and development programs, and other diversity and inclusion initiatives led and supported by global online undertakings in Canada include: inclusion workshops, recruitment efforts, internships and apprenticeships, mentorships and Master classes, incubators and talent labs, sponsorships, screenwriting and script development, project development, marketplace accelerators, community-building opportunities, grants and fellowships, film financing forums, streamer-ready pitch sessions, and more.
26. All of these efforts by global streaming services to bolster the success of programs over which they have creative control, naturally accelerate the success of aspiring and established Canadian creative talent, both on and off-set, above and below-the-line, at all career levels
27. A flexible regulatory framework that permits variations in IP ownership and creative and financial control will:
- a. incentivize greater production activity and allow Canadians to enter into arrangements to share in the success of productions with foreign services;
 - b. substantially increase the opportunities for Canadian creative talent to share in global success;
 - c. build strong partnerships between foreign online undertakings and Canadian production companies; and
 - d. allow the Commission to fulfill its mandate and achieve its objectives including by supporting Canadian IP ownership, creating a flexible and forward-looking approach, facilitating the discoverability and exportability of Canadian programs, and fostering an environment that encourages the development and export of Canadian programs globally.

28. As an industry association, MPA-Canada does not operate a broadcasting undertaking or commission content and is therefore unable to respond to the second part of the question regarding the commissioning of content in other countries.

Question

Q.15 *In Motion Picture Association – Canada’s intervention and presentation, it emphasized s. 3(1)(f.1) of the Broadcasting Act as guiding the Commission in its approach to regulation of foreign online undertakings in this proceeding.*

S. 3(1)(f.1) states: “It is hereby declared as the broadcasting policy for Canada that [...] each foreign online undertaking shall make the greatest practicable use of Canadian creative and other human resources and shall contribute in an equitable manner to strongly support the creation, production and presentation of Canadian programming, taking into account the linguistic duality of the market they serve”.

However, the Broadcasting Act also contains other provisions relevant to the regulation of the role and contribution of foreign online undertaking including:

- *S. 3(1)(a.1): “It is hereby declared as the broadcasting policy for Canada that [...] (a.1) each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking;”*
- *S. 5(2)(a.1): “The Canadian broadcasting system should be regulated and supervised in a flexible manner that [...] takes into account the nature and diversity of the services provided by broadcasting undertakings, as well as their size, their impact on the Canadian creation and production industry, particularly with respect to employment in Canada and Canadian programming, their contribution to the implementation of the broadcasting policy set out in subsection 3(1) and any other characteristic that may be relevant in the circumstances;”*
- *S. 5(2)(a.2): “The Canadian broadcasting system should be regulated and supervised in a flexible manner that [...] ensures that any broadcasting undertaking that cannot make maximum or predominant use of Canadian creative and other human resources in the creation, production and presentation of programming contributes to those Canadian resources in an equitable manner;”*
- *S. 10(1.1)(b): “In making regulations under paragraph (1)(b), the Commission shall consider the following matters: [...] whether key creative positions in the production of a program are **primarily** held by Canadians” (emphasis added)*

Further, the Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework) SOR/2023-239 (Policy Direction) also provides:

- *S. 4 The Commission is directed to impose requirements on broadcasting undertakings that ensure that the Canadian broadcasting system — which is to be effectively owned and controlled by Canadians and includes foreign broadcasting undertakings that provide programming to Canadians — strongly supports a wide range of Canadian programming and Canadian creators. The requirements, both financial and non-financial, must be*

equitable given the size and nature of the undertaking and equitable as between foreign online undertakings and Canadian broadcasting undertakings.

In light of the foregoing, explain:

- a. *What constitutes "equitable" in terms of contributions to support the creation, production and presentation of Canadian programming by foreign online undertakings, and what factors the Commission should consider in identifying appropriate and equitable contributions by foreign online undertakings? In your answer, ensure to respond to the comments made by the Motion Picture Association – Canada at the oral phase of this hearing.*

Response

29. MPA-Canada²³ has referred to virtually all of the above provisions of the Act and the Policy Direction in its oral submissions at the public hearing in combination with its January 20, 2025 written intervention. These and other provisions when interpreted in a manner that is consistent with the “text, context, and purpose”²⁴ of the Act provide clear factors the Commission should consider in determining what would constitute “equitable” contributions by foreign online undertakings to support the creation, production and presentation of Canadian programming.
30. Online undertakings are a distinct class of broadcasting undertaking – they are neither “distribution undertakings” nor “programming undertakings” and are explicitly carved out of the definitions of both in s. 2(1) of the Act. The Commission should consider the following statutory factors when identifying appropriate and equitable contributions by foreign online undertakings and their practical application:
 - a. ***Foreign online undertakings must be subject to a lower financial and non-financial contribution standard than Canadian broadcasting undertakings in recognition of their global business models:*** Financial contributions must be made “in an equitable manner” that is consistent with the contribution standard of “the greatest practicable use of Canadian creative and other human resources” applicable to foreign online undertakings (Act, s. 3(1)(f.1)). This is an objectively lower standard or lesser requirement than “maximum use and no less than predominant use” standard applicable to Canadian broadcasting undertakings (Act, s. 3(1)(f)) – as evident from the excerpt from the legislative debates reproduced in our response to Q.16 below. In establishing s. 3(1)(f.1), Parliament has determined that “it is just not realistic”²⁵ for foreign online undertakings to make maximum or predominant use of Canadian creative and other human resources in the creation, production and presentation of programming and therefore, consistent with s. 5(2)(a.2) of the Act, s. 3(1)(f.1) requires online undertakings

²³ MPA-Canada notes that the issue of what constitutes “equitable” is currently before the Federal Court of Appeal as part of the appeal and judicial review of BRP 2024-141 and BRP 2024-121-1. We therefore reserve all rights in this regard.

²⁴ In *Telus Communication Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15 (CanLII), para. 93, the Supreme Court of Canada indicated that the Commission’s decisions cannot be inconsistent with “the text, context, and purpose” of the statute.

²⁵ Senator Gold, Standing Senate Committee on Transport and Communications, Study on Bill C-11, [November 30, 2022](#).

to contribute to the creation, production and presentation of programming in an equitable manner.

- This means that while the contributions (both financial and non-financial) of foreign online undertakings must be equitable, they do not have to be equal to that of Canadian broadcasting undertakings – which was rejected by Parliament, as set out in our response to Q.16 below. Indeed, pursuant to s. 3(1)(f.1), the contributions of foreign online undertakings should be lower or lesser than that of Canadian broadcasting undertakings.
 - The two parts of the s. 3(1)(f.1) contribution standard must coherently exist. Foreign online undertakings should not be expected to make the greatest practicable use of Canadian creative and other human resources and make maximum or predominant financial contributions – when it is evident from s. 12(e) of the Policy Direction and the legislative debates that Parliament intended that foreign online undertakings that are in the business of producing content would make their financial contributions via direct investments in programs (i.e., using Canadian creative and other human resources).
 - Since foreign online undertakings have global business models based on international content distribution, and these models are dramatically different than licensed Canadian broadcasting undertakings operating almost exclusively in a domestic market, it would not be equitable to impose the same or higher contributions on foreign online undertakings vis-à-vis Canadian broadcasting undertakings.
 - For any approach to equitable, it must take into account the unique nature of the business of each foreign online undertaking, including the benefits that flow to the participants in the creation of Canadian programs from global exposure. This was clearly Parliament’s intent in revising the Act and establishing the s. 3(1)(f.1) contribution standard for foreign online undertakings and in including s. 4 in the Policy Direction, as is evident from the excerpts from the legislative debates reproduced in response to Q.16 below.
- b. ***Whether and how an online undertaking should contribute must be determined on the basis of the individual undertaking and not its affiliated entities or broadcasting ownership group:*** “Each broadcasting undertaking” must be permitted to contribute “in a manner that is appropriate in consideration of the nature of the services provided by the undertaking” (Act, s. 3(1)(a.1)).
- The Commission is required to consider ***each*** broadcasting undertaking (***not its affiliates***) in determining the contributions that would be appropriate for that undertaking and take into consideration the nature of service of each undertaking.
 - This means the Commission should not consider the contributions made by affiliated licensed entities of Canadian online undertakings or HVID services in determining their contributions.

- It also means that the financial contribution threshold should be established vis-à-vis individual foreign online undertakings and not their broadcasting ownership groups, as set out in our response to our response to Q.21 below.
- c. ***Contributions of foreign online undertakings should be equitable vis-à-vis comparable Canadian HVOD services and online undertakings:*** Any requirements for financial and/or non-financial contributions must be “equitable given the size and nature of the broadcasting undertaking” and “equitable as between foreign online undertakings and Canadian broadcasting undertakings” (Policy Direction, s. 4). The Regulatory Impact Analysis Statement to the Policy Direction further explains that this means that “[t]he Commission is directed to ensure that any financial or non-financial requirements imposed on broadcasting undertakings are equitable relative to their size and nature, and would ensure **comparable** foreign and Canadian undertakings are treated equitably” (emphasis added).
- This means that the financial and non-financial contributions of foreign online undertakings and Canadian HVOD services like Crave and other Canadian online undertakings should be equitable.
 - The Commission has already acknowledged the “similarities”²⁶ between online undertakings and HVOD services and that “many Canadians likely view HVOD undertakings as being **comparable** to audiovisual DMBUs [online undertakings]”.²⁷ Practically-speaking, the Crave HVOD service is the closest competitor to the large foreign streaming services.
- d. ***Foreign online undertakings in the business of creating, producing and broadcasting content should be allowed to contribute via CPEs and not mandated contributions to funds:*** “Where appropriate for a given business model and set of objectives”, the Commission must “**prioritize** the imposition of requirements to make expenditures directly on the creation, production and presentation of Canadian programming” (Policy Direction, s. 12(e), emphasis added).
- This means that for foreign online undertakings whose business models are based on creating, producing and broadcasting programming, the Commission should permit those undertakings to first and foremost contribute via CPEs, rather than mandating payments into funds.
 - Those CPEs should include **all expenses** related to the creation, production and presentation (i.e., marketing and promotional expenses relating to showcasing and discoverability²⁸) of Canadian programs, as set out in our response to Q.22 below.
 - That would be equitable as between foreign online undertakings and Canadian broadcasters and equitable given the size and nature of broadcasting undertakings

²⁶ Decision 2023-34, para. 44.

²⁷ *Ibid.*, para. 43, emphasis added.

²⁸ Subsection 9.1(1)(e) of the Act states that the presentation of programs for selection by the public include the showcasing and discoverability of such programs.

that are engaged in comparable activities, given that Canadian broadcasters (including large ownership groups) are currently permitted to make their financial contributions almost exclusively via CPEs and only pay into funds as part of tangible benefit packages associated with applications for approvals of changes of effective control (which are inapplicable to foreign online undertakings not subject to Canadian ownership and control requirements).

- e. ***Foreign online undertakings should be given the flexibility to contribute via funds where appropriate and should also be given flexibility in meeting their expenditure requirements:*** The Commission must “recognize the diversity of services provided by undertakings” (Policy Direction, s. 12(b)) and “consider providing *flexibility in meeting expenditure requirements*” (Policy Direction, s. 12(c), emphasis added).

- While they should not be forced to make their financial contribution via payments into funds, the above provisions mean that foreign online undertakings should be given the flexibility in meeting their expenditure requirements to choose to contribute via funds, where it is not appropriate for them to contribute via CPEs – for a given set of objectives and/or based on the nature of their service and business model.
- In terms of equity based on the size and nature of undertakings, foreign online undertakings should be provided with the same flexibility in meeting their expenditure requirements as currently given to large and mid-sized Canadian broadcasting ownership groups, including:
 - by being permitted to use a group-based approach that allows a group member to count CPEs made by another member of the broadcasting ownership group in the same broadcast year towards fulfilling its CPE requirement, provided such expenditures are not double-counted; and
 - by being permitted to make over- and under-expenditures over various broadcast years, provided their overall CPE requirements are met by the end of their licence term, which is generally a 5-year period.²⁹ This will be essential for foreign online undertakings to ramp-up their Canadian content development and production under a new regulatory framework. In addition, the ability to balance out and carry over expenditures is crucial given the natural flow of licensing, acquisition, and production deals, which may not line up with fiscal years or reporting periods.

- f. ***In certifying Canadian programs vis-à-vis foreign online undertakings, the Commission must apply a key creatives test based on the greatest practicable use of Canadian creative and other human resources, with no mandatory Canadian positions:*** Subsection 10(1.1)(b) of the Act only requires the Commission to “consider whether” key creative positions are “primarily held by Canadians” as one non-determinative factor among the five factors the Commission must consider in making

²⁹ A 5-year period is consistent with s. 53(1) of the Act, which provides that the Government must undertake a comprehensive review of the amendments to the Act and of their operation every 5 years.

regulations regarding the definition of a Canadian program. It does not require that key creatives positions must be primarily held by Canadians.

- Notwithstanding, MPA-Canada has borne in mind this consideration in making our proposal that when applying for certification of a program as a “Canadian program”, a foreign online undertaking must score at least 51% on the key creatives test. In other words, under our proposal, the key creative positions must primarily or for the most part³⁰ be filled by Canadians. We believe that is a fair, reasonable and practical application of the “greatest practicable use” of Canadian creative and human resources, as set out in s. 3(1)(f.1) of the Act for foreign online undertakings.
 - Conversely, it would be inconsistent with the “greatest practicable use” standard if foreign online undertakings were mandated to fill certain positions or functions with Canadian creative and human resources.
- g. ***The existing contributions of foreign online undertakings, especially with respect to employment of Canadian creative talent and support of Canadian programs, must be considered:*** The Commission must take into account “the nature and diversity of the services provided by broadcasting undertakings, as well as their size, their impact on the Canadian creation and production industry, particularly with respect to employment in Canada and Canadian programming” (Act, s. 5(2)(a.1).
- This requires the Commission to take into consideration foreign online undertakings’ existing contributions to the Canadian broadcasting system, and in particular, to Canadian creative talent and Canadian programming, when establishing their contribution requirements.
 - Foreign online undertakings already make significant voluntary investments in the Canadian audiovisual industry. These include: (i) directly commissioning and financing original Canadian series and films; (ii) employing Canadian creative talent, including but limited to, writers, directors, actors, and crews; (iii) showcasing Canadian programs to global audiences through their global platforms; and (iv) supporting talent development initiatives and partnerships with Canadian creators and institutions. These all provide immense value to Canadian creative talent and Canadian programming and should be recognized as tangible contributions of foreign online undertakings to the Canadian broadcasting system.
 - As set in our response to Q.14 above, productions in Canada by global streaming services create more jobs and opportunities for Canadian creative talent at all levels of experience than a production produced only for a domestic market, which generally has a lower production budget and distribution footprint.
- h. ***Required contribution levels should not be disproportionate relative to clearly identified and substantiated objectives to address market failure:*** Expenditure

³⁰ “Primarily” is defined as “for the most part” in the Merriam-Webster Dictionary and Cambridge Dictionary.

requirements must be “proportional to their objectives” and the Commission must ensure “those objectives are clear” (Policy Direction, s. 12(a)).

- As set out in our response to Q.20 below, this means that the Commission should not impose a **disproportionate** financial contribution requirement on foreign online undertakings relative to the objective it is trying to achieve. In addition, that objective should be based on **clear** evidence of being “at risk” or undergoing “market failure” that warrants regulatory intervention rather than leaving it to market forces.
- i. ***Thematic, niche or nascent services should be exempt from contributions where such imposition would result in a net loss to the system:*** The Commission is required to take into account the variety of broadcasting undertakings to which the Act applies and avoid imposing obligations on any class of undertaking “if that imposition will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1)” (Act, s. 5(2)(h)).
 - As set out in our response to Q.21 below, this requires the Commission to consider whether the imposition of obligations on a foreign online undertaking, such as a thematic, niche or nascent service would result in a net loss to the achievement of the broadcasting policy objectives, if it results in forcing such services out of the market or dissuading them from entering in the first place.

Question

Q.16 *Non-Canadian online programming undertakings benefit significantly from the Canadian market. However, they are not subject to the same financial contributions and regulatory obligations as Canadian broadcasting undertakings and have not yet made non-financial contributions (such as in broadcasting infrastructure) in Canada on the same scale as Canadian broadcasting undertakings. While it would not be practicable for non-Canadian online programming undertakings to make the same contributions, direct financial contributions may be viewed as the most practicable manner to support the Canadian broadcasting system in a manner that is commensurate with their size and nature.*

- a. *In the absence of comparable contributions, address why online non-Canadian undertakings should not be expected to make equal or greater financial contributions as those of Canadian undertakings in order to equitably support the Canadian broadcasting system.*

Response

- 31. As a preliminary point, we note that all online undertakings (Canadian and foreign) have not previously been required by the Commission to make financial contributions to the Canadian broadcasting system, since they operated pursuant to the Commission’s Digital Media Exemption Order, prior to its repeal in 2023.³¹

³¹ Pursuant to Broadcasting Regulatory Policy CRTC [2023-331](#) and Broadcasting Order CRTC 2023-332: *Review of exemption orders and transition from conditions of exemption to conditions of service for broadcasting online undertakings*, 29 September 2023.

32. Notwithstanding this exemption, as MPA-Canada has extensively detailed in its submissions in this proceeding, BNC 2023-138 and others, foreign online undertakings have made significant financial and non-financial contributions to the Canadian broadcasting system, and in particular to Canadian programs and Canadian creative talent, for many years. Therefore, we fundamentally disagree with the premise of this question that foreign online undertakings “have not yet made non-financial contributions (such as in broadcasting infrastructure) in Canada on the same scale as Canadian broadcasting undertakings”.
33. As detailed in the RFI responses of the MPA Companies, those companies and/or their affiliated MPA Studios have made significant financial and non-financial contributions to Canada’s broadcasting infrastructure, including by establishing animation studios, long-term partnership with sound stages, training and development programs and more. These companies have been an essential and integrated part of the production and distribution ecosystem in Canada for decades. They are major investors with a proven, long-term commitment in Canada’s creative sector that has helped to build the Canadian audiovisual industry.
34. In terms of financial contributions to be made by foreign online undertakings as part of the Commission’s future regulatory framework, as set out in our response to Q.15 above, the Act and Policy Direction include clear statutory requirements, which provide that **while the contributions of foreign online undertakings must be equitable, they do not have to be equal to, and should not be greater than, the financial contributions of Canadian broadcasting undertakings.**
35. Certain interveners have argued that foreign online undertakings should be required to make financial contributions that are equal to, or greater than, the financial contributions of Canadian broadcasting undertakings as some form of reparation or retribution for the fact that online undertakings were previously allowed to operate pursuant to an exemption order that did not mandate contributions. In certain cases, interveners argue that this should apply to only foreign online undertakings, while Canadian online undertakings and HVOD services should remain exempt from contributions. Others attempt to argue that Canadian broadcasting undertakings and foreign online undertakings are subject to the same contribution standard of “maximum use and no less than predominant use” under s. 3(1)(f) of the Act.
36. These interveners are attempting to rewrite the Act. Their requests to have a singular contribution standard for both Canadian and foreign online undertakings were raised before, and rejected by Parliament. With the passage of Bill C-11 – *Online Streaming Act*, many of these same interveners released public statements in which they acknowledged that foreign online undertakings are subject to lower contributions.³²

³² See for example:

- ACTRA Press Release – [ACTRA welcomes modernized Broadcasting Act in Bill C-11](#)
- ACTRA Press Release - [ACTRA appears before Senate Standing Committee on Transport and Communications with two essential changes to strengthen Bill C-11](#), September 15, 2025.

37. If adopted by the Commission, such proposals would have a discriminatory effect on foreign online undertakings that would be entirely inconsistent with the text, context, and purpose of the Act.
38. The Act is meant to establish a forwarding-looking framework for contributions of online undertakings, not a backwards-looking approach that punitively extracts contributions for operating in compliance with an exemption order. As such, we appreciate Vice-Chairperson Théberge’s assurance that
- ...the Commission is not looking to put in place a punitive framework; more of an empowering and growth centric approach as per the Policy Direction.³³
39. An empowering and growth-centric approach is consistent with the text, context and purpose of the Act and Parliament’s intention, as evident from the extensive legislative debates surrounding the implementation of the *Online Streaming Act*.
40. As noted in our response to Q.15 above, by adding s. 3(1)(f.1) to the Act, Parliament has already determined that it is impracticable for foreign online undertakings to make maximum use and no less than predominant use of Canadian creative and other human resources. That is precisely why Parliament deliberately used the language of “greatest practicable use” for foreign online undertakings in s. 3(1)(f.1), which by any measure must be understood as a *lesser obligation* or a *lower contribution standard* than that of the “maximum use and no less than predominant use” standard applied to Canadian broadcasting undertakings in s. 3(1)(f) of the Act.
41. The following exchange with then Heritage Minister Rodriguez from the November 22, 2022 legislative debates during TRMC’s Study on Bill C-11 makes this abundantly clear:

Senator Miville-Dechêne: A number of Canadian groups are fighting to have both Canadian and foreign companies subject to the same requirements when it comes to the use of cultural workers.

I refer you to new paragraph 3(1)(f.1). The government has chosen to impose different hiring requirements on Canadian companies and foreign companies. Canadian companies have to make maximum use of Canadian human resources, while foreign companies have to do what they can.

Can you tell us why you made that decision? A number of Canadian stakeholders are clearly not happy about it, broadcasters and

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- ACTRA Press Release – [ACTRA calls for Heritage Committee to amend Online Streaming Act to support Canadian stories and creators](#), May 31, 2022
 - CMPA’s [opening statement](#) to the Standing Senate Committee on Transport and Communications (“TRCM”), Study on Bill C-11 (September 15, 2022).
 - CMPA Press Release – [Statement from the CMPA on Bill C-11](#), February 3, 2023.

³³ Vice-Chairperson Théberge, Transcript of Hearing, May 16, 2025, para. [2635](#).

musicians alike, and we've heard that from many of the groups we've met with.

Mr. Rodriguez: Again, thank you for your question. It's safe to say that our industry is one of the best in the world, and so are our human resources. The bill will make the industry even stronger by bringing in more money and more productions and by creating more jobs.

At the same time, it's important to recognize that the players we are bringing into the system are different. We are talking about online broadcasters currently operating wholly outside the system that are being brought into the system. They are multinational companies with productions all over the world and a system all their own. Those companies are not subject to any requirements today.

I understand the way you're looking at it, senator. You're saying that, instead of holding them to this standard, we're only holding them to this standard down here. What we are saying is that, instead of those companies being down here, we're going to bring them up here.³⁴ [emphasis added]

42. In adopting a lower contribution standard for foreign online undertakings, Parliament also recognized that given their global business models, it is not realistic to expect that foreign broadcasting undertakings would be subject to the same contribution standards as Canadian broadcasting undertakings. Therefore, Parliament rejected proposals for foreign online undertakings to be subject to the contribution standard of maximum use and no less than predominant use in s. 3(1)(f) of the Act:

Senator Gold: The government cannot support this amendment, and I will be brief in my reasoning. As you see from the section in the bill itself, *it splits the provisions governing the use of Canadian resources into two categories: Canadian broadcasters and foreign broadcasters.* We are dealing in the context of this bill with large multinational corporations, and we need to recognize the reality that foreign players operating in Canada have global business models. *It is just not realistic, in the opinion of the government, to expect that foreign broadcasters who operate in a global marketplace to be subject to the same provisions as Canadian broadcasters,* notwithstanding the flexibility that Senator Cormier introduced in the language of his amendment.

I'm also advised that the minister has noted publicly — or I am certainly putting it on the record here — that *our trade partners would have serious issues with these proposed changes were they adopted.* In that regard, I might ask the officials to elaborate on what the threat might be of foreign companies challenging these

³⁴ TRCM, Study on Bill C-11, [November 22, 2022](#).

provisions under the terms of our trade agreements, notably CUSMA.³⁵ [emphasis added]

43. Parliament also rejected the notion that foreign online undertakings should make equal contributions as Canadian broadcasting undertakings, given that their global business models mean they do not produce content just for the Canadian market. Therefore, holding them to the same contribution standard as Canadian broadcasting undertakings would have a discriminatory effect on foreign online undertakings:

Senator Miville-Dechêne: *Does it have to do with the free trade agreement? Are you worried about reprisals? What's behind it?*

Mr. Rodriguez: *Yes, there are also concerns from a free trade standpoint.*

Senator Miville-Dechêne: Can you be more specific? Since the beginning, we've been hearing about concerns in general terms. What are those concerns?

Thomas Owen Ripley, Associate Assistant Deputy Minister, Canadian Heritage: Thank you for your question, senator. The bill was drafted to take into account our obligations as far as discrimination is concerned. *We can't be seen in any way to be discriminating against foreign services.*

As the minister mentioned, for them, it's about more than producing content just for the Canadian market. [emphasis added]

Senator Miville-Dechêne: But how would it be a discrimination if it is a level playing field between Canadian enterprises and foreign enterprises?

Mr. Ripley: It's not only about discrimination. We also have to consider whether we have any rules requiring companies to do certain things here, in Canada, that aren't allowed under the free trade agreement. *We have to find a balance.* Those companies are ready to make a contribution, and we didn't want to craft the bill in such a way that, right off the bat, they would want to launch a court challenge. *The objective is twofold: to be ambitious while respecting the fact that these companies have a different business model than Canadian companies operating here, in Canada.*³⁶ [emphasis added]

44. To be equitable, the financial contributions of foreign online undertakings must be consistent with the “greatest practicable use standard” set out in s. 3(1)(f.1) of the Act. In other words, **the two parts of the s. 3(1)(f.1) contribution standard must coherently exist. Foreign**

³⁵ TRCM, Study on Bill C-11, [November 30, 2022](#).

³⁶ TRCM, Study on Bill C-11, [November 22, 2022](#).

online undertakings should not be expected to make the greatest practicable use of Canadian creative and other human resources *and* make maximum or predominant financial contributions – when it is evident from s. 12(e) of the Policy Direction and the legislative debates that Parliament intended that foreign online undertakings that are in the business of producing content would make their financial contributions via direct investments in programs (i.e., using Canadian creative and other human resources):

Senator Klyne: ... It has been related that this act will bear \$900 million in incrementally new revenue, and I doubt that will come off willingly from shareholders of the online broadcasters' streaming services and platforms. In that scenario, the revenue is likely to come on the backs of Canadian subscribers, or are there some provisions of policy and regulations that say otherwise?

Mr. Ripley: It relates a little to your previous question to the minister. *The bulk of the modelling behind that had those what we will call "expenditure requirements," so that's an expectation that streaming services invest a certain amount of money on an annual basis in the production of Canadian programs. It's not a "pay all that money into a fund," for example, which I agree with you would have a direct flow-through effect to consumers. But this starts from a premise that many of these streaming services already have a deep production footprint in Canada. They are producing a variety of programs here, and the bill is fundamentally about saying to them in that production footprint moving forward, we expect a portion of that to be Canadian programs, where you use Canadian creative talent and tell Canadian stories. That relates to the discussion we were having about the definition of what Canadian program will be moving forward.*

Senator Klyne: That will be an incremental investment and expense on their part to play in the Canadian sandbox.

Mr. Ripley: *No, it will not be all incremental expense. Many of these streaming services are already investing billions of dollars in production. I always characterize it as being about a spectrum of that and challenging them to move a portion of that investment into what is Canadian program once we work through what that new definition will be. It's about saying, "It's great that you do so much business here." Yes, there will continue to be foreign location shooting that happens in Canada, but for big streaming services with a big production footprint in Canada it will also be about challenging them to invest a percentage of their production budget in Canadian programs. That \$900 million is not on top of what they are already doing. It's about shifting the ambition around their production here in Canada.*

Senator Klyne: Essentially recognizing it.

Senator Quinn: A very brief follow-up to Senator Klyne: As revenues accrue, will there be any offsets from departmental budgets? As new revenues accrue, the funds that you may be accruing from streamers, will there be offsets in other areas of the department to balance that?

Mr. Ripley: With respect to expenditure requirements, that money is never transferred. *An expenditure requirement stays within the company. It's essentially an investment obligation on their part to invest that in Canadian production, but they still retain control in the decision making over how they will do that.*³⁷ [emphasis added]

45. Therefore, Parliament thoughtfully and deliberately determined that foreign online undertakings should make (financial and non-financial) contributions to the Canadian broadcasting system that are lower or lesser than those made by Canadian broadcasting undertakings. This is reflected in the text of the Act and Policy Direction (as set out in our response to Q.15) and in the context and purpose of the Act (as reflected in the legislative history excerpted above). **The imposition of equal or higher contributions would be inconsistent with the text, context and purpose of the Act and would result in a discriminatory impact on foreign online undertakings.**

Question

Q.17 *The Canada Media Fund (CMF) urged the Commission to eliminate the ability for foreign streamers to redirect up to 75% of their mandatory contribution to certified Canadian content expenditures. In the CMF's view, removing this flexibility so that a full 2% of the base contributions is made to the CMF is imperative to ensuring a robust Canadian audiovisual production sector.*

- a. *Please comment on the CMF's position and explain how you view flexibility in investing in Canadian content productions and acquisitions directly, instead of to funds, as part of the overall approach towards an equitable contribution to the system?*

Response

46. MPA-Canada is opposed to the CMF's position for the following reasons.
47. First, as noted above, it was Parliament's intention that those foreign online undertakings that are currently in the business of producing and commissioning content would make their financial contributions via CPEs. As made clear in the following quote from the legislative debates, Parliament clearly intended that only for those foreign online undertakings that are *not* in the business of producing and commissioning content, would it be appropriate for them to contribute via production funds such as the CMF:

Mr. Ripley: ... The working assumption of the department in terms of how the bill will be implemented for the big streaming services is that they would be subject to similar types of requirements that our big Canadian broadcasting ownership groups are subject to. *For*

³⁷ TRCM, Study on Bill C-11, [November 22, 2022](#).

those businesses that are in the business of production and commissioning content, right now that takes the form of an expenditure requirement. It's not a question of them paying into a fund, but it really is a question of an investment obligation on their part. That harnesses and creates a degree of flexibility for them to use their market intelligence and what they're very good at in terms of making those commissioning decisions.

Again, there certainly is a possibility that, for some services, that will not be the appropriate form of contribution for them, and we may be looking at a question of them paying into something like the Canada Media Fund.³⁸ [emphasis added]

48. Second, this is consistent with the current treatment of Canadian programming services (including those owned by large Canadian broadcasting ownership groups), which are permitted to make their financial contributions almost entirely via CPEs. In contrast, since BDUs are generally not in the business of producing and commissioning content, they make their financial contributions via payments into funds. In both cases, these Canadian broadcasting undertakings are permitted to contribute “in a manner appropriate in consideration of the nature of the services provided by the undertaking” and s. 3(1)(a.1) of the Act requires that the same treatment be applied to foreign online undertakings.
49. Third, it is inequitable to force online undertakings that are in the business of producing and commissioning content to make mandated contributions to funds. This is especially problematic in the case of production funds, such as the CMF, that foreign online undertakings are precluded from accessing, as this essentially amounts to forced cross-subsidization of their competitors.³⁹
50. As MPA-Canada noted at the public hearing,⁴⁰ the CMF serves its constituency of Canadian production companies and Canadian broadcasters. However, the limitations on the CMF from its contribution agreement with the Government prohibits it from funding a project where the underlying rights are not owned and developed by Canadians, and a Canadian production company or other prescribed person (including a licensed Canadian broadcaster) does not hold the copyright.
51. Fourth, the CMF is not “at risk”. There is no demonstrated need for additional funding to the CMF and therefore, no rationale for a regulatory framework whereby foreign online undertakings should be mandated to make payments to the CMF, including on the basis of declining BDU revenues.
52. The CMF was established as a collaboration between the Department of Canadian Heritage and Canadian BDUs and receives financial contributions from both. Any decline in BDU contributions should be offset by the Government (not by foreign online undertakings) and

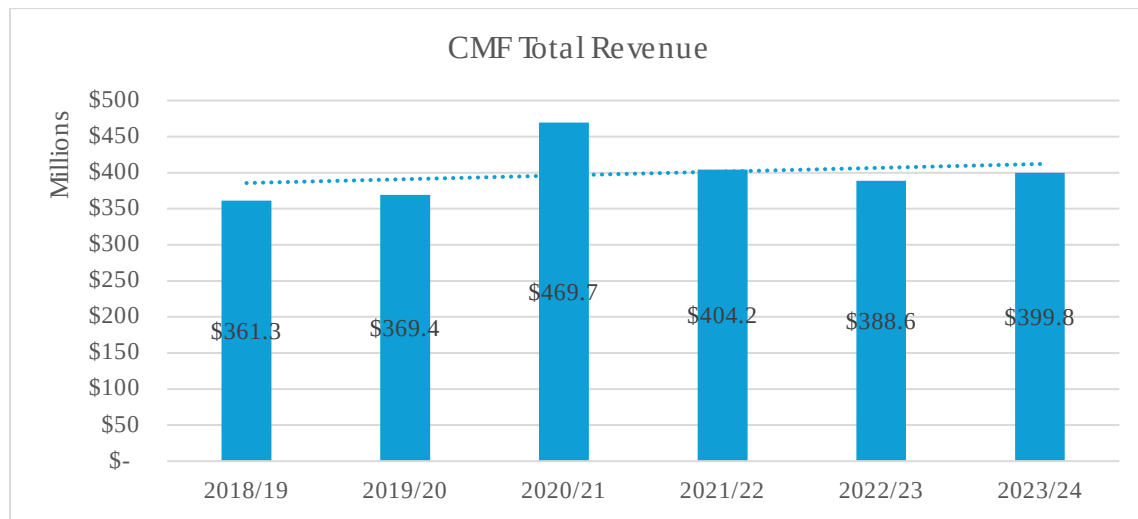
³⁸ TRCM, Study on Bill C-11, [November 22, 2022](#).

³⁹ See MPA-Canada, Transcript of Public Hearing, May 16, 2025, paras. [2683-2684](#).

⁴⁰ MPA-Canada, Transcript of Public Hearing, May 16, 2025, paras. [2673-2675](#).

that is consistent with the approach taken by the Government to date to ensure the CMF is stabilized.

53. As a result, the CMF's total revenue has actually increased, with total revenue growing from \$361.3 million in 2018 to almost \$400 million in 2023, despite any decline in BDU revenues over this period.



Sources: [CMF Annual Reports 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22, 2022-23, 2023-24](#)

54. Any decline in BDU funding to the CMF has been more than offset by the Government with stabilization funding that appears to have successfully achieved what it was intended to do by helping the CMF adapt to declining BDU revenues as a direct impact of the rise of online streaming. Therefore, as acknowledged by the CMF, its current funding enables it to remain competitive and resilient in the coming years:

- CMPA's 2023 Profile Report states, "While the CMF overall has experienced reduced revenue from BDUs in recent years – on account of decreasing subscriber levels and revenue in that industry – *additional funding from the Government of Canada to offset the lower revenue from BDUs and to enable the CMF to promote production within Canada's Indigenous and equity seeking communities has allowed the CMF to maintain and even increase its funding levels.*"⁴¹
- In 2023-24, the BDU offset reached its annual maximum of \$42.5 million. The Government then provided the CMF with an additional \$40 million over two years in Budget 2024.⁴²

⁴¹ [Profile 2023, Canada Media Fund](#), p. 42 / Citation: Canada Media Fund (2023). P. 131, emphasis added.

⁴² CMF News Release, [CMF thanks government for additional \\$40M investment in Budget 2024](#), April 2024, emphasis added.

- CMF President and CEO Valerie Creighton is quoted as saying, “This funding will allow the Canadian audiovisual industry to remain *competitive and resilient* in the coming years, while continuing to generate significant economic impacts.”⁴³
 - In the 2025 federal election, the Liberal Party Platform committed even more support for the CMF.⁴⁴
55. As previously noted by industry observers, the audiovisual industry has entered a period of reduction in global content spending and future spending expected to be relatively flat or even decline.⁴⁵
56. Given all of the above, there is not a sufficient public policy basis for the Commission to require foreign online undertakings that are in the business of producing content to make mandated contributions to the CMF, as opposed to direct investments in Canadian programs, in direct contradiction to Parliament’s stated intention.

Question

Q.18 Please comment on the following definition of Children’s programming. In so doing, identify and explain whether the Commission should incorporate any additional criteria in this definition:

Children’s audiovisual programming must meet the following criteria:

- Audiovisual programs, whose intended audience is children aged 12 years and under.
- Programming that aims to:
 - Meet children’s needs and interests; and/or
 - Engage children’s creativity; and/or
 - Entertain children; and/or
 - Reflects reality from a child’s point of view; and/or
 - Inform or educate children.

Response

57. We agree with the proposed definition of children’s programming. However, this question appears to be driven by certain parties claiming that children’s programming is at risk. The onus should be on the parties making “at risk” claims to substantiate them with verifiable, long-term data. As set out in our response to Q.23 below, while children’s and youth programming has undergone a slight decrease over the past six years, this is primarily driven by changing audience viewing habits and platform choice.
58. If the Commission determines in light of the evidence, that children’s programming is “at risk” and requires support, then as described in our response to Q.23 below, in accordance with the Act and Policy Direction, any such support should be consistent with the natures of

⁴³ *Ibid.*

⁴⁴ [2025 Liberal Party Platform](#), p. 8.

⁴⁵ See: [Ampere Analysis, 2023](#), [Variety.com](#), [The Hollywood Reporter](#).

service and business models of the broadcasting undertakings in question and should be incentives-based, rather than prescriptive.

Question

Q.19 *What roles and responsibilities during the pre-development, pre-production, production and post-production phases are commonly understood as being a part of the role occupied by a “showrunner” where the role of “showrunner” is credited or acknowledged as being a part of an audiovisual production?*

Response

59. MPA-Canada and many other interveners⁴⁶ are opposed to the proposal to include a showrunner in the key creatives test.
60. As the Commission heard from various interveners during the public hearing, the role of showrunner simply does not exist in productions other than some (but not all) episodic series. It is not applicable to documentaries, movies, or non-episodic productions (among others). If the position of showrunner were to be included in the key creatives test for Canadian program certification, programs without showrunners would have to attain 9 out of 13 points versus 9 out of 15 based on the Commission’s proposed key creatives test (i.e., close to 70% versus 60%), which would put those programs at a significant disadvantage to be certified as Canadian.
61. A person who may act as a showrunner does not fulfill uniform functions during the pre-development, pre-production, production and post-production phases of a production. A showrunner on one series can perform different functions than a showrunner on another series. This is the reason it is not a credited role even in series production, instead the “showrunner” receives credits such as “created by” or “executive producer” or “writer” or a combination of these based on the specific situation and the individual’s role and contributions on the production. The national professional academies in Canada, the US and the UK simply do not award or recognize “showrunners” as a position in the way they do all other key creatives.
62. The definition of a showrunner proposed by the Writers Guild of Canada (“WGC”) limits a showrunner to a specific type of writer, namely “a writer-producer who is the chief custodian of the creative vision of a series and whose primary responsibility is to communicate the creative vision of that series through control of both the writing process and the production process—often from the pilot episode through to the finale”.⁴⁷ This definition requires the showrunner to have three characteristics: (1) be the writer who has both (2) creative vision and (3) creative control. This results in the double-counting of the writer position.
63. Moreover, top showrunners typically guide a series’ creative vision, but they may not have complete creative control. In many of the most prolific and successful series for which there is a “showrunner”, creative control is distributed among various team members whose roles

⁴⁶ For instance, based on their written submissions, the following interveners either opposed or questioned the utility of including a showrunner position as part of the key creatives test: 9 Story, AQPM, AMPA, ARRQ+, Blue Ant, CMF, CMPA, Corus, DHX/Wildbrain, IATSE, Lionsgate, Quebecor, Rogers and Telefilm.

⁴⁷ WGC January 20, 2025 intervention to BNC 2024-288, para. 30.

may change across projects and seasons. Therefore, the WGC's proposed definition is simply inapplicable for many series and the most prolific creators who are known as the industry's most famous "showrunners" would not qualify under the WGC definition, including: Dick Wolf for the *Law & Order* and *Chicago* franchises; Jerry Bruckheimer for *CSI* and its spin-offs; Shonda Rhimes for *Grey's Anatomy*, *Scandal* and *Bridgerton*; Ryan Murphy for *Nip/Tuck*, *Glee* and *American Horror Story* among others; and Greg Berlanti for numerous shows in the "Arrowverse" (i.e., various interconnected television series based on DC Comics).

64. WGC has also recommended that the position of showrunner and screenwriter be subject to a Canadian residency requirement at all times and that such a requirement would be consistent with the Canadian Film or Video Production Tax Credit ("CPTC").⁴⁸ However, CAVCO's current approach to the CPTC permits a non-Canadian showrunner, in recognition of the fact that a showrunner does not have *de facto* creative control of a production, and there is simply not a large enough pool of Canadian showrunners. Moreover, the inclusion of a Canadian residency requirement on any of the positions in the key creatives test would make the test more onerous than it is today at a time when remote working has been embraced and encouraged by many companies. Instead of modernizing the definition of a Canadian program, it would be introducing a dated and restrictive requirement.
65. Notwithstanding the concerns set out above and in MPA-Canada's January 20, 2025 submission and all of the various submissions from other interveners opposing the inclusion of showrunner, if the Commission determines that the showrunner position should be included as part of the Canadian program certification process, we recommend:
 - the showrunner position should only be considered as a non-mandatory bonus after the application of the key creatives test – or as a CPE credit – if the showrunner is Canadian; and
 - since there could be more than one showrunner on a given production, MPA-Canada's proposed percentage test for shared positions should also be applied to the showrunner position – i.e., the showrunner point(s) should be obtained if at least 50% of those persons are Canadian where two people are sharing the role, or at least 51% are Canadian where more than two people are sharing the role.

Question

Q.20 *The Commission has heard from various intervenors on potential levels of CPE contributions. Specifically, it has heard CPE contributions should be set at 5%, 20%, and 30%.*

- i. *Please propose a CPE level for Canadian broadcasters (including their online streaming services).*
- ii. *Please propose a level for foreign online streamers.*
- iii. *What elements of the two linguistic markets (French and English) should the Commission consider in establishing any expenditure requirements?*

⁴⁸ *Ibid.*, para. 13.

Response

66. Throughout the legislative process and throughout the Commission’s regulatory process, MPA-Canada and the MPA Companies have endeavoured to be collaborative and constructive partners, but we simply are not able to say what number would be appropriate at this time without clarity on what will count as a “Canadian program”, and what level of flexibility foreign online undertakings will have in meeting any expenditure requirements.
67. The Government recognized that redefining what constitutes a “Canadian program” would need to be prioritized in the Policy Direction given its “foundational” nature,⁴⁹ but changes to the regulatory plan mean we are only now at that stage. A year and a half later, the following analogy from PIAC is still as applicable now, as it was then:

11211 MR. LAWFORD: ... we understand where the streamers are coming from, because *it’s kind of like going to a restaurant and being asked, when you sit down, “How much would you like to pay?” and you say, “Can I see the menu?” and they say, “Well, soon. But some of the other customers that were here before they don’t want to pay as much as they used to. Oh, and by the way, the restaurant is going out of business and the employees are all mad.” So, you know, we get it. **They’re being asked to sort of go into the void and give money...***⁵⁰ [emphasis added]

68. As Chairperson Eatrdes indicated during her very recent speech at the Banff World Media Film Festival, “[t]he definition [of a Canadian program] matters because it is tied to what is broadcast, what is supported by funding”.⁵¹ That is why the Government identified it as foundational and directed that it be prioritized or dealt with first. In short, it is impossible to say what the appropriate numerical value of something is, when you do not know how that something will be defined.
69. Expenditure requirements should be “proportional to their objectives” and the Commission must ensure “those objectives are clear”.⁵² A disproportionate financial contribution obligation imposed on foreign online undertakings would be inequitable and discriminatory. It will also result in unintended negative consequences, such as the 30% increase in production costs for French content in 2023, coupled with labour and resources shortages, resulting from France’s outlier approach to the application of the AVMSD.⁵³
70. Consistent with the Policy Direction, the contribution level for foreign online undertakings should only be determined after the definition of a Canadian program has been finalized and

⁴⁹ Policy Direction, s. 19 and Regulatory Impact Analysis Statement – “Redefine Canadian Programs”.

⁵⁰ PIAC, BNC 2023-138 Transcript of Public Hearing, 7 December 2023, at line [11211](#).

⁵¹ Chairperson Eatrdes, Speech to the Banff World Media Festival: “From Pitch to Production: Building Canada’s broadcasting framework of the future”, 9 June 2025.

⁵² Policy Direction, s. 12(a).

⁵³ See assessment [report](#) by French regulators, ARCOM and CNC.

then, allowing for the proper due process required in determining an issue of this importance, established for individual undertakings at the tailored conditions of service stage.⁵⁴

71. The initial base contribution obligation should be revoked, as a mandatory contribution to funds is inconsistent with the text, context and purpose of the Act for those foreign online undertakings in the business of producing content (as set out in our responses to Q.15 and Q.16 above). Instead, consistent with s. 12(c) of the Policy Direction, the Commission should provide “flexibility in meeting expenditure requirements” by allowing each broadcasting undertaking to contribute via CPEs, funds and/or other tangible and intangible methods, in a manner that is consistent with the nature of the service that it provides and its business model, as determined during the tailored conditions of service stage, together with the applicable undertaking.
72. As set out in our responses to Q.17 above and Q.22 below, funds have received even more government funding since the issuance of BPR 2024-121 and any party claiming such funds are “at risk” should be required to substantiate their claims.

Question

Q.21 *What factors should the Commission consider when it establishes expenditure requirements on undertakings owned by different entities that earn over \$25 million in broadcasting revenue in Canada?*

Response

73. Please refer to our responses to Q.15, Q.16 and Q.20 above for the factors the Commission should consider when it establishes expenditure requirements for foreign online undertakings.
74. In terms of the contribution threshold, we have advocated for a higher contribution threshold of \$50 million applied at the individual service level, rather than \$25 million applied at the level of the broadcasting ownership group. This recommendation is to avoid capturing thematic, niche or nascent online undertakings – often owned by different entities (sometimes with different shareholders) within a broadcasting ownership group – that would be well below the contribution threshold on their own.
75. Pursuant to s. 5(2)(h) of the Act, the Commission is required to take into account the variety of broadcasting undertakings and avoid imposing obligations on any class of undertaking if that imposition will not contribute in a material manner to the implementation of the broadcasting policy objectives in s. 3(1) of the Act.
76. Imposing a contribution requirement on thematic, niche or nascent services could push existing services out of the market and disincentivize the launch or entry of new services. Such services often serve ethnic, third-language, equity-deserving groups and Canadians of diverse backgrounds – imposing an inequitable contribution requirement that forces these services out of the market would undermine various policy objectives of the Act, including:

⁵⁴ Policy Direction, s. 12(c).

- being responsive to the preferences and interests of various audiences;
 - serving the needs and interests of Canadians of diverse ethnocultural backgrounds;
 - supporting the broadcast of programs in a diversity of languages that reflects the ethnocultural composition of Canadian society; and
 - providing varied and comprehensive programming to people of all ages, interests and tastes.⁵⁵
77. Therefore, there would be a net loss to the Canadian broadcasting system if an inequitable contribution threshold were to force such services out of the market or dissuade them from entering in the first place.
78. If the Commission decides to continue to apply the contribution threshold to broadcasting ownership groups, and if any form of deductible or exemption (as proposed by Corus and Quebecor)⁵⁶ is applied to Canadian broadcasting undertakings, then the same form of deductible or exemption should be applied to foreign online undertakings.

Question

Q.22 In determining an expenditure requirement, what should be allowable expenses that count towards fulfilling these requirements? What ratio of expenses should be devoted to direct programming expenses, other direct expenses such as contributions to funds and other more intangible expenses such as training and infrastructure? Additionally, what factors should the Commission consider when establishing these ratios as a part of overall tailored conditions of service?

Response

79. As set out in our response to Q.20 above, consistent with s. 12(c) of the Policy Direction, the Commission should provide “flexibility in meeting expenditure requirements” by allowing each broadcasting undertaking to contribute via CPEs, funds and/or other tangible and intangible methods, in a manner that is consistent with the nature of the service that it provides and its business model. We agree with the Commission that the ratio devoted to the various types of contributions should be established during the tailored conditions of service stage, together with the applicable undertaking.
80. Consistent with the Act and s. 8(d) of the Policy Direction, which require the Commission to create an equitable, flexible, and adaptable regulatory framework and where appropriate, to “use tools based on incentives and outcomes”, the Commission should utilize an incentives and outcomes-based approach, and not a prescriptive model, when establishing the ratios and the manner in which they may be fulfilled.

⁵⁵ Act, ss. 3(1)(d)(iv), (d)(v) and (i)(i).

⁵⁶ Corus has proposed that all broadcasting undertakings should make contributions against gross broadcasting revenues in excess of \$25 million (i.e., using \$25 million as a deductible rather than a threshold). Quebecor has proposed that the contribution threshold should be \$25 million for broadcasting ownership groups but group members with less than \$10 million in gross broadcasting revenues should be exempted from contributions.

81. In particular, foreign broadcasting undertakings should not be required to make mandated contributions to funds for the reasons set out in our responses to Q.15 and Q.16 above, and because there is no evidence that funds are “at risk”. Any decline in funding from BDUs or otherwise has been offset by Government funding. For instance:
- As set out in our response to Q.17 above, between 2018-19 to present, Government stabilization funding resulted in increased revenue to the CMF. The CMF has noted that this funding enables it to remain competitive and resilient in the coming years.
 - On January 31, 2024, the Government committed \$100 million for Telefilm Canada over two years (2024–25 and 2025–26).⁵⁷
 - On March 14, 2024, the Government announced permanent funding to the Indigenous Screen Office, including \$65 million over five years and \$13 million per year ongoing.⁵⁸
 - Further, Prime Minister Carney has committed (via the Liberal Party Platform) to supporting Canadian artists and creators by increasing funding to agencies such as the Canada Council for the Arts, Telefilm, the CMF, and the National Film Board.⁵⁹
82. Therefore, there is no demonstrated need that would support mandated contributions to funds, especially where such mandated contributions are inconsistent with the text, context and purpose of the Act.
83. With respect to the allowable expenses that should count towards fulfilling any expenditure requirement – in order to incentivize investments in the creation, promotion and discoverability of high-quality, successful Canadian programs that audiences will want to watch – expenditures associated with each stage of a production, including on- and off-screen and on and off-service marketing and promotional expenses should count towards fulfilling any expenditure requirement.
84. As set out in our response to Q.14 above, on- and off-screen and on- and off-service marketing and promotion play a crucial role in the discoverability and potential success of a Canadian program and Canadian creative talent. In 2019, the Canadian Association of Broadcasters recommended that such expenses should be counted as eligible CPE expenditures for all broadcasting undertakings⁶⁰ and we agree with that approach.
85. Since 2015, the Commission has permitted independent programming services to claim promotional expenditures incurred with third parties for Canadian programs as eligible CPEs, up to a maximum of 10% of their CPE requirement. This includes any payments made to other broadcasters for paid promotional time. The Commission also adopted the CMF’s list of eligible marketing expenses as eligible expenditures, provided that these payments are

⁵⁷ Heritage Canada News Release: [Supporting the audiovisual sector through Telefilm Canada](#), January 31, 2024.

⁵⁸ Heritage Canada News Release: [Supporting Indigenous-led storytelling through permanent funding for the Indigenous Screen Office](#), March 14, 2024.

⁵⁹ [2025 Liberal Party Platform](#), p. 8.

⁶⁰ CAB Intervention dated July 5, 2019, at para. 121 to Broadcasting Notice of Consultation CRTC [2019-91](#): *Call for comments on the Commission’s policy on Canadian programming expenditures*, 28 March 2019.

made to parties not affiliated with either the broadcaster or producer of the program.⁶¹ The CMF's eligible marketing expenses included at that time:

- Unit publicity expenses incurred during production (e.g., production photographs, hiring a publicist to arrange interviews).
- Digital media/viral marketing campaigns.
- Attendance at national and international media markets to generate sales or other revenues from the eligible project.
- Submission/registration of the television component of an eligible program to an award show/event.
- Expenses related to search engine optimization.⁶²

86. We recommend that the list of eligible expenses be updated to reflect the wide diversity of on- and off-screen and on- and off-service promotion and marketing techniques employed by broadcasting undertakings and that this should be explored with undertakings during the tailored conditions of service stage.
87. Further, consistent with s. 11.1(1)(b) of the Act, expenditures for the purpose of “supporting, promoting or training Canadian creators” of audiovisual programs should be allowable expenses that should count towards fulfilling any expenditure requirement. As set out in our response to Q.14 above, together with local and national partners, global streaming services lead and support a range of programs and initiatives that provide meaningful opportunities for Canadian creative talent (both on and off-set, above and below-the-line, at all career levels) to accelerate their careers and enhance their success. Such initiatives should be incentivized and recognized as allowable expenses.

Question

Q.23 *What factors should the Commission consider in determining what types of programming are at risk in the Canadian broadcasting system and who should contribute to supporting that programming?*

Response

88. As previously noted, the onus should be on the party making the argument that a programming category is “at risk” to prove that claim with verifiable, long-term evidence.
89. To MPA-Canada's knowledge, there is no data to support the position that Canadian content production has declined, nor is there data that suggests specific programming genres, including drama, documentary, children's content, or variety and performing arts, are considered at risk. There is therefore no rationale for any mandated support for certain types of programming.

⁶¹ BRP 2015-86, para. 70.

⁶² Appendix A to CMF's September 19, 2014 response to undertaking re: BNC 2014-190: Let's Talk TV.

90. As set out in *Appendix A – Trends in Canadian Content Production* (attached), based on data from the CMPA’s Profile 2024 Report, from 2018/19 to 2023/24, Canadian content production overall and Canadian television production have both grown extensively over time (even with 2023/24 production data being an aberration due to labour strikes in the US). As well, all genres that have been argued by certain interveners to be “at risk” (Fiction, Documentary, and Variety and Performing Arts) have also grown over time. Only Children’s and Youth programming has undergone a slight decrease, and this is primarily driven by changing audience viewing habits and platform choice. According to the CMF’s [Genre Report](#):
- “The problem of vanishing young audiences from linear broadcasting is a global trend. A 2024 article from Business Insider⁶³ notes that “kids are now getting their TV fix on streaming, which accounts for two-thirds of TV watch time for children 2 to 11,” and that younger audiences prefer short-form videos over longer episodes and movies. The same article says that, for kids, “YouTube has become king”.”
 - “Numeris data from 2023 confirms that younger Canadian audiences, including more than half of teens in Ontario and Quebec, aged 12 to 17, are abandoning linear broadcast, moving to streaming and social media.”⁶⁴
91. TVO confirmed during the public hearing that children are getting their viewing from online platforms and it is making a concerted effort to follow its audience.⁶⁵ The regulatory framework should promote innovation and be readily adaptable to technological change,⁶⁶ including by incentivizing broadcasters such as TVO to be responsive to viewers’ preferences⁶⁷ by providing them with the programming they desire, in the manner, time and place of their choosing.
92. Where it is proven that a type of programming is at risk in the Canadian broadcasting system, then in accordance with the Act and Policy Direction, any requirement to support such programming should be incentives-based, rather than prescriptive. Tools such as CPE credits should be used to incentivize broadcasting undertakings to support that programming. Prescriptive regulatory obligations (such as minimum expenditure requirements) that attempt to force broadcasting undertakings to support particular genres of programming (especially where it is inconsistent with their natures of service and business models) will result in an

⁶³ Lucia Moses, “Disney has a kid problem,” Business Insider, July 15, 2024, <https://www.businessinsider.com/disney-kid-problem-cable-tv-decline-disney-channel-watching-youtube-2024-7>.

⁶⁴ Numeris VAM, Share of TotTime (000) Hrs, Mo-Su 2a-2a, 25 Sep 2023 – 31 Dec 2023.

⁶⁵ TVO, Transcript of Public Hearing, May 15, 2025, para. [1375](#): “... I don’t see a problem with children getting their viewing from online platforms. I think that that is absolutely the reality and we contend with that, and if we don’t, we are not playing in the space, and I think that that’s an absolute necessity. TVO makes this -- everything that we produce is then presented and posted on our online platforms. We have a very large subscriber base for TVOKids. I think it’s over 270,000 subscribers, and some of the content on it gets tens of thousands and hundreds of thousands of views. So, we think that that is a very successful model for us, as well.”

⁶⁶ Act, s. 5(2)(c) provides that the “Canadian broadcasting system should be regulated and supervised in a flexible manner that promotes innovation and is readily adaptable to scientific and technological change”.

⁶⁷ Act, s. 3(1)(d)(v) provides that “the Canadian broadcasting system should reflect and be responsive to the preferences and interests of various audiences”.

unsustainable model that does not allow broadcasting undertakings to adapt to shifting market dynamics.

93. As the Commission has heard from virtually every Canadian broadcaster that has made submissions in this proceeding a prescriptive model that forces broadcasting undertakings to provide a certain category of programming that was perceived to be “at risk” at a particular moment in time restricts the ability of those undertakings to adapt to changing circumstances:

MR. ASPER: ...we just think the PNI thing is outdated and should reflect this changing landscape. It came at a time, years ago, when there was a sentiment that certain kinds of content would never get made without this requirement to make it, but I think that was based on a thesis that that has some superior ability -- drama in particular had some superior effect on Canadians and made them more Canadian, for lack of a better way of describing it. It shouldn't be prescriptive that way. It shouldn't be a 'one size fits all' requirement, but one that reflects the broadcasters' challenges and does have this flexibility.

...taking out the subjectivity and what I would call 'genre-picking', would be something we'd like to see happen, allowing for programming and production decisions being made based on data what audiences want, based on data from interest shown by audiences, viewing trends, competitive pressures. You know, things come and go. For five years, comedy is hot. Then reality is hot. Then drama comes back, and docudrama -- dramedies come back. So, there's trends that PNI doesn't really allow broadcasters and producers to account for, and in some cases, it stifles the creative process because creatives' judgment about what people want to watch is sometimes ahead of what people are actually watching.⁶⁸

94. The Canadian broadcasting system will be best served when “overly prescriptive handcuffs come off”⁶⁹ and broadcasting undertakings are permitted to fill their regulatory contributions by serving their audiences in a manner that taps into their strengths and are consistent with their business models and the nature of the services they wish to provide.

Question

Q.27 *Given the realities of global financing and international partnerships, are there public policy benefits to a more flexible approach - such as implementing a sliding scale that links the number of Canadian content points to the level of credit toward CPE? How can the Commission strike the right balance to ensure both the integrity and viability of Canadian storytelling?*

⁶⁸Anthem Sports and Entertainment, Transcript of Public Hearing, May 23, 2025, paras. [6053-6054](#).

⁶⁹ Corus, Transcript of Public Hearing, May 16, 2025, para. [1969](#): “... the government, the Order in Council was correct when it said that PNI should not be a priority going forward and what we need to serve our audiences and serve our business as a result is to ensure that those kinds of overly prescriptive handcuffs come off.”

Response

95. We agree with the Commission that given the public policy benefits of global financing and international partnerships, a more flexible approach should be adopted for certifying Canadian programs and for financial contributions in support of such programming. Such an approach encourages foreign online undertakings and producers to make the “the greatest practicable use of Canadian creative and other human resources” by avoiding an all-or-nothing test and instead encouraging undertakings and producers to tell Canadian stories and engage Canadian talent and crews wherever possible, even if they are unable to hit a set threshold. The more flexibility afforded to foreign online undertakings, the more opportunities they will have to help fulfill the key goals of the Act, and they will be incentivized to do so.
96. Depending on how it is implemented, MPA-Canada agrees that a sliding scale that links the number of Canadian content points to the level of credit towards CPEs could be beneficial. For instance, CPE credits could be awarded if a program attains more than the 51% threshold on the key creatives test proposed by MPA-Canada for foreign online undertakings.
97. While we have proposed several bonuses that can be applied after the key creatives test, those bonuses can instead be applied as CPE credits. For example, if a program is able to meet the 51% threshold without the use of any bonus points but would otherwise qualify for bonus points (e.g. is based on a novel by a Canadian author and would be eligible for a cultural element bonus), then a CPE credit can be applied to that program spend, instead of a bonus applied to the key creatives position test.

Question

***Q.28** Should the Commission consider a sliding scale approach to IP ownership - where a higher number of Canadian key creative positions could offset a lower level of Canadian IP ownership, and vice versa? Would such a model effectively balance the goals of fostering Canadian creative control and significant and equitable financial control and benefit?*

Response

98. As MPA-Canada has consistently stated, mandating Canadian IP ownership as a condition for certification or contribution eligibility is inconsistent with standard international business practices, and particularly misaligned with the nature and operating models of global streaming services.
99. However, should the Commission nevertheless choose to introduce IP ownership as a factor in Canadian program certification, MPA-Canada supports a flexible, and not mandatory, approach to (whole or partial) Canadian IP ownership. Different IP ownership models are required to accommodate the wide diversity of production business models used in today’s global marketplace (i.e., commissioning, financing, licensing, pre-sales, co-production and co-venture agreements and more).⁷⁰ Productions vary dramatically in scale and financial risk profiles and there should not be a one-size-fits-all approach to IP ownership.

⁷⁰ For a discussion of the diversity of business models, see Section 3.2 of KPMG Report appended as Appendix B to MPA-Canada’s January 20, 2025 submission.

100. We have proposed that in order to incentivize productions where Canadians own or share in the IP, the Commission should apply a non-mandatory bonus (worth 2 points) after the application of the key creatives test or alternatively, a CPE credit.
101. Our proposal is consistent with a sliding scale approach to IP ownership:
- If a program has a lower number of Canadians in key creative positions and is therefore unable to meet the 51% threshold proposed by MPA-Canada for foreign online undertakings, this could be offset by Canadian IP ownership by adding 2 points to the program's score on the key creatives test. Provided the program is otherwise able to acquire the points necessary to meet the 51% threshold, it would be eligible for certification as a "Canadian program".
 - In addition, if the program has a higher number of Canadians in key creative positions, it may not need a Canadian IP bonus in order to meet the 51% threshold. However, if on top of meeting the 51% key creatives test, Canadian(s) also own or share in the IP, then the production costs associated with that program should be eligible for a CPE credit.
102. The above proposals balance the goals of fostering Canadian creative control and significant and equitable financial control and benefit.
103. IATSE has proposed a similar approach and as it notes in its January 20, 2025 submission, this is in keeping with a "give and take" model:

Making intellectual property ownership one non-mandatory item with an assigned point value under the overall certification points system would be consistent with the "give-and-take" symmetry model that the CRTC has identified at paragraph 31 of the Notice. A program that earns the points associated with Canadian intellectual property ownership would necessarily require fewer points from the remaining categories to satisfy the minimum threshold, whereas a program that does not earn the Canadian intellectual property ownership points would need to "make up" those points elsewhere in order to reach the threshold. More broadly, this approach to intellectual property ownership would more appropriately balance the value of encouraging productions with Canadian intellectual property ownership with the importance of a flexible certification framework that recognizes the wide range of creative, cultural, and financial elements that work together to make a program truly "Canadian."⁷¹

104. This proposal aligns with the policy objectives of the Act to foster collaboration between Canadian and foreign broadcasting undertakings; is supported by key industry stakeholders (including IATSE); reflects practices in other international markets; fits with the operating models of global streaming platforms; and represents a strong path to growing the Canadian creative sector.

⁷¹ IATSE, January 20, 2025 intervention to BNC 2024-288, para. 66.

Question

Q.29 *Should the Commission include points or other incentives for the use, in Canadian programs, of pre-existing Canadian source material such as Canadian-authored novels, plays, or short stories or Canadian musical selections as defined by the Commission- in defining Canadian content, particularly in light of subsections 10(1.1)(a) and 10(1.1)(c) of the Broadcasting Act? How should those points be attributed or, alternatively, what should those incentives be?*

Response

105. With the addition of s. 10(1.1)(c) to the Act, the Commission is now required to consider “whether *a program* furthers Canadian artistic and cultural expression” (emphasis added). Many intervenors have also made submissions about the importance of the creation and presentation of great, untold, compelling Canadian stories to domestic and international audiences. However, the current definition of a “Canadian program” does not consider, much less guarantee or even incentivize, the creation of programs with cultural relevance and reflection. As Chairperson Eatrides recently indicated, the decision coming out of this proceeding will “shape the stories that are told in the future”.⁷²
106. That is why MPA-Canada has proposed that the Commission include an incentive for programs with a cultural component within the definition of what qualifies as a “Canadian program”. The cultural element incentive is also consistent with s. 10(1.1)(a) of the Act because where Canadians own the underlying rights to pre-existing Canadian source material such as Canadian-authored novels, plays, or short stories or Canadian musical selections, it would allow those Canadians to have a right or interest in relation to a program that allows them to benefit in a significant and equitable manner from the exploitation of the program.
107. Our proposal would result in new and unique opportunities for both Canadian creatives and Canadian stories:
 - As an incentive for programs that fulfill cultural elements, after the key creative positions test has been applied, there would be the potential for 4 bonus points (i.e., without increasing the denominator of the key creatives test) (or alternatively, these can be CPE credits) if the program contains one or more Canadian cultural elements, such as where a program:
 - o is based on underlying Canadian creative, artistic or historical material (e.g., a novel or story written by a Canadian);
 - o has a story or narrative based on a Canadian setting (in whole or in part);
 - o includes Canadian characters, subject matter, or themes; or

⁷² Chairperson Eatrides, Speech to the Banff World Media Festival: “From Pitch to Production: Building Canada’s broadcasting framework of the future”, 9 June 2025.

- o demonstrates Canadian creativity, heritage and/or diversity (i.e., through the inclusion or reflection of equity-deserving groups, OLMCs and Canadians of diverse backgrounds)
 - MPA-Canada has also proposed bonus points (or CPE credits) where:
 - o Canadians own the IP (in whole or in part) (2 points);
 - o 50% or more of all lead performers are Canadian (recognizing the increasing use of ensemble casts) (2 points); and
 - o 75% or more of the total cast and crew in Canada are Canadian (1 point).
108. While some interveners have raised concerns that the inclusion of a Canadian cultural element could potentially be restrictive, the above incentives would not be mandatory. For instance, they would *not* result in a program that would otherwise qualify as Canadian being disqualified because it does not contain a cultural element. They would simply incentivize and reward a broadcasting undertaking where the Canadian program that it invests in (i.e., produces, commissions or acquires) includes a cultural element.

Question

Q.30 *The Commission currently collects programming and production expenditures data by programming category⁷³. The programming categories are currently divided into 14 groups:*

1. News (category 1);
 2. Analysis and Interpretation (category 2(a)),
 3. Long-form documentary (category 2(b)),
 4. Other information (category 3 to 5),
 5. Sports (category 6),
 6. Drama and Comedy (category 7(a), (b), (f), (g)),
 7. Films (category 7(c), (d)),
 8. Animated programs & films (category 7(e)),
 9. Music/variety (category 8 and 9),
 10. Game shows (category 10),
 11. Human interest excluding award shows (category 11(a)),
 12. Reality television (category 11(b)),
 13. Award Shows (not incl. in 11(a)),
 14. Others (category 12 to 15)
- a. *Should the data collection be amended to further group the categories in the reporting to reduce reporting burden? If so, how and if not, why?*

⁷³ News (category 1); Analysis and Interpretation (category 2(a)), Long-form documentary (category 2(b)), Other information (category 3 to 5), Sports (category 6), Drama and Comedy (category 7(a), (b), (f), (g)), Films (category 7(c), (d)), Animated programs & films (category 7(e)), Music/variety (category 8 and 9), Game shows (category 10), Human interest excluding award shows (category 11(a)), Reality television (category 11(b)), Award Shows (not incl. in 11(a)), Others (category 12 to 15)

Response

109. MPA-Canada supports further grouping the programming categories for data collection purposes, as suggested by the Commission's question. As the Commission heard from certain Canadian broadcasters (including Rogers) over the course of this proceeding, their existing reporting requirements are too onerous and time-consuming. Any reporting requirements should be sensitive to the administrative burden imposed on broadcasting undertakings and minimize that burden where appropriate, as required under s. 5(2)(g) of the Act and s. 8(a) of the Policy Direction.
110. Reporting requirements should include only data that is essential for the Commission to monitor regulatory obligations, keeping in mind that foreign online undertakings that operate in various global jurisdictions and have not previously been subject to the Commission's regulatory framework would be unfamiliar with the categorization of programs into the Commission's various programming categories and would not keep the same detailed reporting records as Canadian broadcasters.

Question

***Q.31** If the Commission were to maintain its current co-venture model but incorporate provisions regarding IP ownership, whether the IP would be shared or wholly owned by one party, please provide details on what these provisions could be. (e.g. should the Commission require full Canadian IP ownership for productions with lower Canadian certification points? Should the IP be shared 50/50 between a Canadian production and a non-Canadian production company, which would align with the current co-venture model requiring shared decision-making responsibilities and financial participation and profit-sharing?)*

Response

111. The co-venture model should be retained as is, without the inclusion of an IP requirement, as this would significantly reduce the financial benefits this model provides to both the Canadian and foreign co-venturers.
112. The Commission's existing co-venture model, like its existing definition of a "Canadian program", does not include any IP ownership requirements. As previously recognized by the Commission, "this flexibility has enabled large-scale productions such as "Beauty and the Beast" and "Reign"."⁷⁴
113. While creative and financial decision-making responsibilities are equally shared between Canadian and foreign co-venturers, the IP in co-ventures is generally held by the foreign co-venturer for several reasons:
- First, co-ventures are not eligible for the CPTC or for any counterpart provincial "Canadian content" film tax credits (for example, in BC, Ontario and Quebec) and are therefore a tax-inefficient model for Canadian IP ownership:
 - Under the *Income Tax Act*, if the copyright in a co-venture production is owned or co-owned by a Canadian co-venturer, since a co-venture is not eligible to be

⁷⁴ BRP 2015-86, para. 127.

“certified” by CAVCO for the CPTC, the Canadian co-venturer cannot depreciate the asset at the 100% rate of capital cost allowance, which is only available to a production certified by CAVCO for the CPTC. Rather, as discussed below, the Canadian co-venturer can only depreciate its interest in the asset at the much lower annual rate of 15%, very likely resulting in a significant income inclusion for Canadian tax purposes.

- o Under Schedule 2 (Capital Cost Allowances) of the *Income Tax Regulations*, a production which is certified by CAVCO for the CPTC falls within Class 12 and is subject to capital cost allowance (i.e., depreciation) at the rate of 100% and is not subject to the half-year rule. However, a production, such as a co-venture, which is not certified by CAVCO for the CPTC (for example, one which access the lower production services film tax credit or PSTC) falls within Class 10 and is subject to capital cost allowance at the much lower rate of 30% and this is subject to the half-year rule (so, effectively, only 15% of the capital cost of the asset can be depreciated annually).
 - o Therefore, since the Canadian co-venturer’s ownership interest in a co-venture production can only be depreciated at the significantly lower 15% annual rate of capital cost allowance (i.e., taking into account the half-year rule), rather than 100% for a CPTC-eligible production, if the Canadian co-venturer owned or co-owned the copyright in such a production, it would very likely result in a substantial income inclusion for Canadian tax purposes (i.e., since the Canadian co-venturer’s share of the production financing, which is income to the Canadian co-venturer, can only be reduced by a portion of the cost of production rather than by 100% of the cost of production).
- Second, while at least 50% of the financing required for the co-venture production must be procured by the Canadian co-venturer, as a practical matter, this often takes the form of pre-sales, distribution advances, and film tax credits, rather than an up front cash investment by the Canadian co-venturer. This allows the Canadian co-venturer to defer part of its financial investment until monies have been recouped from the production. As the Commission has previously recognized,⁷⁵ large pre-sales to foreign networks (generally US networks affiliated with the foreign co-venturer) and/or large distribution advances from foreign distributors (generally US distributors affiliated with the foreign co-venturer) are the way in which many co-venture productions can be made.
 - Third, as most of the Canadian co-venturer’s financial investment is deferred until monies are recouped from the production, the foreign co-venturer’s upfront financial investment, together with funding from its affiliated foreign networks and/or distributors, is critical for the financing of the co-venture.
114. Given the large upfront financial investment and risk borne by the foreign co-venturer and its affiliated companies in a co-venture and the tax-inefficient model for Canadian IP ownership, the IP is generally held by the foreign co-venturer. Foreign co-venturers would

⁷⁵ *Ibid.*

not be willing to make these critical investments if they were not entitled to retain IP ownership, equity and rights of exploitation in the co-venture program.

115. The co-venture model supports investment and balances the economic benefits of holding/sharing the IP of a production with incentives to collaborate and partner between Canadian and foreign co-venturers – a goal espoused by the Commission for the new regulatory framework.⁷⁶ It provides necessary flexibility on projects in which a foreign co-venturer is involved at the inception or commissioning stage with a Canadian co-venturer and allows for a mutually beneficial financial model to create high-quality Canadian programming.
116. Given that the revised Act and Policy Direction direct the Commission to create a regulatory framework for both Canadian and foreign broadcasting undertakings and foster collaboration among them,⁷⁷ and that the Commission has expressed its goal to “facilitate flexible audio-visual Canadian programming and a financial support ecosystem that encourages a variety of productions, and a variety of business, broadcast and distribution models”,⁷⁸ it would be antithetical to revise the Commission’s long-standing co-venture model at this time to eliminate its utility for both Canadian and foreign co-venturers.

Question

Q.34 *In order to identify programming that is representative of the cultural diversity in Canada, should the Commission work with an organization to collect relevant information and coordinate the identification of reflective programming? If so, what organization would be the best positioned to fulfill that mandate? What safeguards should be in place and what information should be collected?*

Response

117. As explained in our January 20, 2025 submission, the MPA Services’ ability to collect diversity information is constrained by various collective agreements that govern all foreign producers who are members of the Alliance of Motion Picture and Television Producers (AMPTP) producing in Canada. The MPA Services cannot require information of this nature unless it was specifically authorized under the collective agreements, and there may be concerns as well as to how even requesting to do so would conform to provincial human rights legislation. For instance, MPA-Canada is aware that both the DGC and the IATSE local had to obtain authorization from the BC Human Rights Commission to offer programs that involved demographic data being shared with employer producers for programs to support equity-deserving groups.
118. Therefore, given the constraints on the MPA Services’ ability to collect data on cultural diversity, perhaps funding agencies like the CMF and/or Telefilm that already collect such data would be best positioned to fulfill that mandate.

⁷⁶ BNC 2024-288, para. 31.

⁷⁷ Act, ss. 3(1)(a) and 10(1.1)(d); Policy Direction, ss. 8(g) and 13(e).

⁷⁸ BNC 2024-288, para. 7.

Question

Q.35 *In order to effectively participate and monitor the support of Canadian programming, should the Commission require the disclosure of revenues, overall programming expenditures in Canada, and Canadian programming expenditures, and contributions by entity for all broadcasting undertakings carried on in Canada? Should a financial threshold apply to be subject to such a requirement?*

Response

119. Please refer to our response to Q.6 above regarding the need to treat as confidential the financial and competitively sensitive information by entity for *all* broadcasting undertakings. This would include, but not be limited to, revenues, overall programming expenditures in Canada, Canadian programming expenditures, and financial contributions.
120. MPA-Canada does not believe a financial threshold should apply to this requirement, as regardless of the size of the entity, any disclosure of financial and competitively sensitive information that is consistently treated in a confidential manner would reasonably be expected to: (i) result in material financial loss or gain, (ii) prejudice the competitive position, and/or (iii) affect contractual or other negotiations⁷⁹ of the individual broadcasting undertaking.
121. MPA-Canada appreciates the opportunity to respond on behalf of the Companies.

All of which is respectfully submitted,



Wendy Noss
President, Motion Picture Association – Canada

c.c.: Scott Shortliffe, Vice-President Broadcasting, CRTC

Att: Appendix A – Trends in Canadian Content Production

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⁷⁹ Act, s. 25.3(1)(c).

APPENDIX A

Trends in Canadian Content Production

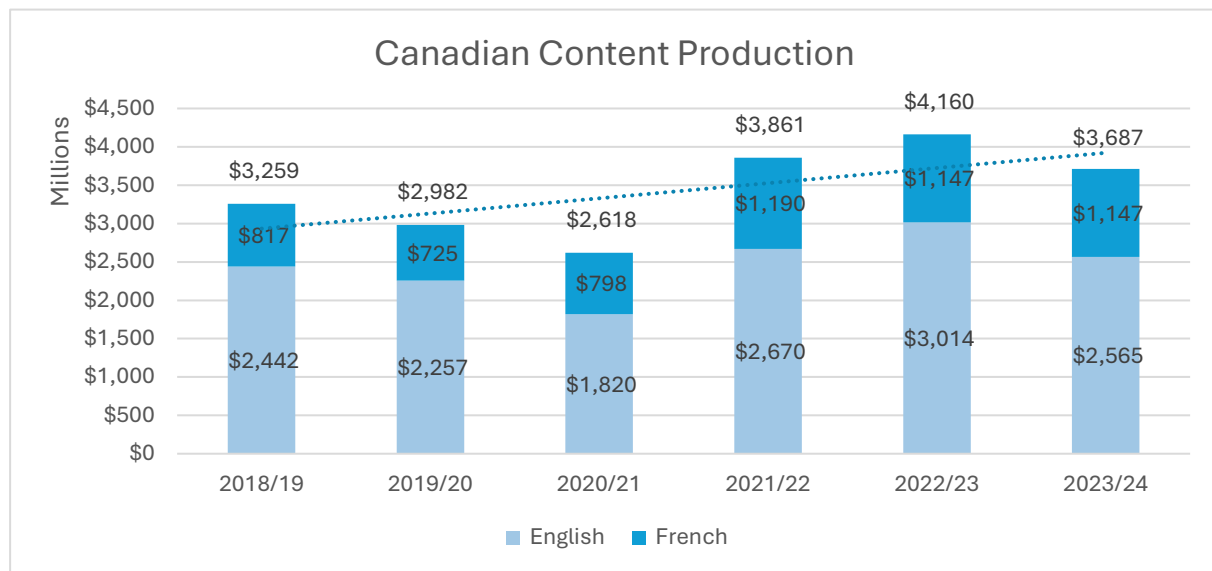
EXECUTIVE SUMMARY

Based on data from the Canadian Media Producers' Association (CMPA) own Profile report, looking back from 2018/19 to 2023/24, Canadian content production overall and Canadian television production have both grown extensively over time. As well, all genres which have been considered “at risk” by interveners at the CRTC (Fiction, Documentary and Variety and Performing Arts) have also grown over time. Only Children’s and Youth programming has undergone a slight decrease, and this is primarily driven by changing audience viewing habits and platform choice.

The below report illustrates this reality with analysis of the CMPA’s Profile report. The data supports this reality, even with 2023/24 production data being an aberration due to labour strikes in the US.

OVERALL CANADIAN CONTENT PRODUCTION HAS INCREASED

- From 2018/19 to 2023/24 Canadian content production has grown by 13.13%, with an average year-over-year increase of 4.63%¹
 - o English language content production has grown by 5.04%, with an average year-over-year increase of 3.55%
 - o French language content production has grown by 37.21%, with an average year-over-year increase of 8.41%



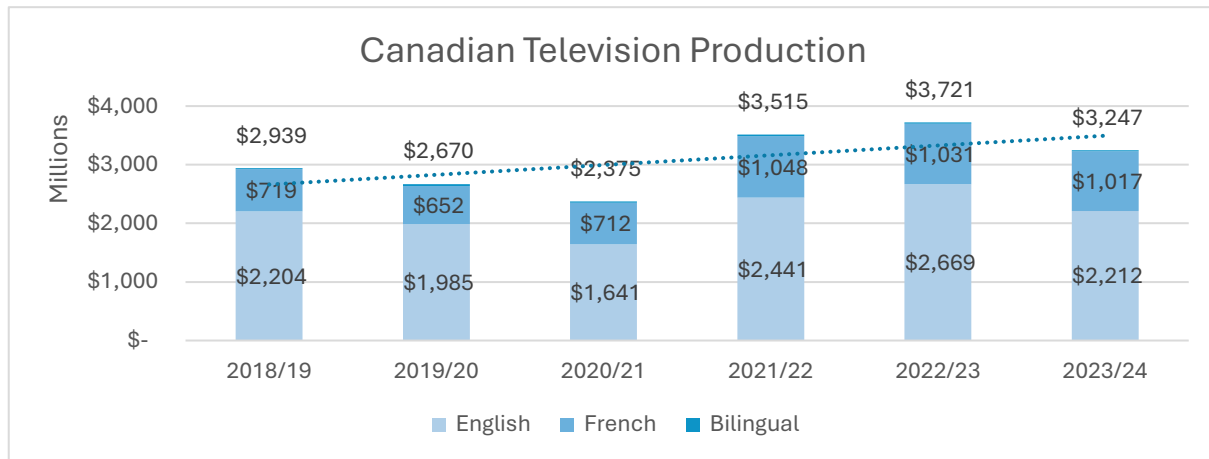
CANADIAN TELEVISION CONTENT PRODUCTION HAS INCREASED

- From 2018/19 to 2023/24 Canadian television content production has grown by 10.48%, with an average year-over-year increase of 4.18%²

¹ CMPA Profile 2024 – Exhibit 2-2: Total volume of Canadian content production, by language

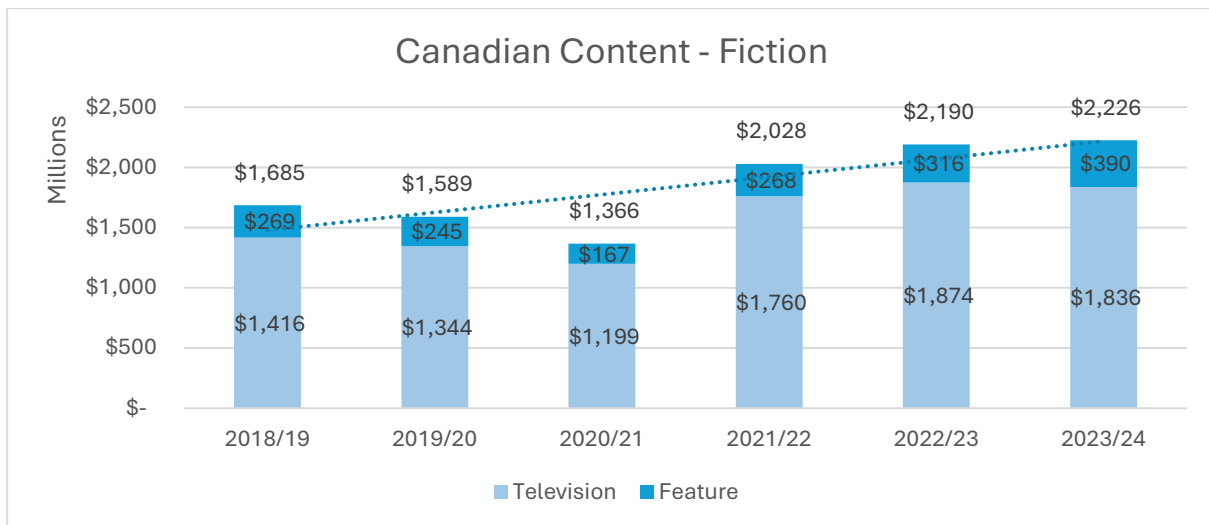
² CMPA Profile 2024 – Exhibit 3-3: Volume of Canadian television production, by language

- o English language television content production has grown by 0.36%, with an average year-over-year increase of 2.74%
- o French language television content production has grown by 41.45%, with an average year-over-year increase of 8.82%



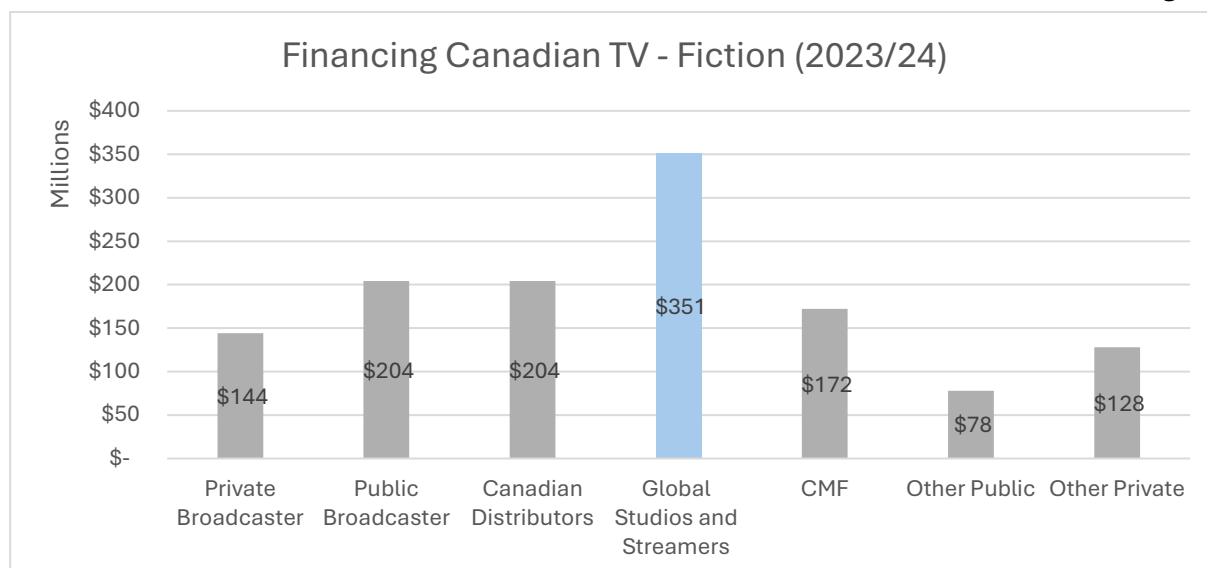
CANADIAN FICTION CONTENT PRODUCTION HAS INCREASED, DRIVEN BY INVESTMENT BY GLOBAL STUDIOS AND STREAMERS

- Canadian fiction content, which CMPA Profile defines as drama and comedy, has also grown both overall and in television production specifically from 2018/19 to 2023/24. This dispels the myth that there is a “crisis” in the production of drama in Canada.³
- Not only that, global studios and streamers far outpace private and public broadcasters as well as the CMF when it comes to funding Canadian television fiction production in 2023/24.⁴



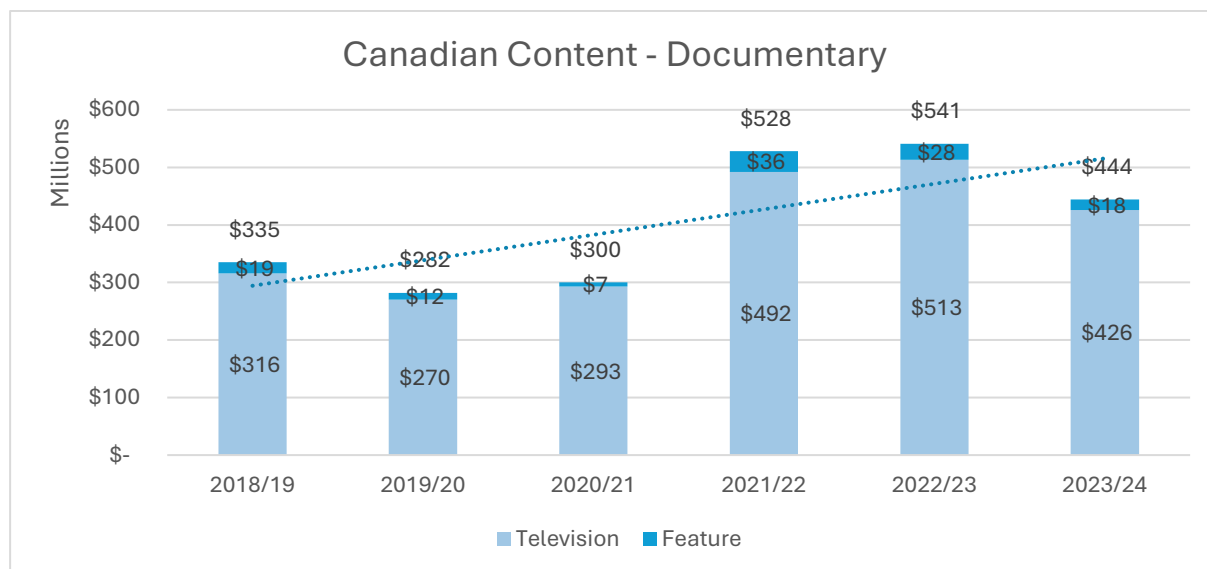
³ CMPA Profile 2024 – Exhibit 2-4: Volume of Canadian content production, by genre and release medium

⁴ CMPA Profile 2024 – Exhibit 3-19: Financing of Canadian television production, by genre 2023/24



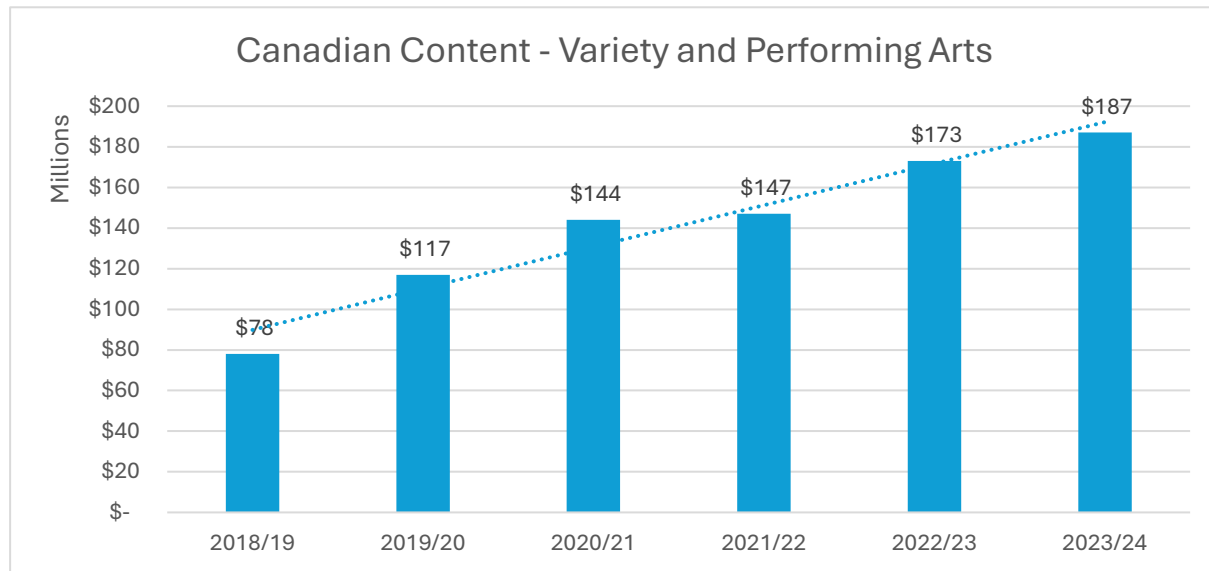
CANADIAN DOCUMENTARY CONTENT PRODUCTION HAS INCREASED

- Canadian documentary content has also grown overall from 2018/19 to 2023/24. While documentary feature production decreased very slightly between 2018/19 and 2023/24, by only \$1 million, 2023/24 production data was an aberration due to labour strikes in the US. Based on 2022/23 data, feature documentary production had increased \$9 million since 2018/19.⁵



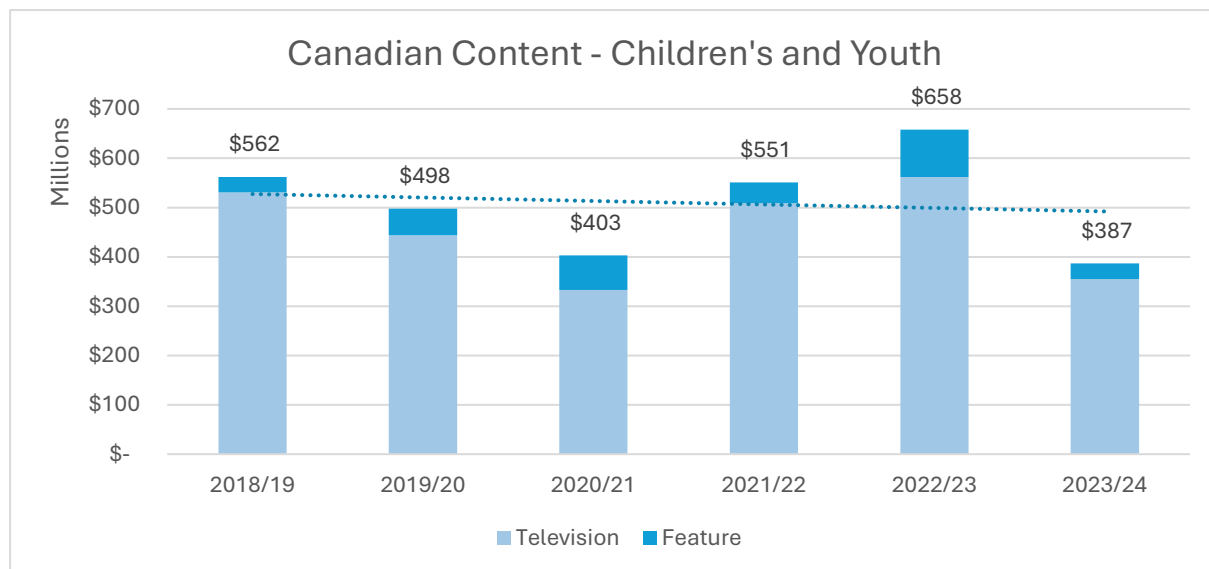
⁵ CMPA Profile 2024 – Exhibit 2-4: Volume of Canadian content production, by genre and release medium

CANADIAN VARIETY AND PERFORMING ARTS PRODUCTION HAS CONSISTENTLY INCREASED YEAR-OVER-YEAR



CANADIAN CHILDREN'S AND YOUTH PROGRAMMING DECREASED DESPITE INVESTMENT BY GLOBAL STUDIOS AND STREAMERS, DRIVEN BY CHANGING AUDIENCE VIEWING HABITS

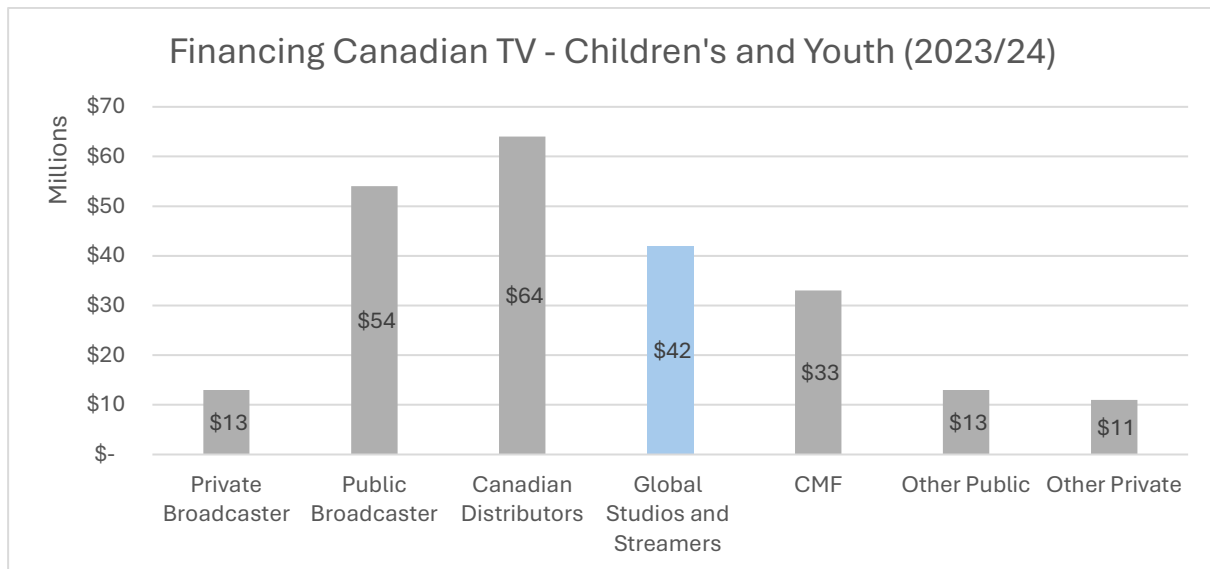
- While Canadian Children's and Youth content production has seen a slight decrease between 2018/19 and 2023/24, this is primarily driven by a large drop in 2023/24 which was an aberration due to labour strikes in the US. Removing 2023/24 data, children's and youth content production would have grown by over \$95 million since 2018/19.⁶



- As well, global studios and streamers outpaced private broadcasters and the CMF when it came to financing Canadian children's and youth television production in 2023/24.⁷

⁶ CMPA Profile 2024 – Exhibit 2-4: Volume of Canadian content production, by genre and release medium

⁷ CMPA Profile 2024 – Exhibit 3-19: Financing of Canadian television production, by genre 2023/24



- Much of the decline in Canadian children's and youth content production can instead be traced to the changing viewing habits of young Canadians, who increasingly rely on streaming and other online platforms such as YouTube for their content. According to the CMF's own [Genre Report](#):
 - o "The problem of vanishing young audiences from linear broadcasting is a global trend. A 2024 article from Business Insider⁸ notes that "kids are now getting their TV fix on streaming, which accounts for two-thirds of TV watch time for children 2 to 11," and that younger audiences prefer short-form videos over longer episodes and movies. The same article says that, for kids, "YouTube has become king."
 - o "Numeris data from 2023 confirms that younger Canadian audiences, including more than half of teens in Ontario and Quebec, aged 12 to 17, are abandoning linear broadcast, moving to streaming and social media."⁹

*****End of Document*****

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⁸ Lucia Moses, "Disney has a kid problem," Business Insider, July 15, 2024, <https://www.businessinsider.com/disney-kid-problemcable-tv-decline-disney-channel-watching-youtube-2024-7>.

⁹ Numeris VAM, Share of TotTime (000) Hrs, Mo-Su 2a-2a, 25 Sep 2023 – 31 Dec 2023.

C

This is Exhibit "C" referred to in the
affidavit of Sydney Grieve
affirmed before me, this 17th
day of December, 2025

A handwritten signature in cursive script, appearing to be "L. D." with a horizontal flourish at the end.

A Commissioner for taking affidavits



MOTION PICTURE ASSOCIATION CANADA

June 23, 2025

Filed Electronically

Mr. Marc Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Gatineau, Québec
K1A 0N2

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2024-288: *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector*, 15 November 2024 (“BNC 2024-288” or “Canadian AV Content Consultation”)

1. These final post-hearing reply comments are submitted by Motion Picture Association - Canada (“**MPA-Canada**”) on behalf of the operating companies (“**MPA Companies**”) of the online undertakings (“**MPA Services**”)¹ affiliated with the global studios that are members of the Motion Picture Association (the “**MPA Studios**”).² Certain of the MPA Companies may file individual reply submissions.
2. MPA-Canada incorporates by reference our June 12, 2025 responses to the Commission’s May 29, 2025 request for information (“**RFI**”) questions.

INTRODUCTION & EXECUTIVE SUMMARY

3. Parliament and the Government have tasked the Commission with creating a new regulatory framework in accordance with the revised *Broadcasting Act* (the “**Act**”) and Policy Direction³ for a broadcasting system that includes *both* Canadian and foreign broadcasting undertakings.
4. We are at a critical juncture in this proceeding: the Commission now must reconcile the often-conflicting messages it has heard from a wide variety of participants, each trying to protect their interests in the Canadian broadcasting system.

¹ The MPA Services (and their Canadian operating MPA Companies) include: Crunchyroll (Crunchyroll, LLC); Discovery+ (Discovery Digital Ventures, LLC); Disney+ (Buena Vista International, Inc.); Hayu (Universal Pictures Subscription Television Limited); Netflix (Netflix Services Canada ULC); Paramount+ (Paramount Streaming Canada, a division of Paramount Entertainment Canada ULC); Pluto TV (Pluto Inc.); Prime Video (Amazon.com.ca ULC); and SonyLIV (Sony Pictures Networks India Private Limited).

² Amazon Studios LLC; Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment Inc.

³ *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)*, (SOR/2023-239) (the “**Policy Direction**”).

5. At a high level, there are two paths available:
 - (a) the well-trodden path of micro-regulation through prescriptive rules – while traditional broadcasters are seeking relief from this approach, certain interveners say it should be perpetuated and extended to foreign online undertakings; or
 - (b) forging a new path by creating an incentives-based framework that stimulates the creation and dissemination of Canadian content by allowing each broadcasting undertaking to contribute in a flexible manner in accordance with its business model and the nature of the services it provides.
6. The first option is comfortable and familiar for those who have historically benefitted from that framework, but “anachronistic”⁴ and “overly prescriptive”⁵ for those who have been obligated to financially support it. The second option is bold and unfamiliar but is required by the Act and Policy Direction and holds more promise for the Commission to create a “sustainable and equitable” regulatory framework.
7. Moreover, the second option – creating a flexible, incentives-based framework that allows each participant to contribute according to their strengths – is the *only* path for the Commission to achieve *the objectives it has set out* for:
 - (a) A new and modernized regulatory framework that:
 - recognizes the new perspectives and opportunities that online undertakings bring to the broadcasting system;
 - ensures flexibility and adaptability in the future;
 - recognizes that each broadcasting undertaking or group of undertakings is unique;
 - focuses on desired performance standards and measures of success; and
 - ensures that the principles of regulatory fairness and equity are upheld across all contributors.⁶
 - (b) A new contribution framework that:
 - is flexible and focuses on clearly defined, measurable regulatory objectives without specifying precisely how those objectives must be achieved;
 - allows applicable undertakings to determine how best to achieve established outcomes (i.e., an outcomes-based approach);
 - avoids unnecessary regulatory burden;
 - encourages innovation; and
 - allows regulated undertakings greater control over how they will meet their regulatory obligations.⁷

⁴ BCE, Transcript of Public Hearing, May 22, 2025, para. 4982.

⁵ Corus, Transcript of Public Hearing, May 16, 2025, para. 1969.

⁶ Broadcasting Notice of Consultation CRTC 2023-138: *The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content*, 12 May 2023 (“**BNC 2023-138**”), Preamble and para. 15.

⁷ BNC 2023-138, para. 58; Policy Direction, s. 8(a).

(c) A modernized definition of a “Canadian program” that:

- makes room for flexible business models and different types of programming;
- facilitates the discoverability and exportability of Canadian content, both within Canada and globally; and
- enables innovation brought about by technological advancements in a manner that supports creativity and employment in the industry.⁸

(d) A modernized approach to intellectual property rights retention in a program that:

- maintains, strengthens, expands and protects Canada’s competitiveness in the audio-visual production industry;
- ensures continued international investment in the Canadian production system;
- is flexible enough to accommodate diverse business models and distribution methods;
- facilitates the exportability of Canadian programming and formats;
- encourages all types of players to make Canadian programming discoverable both domestically and abroad, on traditional and online platforms; and
- facilitates the ownership of content by Canadian entities, including Canadian broadcasters.⁹

8. In reliance on the Commission’s stated objectives, MPA-Canada has made proposals based on a flexible, incentives-based regulatory framework that recognizes the new perspectives and opportunities that foreign online undertakings can bring to the system. We have been constructive participants and made proposals that are consistent with the text, context and purpose of the Act and Policy Direction.¹⁰ This includes, but is not limited to, our proposals for what would constitute equitable contributions by foreign online undertakings.

9. As set out in Appendix A to this submission,¹¹ to be equitable under the Act and Policy Direction: (a) foreign online undertakings must be subject to a lower financial and non-financial contribution standard than Canadian broadcasting undertakings in recognition of their global business models; (b) whether and how an online undertaking should contribute must be determined on the basis of the individual undertaking and not its affiliated entities or broadcasting ownership group; (c) contributions of foreign online undertakings should be equitable vis-à-vis comparable Canadian HVID services and online undertakings; (d) foreign online undertakings in the business of creating, producing and broadcasting content should be allowed to contribute via Canadian programming expenditures (“CPEs”) and not mandated contributions to funds; (e) foreign online undertakings should be given the flexibility to contribute via funds where appropriate and should also be given flexibility in meeting their expenditure requirements; (f) in certifying Canadian programs vis-à-vis foreign

⁸ Broadcasting Notice of Consultation CRTC 2024-288: *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector*, 15 November 2024 (“BNC 2024-288”), Preamble.

⁹ BNC 2024-288, para. 33.

¹⁰ As set out in our January 20, 2025 written intervention, our May 16, 2025 oral remarks at the public hearing and our June 12, 2025 RFI responses, all of which are incorporated by this reference.

¹¹ These proposals were made by MPA-Canada in response to RFI Q.15 and are attached for convenience. MPA-Canada notes that the issue of what constitutes “equitable” is currently before the Federal Court of Appeal as part of the appeal and judicial review of BRP 2024-141 and BRP 2024-121-1. We therefore reserve all rights in this regard.

online undertakings, the Commission must apply a key creatives test based on the greatest practicable use of Canadian creative and other human resources, with no mandatory Canadian positions; (g) the existing contributions of foreign online undertakings, especially with respect to employment of Canadian creative talent and support of Canadian programs, must be considered; (h) required contribution levels should not be disproportionate relative to clearly identified and substantiated objectives to address market failure; and (i) thematic, niche or nascent services should be exempt from contributions where such imposition would result in a net loss to the system.

10. The Commission must hold fast to its stated objectives throughout its deliberations – particularly in the face of proposals that are not only inconsistent with its objectives, but also with the text, context and purpose of the Act.¹²
11. We ask that the Commission adopt our proposals, which will help to build a “sustainable broadcasting system ... that is financially resilient and capable of adapting to technological advancements and changing market dynamics. A system in which broadcasters contribute in the most effective and appropriate way for their business models. And a system that promotes fair competition, diversity and innovation”.¹³

(A) RECOGNIZE THE NEW PERSPECTIVES & OPPORTUNITIES ONLINE UNDERTAKINGS BRING

12. Certain interveners argue that foreign online undertakings should be required to contribute to Canadian programs (under the existing or a more restrictive definition) only via funds that benefit Canadian industry players. They base their arguments on s. 3(1)(a) of the Act, which they interpret as inflexibly requiring foreign online undertakings to cross-subsidize Canadian participants to ensure their sustainability.¹⁴
13. This interpretation is not supported by the Act or the Policy Direction and if adopted, it will prevent the Commission from meeting its objective to “recognize the new perspectives and opportunities that online undertakings bring to the broadcasting system”.¹⁵
14. As explained during the legislative review of Bill C-11,¹⁶ s. 3(1)(a) of the Act refers to the existing foreign ownership restrictions that apply only to traditional Canadian broadcasting undertakings and prevent the Commission from issuing, amending or renewing a broadcasting licence to a non-Canadian.¹⁷ That aspect of s. 3(1)(a) has nothing to do with online undertakings, which are not subject to foreign ownership restrictions. Therefore, s. 3(1)(a) of the Act does *not* require the subsidization of Canadian broadcasting undertakings or other industry participants by foreign online undertakings.

¹² In *Telus Communication Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15 (CanLII), para. 3, the Supreme Court of Canada indicated that the Commission’s decisions cannot be inconsistent with “the text, context, and purpose” of the statute. While that decision dealt with the *Telecommunications Act*, the principle is equally applicable to the Commission’s decisions under the *Broadcasting Act*.

¹³ Chairperson Eatrides, Speech to the Banff World Media Festival: “From Pitch to Production: Building Canada’s broadcasting framework of the future”, 9 June 2025.

¹⁴ For instance, Quebecor and CMF.

¹⁵ BNC 2023-138, Preamble and para. 15.

¹⁶ Standing Committee on Canadian Heritage, Study on Bill C-11, [June 14, 2022](#).

¹⁷ As contained in the *Direction to the CRTC (Ineligibility of Non-Canadians)*.

15. Restricting the participation of foreign online undertakings in the Canadian broadcasting system in the manner these interveners suggest would be discriminatory and inconsistent with the text, context and purpose of the Act.¹⁸
16. It would also deny the Canadian broadcasting system the new skills and perspectives that foreign online undertakings bring, based on their decades of production experience and exposure to world-class best practices, successful regulatory models and cutting-edge technical innovations. Further, Canadian creatives will suffer significant missed opportunities in the form of jobs, mentorship, training, skills transfers and development and international exposure, and Canadian audiences will not experience world-class and culturally significant Canadian programs¹⁹ if foreign online undertakings are prevented from contributing via direct investments in Canadian programs and in a manner that allows them creative control.
17. As the DGC notes, permitting foreign online undertakings to contribute via CPEs would be a very impactful strategy for creating high-quality Canadian content:

MR. FORGET: ...the streamers have expressed a preference that it be CPE requirements, and, you know, as the entities who are commissioning content, we're actually pleased to see that. *They are in the business of creating content.* The notion of seeking partnerships with Canadian independent producers to develop more high-quality content that they would commission for their services. We heard from CBC, I believe it was yesterday, talk about the kind of partnerships that they've had. We see that as being *a very impactful strategy for creating high-quality content into the system.*²⁰ [emphasis added]

18. Today, the MPA Companies and their affiliated MPA Studios are among the global producers that provide the majority of employment for Canadian film and television workers. These are well-paid, high-quality, unionized jobs providing global exposure and invaluable training for Canadian talent, which increases their value to future productions by Canadian broadcasters. The MPA Companies and their affiliated studios are also among the foreign financing partners supporting more than \$1 billion in Canadian-owned content annually.²¹
19. In short, foreign online undertakings make direct and indirect investments in Canadian creative talent and Canadian programs that benefit the entire broadcasting system, including Canadian broadcasting undertakings. The Commission should incentivize such investments so as to ensure that Canadian talent benefits from the world-class knowledge and experience of foreign online undertakings. Mandating contributions via funds ignores these opportunities by focusing solely on extracting money from some undertakings and transferring them to others.
20. Foreign direct investment and Canadian cultural objectives are not opposing forces – they are mutually reinforcing. While the public debate on investments in Canada's audiovisual

¹⁸ As described in MPA-Canada's response to Q.15 and Q.16 in its RFI response letter.

¹⁹ As described in the RFI responses to Q.14 filed by MPA-Canada, Amazon, Disney, Netflix and Paramount.

²⁰ Directors Guild of Canada, Transcript of Public Hearing, May 27, 2025, para. 8261.

²¹ CMPA, Profile Report 2023.

(“AV”) sector is often framed around the distinction between foreign versus domestic production, the reality is much more nuanced. There are a broad range of business models that exist within the industry, which in turn have varying degrees of impact on the Canadian film, television, and streaming ecosystem. The Commission should not impose any regulatory requirements without accounting for how these impacts advance the objectives of the Act.

(B) A MODERNIZED APPROACH TO CONTRIBUTIONS

21. Certain interveners have argued that when it is interpreting the meaning of “equitable” contributions, the Commission should rely more on s. 9 of the Policy Direction than s. 3(1)(f.1) of the Act, in support of their arguments that foreign online undertakings should make financial contributions that are equal to or higher than those made by Canadian broadcasting undertakings.²²
22. In order to determine what constitutes equitable contributions by foreign online undertakings, the Commission must use a holistic approach to interpret the relevant provisions of the Act and Policy Direction, as set out in Appendix A. These provisions make it clear that the financial contributions of foreign online undertakings must be consistent with the “greatest practicable use standard” set out in s. 3(1)(f.1) of the Act.
23. In other words, the two parts of the s. 3(1)(f.1) contribution standard must coherently exist. Foreign online undertakings cannot be expected to make the greatest practicable use of Canadian creative and other human resources *and* make maximum or predominant financial contributions – when it is evident from s. 12(e) of the Policy Direction and the legislative debates that the legislative intent is that foreign online undertakings in the business of production would make their financial contributions via direct investments in Canadian programs (i.e., using Canadian creative and other human resources).²³
24. The imposition of equal or higher contributions would be inconsistent with the text, context and purpose of the Act and would result in a discriminatory impact on foreign online undertakings. Required contribution levels should not be disproportionate relative to clearly identified and substantiated objectives to address market failure.²⁴ The entertainment industry has entered a period of significantly slower growth after years of aggressive expansion.²⁵ Global content spending patterns reveal a dramatic deceleration with future content spending expected to be relatively flat or even decline.²⁶ The Commission should not base its decisions on historical spending, when the era of peak TV is over.
25. Consistent with the Policy Direction, the contribution level for foreign online undertakings should be determined only after the definition of a Canadian program has been finalized and then, allowing for the proper due process required in determining an issue of this importance,

²² For example, Rogers, Transcript of Public Hearing, May 23, 2025, para. 6325 and Corus, Transcript of Public Hearing, May 16, 2025, para. 1888.

²³ See MPA-Canada’s response to RFI Q.16.

²⁴ Pursuant to s. 12(a) of the Policy Direction, expenditure requirements must be “proportional to their objectives” and the Commission must ensure “those objectives are clear”.

²⁵ [Ampere Analysis, 2023](#) & [Variety.com](#).

²⁶ [The Hollywood Reporter](#) referencing Moffett Nathanson Analysis, 2023.

established for individual undertakings at the tailored conditions of service stage in a manner that is consistent with the other requirements of the Policy Direction and the Act.²⁷

Success requires audience-first thinking

26. The Commission has stated that it intends to use an “outcomes-based approach” and “design a new contribution framework that is flexible and focuses on clearly defined, measurable regulatory objectives without specifying precisely how those objectives must be achieved”.²⁸ Therefore, the Commission must reject proposals by certain interveners that would require it to specify precisely how contributions should be allocated. These include (but are not limited to) proposals for mandated contributions to funds or programming genres that are alleged to be “at risk”, and proposals for shelf-space requirements.
27. In addition to being inconsistent with the text, context and purpose of the Act, mandated contributions to funds divert money away from other more meaningful ways that foreign online undertakings can contribute. There is no evidence that funds are “at risk”.²⁹ A dollar spent by a fund does not have the same impact as a dollar spent by foreign online undertakings on direct investment in productions, which provide support to the wider industry through spending on infrastructure, talent and skills development and promoting Canadian stories. The long-term sustainability of the Canadian broadcasting sector depends on strong components of the value chain, particularly professional development of skills and talent, as well as the promotion and discoverability of Canadian creators and programs.
28. In terms of “at risk” programming, the onus should be on the party making such claims to prove it with verifiable, long-term evidence. Based on data published by the CMPA, no particular program genre is at risk.³⁰ Where it is proven that a type of programming is at risk, then consistent with the Commission’s stated intent, any requirement to support such programming should be incentives-based, rather than prescriptive.
29. Telefilm’s proposal to impose a “dedicated shelf space requirement for Canadian features and documentaries on online platforms and on other on-demand services”³¹ should also be rejected. The Government has specified that rather than imposing “quotas on content catalogues”, the Commission should rely on the incentive for online undertakings to make available Canadian content in order to recoup their investments in such programs.³²
30. The premise of mandating expenditures on specific program genres or securing “shelf space” assumes scarcity that simply does not exist anymore. Mandating shelf space will do nothing to achieve the objectives of the Act in an environment with nearly infinite programming options. The real challenge is not getting productions made – it is creating programs that audiences want to watch.

²⁷ See MPA-Canada’s response to RFI Q.20.

²⁸ BNC 2023-138, para. 58.

²⁹ See MPA-Canada’s response to RFI Q.22.

³⁰ See MPA-Canada’s response to RFI Q.23.

³¹ Telefilm, Transcript of Hearing, May 20, 2025, para. 2328.

³² RIAS to Policy Direction – “Comparisons with other jurisdictions”.

31. The Canadian broadcasting system has historically been focused on the supply of certain categories of programming, rather than the demand for such programming.³³ As Rogers stated at the public hearing:

MR. SHAIKH: My fear is that because there's a perceived market outcome that the Commission is not satisfied with, it may introduce regulatory tools that really aren't about market failure but actually create market distortions and inefficiencies ...the answer to declining audiences, the answer to decreased demand cannot be more funds, more subsidies that oversupply in response to declining demand, that undermine the entire market and where we should actually be properly allocating [our] spending.³⁴

32. Audience demand is constantly changing and all broadcasting undertakings must be allowed to be nimble in order to “reflect and be responsive to the preferences and interests of various audiences”.³⁵ The Commission has heard from virtually every Canadian broadcaster in this proceeding that a prescriptive model that forces broadcasting undertakings to fund a certain category of programming that was perceived to be “at risk” at a particular moment in time, restricts the ability of those undertakings to adapt to changing circumstances.³⁶
33. In today's market, programming cannot succeed simply because it is mandated. Success requires audience-first thinking. Canadian stories that connect with viewers – both domestically and internationally – will find their audience and generate sustainable investment. Regulatory quotas cannot manufacture cultural relevance.
34. Canadian programs now compete on a global stage and global competition demands excellence. The most effective way to support Canadian creators is to focus on developing world-class storytelling that can succeed anywhere, rather than protecting programming that only exists because of regulatory requirements.

³³ For example, see Transcript of Public Hearing:

- Irene Berkowitz, May 16, 2025, para. 1753: “Our chronic pain point in three words: low audience, audience, audience. Our CanCon was well built to increase supply and not meet demand. Its forcing function is volume, not reach. In my research, a Canadian network exec worried, “If you can make an okay show and get renewed, why make a great one?” Another exec put it like this: “I don't see the incentive to prove the content is market worthy.””
- Corus, May 16, 2025, paras. 1971-1972 and 2021: “...I think there is a lot of focus ... on the supply side, ensuring a certain amount of production is consistent in specific genres. I would maybe direct the Commission's attention to the question of capacity, the capacity of the system to continue to deliver production at those levels. ...you absolutely have to be conscious of the distribution environment. You can't just focus on the supply side as it relates to kids' programming. Forcing broadcasters who have limited distribution opportunities to make programming that may not be distributed is not a tenable proposition.”
- MPA-Canada, May 16, 2025, paras. 2641-2643: “...we are not in a world where supply matters. We are in a world where demand matters, and so there is no point in shelf space if there is not an audience that is eager to consume. ... that is also one of the challenges that the Commission has now, which is these old frameworks were based on supply...We are in the world of infinite supply now, and so to your point, marketing and promotion on and off service is absolutely critical.”

³⁴ Rogers, Transcript of Public Hearing, May 23, 2025, paras. 6217-6218 and 6222.

³⁵ Act, s. 3(1)(d)(v)

³⁶ See for example, Transcript of Public Hearing: Corus, May 16, 2025, para. 1969; Anthem Sports and Entertainment, May 23, 2025, paras. 6053-6054; Blue Ant Media, May 27, 2025, paras. 8149-8151.

35. In a world with millions of hours of entertainment, marketing is now as critical as production. Marketing and promotion to global audiences can cost as much as production itself and is essential for success. The latest public opinion polling shows Canadians believe “promoting and marketing Canada to the world” is one of the most beneficial contributions global studios and streamers make.³⁷ A modern regulatory framework should recognize and value these promotional investments as major contributions to Canadian programs and as eligible CPEs. Without marketing, even great Canadian stories remain invisible. These marketing investments create authentic discoverability by building genuine audience interest.
36. Foreign online undertakings must be permitted to make direct investments in high-quality Canadian programs that audiences want to watch. *Investment has to follow demand.* A regulatory approach that ignores audience preferences ultimately undermines the very Canadian programs it seeks to promote by divorcing it from market realities.

Mandated contributions to a SEIP fund would be inconsistent with the Act

37. The Commission should reject the proposals made by BCE and other interveners that foreign online undertakings should be forced to pay into a fund to support the entire cost of services that the Commission has ordered BDUs to distribute pursuant to s. 9.1(1)(h) of the Act (commonly referred to as “s. 9.1(1)(h) services”, “services of exceptional importance” or “SEIPs”).
38. There is no nexus between foreign streaming services and SEIPs. General entertainment streaming services are not BDUs and an online undertaking is explicitly carved out of the definition of “distribution undertaking” in s. 2(1) of the Act. In addition, the Act does not provide for the funding of the entire cost of s. 9.1(1)(h) services by online undertakings.
39. Moreover, there is no proven need or market failure that warrants a SEIP fund. As the Commission recently held in denying two SEIP services access to the Independent Local News Fund, SEIPs “benefit from mandatory carriage on the basic service of BDUs and receive an associated wholesale rate ...Recently, APTN’s rate increased, and CPAC’s ultimate ownership includes a majority stake from vertically integrated entities”.³⁸ Given that BDUs receive retail subscription fees from their subscribers for their carriage of SEIPs as part of their basic service, there is a clear nexus between BDUs and SEIPs and they should continue to fund SEIPs.

(C) A MODERNIZED DEFINITION OF A “CANADIAN PROGRAM”

40. Certain interveners have resisted *any* changes to the current definition of a Canadian program. If adopted by the Commission, these proposals would violate the spirit and intent of the Policy Direction, which directs the Commission to “prioritize” redefining Canadian programs given its “foundational” nature.³⁹ Indeed, upon tabling Bill C-11, then Heritage Minister Rodriguez indicated that the definition of a Canadian program would have to be modernized.⁴⁰ As Chairperson Eatrides recently noted, “[t]he definition matters because it

³⁷ See MPA-Canada website, [Expert’s Polling Report: How Canadians View the Contributions of Global Studios & Defining Canadian Content](#).

³⁸ Broadcasting Decision CRTC 2025-133: *Review of the Independent Local News Fund*, 9 June 2025, paras. 16-17.

³⁹ Policy Direction, s. 19 and Regulatory Impact Analysis Statement (“RIAS”) - “Redefine Canadian programs”.

⁴⁰ CPAC, [“Heritage Minister Discusses Online Streaming Bill”](#), February 2, 2022.

is tied to what is broadcast, what is supported by funding, and therefore, what gets greenlit and aired”.⁴¹

41. In addition, some interveners are urging the Commission to make it *more difficult* for foreign online undertakings to certify any of their productions as a Canadian program. These include additional mandatory Canadian positions,⁴² residency requirements, no ability to share positions between Canadians and non-Canadians, animation functions having to be performed entirely within Canada, and more. This would also be inconsistent with the Act. Parliament clearly intended that foreign online undertakings that are in the business of production would be permitted to contribute by producing Canadian programs (as redefined).⁴³ Like Canadian broadcasters, those foreign streaming services should be able “to invest directly in Canadian programming and maximize those dollars rather than send them over to our competitors”⁴⁴ via contributions to funds such as the CMF. We agree with Rogers that based on “core principles [of] fairness and equitability ... if you’re paying into a fund, you should be able to, obviously... participate and benefit from the proceeds of that”.⁴⁵
42. The definition of a Canadian program will dictate virtually all of the future potential obligations of foreign AV online undertakings, including expenditure obligations to: (a) develop, finance, produce or promote Canadian programs,⁴⁶ (b) support, promote or train Canadian creators of such programs,⁴⁷ and (c) showcase and enhance the discoverability of Canadian programs.⁴⁸
43. If the Commission were to adopt a Canadian program definition that would make it virtually impossible for foreign online undertakings to produce programs that qualify as Canadian or require them to contribute to production funds like the CMF that they cannot access – that would significantly prejudice the manner in which they may meet their regulatory obligations, given their business models and the nature of the services they provide.
44. MPA-Canada has proposed a key creatives test that reflects how modern productions are made.⁴⁹ As IATSE notes, including more creative positions creates more incentives to hire Canadians while the current restrictive test has the opposite effect:

MR. LEWIS: ...it has to be the broad range of creative positions, because this is an incentive to hire Canadians. We want productions to try to be Canadian content -- meet the criteria. To do so means they have to hire Canadians to do that. Right now, it’s such a small restrictive 10

⁴¹ Chairperson Eatrides, Speech to the Banff World Media Festival: “From Pitch to Production: Building Canada’s broadcasting framework of the future”, 9 June 2025.

⁴² See MPA-Canada’s RFI response to Q.19 for our opposition to including a mandatory Canadian showrunner in the key creatives test.

⁴³ As described in MPA-Canada’s response to Q.16 in its RFI response letter.

⁴⁴ Rogers, Transcript of Public Hearing, May 23, 2025, para. 6208.

⁴⁵ Rogers, Transcript of Public Hearing, May 23, 2025, paras. 6313 and 6315.

⁴⁶ Act, s. 11.1(1)(a).

⁴⁷ Act, s. 11.1(1)(b)

⁴⁸ Act, s. 9.1(1)(e).

⁴⁹ Summarized in Appendix D to MPA-Canada’s January 20, 2025 intervention.

out of 10 that was created 30, 35 years ago, and it doesn't reflect the changing technology.⁵⁰

45. Under our proposal, a foreign online undertaking must score at least 51% on the key creatives test. In other words, the key creative positions must primarily or for the most part⁵¹ be filled by Canadians.⁵² That is a fair, reasonable and practical application of the “greatest practicable use” of Canadian creative and human resources, as set out in s. 3(1)(f.1) of the Act for foreign online undertakings.

Cultural elements connect domestic and global audiences to Canadian stories

46. The Commission is now required to consider “whether a program furthers Canadian artistic and cultural expression”.⁵³ Both the Government⁵⁴ and the Commission have emphasized the importance of telling Canadian stories. Cultural elements connect domestic and global audiences to Canadian stories.⁵⁵
47. This cultural requirement can be met by the Commission incenting cultural elements, not requiring them in every Canadian program. To this end, we have proposed a non-mandatory incentive that would *not* result in a program that would otherwise qualify as Canadian being disqualified because it does not contain a cultural element. It would simply incentivize and reward a broadcasting undertaking where the Canadian program that it invests in includes a cultural element.
48. As the CMF noted, given the number of successful international examples, it is possible to include cultural elements into the Canadian program certification test in a manner that is not restrictive or subjective:

MS. CREIGHTON: I think the issue on the cultural elements, we see it as much more flexible and optional. So there was some research done, and out of nine countries, considering cultural content with criteria like nationality, which Canada has, location, and cultural content, Canada is the only country that has a hundred per cent nationality as a criteria. So if eight countries include other elements, then obviously it's possible to assess a project on its cultural content or location objectivity.⁵⁶

(D) A MODERNIZED APPROACH TO IP

49. The Commission has set out its objectives for a modernized approach to IP rights retention in a program that: (a) maintains, strengthens, expands and protects Canada's competitiveness in the AV production industry; (b) ensures continued international investment in the Canadian production system; (c) is flexible enough to accommodate diverse business models

⁵⁰ IATSE, Transcript of Public Hearing, May 21, 2025, para. 3994.

⁵¹ “Primarily” is defined as “for the most part” in the Merriam-Webster Dictionary and Cambridge Dictionary.

⁵² Consistent with s. 10(1.1)(b) of the Act.

⁵³ Act, s. 10(1.1)(c), emphasis added.

⁵⁴ See Appendix C to MPA-Canada's January 20, 2025 intervention.

⁵⁵ This is supported by the Commission's *Perceptions of Canadian Programming and News Report* and the public polling and expert report in Appendix F to MPA-Canada's January 20, 2025 intervention.

⁵⁶ CMF, Transcript of Public Hearing, May 26, 2025, para. 7093.

and distribution methods; (d) facilitates the exportability of Canadian programming and formats; (e) encourages all types of players to make Canadian programming discoverable both domestically and abroad, on traditional and online platforms; and (f) facilitates the ownership of content by Canadian entities, including Canadian broadcasters.⁵⁷

50. Those objectives will *not* be realized if Canadian IP ownership is mandatory for a program to be certified as Canadian. As IATSE notes, “if you have a production that hits everything, but it doesn’t hit the IP ownership, where is the incentive then to hire Canadians?”⁵⁸ In order for the Commission to make its objectives a reality, it cannot mandate Canadian IP ownership. It must also eliminate the existing requirement for a Canadian producer to have creative and financial control of a production, which serves as a *de facto* Canadian IP requirement that ignores the objectives of the Act. As IATSE notes:

MR. LEWIS: We urge the Commission to eliminate Canadian IP ownership as a mandatory requirement for certification. It should instead be one optional way to earn points. IP ownership is important, but the Perceptions report makes clear that it’s not what audiences are thinking about when they consider whether a show is Canadian.

Right now, productions created by predominantly Canadian teams -- shot in Canada, featuring Canadian characters, telling Canadian stories -- can be denied certification solely because the IP is held outside the country. That disconnect undermines both the intent of the CanCon system and the public’s trust in it.

Instead, we propose assigning IP ownership a point value -- alongside other production and cultural criteria. This flexible approach would acknowledge the reality that international productions are the largest employers of Canadian creatives, and are often creators of *bona fide* Canadian stories, while ensuring Canadian voices remain at the forefront.⁵⁹

51. The findings of the Commission’s *Perceptions of Canadian Programming and News Report* referred to in the above quotation are also supported by ongoing national public opinion research commissioned by MPA-Canada.⁶⁰ The corresponding expert’s report notes that “Canadians believe the definition of Canadian content should not hinge on whether a film or show is owned by a Canadian production company – they prefer to see a broader set of benefits for Canadians used to frame policy in this area, including recognizing productions that hire locally, feature Canadian locations and use Canadian studios”.⁶¹
52. Rogers’ statement that foreign location services productions are “largely financed by public taxpayers” with “no direct investment from the foreign undertaking”⁶² is a blatant

⁵⁷ BNC 2024-288, para. 33.

⁵⁸ IATSE, Transcript of Public Hearing, May 21, 2025, para. 4002.

⁵⁹ IATSE, Transcript of Public Hearing, May 21, 2025, paras. 3976-3978.

⁶⁰ Originally attached as Appendix F to MPA-Canada’s January 20, 2025 intervention.

⁶¹ See MPA-Canada website, [Expert’s Polling Report: How Canadians View the Contributions of Global Studios & Defining Canadian Content](#).

⁶² Rogers, Transcript of Public Hearing, May 23, 2025, para. 6196.

mischaracterization. Using Rogers' rationale, given that the Canadian Film or Video Production Tax Credit ("CPTC") provides a higher tax credit than the Production Services Tax Credit ("PSTC"), Canadian broadcasters that count a program receiving the CPTC credit would be utilizing even more financing by public taxpayers and applying it towards their CPEs.

53. Production tax credits are economic development tools that offer tax incentives based on labour expenses the producer incurs. In 2022, productions by MPA Studios *alone* supported over 38,986 local Canadian businesses with over \$4.8 billion in spending across Canada.⁶³ The benefits of foreign location services productions flow to the Canadian economy through wages and local business activity, not as subsidies to foreign producers. More broadly, the spin-off benefits generated as a result of this economic development has meant the Canadian production sector has grown in quality and sophistication years before the domestic market alone could have justified building the same capacity.
54. The Commission must also resist calls to adopt CAVCO's more restrictive definition for Canadian content. That definition mandates that a Canadian production company or prescribed person (which includes a licensed Canadian broadcaster) must be the copyright holder for all commercial exploitation of a program for at least 25 years and control initial licensing of all commercial rights. CAVCO's definition of Canadian content serves an entirely different purpose of determining eligibility for the CPTC under the *Income Tax Act*, which is designed to create exclusive benefits for Canadian production companies and prescribed persons, including licensed Canadian broadcasters.⁶⁴
55. The Commission's task of redefining what constitutes a "Canadian program" serves a fundamentally different purpose than production tax credits. It will establish the basis for the financial contribution requirements for foreign online undertakings that are being brought into the Canadian broadcasting system for the first time. It cannot be done in a manner that creates exclusive benefits for Canadian broadcasting undertakings, while prejudicing foreign online undertakings.
56. Instead, the Commission should allow for various IP models that support investment and balance the economic benefits of holding/sharing the IP of a production with incentives to collaborate and partner between Canadians, including Canadian broadcasters, and foreign online undertakings.⁶⁵ The co-venture model is one such model and should be retained without a Canadian IP requirement, which would eliminate its utility for Canadian and foreign co-venturers.⁶⁶
57. As 9 Story Media Group indicated at the public hearing, "there may be good policy reasons why some productions could qualify as Canadian by the CRTC that do not qualify as Canadian by CAVCO" and it would support an expansion of such types of productions. 9 Story also provided as an example, its co-venture series *Daniel Tiger's Neighbourhood*,

⁶³ See KPMG Report attached as Appendix B to MPA-Canada's January 20, 2025 intervention.

⁶⁴ CAVCO, CPTC Application Guidelines, Section 3.03, p.19.

⁶⁵ Model 3 as proposed by the Commission in BNC 2024-288, para. 31.

⁶⁶ See MPA-Canada's response to RFI Q.31.

which “has brought tremendous success to 9 Story, who participates in it economically without owning copyright”.⁶⁷

58. We agree with Rogers that “there should be a mix. Broadcasters where they want to invest and own a portion of the intellectual property in a Canadian program that they’ve put up the majority of the financing for, that it’s only fair that they be able to benefit from any kind of future monetization of that programming”.⁶⁸
59. As MPA-Canada noted in its RFI response letter,⁶⁹ mandating Canadian IP ownership as a condition for certification or contribution eligibility is inconsistent with standard international business practices, and particularly misaligned with the nature and operating models of global streaming services.
60. However, should the Commission nevertheless choose to introduce IP ownership as a factor in Canadian program certification, MPA-Canada supports a flexible, and not mandatory, approach to (whole or partial) Canadian IP ownership. Different IP ownership models are required to accommodate the wide diversity of production business models used in today’s global marketplace (i.e., commissioning, financing, licensing, pre-sales, co-production and co-venture agreements and more).⁷⁰ Productions vary dramatically in scale and financial risk profiles and there should not be a one-size-fits-all approach to IP ownership.
61. We have proposed that in order to incentivize productions where Canadians own or share in the IP, the Commission should apply a non-mandatory bonus (worth 2 points) after the application of the key creatives test or alternatively, a CPE credit.
62. This proposal aligns with the policy objectives of the Act to foster collaboration between Canadian and foreign broadcasting undertakings; is supported by key industry stakeholders (including IATSE); reflects practices in other international markets; fits with the operating models of global streaming services; and represents a strong path to growing the Canadian broadcasting industry.

Codes of practice (terms of trade) will impede the Commission’s objectives

63. MPA-Canada supports collaborative relationships with Canadian independent producers. However, the MPA Companies (and Canadian broadcasters) oppose the CMPA and AQPM proposals to reimplement terms of trade or codes of practice.
64. The CMPA indicated that codes of practice exist in France and the UK,⁷¹ without explaining that codes of practice in the UK (as well as in Germany) are restricted only to public service broadcasters, not private broadcasters or online undertakings. The model in France is part of

⁶⁷ 9 Story Media Group, Transcript of Public Hearing, May 27, 2025, paras. 8297-8299.

⁶⁸ Rogers, Transcript of Public Hearing, May 23, 2025, para. 6336.

⁶⁹ MPA-Canada’s response to RFI Q.28.

⁷⁰ For a discussion of the diversity of business models, see Section 3.2 of KPMG Report appended as Appendix B to MPA-Canada’s January 20, 2025 intervention.

⁷¹ CMPA, Transcript of Public Hearing, May 23, 2025, para. 6436.

a complex regulatory regime that makes France an outlier in many respects and has resulted in unintended negative consequences.⁷²

65. Codes of practice “put the thumb on the scale ... in negotiations between different business entities”⁷³ and require the Commission to “manage commercial relationships”.⁷⁴ We question the Commission’s jurisdiction to impose codes of practice on foreign online undertakings, given that its dispute resolution power under s. 10(1)(h) of the Act does not extend to foreign online undertakings or production companies. Therefore, there would be no utility to the Commission imposing codes of practice that it cannot enforce or oversee. Parliament used “precise and narrow language... tightly constraining”⁷⁵ the Commission’s authority to intervene in the economic and commercial relationships of online undertakings and the Commission “must respect the legislature’s choice in this regard”.⁷⁶
66. Moreover, in Canada, terms of trade were a failure. When it dismantled terms of trade in 2015, the Commission recognized that to create “higher-quality Canadian programming with more success domestically and internationally”, broadcasting undertakings should have the option to own equity in the content and IP so that they have “an incentive to promote its long-term exploitation and export”, as Canadian producers often lack the capacity to do so.⁷⁷
67. Given the new objective under the Act to “foster an environment that encourages the development and export of Canadian programs globally”⁷⁸ and the wide variety of business models now used to make AV productions, it is more important than ever to retain flexibility through market negotiations, as opposed to being bound by rigid codes.
68. MPA-Canada appreciates the opportunity to submit this final reply submission on behalf of the MPA Companies.

All of which is respectfully submitted,



Wendy Noss
President, Motion Picture Association – Canada

Att. Appendix A - What Constitutes Equitable Contributions by Foreign Online Undertakings

⁷² See MPA-Canada’s response to RFI Q.20 and Netflix’s response to RFI Q.21.

⁷³ CAB, Transcript of Public Hearing, May 14, 2025, para. 323.

⁷⁴ Corus, Transcript of Public Hearing, May 16, 2025, para. 1985.

⁷⁵ *Auer v. Auer*, 2024 SCC 36 (CanLII), para. 62.

⁷⁶ *Ibid.*

⁷⁷ Broadcasting Regulatory Policy CRTC 2015-86: *Let’s Talk TV - The way forward - Creating compelling and diverse Canadian programming*, 12 March 2015, paras. 117 and 121.

⁷⁸ Act, s. 3(1)(d)(ii).

Appendix A

What Constitutes Equitable Contributions by Foreign Online Undertakings⁷⁹

The following provisions when interpreted in a manner that is consistent with the “text, context, and purpose”⁸⁰ of the Act provide clear factors the Commission should consider in determining what would constitute “equitable” contributions by foreign online undertakings to support the creation, production and presentation of Canadian programming.

- a. ***Foreign online undertakings must be subject to a lower financial and non-financial contribution standard than Canadian broadcasting undertakings in recognition of their global business models:*** Financial contributions must be made “in an equitable manner” that is consistent with the contribution standard of “the greatest practicable use of Canadian creative and other human resources” applicable to foreign online undertakings (Act, s. 3(1)(f.1)). This is an objectively lower standard or lesser requirement than “maximum use and no less than predominant use” standard applicable to Canadian broadcasting undertakings (Act, s. 3(1)(f)) – as evident from the excerpt from the legislative debates reproduced in our response to Q.16 below. In establishing s. 3(1)(f.1), Parliament has determined that “it is just not realistic”⁸¹ for foreign online undertakings to make maximum or predominant use of Canadian creative and other human resources in the creation, production and presentation of programming and therefore, consistent with s. 5(2)(a.2) of the Act, s. 3(1)(f.1) requires online undertakings to contribute to the creation, production and presentation of programming in an equitable manner.
 - This means that while the contributions (both financial and non-financial) of foreign online undertakings must be equitable, they do not have to be equal to that of Canadian broadcasting undertakings – which was rejected by Parliament, as set out in our response to Q.16 below. Indeed, pursuant to s. 3(1)(f.1), the contributions of foreign online undertakings should be lower or lesser than that of Canadian broadcasting undertakings.
 - The two parts of the s. 3(1)(f.1) contribution standard must coherently exist. Foreign online undertakings should not be expected to make the greatest practicable use of Canadian creative and other human resources and make maximum or predominant financial contributions – when it is evident from s. 12(e) of the Policy Direction and the legislative debates that Parliament intended that foreign online undertakings that are in the business of producing content would make their financial contributions via direct investments in programs (i.e., using Canadian creative and other human resources).
 - Since foreign online undertakings have global business models based on international content distribution, and these models are dramatically different than licensed

⁷⁹ Reproduced from MPA-Canada’s response to RFI Q.15. MPA-Canada notes that the issue of what constitutes “equitable” is currently before the Federal Court of Appeal as part of the appeal and judicial review of BRP 2024-141 and BRP 2024-121-1. We therefore reserve all rights in this regard.

⁸⁰ In *Telus Communication Inc. v. Federation of Canadian Municipalities*, 2025 SCC 15 (CanLII), para. 3, the Supreme Court of Canada indicated that the Commission’s decisions cannot be inconsistent with “the text, context, and purpose” of the statute.

⁸¹ Senator Gold, Standing Senate Committee on Transport and Communications, Study on Bill C-11, [November 30, 2022](#).

- Canadian broadcasting undertakings operating almost exclusively in a domestic market, it would not be equitable to impose the same or higher contributions on foreign online undertakings vis-à-vis Canadian broadcasting undertakings.
- For any approach to equitable, it must take into account the unique nature of the business of each foreign online undertaking, including the benefits that flow to the participants in the creation of Canadian programs from global exposure. This was clearly Parliament's intent in revising the Act and establishing the s. 3(1)(f.1) contribution standard for foreign online undertakings and in including s. 4 in the Policy Direction, as is evident from the excerpts from the legislative debates reproduced in response to Q.16 below.
- b. ***Whether and how an online undertaking should contribute must be determined on the basis of the individual undertaking and not its affiliated entities or broadcasting ownership group:*** "Each broadcasting undertaking" must be permitted to contribute "in a manner that is appropriate in consideration of the nature of the services provided by the undertaking" (Act, s. 3(1)(a.1)).
- The Commission is required to consider ***each*** broadcasting undertaking (***not its affiliates***) in determining the contributions that would be appropriate for that undertaking and take into consideration the nature of service of each undertaking.
 - This means the Commission should not consider the contributions made by affiliated licensed entities of Canadian online undertakings or HVOD services in determining their contributions.
 - It also means that the financial contribution threshold should be established vis-à-vis individual foreign online undertakings and not their broadcasting ownership groups, as set out in our response to our response to Q.21 below.
- c. ***Contributions of foreign online undertakings should be equitable vis-à-vis comparable Canadian HVOD services and online undertakings:*** Any requirements for financial and/or non-financial contributions must be "equitable given the size and nature of the broadcasting undertaking" and "equitable as between foreign online undertakings and Canadian broadcasting undertakings" (Policy Direction, s. 4). The Regulatory Impact Analysis Statement to the Policy Direction further explains that this means that "[t]he Commission is directed to ensure that any financial or non-financial requirements imposed on broadcasting undertakings are equitable relative to their size and nature, and would ensure ***comparable*** foreign and Canadian undertakings are treated equitably" (emphasis added).
- This means that the financial and non-financial contributions of foreign online undertakings and Canadian HVOD services like Crave and other Canadian online undertakings should be equitable.
 - The Commission has already acknowledged the "similarities"⁸² between online undertakings and HVOD services and that "many Canadians likely view HVOD

⁸² Broadcasting Decision 2023-34: *Publication of aggregate data collected in response to the Annual Digital Media Survey*, 15 February 2023, para. 44.

undertakings as being **comparable** to audiovisual DMBUs [online undertakings]”.⁸³ Practically-speaking, the Crave HVOD service is the closest competitor to the large foreign streaming services.

- d. ***Foreign online undertakings in the business of creating, producing and broadcasting content should be allowed to contribute via CPEs and not mandated contributions to funds:*** “Where appropriate for a given business model and set of objectives”, the Commission must “**prioritize** the imposition of requirements to make expenditures directly on the creation, production and presentation of Canadian programming” (Policy Direction, s. 12(e), emphasis added).

- This means that for foreign online undertakings whose business models are based on creating, producing and broadcasting programming, the Commission should permit those undertakings to first and foremost contribute via CPEs, rather than mandating payments into funds.
- Those CPEs should include **all expenses** related to the creation, production and presentation (i.e., marketing and promotional expenses relating to showcasing and discoverability⁸⁴) of Canadian programs, as set out in our response to Q.22 below.
- That would be equitable as between foreign online undertakings and Canadian broadcasters and equitable given the size and nature of broadcasting undertakings that are engaged in comparable activities, given that Canadian broadcasters (including large ownership groups) are currently permitted to make their financial contributions almost exclusively via CPEs and only pay into funds as part of tangible benefit packages associated with applications for approvals of changes of effective control (which are inapplicable to foreign online undertakings not subject to Canadian ownership and control requirements).

- e. ***Foreign online undertakings should be given the flexibility to contribute via funds where appropriate and should also be given flexibility in meeting their expenditure requirements:*** The Commission must “recognize the diversity of services provided by undertakings” (Policy Direction, s. 12(b)) and “consider providing *flexibility in meeting expenditure requirements*” (Policy Direction, s. 12(c), emphasis added).

- While they should not be forced to make their financial contribution via payments into funds, the above provisions mean that foreign online undertakings should be given the flexibility in meeting their expenditure requirements to choose to contribute via funds, where it is not appropriate for them to contribute via CPEs – for a given set of objectives and/or based on the nature of their service and business model.
- In terms of equity based on the size and nature of undertakings, foreign online undertakings should be provided with the same flexibility in meeting their expenditure

⁸³ *Ibid.*, para. 43, emphasis added.

⁸⁴ Subsection 9.1(1)(e) of the Act states that the presentation of programs for selection by the public include the showcasing and discoverability of such programs.

requirements as currently given to large and mid-sized Canadian broadcasting ownership groups, including:

- by being permitted to use a group-based approach that allows a group member to count CPEs made by another member of the broadcasting ownership group in the same broadcast year towards fulfilling its CPE requirement, provided such expenditures are not double-counted; and
 - by being permitted to make over- and under-expenditures over various broadcast years, provided their overall CPE requirements are met by the end of their licence term, which is generally a 5-year period.⁸⁵ This will be essential for foreign online undertakings to ramp-up their Canadian content development and production under a new regulatory framework. In addition, the ability to balance out and carry over expenditures is crucial given the natural flow of licensing, acquisition, and production deals, which may not line up with fiscal years or reporting periods.
- f. ***In certifying Canadian programs vis-à-vis foreign online undertakings, the Commission must apply a key creatives test based on the greatest practicable use of Canadian creative and other human resources, with no mandatory Canadian positions:*** Subsection 10(1.1)(b) of the Act only requires the Commission to “consider whether” key creative positions are “primarily held by Canadians” as one non-determinative factor among the five factors the Commission must consider in making regulations regarding the definition of a Canadian program. It does not require that key creatives positions must be primarily held by Canadians.
- Notwithstanding, MPA-Canada has borne in mind this consideration in making our proposal that when applying for certification of a program as a “Canadian program”, a foreign online undertaking must score at least 51% on the key creatives test. In other words, under our proposal, the key creative positions must primarily or for the most part⁸⁶ be filled by Canadians. We believe that is a fair, reasonable and practical application of the “greatest practicable use” of Canadian creative and human resources, as set out in s. 3(1)(f.1) of the Act for foreign online undertakings.
 - Conversely, it would be inconsistent with the “greatest practicable use” standard if foreign online undertakings were mandated to fill certain positions or functions with Canadian creative and human resources.
- g. ***The existing contributions of foreign online undertakings, especially with respect to employment of Canadian creative talent and support of Canadian programs, must be considered:*** The Commission must take into account “the nature and diversity of the services provided by broadcasting undertakings, as well as their size, their impact on the Canadian creation and production industry, particularly with respect to employment in Canada and Canadian programming” (Act, s. 5(2)(a.1)).

⁸⁵ A 5-year period is consistent with s. 53(1) of the Act, which provides that the Government must undertake a comprehensive review of the amendments to the Act and of their operation every 5 years.

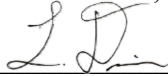
⁸⁶ “Primarily” is defined as “for the most part” in the Merriam-Webster Dictionary and Cambridge Dictionary.

- This requires the Commission to take into consideration foreign online undertakings' existing contributions to the Canadian broadcasting system, and in particular, to Canadian creative talent and Canadian programming, when establishing their contribution requirements.
 - Foreign online undertakings already make significant voluntary investments in the Canadian audiovisual industry. These include: (i) directly commissioning and financing original Canadian series and films; (ii) employing Canadian creative talent, including but limited to, writers, directors, actors, and crews; (iii) showcasing Canadian programs to global audiences through their global platforms; and (iv) supporting talent development initiatives and partnerships with Canadian creators and institutions. These all provide immense value to Canadian creative talent and Canadian programming and should be recognized as tangible contributions of foreign online undertakings to the Canadian broadcasting system.
 - As set in our response to Q.14 above, productions in Canada by global streaming services create more jobs and opportunities for Canadian creative talent at all levels of experience than a production produced only for a domestic market, which generally has a lower production budget and distribution footprint.
- h. ***Required contribution levels should not be disproportionate relative to clearly identified and substantiated objectives to address market failure:*** Expenditure requirements must be “proportional to their objectives” and the Commission must ensure “those objectives are clear” (Policy Direction, s. 12(a)).
- As set out in our response to Q.20 below, this means that the Commission should not impose a ***disproportionate*** financial contribution requirement on foreign online undertakings relative to the objective it is trying to achieve. In addition, that objective should be based on ***clear*** evidence of being “at risk” or undergoing “market failure” that warrants regulatory intervention rather than leaving it to market forces.
- i. ***Thematic, niche or nascent services should be exempt from contributions where such imposition would result in a net loss to the system:*** The Commission is required to take into account the variety of broadcasting undertakings to which the Act applies and avoid imposing obligations on any class of undertaking “if that imposition will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1)” (Act, s. 5(2)(h)).
- As set out in our response to Q.21 below, this requires the Commission to consider whether the imposition of obligations on a foreign online undertaking, such as a thematic, niche or nascent service would result in a net loss to the achievement of the broadcasting policy objectives, if it results in forcing such services out of the market or dissuading them from entering in the first place.

End of Document

D

This is Exhibit "D" referred to in the
affidavit of Sydney Grieve
affirmed before me, this 17th
day of December, 2025



A Commissioner for taking affidavits



MOTION PICTURE ASSOCIATION CANADA

December 11, 2025

Filed Electronically

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

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2025-52 - The Path Forward – Supporting Canadian and Indigenous audio content (“Canadian Audio Content Consultation”)

1. This final post-hearing reply is submitted by Motion Picture Association - Canada (“**MPA-Canada**”) on behalf of the operating companies (“**MPA Companies**”) of the online undertakings (“**MPA Services**”)¹ affiliated with the global studios that are members of the Motion Picture Association (the “**MPA Studios**”).² Some of the MPA Companies may be filing individual post-hearing replies.
2. As with our May 5, 2025 intervention, this reply is limited to the application by FACTOR and the Community Radio Fund of Canada (the “**CRFC**” and collectively with FACTOR, the “**Applicants**”) dated February 7, 2025 (the “**Application**”), which was added by the Commission on April 15, 2025 for consideration in this proceeding.³ The Application asks the Commission to clarify the scope of the confidentiality terms under Broadcasting Regulatory Policy CRTC 2024-121-1⁴ and in particular, to confirm that the identities of online operators required to make base contributions and their contributions are not confidential information and must be provided to the recipient funds on a disaggregated basis.
3. MPA-Canada continues to strongly oppose the Application and requests that the Commission deny it. The Commission’s approval of the Application would violate the *Broadcasting Act*

¹ The MPA Services (and their Canadian operating MPA Companies) include: Crunchyroll (Crunchyroll, LLC); Discovery+ (Discovery Digital Ventures, LLC); Disney+ (Buena Vista International, Inc.); Hayu (Universal Pictures Subscription Television Limited); Netflix (Netflix Services Canada ULC); Paramount+ (Paramount Streaming Canada, a division of Paramount Entertainment Canada ULC); Pluto TV (Pluto Inc.); Prime Video (Amazon.com.ca ULC); and SonyLIV (Sony Pictures Networks India Private Limited).

² Amazon Studios LLC; Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment Inc.

³ Broadcasting Notice of Consultation CRTC [2025-52-3](#): *The Path Forward – Supporting Canadian and Indigenous audio content – Additional information to be considered in this proceeding*, 15 April 2025.

⁴ Broadcasting Regulatory Policy CRTC [2024-121-1](#) and Broadcasting Order CRTC 2024-194: *The Path Forward – Supporting Canadian and Indigenous content through base contributions – Finalization of conditions of service*, 29 August 2024 (“**BPR 2024-121-1**”).

and principles of procedural fairness. The Commission has already issued its final and conclusive decision⁵ on *all* aspects of the Application when it determined in BRP 2024-121-1 that with respect to base contributions:

- (a) the identities of the contributing operators and their respective online undertakings *are* confidential information, and are *not* required to be provided to the recipient funds;
 - (b) the online undertakings' contributions *are* confidential information, and are *not* required to be provided to the recipient funds on a disaggregated basis; and
 - (c) in order to safeguard the confidentiality of the identities of the contributing operators and their contributions, the contribution payments will be monitored by the Commission and will only be reported on an aggregate basis, *unless* an online undertaking chooses to waive such confidentiality vis-à-vis a recipient fund/administrator by entering into a direct agreement with the fund/administrator, such as a non-disclosure agreement.
4. In reliance on the Commission's determinations in BRP 2024-121-1 noted above, the MPA Companies subject to base contribution orders, other applicable operators of online undertakings and funds/administrators did not appeal this aspect of BRP 2024-121-1. They also expended significant time and resources negotiating, finalizing and filing an industry-wide, third-party payments administrator agreement (the "**TPA Agreement**") with Welch Fund Administration Services Inc. ("**Welch**") by the November 28, 2024 deadline established by the Commission. This was the same deadline by which any party could request a confidentiality ruling on the Commission's decision. That deadline had long since expired when the Application was filed by FACTOR and CRFC on February 7, 2025.
 5. There has been nothing added to the public record of this proceeding to justify approval of the Application. Neither the Applicants nor other interveners have attempted to refute MPA-Canada's position as set out above during their appearances at the public hearing of this proceeding or in their post-hearing responses to requests for information ("**RFIs**").
 6. The Application does not provide any cogent rationale as to why the Applicants require disaggregated information. It is the Commission's mandate (not that of recipient funds or fund administrators) to monitor and enforce the payment of base contributions by applicable online undertakings. As Starmaker states in its RFI response, the primary concern is that the Commission collect disaggregated financial information to monitor the accuracy of contributions⁶ in order to fulfill its mandate. Such information, including information that is aggregated at the entity level, does not need to be disclosed to the public in order for the Commission to fulfill its mandate of monitoring compliance.
 7. The TPA Agreement and reporting by Welch to the Commission provides an efficient and less administratively burdensome mechanism by which the Commission can fulfill its mandate. The disclosure of individual revenues or contributions by online undertakings (as opposed to aggregated contributions or revenues at the industry level) will not provide any greater assistance to recipient funds/administrators in predicting future contributions, as

⁵ Pursuant to s. 31(1) of the *Broadcasting Act*, every decision of the Commission is "final and conclusive".

⁶ Starmaker, November 21, 2025 RFI response, at p. 4.

those payments will vary based on the previous year's broadcasting revenues of individual online undertakings and in some cases, will vary depending on which funds are selected to receive contributions by individual online undertakings each year. Therefore, the Commission correctly decided that such information should only be disclosed in an aggregated manner that protects the confidentiality of the financial information of online undertakings and that decision should remain undisturbed.

8. Furthermore, we understand from Welch that the CRFC signed an accession agreement on August 22, 2025 to become a party to the TPA Agreement. Welch also advises that while FACTOR signed an accession agreement on August 26, 2025 to become a party to the TPA Agreement, it chose to terminate its accession agreement effective October 12, 2025. It appears that FACTOR's change of heart was in response to requests by Amazon.com.ca ULC ("**Amazon**") and MPA-Canada for the Commission to render the Application moot, given that both applicants had signed on to the TPA Agreement at that time.⁷ Given that the TPA Agreement guarantees the confidentiality of the identities of the contributing online operators and their contributions, the fact that both applicants acceded to the TPA Agreement and one of the applicants remains a party to the TPA Agreement means that the entire basis for the Application is no longer relevant and the Application should be denied.
9. In addition, we understand from Welch that all eligible audiovisual funds have signed on to the TPA Agreement. This demonstrates the utility of the TPA Agreement as an effective means for preserving the confidentiality of the financial information of online undertakings, enabling the efficient payment of aggregate contributions to funds, and providing full disclosure of individual contributions to the Commission so that it can confirm compliance.
10. Given the Commission's final and conclusive decision in BRP 2024-121-1 to protect the confidentiality of the identity of the payors and their financial information with respect to base contributions, we reiterate the requests made in the Part 1 applications filed on August 8, 2025 by each of Amazon and MPA-Canada. Namely, that each of the funds eligible to receive base contribution payments should be required to accede to the TPA Agreement as a condition of receiving base contribution payments from an operator of an online undertaking that has acceded to the TPA Agreement. In addition, no operator of an online undertaking that has acceded to the TPA Agreement should be required to make base contribution payments, through the TPA Agreement or otherwise, to any fund that has not acceded to the TPA Agreement. The TPA Agreement should also apply to any future contributions required to be made to funds.
11. Subsection 8(f) of the Policy Direction directs the Commission to consider such other "foreign regulatory regimes that affect online undertakings". The importance of confidentiality for financial and sensitive business data is a matter of particular importance for foreign online services. The Commission recognized this when it previously determined that disclosing the financial information of an individual online undertaking would lead to

⁷ While they have not been publicly posted by the Commission, each of Amazon and MPA-Canada filed Part 1 applications on August 8, 2025 (copying all eligible funds), seeking a confidentiality ruling with respect to base contributions as described in para. 9 of this submission. By updates filed on September 5, 2025 by Amazon and on September 11, 2025 by MPA-Canada, both parties requested that the Commission deem the Application moot, as both FACTOR and the CRFC had signed on as parties to the TPA at that time. Amazon also made this request during its [September 18, 2025](#) appearance at the public hearing of this proceeding.

commercial harm⁸ – that fact has not changed despite the Commission’s recent reversal of its position.⁹

12. As Amazon Music, Apple and DIMA note in their responses to RFIs:

- Foreign streaming services operate under fundamentally different business models and competitive dynamics from traditional Canadian broadcasting undertakings.¹⁰
- The public interest rationale that may apply to traditional broadcasting licensees operating on scarce spectrum does not extend to digital streaming services operating in a global, highly competitive environment over the Internet.¹¹
- The competitive sensitivity associated with the international market for online streaming services exceeds any comparable considerations in respect of the domestic market.¹²
 - In the highly competitive global streaming environment, this information could be used to gain unfair advantages in negotiations with content providers, advertisers, and other business partners.¹³
 - Given that the businesses of most large foreign online undertakings are international, data disclosed from one jurisdiction could be extrapolated to others.¹⁴
 - Many foreign online undertakings or their ownership groups are publicly-traded companies that are subject to their own established domestic financial and operational regulatory requirements and practices for accounting, data management, and limited disclosures.¹⁵
- Revenue and expenditure data may reveal commercially sensitive information about business performance and strategic priorities.¹⁶

13. Therefore, the potential harm that they would incur by the release of confidential and competitively sensitive information on the public record would not just be limited to Canada as international competitors of foreign streaming services could also look to these figures as a way to approximate revenues and expenditures in other jurisdictions. This is very different

⁸ For example, Broadcasting Regulatory Policy [2022-47](#): *Annual Digital Media Survey*, paras. 138-146; BRP [2024-121-1](#), paras. 59-61.

⁹ Broadcasting Regulatory Policy [2025-299](#): *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector – Part 1 – Certification framework for Canadian programs, artificial intelligence, data collection and publication, and reporting requirements*, November 18, 2025, paras. 205-213.

¹⁰ Amazon Music, November 24, 2025 RFI response, at p. 16.

¹¹ *Ibid.*

¹² Apple, November 24, 2025 RFI response, at p. 10.

¹³ Amazon Music, November 24, 2025 RFI response, at p. 16.

¹⁴ DIMA, November 24, 2025 RFI response, at para. 37.

¹⁵ *Ibid.*

¹⁶ Amazon Music, November 24, 2025 RFI response, at p. 16.

from Canadian companies that operate only in Canada.

14. Together, these are compelling reasons to deny the Application.
15. The Commission should continue to abide by its previous decisions to safeguard the confidentiality of the financial information of online undertakings at the entity level and to publicly disclose only financial information that is aggregated by industry segment (i.e., audio and audiovisual). As the Commission has previously determined, there is no public policy reason for the disclosure of information at the entity level that could not be addressed by the disclosure of data aggregated at the industry level.¹⁷
16. MPA-Canada appreciates the opportunity to reply on behalf of the MPA Companies.

All of which is respectfully submitted,



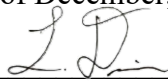
Wendy Noss
President, Motion Picture Association – Canada

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¹⁷ Broadcasting Decision [2023-34](#); *Publication of aggregate data collected in response to the Annual Digital Media Survey*, 15 February 2023, paras. 23-24.

E

This is Exhibit "E" referred to in the
affidavit of Sydney Grieve
affirmed before me, this 17th
day of December, 2025



A Commissioner for taking affidavits



MOTION PICTURE ASSOCIATION CANADA

July 30, 2021

Via GCKey

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

Dear Mr. Doucet:

**Re: Broadcasting Notice of Consultation CRTC 2019-90-1 - Call for
comments on a new, annual digital media survey**

1. Motion Picture Association-Canada (“MPA-Canada”) is pleased to submit these comments in response to Broadcasting Notice of Consultation CRTC 2019-90-1 (the “Notice of Consultation” or “BNC 2019-90-1”). MPA-Canada serves as the voice and advocate of the world’s largest producers and distributors of film, television and streaming content for global audiences. As the Canadian affiliate of the Motion Picture Association, the global studios we represent – including Walt Disney Studios Motion Pictures; Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; and Warner Bros. Entertainment Inc. – are major investors in the Canadian economy through the production of long-running television series, major feature films, and world-renowned post-production, visual effects, and digital animation projects.
2. MPA-Canada appreciates the Commission having undertaken this consultation, which will provide stakeholders with an important opportunity to make their voices heard with respect to the Commission’s consideration of potential modifications to its proposed annual digital media survey and its administration.

Summary

3. MPA-Canada agrees with the concerns expressed by certain interveners in phase one of this proceeding that implementation of the proposed digital media survey at this time would be premature. We also agree with the concerns previously voiced by the Commission and certain interveners that the Commission’s collection of data from digital media services that provide

services in Canada should only be done with “explicit statutory authority”¹, not only for the data collection itself, but for the designation of certain types of information as confidential where “significant commercial, personal or national security harm could be expected were it to be released”.²

4. Legislative amendments to the *Broadcasting Act* that will likely be passed in the near future would:
 - a. allow an orderly transition that would ensure the Commission meets its overall objective of obtaining an accurate picture of the full scope of the digital media broadcasting activities in the Canadian broadcasting system;
 - b. enable the Commission to determine and finalize the contents of the digital media survey based on any obligations imposed as a result of legislative amendments and ensure that the data captured by the survey corresponds to those obligations; and
 - c. provide respondents with the assurance that commercially sensitive and confidential information collected via the survey has been predesignated as confidential by the Commission pursuant to an explicit statutory authority.
5. If the Commission decides to proceed without such explicit statutory authority, we respectfully request that the Commission accord the highest level of confidentiality to the information collected via the annual survey. Specifically, we request that the Commission exercise its discretionary authority to vary its Rules with respect to confidentiality and designate the information filed in response to the survey as confidential in a final and conclusive decision, as it has done in a previous proceeding and as suggested in BNC 2019-90.³ In the alternative, we recommend that the Commission stipulate that sections 30 to 34 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the “Rules”) would apply to confidentiality requests for information filed in response to the survey. In particular, a party should have the right under section 34(2) of the Rules to confirm its designation of information as confidential, in which case the information would not be disclosed or considered by the Commission.

¹ CRTC written public submission to the Legislative Review Panel, 2019 (“CRTC Legislative Review Panel Submission”), at pages 11-12.

² CRTC Legislative Review Panel Submission, at page 12.

³ Broadcasting Notice of Consultation CRTC 2019-90: *Call for comments on a new, annual digital media survey*, 28 March 2019 (“BNC 2019-90”), at para. 7.

6. The information the Commission proposes to collect via the survey is detailed financial and commercial information that is highly confidential, competitively sensitive and proprietary. It is generally treated in a confidential manner and not disclosed by digital media services. Significant commercial harm could be expected if this information were to be released on the public record. This would have a potential chilling effect on further investment in digital media offerings in Canada, with consumers suffering the consequences of a more limited selection of content and choices.
7. MPA-Canada agrees with the Commission's view that the disclosure of disaggregated data is not necessary in order for stakeholders to be informed on the state of digital media broadcasting in Canada. We strongly believe that any information gathered by the Commission for the proposed digital media survey should only be released on the public record or otherwise be made available to any stakeholder or interested party if such information is aggregated on an industry-wide basis or at minimum, aggregated on the basis of all Canadian and all non-Canadian digital media undertakings.
8. With regard to the timing of implementation of the survey, it would be very challenging for global digital media services to compile and report the information contemplated under the proposed survey by fall 2021. MPA-Canada expects that global digital media services would need a reasonable amount of time from the issuance of the final form of survey by the Commission for their companies to be able to compile and report the information in the manner contemplated by the Commission.
9. Consistent with the Commission's stated objectives to minimize the administrative burden and collect only minimum information necessary to achieve its objectives, the Commission should, at minimum, resist proposals to extend the scope and contents of the survey. In addition:
 - a. the survey should be issued no more often than on an annual basis;
 - b. no higher level data, such as additional top-line revenue and subscriber figures, should be collected on a quarterly basis;
 - c. instead of the survey being overly prescriptive in nature and collecting the granular level of detail as currently envisioned, the Commission should adopt a flexible approach to the contents of the survey that can be adapted to the data maintained by a particular digital media service and companies should not be required to expand their data-collection practices in order to respond to the survey; and
 - d. all information gathered via the survey should be limited to historical data that excludes the current fiscal year.

10. Lastly, MPA-Canada supports limiting participation in the survey based on a threshold approach. We believe a threshold based on the level of subscribers of a service would be consistent with other exemption thresholds employed by the Commission. Specifically, all digital media services with fewer than 300,000 subscribers should not have to participate in the survey. Such services should only have to participate in the survey if the number of subscribers increases to more than 350,000 subscribers for a period of more than three consecutive months.

General Comments

11. The Commission has indicated that its main objective with respect to the proposed digital media survey is to collect ‘certain basic financial information relating to digital media activities in order to understand the full scope of those activities and to develop effective regulatory policy’.⁴ In the Notice of Consultation, the Commission is seeking comment on a proposal to extend the proposed survey to apply to all digital media services providing services in Canada, including non-Canadian digital media services operating under the Digital Media Exemption Order.⁵
12. MPA-Canada recognizes that part of the impetus behind the proposal to extend the survey to non-Canadian digital media services at this time may be reflective of the fact that Bill C-10⁶ has not yet completed the legislative process. However, we agree with the concerns expressed by certain interveners⁷ in phase one of this proceeding that implementation of the proposed digital media survey at this time would be premature.
13. In particular, we echo the concerns previously voiced by the Commission and by certain interveners in phase one that the Commission’s collection of data from digital media services that provide services in Canada should only be done with “explicit statutory authority”⁸, not only for the data collection itself, but for the designation of certain types of information as confidential where “significant commercial, personal or national security harm could be expected were it to be released”.⁹ There are several reasons for this.

⁴ BNC 2019-90, at para. 5.

⁵ Appendix to Broadcasting Order CRTC 2012-409: *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, 26 July 2021 (the “Digital Media Exemption Order”).

⁶ *An Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts*.

⁷ For example, the May 14, 2019 submission by the Canadian Association of Broadcasters, at para. 29.

⁸ CRTC Legislative Review Panel Submission, at pages 11-12.

⁹ CRTC Legislative Review Panel Submission, at page 12.

14. First, we expect that legislation to amend the *Broadcasting Act* (whether in the form of Bill C-10 or otherwise) will be passed in the near future. Legislative amendments would ensure an orderly transition, by allowing the Commission to first establish a registry of all digital media services providing services in Canada. It would then be able to determine in a methodical fashion which services should be required to complete the annual survey and ensure that the survey captures all relevant digital media services that provide services in Canada. This would ensure the Commission meets its overall objective of obtaining an accurate picture of the full scope of the digital media broadcasting activities in the Canadian broadcasting system.
15. Second, it would be most efficient for the Commission to determine and finalize the contents of the digital media survey based on any obligations imposed as a result of legislative amendments. That would allow the Commission and the applicable digital media undertakings to ensure that the data captured by the survey corresponds to those obligations. It would also ensure that companies are only required to make any necessary adaptations to their data collection and reporting practices once. As described below, such adaptations may impose a significant administrative burden on respondents.
16. Third, respondents to the survey may be more comfortable filing commercially sensitive and confidential information with the Commission, if they are provided with the assurance that such information has been predesignated as confidential by the Commission pursuant to an explicit statutory authority, as described more fully in the following section.

Confidentiality

17. The Commission has requested comments on “the appropriate level of confidentiality that should be granted to any information provided on the survey form, as well as on the appropriate balance between the public interest benefits of disclosing the information when compared to the associated potential harm”.¹⁰ The Commission has also indicated that it “will carefully consider any submissions expressing views on these matters”.¹¹
18. As noted above, MPA-Canada believes that it would be premature for the Commission to implement the proposed digital media survey at this time. However, if the Commission decides to proceed, we request that the Commission accord the highest level of confidentiality to the information collected via the annual survey.

¹⁰ BNC 2019-90-1, at para. 5.

¹¹ BNC 2019-90-1, at para. 3.

19. In the absence of explicit statutory authority to designate certain types of information as confidential, we note that the Commission has previously exercised its discretionary authority to vary its Rules with respect to confidentiality and has designated sensitive financial or commercial information that is consistently treated in a confidential manner as confidential in a “final and conclusive decision”, prior to such information being filed with the Commission.¹² While this exercise of its discretionary authority was referenced in BNC 2019-90, we are concerned that it has not been suggested by the Commission in BNC 2019-90-1. We respectfully request that the Commission accord the same treatment to the information filed in response to the survey by issuing a similar final and conclusive decision, according confidential treatment to any information that will be filed in response to the survey. In the alternative, we request that the Commission stipulate that sections 30 to 34 of the Rules would apply to its treatment of requests for confidentiality for information filed in response to the survey. In particular, where the Commission has determined that any information submitted via the survey should be disclosed, a party should be entitled to confirm its designation of the information as confidential, in which case the information would not be disclosed and would not be considered by the Commission, as per section 34(2) of the Rules.
20. The Commission’s acknowledgement that “certain broadcasters may be reticent or unwilling to share this commercially sensitive information with the Commission, particularly if the data is published, even in aggregate form”¹³ is reinforced by the submissions of the licensed Canadian broadcasters in phase one of this proceeding. Indeed, as summarized by the Commission in the current Notice of Consultation, “multiple interveners ... expressed concerns relating to the commercially sensitive nature of some of the data that the proposed survey form would collect”.¹⁴ MPA-Canada shares those concerns.
21. The information the Commission proposes to collect via the survey is detailed financial and commercial information that is highly confidential, competitively sensitive and proprietary. Such information is consistently treated in a confidential manner and is generally not disclosed on the public record by digital media services, whether Canadian or non-Canadian. As the Commission is aware, the business models of the communications industry within Canada and worldwide are becoming increasingly complex, with parties interacting with one another in various capacities as program creators, suppliers, distributors and business partners. Significant commercial harm could be

¹² Commission procedural letters dated February 2, 2018 related to Notice of Consultation 2017-359: *Call for comments on the Governor in Council’s request for a report on future programming distribution models*, 12 October 2017.

¹³ BNC 2019-90, at para. 7.

¹⁴ BNC 2019-90-1, at para.3.

expected if competitively sensitive information were to be released and used by one party against another. The disclosure of such information could reasonably be expected to meet one or more of the factors set out in section 31 of the Rules by:

- a. resulting in material financial loss or gain to a person;
- b. prejudicing the competitive position of a person; and/or
- c. affecting contractual or other negotiations of a person.

Any of the above impacts would have a potential chilling effect on further investment in digital media offerings in Canada, with consumers suffering the consequences of a more limited selection of content and choices. As such, we strongly believe that the information collected via the digital media survey requires the highest level of confidential treatment by the Commission.

22. MPA-Canada understands that the Commission seeks to find an appropriate balance between the public interest and the potential harm of disclosure, and we appreciate those efforts. Such balance may be potentially achieved by disclosing aggregate information on the public record. The Commission has previously found that “the more the information is disaggregated or the greater the degree of competition, the more likely it is that the direct harm will outweigh the public interest and the information should not be disclosed”.¹⁵ In contrast, the Commission is predisposed to find that the public interest outweighs any direct harm, the “greater the importance of the information to the ability of the Commission to obtain a full and complete record on which to make its decision”.¹⁶ In this case, the survey is not being used by the Commission to make a decision. Instead, the Commission’s specific objectives for the survey are for information gathering purposes only – as stated by the Commission:

- a. to obtain data of the overall state of the broadcasting system;
- b. to analyze and monitor trends; and
- c. to obtain baseline data to inform and measure the impact of any future Commission determinations affecting digital media broadcasting activities in Canada.¹⁷

Furthermore, the Commission contemplates that its specific objective to “inform the industry and all stakeholders on the state of digital media broadcasting in Canada” can be accomplished “through the publication of aggregate data”.¹⁸ MPA-Canada agrees with the Commission’s view that the

¹⁵ Broadcasting and Telecom Information Bulletin CRTC 2010-961: *Procedures for filing confidential information and requesting its disclosure in Commission proceedings*, December 23, 2010 (“Bulletin 2010-961”), at para. 17.

¹⁶ Bulletin 2010-961, at para.17.

¹⁷ BNC 2019-90, at para.6.

¹⁸ BNC 2019-90, at para. 6.

disclosure of disaggregated data is not necessary in order for stakeholders to be informed on the state of digital media broadcasting in Canada.

23. As such, we strongly believe that any information gathered by the Commission for the proposed digital media survey should only be released on the public record or otherwise be made available to any stakeholder or interested party if such information is aggregated on an industry-wide basis or at minimum, aggregated on the basis of all Canadian and all non-Canadian digital media undertakings. We respectfully submit that such information should not be disclosed on a service-by-service basis under any circumstances.

Timing, Contents and Scope of the Survey

24. The Commission has indicated that it intends to administer the survey on an annual basis beginning in fall 2021. While MPA-Canada agrees that the survey should be issued no more often than on an annual basis, it would be very challenging for global digital media services to compile and report the information contemplated under the proposed survey by fall 2021.
25. The following submission by the Canadian Association of Broadcasters is also true of non-Canadian digital media service and, in particular, those with multi-jurisdictional services:

Fulfilling the Commission's request would therefore involve a very significant amount of effort and estimation on the part of broadcasters, as it would require complex accounting and financial analysis. Moreover, given that there has never been a need to develop or establish any kind of general standard or guideline for digital revenues and expenditures, it is likely that, among themselves, broadcasters have tracked data (in whatever current form) very differently, one from the other.¹⁹

26. MPA-Canada expects that global digital media services would need a reasonable amount of time from the issuance of the final form of survey by the Commission for their companies to be able to compile and report the information in the manner contemplated by the Commission.
27. The Commission has questioned "whether, in addition to the proposed annual survey, higher level data, such as top-line revenue and subscriber figures, should be collected on a quarterly basis, as is the Commission's current practice in regard to the largest broadcasting distribution undertakings, in order to better

¹⁹ May 14, 2019 submission by the Canadian Association of Broadcasters, at para. 26.

capture ongoing changes in a rapidly evolving market”.²⁰ As noted above, responding to an annual survey would involve a significant amount of time and effort. Gathering and providing this information multiple times a year would present an onerous administrative burden, especially if the Commission’s quarterly reporting basis is not aligned with the reporting timeframes adopted by different companies. This is particularly the case for smaller services that may have limited resources to meet such a commitment. As such, MPA-Canada submits that digital media undertakings should be required to file information with the Commission no more often than on an annual basis.

28. The Commission has asked whether any of the items in the survey form should be modified or deleted, or whether any new items should be added, to ensure the Commission receives “an accurate picture of the broadcasting activities of digital media undertakings, both Canadian and non-Canadian, that provide services in Canada, while minimizing the administrative burden that completing the proposed survey would place on them”.²¹ The Commission has also indicated that a specific objective of the proposed digital media survey is “to collect only the minimum amount of information necessary to achieve [its] objectives” as described in paragraph 22 above.²²
29. We note and appreciate the CRTC’s objectives to minimize the administrative burden and to collect minimum information only to the degree necessary. We respectfully submit that consistent with those objectives, the Commission should, at minimum, resist proposals to extend the scope and contents of the digital media survey.
30. Furthermore, the prescriptive nature of, and granular level of detail requested in the survey proposed in the Appendix to the Notice of Consultation is not consistent with the Commission’s objectives of minimizing the administrative burden and collecting only the minimum information necessary to achieve its objectives. For instance, it is not clear why the Commission would require any data on the non-programming expenses of non-Canadian digital media services, much less why such expenses should be broken down to the subcategories proposed in the survey. In addition, while foreign digital media services invest in a variety of Canadian productions using a whole host of Canadian creators and talent, they typically do not record and categorize such production expenses in the same manner and level of detail as required of licensed Canadian broadcasters. Likewise, the rigid categorization of subscription models in the proposed survey is not reflective of the different models adopted by various digital media services. It is critically important that the Commission collects only the minimum information required to achieve its objectives and adopts a

²⁰ BNC 2019-90-1, at para. 6.

²¹ BNC 2019-90-1, at para. 5.

²² BNC 2019-90, at para. 6

flexible approach that can be adapted to the data maintained by a particular digital media service, in order to minimize the administrative burden of responding to the survey. Companies collect and maintain data differently and should not be required to expand their data-collection practices in order to respond to the survey.

31. In addition, all information gathered via the survey should be limited to historical data that excludes the current fiscal year. This is essential, given the unpredictability of the industry, the speculative nature and inherent unreliability of forward-looking information, and the highly competitive and confidential nature of future plans and predictions. Limiting the data collected to the minimum historical data necessary to obtain the Commission's objectives would be in keeping with the Commission's stated objectives and consistent with a flexible approach to regulation as recommended by the Commission.²³
32. The Commission has asked "whether participation in the survey should be required based on a threshold approach that would exempt digital media broadcasting undertakings that provide services in Canada but do not significantly engage in broadcasting activities" and what such thresholds should be based on.²⁴ MPA-Canada supports limiting participation in the survey based on a threshold approach. We believe that a threshold based on the level of subscribers of a service would be consistent with other thresholds employed by the Commission to determine whether certain services should be exempt from regulation.²⁵ We believe a threshold of fewer than 300,000 subscribers would be appropriate given that the Commission has adopted a threshold of fewer than 200,000 subscribers for its exemption of linear discretionary television services and the potentially greater reach of digital media services. In other words, all digital media services with fewer than 300,000 subscribers should not have to participate in the survey. Such services should only have to participate in the survey if the number of subscribers increases to more than 350,000 subscribers for a period of more than three consecutive months. We believe this threshold would take into account the variety of digital media services in Canada and avoid imposing obligations on a class of services if doing so will not contribute in a material manner to achieving the Commission's objectives for the proposed digital media survey.

²³ CRTC Legislative Review Panel Submission, at pages 1, 3, 11 and 21.

²⁴ BNC 2019-90-1, at para. 6.

²⁵ For example, the exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers (Broadcasting Order CRTC 2017-320, dated 31 August 2017) and the exemption order for discretionary television programming undertakings serving fewer than 200,000 subscribers (Broadcasting Order CRTC 2015-88, dated 12 March 2015).

33. MPA-Canada appreciates the opportunity to participate in this Notice of Consultation.

All of which is respectfully submitted,

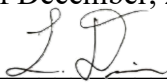
A handwritten signature in black ink, appearing to read 'Wendy Noss', with a stylized, cursive script.

Wendy Noss
President, Motion Picture Association-Canada

*****End of Document*****

F

This is Exhibit "F" referred to in the
affidavit of Sydney Grieve
affirmed before me, this 17th
day of December, 2025



A Commissioner for taking affidavits



June 12, 2025

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

Dear Mr. Morin:

Re: Requests for information regarding the proceeding initiated by The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector, Broadcasting Notice of Consultation CRTC 2024-288, 15 November 2024

1. Netflix Services Canada ULC (“**Netflix**”) is pleased to respond to the specific requests for information (“**RFIs**”) posed to us in the above-noted correspondence. As requested, we have repeated each question below along with our corresponding response.
2. In accordance with the instructions set out in the RFI, Netflix is designating certain information as confidential pursuant to Section 25.3(1) of the Broadcasting Act (“**Act**”). Specifically, in accordance with section 31 of the CRTC Rules of Practice and Procedure (and the accompanying procedure set out in Broadcasting and Telecom Information Bulletin CRTC 2010-961), we are requesting confidentiality with respect to the expenditure information provided in our response to Questions 12 and 13 below. Such information comprises financial and commercial information that is confidential and has been treated consistently in a confidential manner by Netflix.
3. Disclosure of this information will prejudice Netflix’s competitive position by giving existing and potential competitors access to commercially-sensitive information—elements of our business model, cost structure, and strategic focus—that would otherwise remain confidential. Third parties accessing unabridged versions of our responses could tailor their own commercial strategies in ways that erode our market position. Accordingly, releasing the information in our response to Questions 12 and 13 would place Netflix at a significant competitive disadvantage.

4. Moreover, the Commission has long treated “DMBU-level” expenditure data submitted in the Digital Media Survey as confidential,¹ recognizing that individual-service data could reasonably be expected to prejudice respondents’ competitive positions if disclosed.² The information at issue here is even more granular—fully disaggregated by program category—and thus warrants the same, if not greater, protection.
5. In view of the foregoing, Netflix submits that disclosing any of the specific information provided in response to Questions 12 and 13 would not serve the public interest, and the direct, foreseeable harm from such disclosure far outweighs any potential public interest benefit.
6. An abridged version of our RFI responses is also being filed with the Commission concurrently with the submission of these RFI responses.

* * *

Netflix’s responses to the RFI

Question 3

Please comment on the possibility that if the Commission were to require programming services to be distributed pursuant to paragraph 9.1(1)(i) of the Act that any rates paid to those Canadian programming services would be considered eligible for CPE credits.

Response

7. Netflix does not fall within the scope of paragraph 9.1(1)(i) of the Act. Pursuant to the recent amendments to the Act, the definition of a “distribution undertaking” explicitly excludes “*such an undertaking that is an online undertaking*”. The addition of section 9.1(1)(i) provides the means to include undertakings that perform a BDU-like function, i.e., to order that “a person carrying on an online undertaking that provides the programming services of other broadcasting undertakings in a manner that is *similar to a distribution undertaking* carry specified programming services”. Netflix does not fall within this provision. To the contrary, its broadcasting activities are confined to producing, commissioning or licensing audiovisual programs and making such programs available to its subscribers. Netflix does not distribute any “programming services” from other broadcasting undertakings, unlike some other online undertakings.
8. Unless an online undertaking retransmits third-party programming services in their entirety (i.e., operates as a vBDU), it does not perform the functions of a BDU and should not be subject to the regulatory or contribution obligations applicable to BDUs.³

¹ Broadcasting Regulatory Policy CRTC 2022-47, para. 140.

² Broadcasting Regulatory Policy CRTC 2022-47, para. 145: The Commission also noted in a subsequent determination that data must be aggregated in such a way as to avoid compromising the confidentiality of the survey data filed at the individual service level: see Broadcasting Decision CRTC 2023-34. Broadcasting Regulatory Policy 2023-331, para. 70: The Commission confirmed that the level of confidentiality granted under the Digital Media Survey would remain applicable to information collected in that survey.

³ See MPA-Canada Reply (BNC 2023-138), para. 83.

Question 6

Most foreign streaming services argue that publishing certain types of data would cause them commercial harm. The Commission publishes data on its website, not only to inform the public, but also to foster accountability and transparency throughout the broadcasting system. This practice is in the public interest as different parties in the system have access to relevant data and broadcasters are held accountable in meeting their requirements.

- a. How can the public interest in access to data about the Canadian broadcasting system be balanced with concerns raised by some foreign streaming services about potential commercial harm? Why do you believe that the balance either supports making such data public, or keeping it confidential?*
- b. Should any data from foreign streaming services be made public, what measures could mitigate these potential risks of harm while still ensuring interested persons have access to relevant data?*
- c. Regarding the public release of information about revenues, individual production budgets, and acquisition expenditures, certain interveners proposed that this information could be made publicly available in aggregated form. Do you support such an aggregated approach, and if not, why? If yes, what level of aggregation do you support?*

Response

9. Netflix opposes any requirement to disclose commercially sensitive information submitted by online undertakings. Financial data—such as revenues and Canadian and foreign programming expenditures—comprises precisely the kind of information whose disclosure would inevitably threaten our competitive position. This confidentiality has been underscored on the record in this proceeding and several prior proceedings before the Commission.⁴
10. In its Annual Digital Media Survey, the Commission determined that individual-service data—such as revenue, expenses, and related metrics—is commercially sensitive, is consistently treated in a confidential manner by the parties, and could reasonably be expected to prejudice respondents’ competitive positions if disclosed. As a result, such individual-service data must remain confidential.⁵ This has been confirmed in several subsequent rulings.⁶ Releasing individual service-level data would provide competitors material insights into our business model, cost structure, and strategic priorities, thereby prejudicing our competitive position.

⁴ See Netflix Intervention (Notice), paras. 64-68.

⁵ In particular, data that Netflix has provided as part of the Digital Media Survey, as “DMBU-level data” (i.e., at the individual service level). See Broadcasting Regulatory Policy CRTC 2022-47, para. 140.

⁶ In Broadcasting Decision 2023-34, the Commission confirmed that the level of confidentiality granted under the Digital Media Survey remains applicable to information collected in that survey. See also Broadcasting Regulatory Policy CRTC 2024-65; Broadcasting Regulatory Policy CRTC 2024-121-1; and, Broadcasting Order CRTC 2024-194.

11. We note that the impetus for this Question appears to be proposals by certain parties at the Hearing seeking a reversal of previous determinations of the Commission which had affirmed the confidentiality of online undertakings' competitively sensitive business information. The Commission should not depart from the balance it has already struck. We submit that the Commission can fully meet the objectives of fostering accountability and transparency without compromising confidentiality by limiting disclosure to aggregated data. In that regard, the Commission has *already* determined that such an approach would serve the public interest.⁷ We do not believe that any departure from such an approach is warranted: the direct harm from disclosing individual service-level data (including data such as individual programming expenditures) would not justify its disclosure on any application of the public interest test.
12. Finally, we submit that Section 25.3 of the Act already establishes a case-by-case process pursuant to which the Commission can assess whether data filed on a confidential basis should be disclosed based on a "public interest" assessment. Adopting a rigid rule that deems the level of disclosure for all cases would fetter the Commission's discretion and run contrary to Parliament's chosen framework. The Commission should therefore avoid blanket-disclosure rules. In that regard, the Commission recently confirmed that the information filing requirements should be designed so that the information submitted is presumptively considered confidential and that releasing such confidential information can only be done in certain circumstances, *and only if the Commission determines, after hearing from affected parties, that disclosing the information would serve a public interest that outweighs any harm in the disclosure.*⁸

Question 7

In Notice of Consultation [2024-288](#), the Commission indicated it has moved away from exhibition-based regulation. As such, it is the Commission's preliminary view to discontinue the time credits, including for dubbed productions. Nonetheless, the Commission also indicated that it recognized the value of dubbing in Canada, in particular in Quebec.

- a. *Considering the above, how should the Commission incentivize the dubbing of content in Canada by Canadian human resources, including Canadian content? Are there other ways to support this?*
 - i. *Currently, the Commission credits dubbing as a CPE contribution if the dubbing is done in Canada by Canadians. Should foreign online undertakings also be allowed to claim dubbing as a CPE contribution?*
 - ii. *Should there be a cap (e.g. limit) on dubbing as a CPE contribution? If so, why?*
- b. *In regard to content that is dubbed into French, English and Indigenous languages, what*

⁷ Broadcasting Decision 2023-34, para. 23.

⁸ Online News Regulatory Policy CRTC 2025-57, para. 14.

incentives could the Commission introduce to ensure that broadcasters and online streamers distribute Canadian content instead of foreign content?

Response

13. Under the Commission's current policy, licensed programming undertakings receive a "D" number credit when they dub a foreign program in Canada, plus a Canadian time credit equal to the running time of the original work. A broadcaster that dubs a foreign production from one official language of Canada (or an Indigenous Canadian language) into the other official language (or an Indigenous language) may claim a 33% Canadian time credit. If the source language is neither official nor Indigenous, the broadcaster may claim a 50% credit once the production is dubbed into an official or Indigenous language.
14. The Commission has the discretion to establish further measures to incentivize the dubbing of content in Canada by Canadian human resources, including Canadian content, which could be made applicable to foreign online undertakings.

Question 12

In the public record for this proceeding, numerous interveners state that the following types of Canadian programming are at risk: long-form documentaries, drama/feature films, children's/youth programs, music and dance programs as well as variety programs.

- a. *Please provide the Commission with the following trends data regarding these five types of programming on your services in Canada. Please indicate total:*
 - i. *Availability of these five types of programs throughout the past four years (2020-2024).*
 - ii. *Availability of these five types of programs which are certified as Canadian throughout the past four years (2020-2024).*
 - iii. *Audience measurement data throughout the past four years (2020- 2024) in relation to the five types of programs noted above.*
 - iv. *Financial investments in Canadian programming throughout the past four years (2020-2024) in relation to the five types of programs noted above.*

Response

15. With respect to the information requested in (i) and (ii) above, Netflix does not currently track information relating to availability (based on number of titles) in the specified types of programming categories for any of the applicable broadcasting years (2020-2024).
16. With respect to Audience measurement data (iii, above), we refer the Commission to our bi-annual audience engagement "What We Watched" reports for 2023 and 2024:

- First Half of 2023:
<https://about.netflix.com/en/news/what-we-watched-a-netflix-engagement-report>
- Second Half of 2023:
<https://about.netflix.com/en/news/what-we-watched-the-second-half-of-2023>
- First Half of 2024:
<https://about.netflix.com/en/news/what-we-watched-the-first-half-of-2024>
- Second Half of 2024:
<https://about.netflix.com/en/news/what-we-watched-the-second-half-of-2024>

17. With respect to financial investments in Canadian programming for the five categories noted in (iv), above, we have attached as Appendix “A” a summary of financial investments in Canadian programming for the period 2020-2024 in relation to the following program types (Documentaries, Drama/feature films, Children's/Youth Programs and “All Others”). As noted above, the information contained in Appendix “A” is being filed on a confidential basis.⁹

Question 13

Please quantify your financial investments in total programming and in certified Canadian programming throughout the past four years (2020-2024). Please disclose separately acquisitions of programming and production of programming (please separate total programming from certified Canadian programming).

Response

18. Please see Appendix “A” attached (filed on a confidential basis).¹⁰

Question 14

Can you specifically outline what you believe would be missed opportunities for using Canadian creative talent on projects where Canadians have creative control? If so, can you cite your experience in commissioning content in other countries as examples of what the implications for Canada could be?

Response

19. In our experience in other jurisdictions, the application of a flexible regulatory framework, characterized by the absence of mandatory requirements regarding key creative (above-the-line) positions and flexible rules on IP ownership, has resulted in the creation and production of domestic content that is both culturally relevant and

⁹ We note that the data in Appendix “A” for the 2021-2022 period onward is based on the data filed with the Commission pursuant to the Digital Media Survey.

¹⁰ As per the response to Question 12, above, the data in Appendix “A” for the 2021-2022 period onward is based on the data filed with the Commission pursuant to the Digital Media Survey. Information with respect to financial investments in acquisitions of programming and production of programming are only available for the 2023-2024 period (as noted in Appendix “A”).

attractive to domestic audiences. The ability to exercise creative control on a project in turn provides the necessary incentives to direct the investment of resources toward promotion and other discoverability initiatives. In our experience, a flexible framework creates the necessary conditions for more and higher quality programming, which also benefits the creative personnel whose talents are exposed to audiences on a global basis.

20. Our international experience confirms the value of measured openness. Productions such as *Lupin* (France, with British writer-producer George Kay), *The Empress* (Germany, with British EP Scarlett Lacey), *Adolescence* (U.K., with Plan B as executive producer), and *All Quiet on the Western Front* (Germany, co-written by British screenwriter Ian Stokell) combine strong national voices with targeted foreign expertise. Each title reached a global audience without sacrificing cultural identity—precisely because the local framework allowed a balanced mix of talent.
21. In contrast, a rule forcing all above-the-line positions to be Canadian would prevent similar collaborations—and with them, the resulting jobs, skill transfers, and audience appeal. The three practical effects below illustrate how such rigidity can undermine these objectives:
 - **Genre expertise and project viability:** Certain series need partners with specific experience that is relatively scarce in Canada. *Wayward*, an eight-episode Netflix limited series created by Toronto-born comedian Mae Martin, which features many Canadian actors, reached the greenlight stage only after an American co-showrunner with genre (i.e., thriller) credentials joined the team. The Canadian creator retained final authority, but the added expertise provided the assurance needed to greenlight the project. Without that single collaborator, the series—and the jobs it created for Canadian cast and crew—might never have left development.
 - **Mentorship and skills transfer:** The foreign co-showrunner mentored Canadian writers and producers throughout *Wayward's* development and production, allowing them to apply newly acquired skills to subsequent domestic projects. Blocking this collaboration would close an important pathway for Canadians to gain genre-specific expertise at home.
 - **Strategic casting for creative fit and maximizing audience:** Although *Wayward* was otherwise an all-Canadian production—shot in Canada with a Canadian production company and Canadian department heads—the producer cast one internationally recognized actor, Toni Collette, to secure the best creative fit for the role and maximize global audience reach. Allowing one or two strategic international appointments can determine whether a Canadian project succeeds or fails.

Question 15

In Motion Picture Association – Canada’s intervention and presentation, it emphasized s. 3(1)(f.1) of the Broadcasting Act as guiding the Commission in its approach to regulation of foreign online undertakings in this proceeding.

S. 3(1)(f.1) states: “It is hereby declared as the broadcasting policy for Canada that [...] each foreign online undertaking shall make the greatest practicable use of Canadian creative and other human resources and shall contribute in an equitable manner to strongly support the creation, production and presentation of Canadian programming, taking into account the linguistic duality of the market they serve”.

However, the Broadcasting Act also contains other provisions relevant to the regulation of the role and contribution of foreign online undertaking including:

S. 3(1)(a.1): “It is hereby declared as the broadcasting policy for Canada that [...] (a.1) each broadcasting undertaking shall contribute to the implementation of the objectives of the broadcasting policy set out in this subsection in a manner that is appropriate in consideration of the nature of the services provided by the undertaking;”

S. 5(2)(a.1): “The Canadian broadcasting system should be regulated and supervised in a flexible manner that [...] takes into account the nature and diversity of the services provided by broadcasting undertakings, as well as their size, their impact on the Canadian creation and production industry, particularly with respect to employment in Canada and Canadian programming, their contribution to the implementation of the broadcasting policy set out in subsection 3(1) and any other characteristic that may be relevant in the circumstances;”

S. 5(2)(a.2): “The Canadian broadcasting system should be regulated and supervised in a flexible manner that [...] ensures that any broadcasting undertaking that cannot make maximum or predominant use of Canadian creative and other human resources in the creation, production and presentation of programming contributes to those Canadian resources in an equitable manner;”

S. 10(1.1)(b): “In making regulations under paragraph (1)(b), the Commission shall consider the following matters: [...] whether key creative positions in the production of a program are primarily held by Canadians” (emphasis added)

Further, the Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework) SOR/2023-239 (Policy Direction) also provides:

S. 4 The Commission is directed to impose requirements on broadcasting undertakings that ensure that the Canadian broadcasting system — which is to be effectively owned and controlled by Canadians and includes foreign

broadcasting undertakings that provide programming to Canadians — strongly supports a wide range of Canadian programming and Canadian creators. The requirements, both financial and non-financial, must be equitable given the size and nature of the undertaking and equitable as between foreign online undertakings and Canadian broadcasting undertakings.

In light of the foregoing, explain:

- a. What constitutes "equitable" in terms of contributions to support the creation, production and presentation of Canadian programming by foreign online undertakings, and what factors the Commission should consider in identifying appropriate and equitable contributions by foreign online undertakings? In your answer, ensure to respond to the comments made by the Motion Picture Association – Canada at the oral phase of this hearing.*

Response

22. Netflix expressly supports the position taken by MPA-Canada on the record of the proceeding to date, including MPA-Canada's statements at the oral phase of the Hearing. We expressly agree with the approach put forward by MPA-Canada relating to the appropriate interpretation of the relevant statutory provisions stated above, and the related provisions found in the Policy Direction. These provisions must be read in a manner that is consistent with the "text, context, and purpose" of the Act.
23. We are concerned that a number of parties at the oral phase of the hearing have put forward interpretations of the foregoing provisions, in particular the interrelationship between s. 3(1)(f) and s. 3(1)(f.1) of the Act, that significantly departs from the "text, context, and purpose" of the Act¹¹ to argue that "equitable" means "equal" or even that foreign online undertakings should contribute more than Canadian broadcasting undertakings. Online undertakings have been expressly excluded from the definition of "distribution undertaking" and "programming undertaking" in s. 2(1) of the Act, which underscores that online undertakings are a distinct class of broadcasting undertaking. The assessment of whether foreign online undertakings' contributions are "equitable" must therefore be assessed in light of this distinct statutory framework.
24. The correct interpretation of this statutory framework is critical to the range of factors that the Commission should consider in determining what would constitute "equitable" contributions by foreign online undertakings to support the creation, production, and presentation of Canadian programming. In that regard, we do not agree with an interpretive approach that would impose higher contributions on foreign online streaming services, by virtue of the fact that "many of [the MPA-Canada] members are quite large".¹² This in fact would depart from an appropriate "equitable" contribution.

¹¹ See, for example, Transcript (BCE Inc.), 22 May 2025, para. 5219; Transcript (Corus Entertainment Inc.), 16 May 2025, paras. 1883-1889; and, Transcript (Rogers Communications Inc.), 23 May 2025, paras. 6326-6332.

¹² Transcript (MPA-Canada), 16 May 2025, para. 2699.

25. As noted by MPA-Canada at the oral phase of the hearing, the plain meaning of the statutory provisions requiring each broadcasting undertaking to “contribute...in an equitable manner” turns on the standards articulated in the Act for each of the Canadian broadcasting undertakings and foreign online undertakings, respectively:

2537 First, a CPE contribution should be equitable. In our view, equitable has to be coherent with the other half of the standard that is applied to foreign online undertakings, mainly “the greatest practicable use of Canadian creative and human resources”. The two standards have to coherently exist.

2538 As Ms. Noss said in our opening, it’s evident from the standard applied to Canadian broadcasting undertakings is much higher, of maximum use and no less than predominant use. It’s quite a distinction from “greatest practicable use”.¹³

26. It would be unreasonable and incorrect for the Commission to accept such departures from the plain meaning of the statutory provisions in the Act.
27. As MPA-Canada noted at the hearing, the legislative history of paragraphs 3(1)(f) and 3(1)(f.1) reflect the Government’s acknowledgement that it would be unrealistic to oblige non-Canadian online undertakings—whose operations are global in scope—to contribute at the same level as Canadian broadcasters. Each of these provisions must be read separately, according to their plain meaning and legislative context; neither qualifies or expands the other.
28. We concur with the following statement made by MPA-Canada at the Public Hearing:

“So, it’s a twofold section. Right? So, we have to make greatest practicable use of Canadian creative and other human resources, and Canadian broadcasters have to make maximum and no less than predominant use. So, *it is not the size of the undertaking that matters*. There was a deliberate standard for the use of Canadian creative and human resources, and the debate was originally around whether Canadian broadcasters would have a lower standard than they do today. That was rejected as well.”¹⁴

29. Moreover, as the Commission is aware, the current approach to expenditure contributions is effected primarily through establishing CPE requirements. CPE requirements have historically been imposed on a wide range of Canadian broadcasting undertakings based on a percentage of such undertaking’s revenues (from broadcasting activities). Thus, by definition, under the approach taken with respect to CPE, a larger undertaking will produce much higher contributions to Canadian expenditures for the same given percentage.

¹³ Transcript (MPA-Canada), 16 May 2025, paras. 2537-2538.

¹⁴ Transcript (MPA-Canada), 16 May 2025, para. 2710 (*emphasis added*).

30. It would therefore be unreasonable for the Commission to overlay a further consideration relating to the “size” of a foreign online undertaking as a determinant of what is “equitable” contribution. In view of the above historical approach to establishing CPE requirements, adding another stand-alone factor relating to “size” would be duplicative and moreover punitive to the vast majority of foreign online undertakings.

Question 16

Non-Canadian online programming undertakings benefit significantly from the Canadian market. However, they are not subject to the same financial contributions and regulatory obligations as Canadian broadcasting undertakings and have not yet made non-financial contributions (such as in broadcasting infrastructure) in Canada on the same scale as Canadian broadcasting undertakings. While it would not be practicable for non-Canadian online programming undertakings to make the same contributions, direct financial contributions may be viewed as the most practicable manner to support the Canadian broadcasting system in a manner that is commensurate with their size and nature.

- a. *In the absence of comparable contributions, address why online non Canadian undertakings should not be expected to make equal or greater financial contributions as those of Canadian undertakings in order to equitably support the Canadian broadcasting system.*

Response

31. Netflix strongly rejects the premise that Parliament intended the Commission to use “non-financial contributions (such as broadcasting infrastructure)” as a basis for levying direct financial obligations on foreign online undertakings. The Act makes no reference to “non-financial contributions,” and its requirement that each foreign online undertaking make “practicable use” of Canadian resources is deliberately less stringent than the “maximum, and no less than predominant, use” standard that applies to Canadian broadcasters.
32. As noted above in response to Question 15, the legislative history of the statutory provisions found in sections 3(1)(f) and 3(1)(f.1) of the Act must be read separately, according to their plain meaning and legislative context; neither qualifies or expands the other. The Government has likewise acknowledged that it would be unrealistic to oblige non-Canadian online undertakings, whose operations are global in scope (Netflix alone serves audiences in more than 190 countries), to contribute at the same level as Canadian broadcasters.
33. We also question the emphasis in this Question that non-Canadian online programming undertakings “have not yet made non-financial contributions (such as in broadcasting infrastructure) in Canada on the same scale as Canadian broadcasting undertakings”. As the Commission is aware, it permitted foreign online programming undertakings to operate in Canada pursuant to the Digital Media Exemption Order. The fact that “digital media broadcasting undertakings” previously operated under the Exemption Order (which was only recently repealed following amendments to the Act) should not lead to

the conclusion that foreign online undertakings should now be expected to make equal or greater financial contributions as those of Canadian undertakings “in order to equitably support the Canadian broadcasting system”.

34. Moreover, in our written comments in this proceeding and on the record of several proceedings before the Commission, we detailed the significant financial and non-financial contributions which Netflix has made to Canada’s production and broadcasting infrastructure since it began providing service to its members in Canada over two decades ago.¹⁵ As we noted in our written intervention, Netflix has invested over \$5 billion in production in Canada in the last five years alone, translating to \$2.7 million every day flowing to Canadian creators, crews and local businesses. The fruits of these investments have been enjoyed by our members locally and around the world. We continue to make substantial contributions to the production and promotion of Canadian stories, the advancement of Canadian creators, strengthening Canada’s production ecosystem, and showcasing Canadian talent to global audiences.¹⁶
35. We therefore strongly question the underlying premise in this Question, namely that foreign online undertakings “have not yet made non-financial contributions (such as in broadcasting infrastructure) in Canada on the same scale as Canadian broadcasting undertakings”. With respect, the lens focused on “broadcasting infrastructure” is unduly narrow. Contributions to the Canadian broadcasting system ecosystem go far beyond such “facilities”.
36. Moreover, the scenario in which foreign online undertakings would be subject to an additional layer of direct financial contributions as “the most practicable manner to support the Canadian broadcasting system ...in a manner that is commensurate with their size and nature” ignores the legislative history of the amendments to the Act. As noted above in response to Question 15, the Government deliberately adopted a lower standard for contributions by foreign online undertakings. We refer the Commission to the detailed summary of the Government statements regarding the reasons for different contribution standards for Canadian broadcasting undertakings and foreign online undertakings in ss. 3(1)(f) and (f.1) of the Act set out in MPA-Canada’s written submission in this proceeding. Those statements make clear that the government intended foreign broadcasters operating in a global marketplace not to be subject to the same provisions as Canadian broadcasters.¹⁷
37. Finally, as we noted in our written intervention in this proceeding, there are several additional risks which must be considered if the Commission were to impose contribution obligations that are equal to or greater than the financial contributions currently required of Canadian undertakings. These additional risks were outlined in the

¹⁵ See Netflix Intervention (Notice), Appendix A; Netflix Intervention (BNC 2023-138), paras. 7-44.

¹⁶ See Netflix Intervention (Notice), Appendix A, which details Netflix’s substantial contributions to content production, creation and promotion in Canada in the most recent year.

¹⁷ See MPA-Canada Intervention (Notice), Appendix A. This summary also underscores that the Government recognized the potential negative impact that an inflexible single standard could have on the global business models of foreign online undertakings and Canada’s trade obligations under CUSMA.

Frontier Economics Report filed with our written intervention.¹⁸ Among these risks are the following:

- **Market entry and expansion deterrence:** New or higher levies can discourage companies from entering—or growing within—the Canadian market.
- **Cost inflation:** Obligations inflate local production costs, especially for technical crew and creative talent, without a commensurate increase in content. The European Commission (2023) attributes rising producer risk chiefly to escalating labour costs, and ARCOM reports that French production costs jumped by 30% in 2023 due to skilled-labour shortages and increased competition for talent.
- **Competitive dynamics:** Heightened investment obligations intensify competition for scarce labour and creative talent, eroding broadcasters' competitiveness and capacity to secure resources on market terms.

38. Imposing identical—or greater—financial obligations on non-Canadian online undertakings would therefore contradict the Act and risk undermining the very objectives the Commission seeks to advance.

Question 17

The Canada Media Fund (CMF) urged the Commission to eliminate the ability for foreign streamers to redirect up to 75% of their mandatory contribution to certified Canadian content expenditures. In the CMF's view, removing this flexibility so that a full 2% of the base contributions is made to the CMF is imperative to ensuring a robust Canadian audiovisual production sector.

- a. *Please comment on the CMF's position and explain how you view flexibility in investing in Canadian content productions and acquisitions directly, instead of to funds, as part of the overall approach towards an equitable contribution to the system?*

Response

39. Netflix opposes the CMF's position. We submit that any equitable contribution framework must allow foreign online undertakings to satisfy their obligations through direct investment in Canadian productions and acquisitions, rather than mandating compulsory contributions exclusively through one or more funds. The CMF is effectively asking the Commission to "review and vary" its determination and subsequent Order, which was codified less than one year ago¹⁹.
40. Our objective is to balance any investment obligation with a business model centred on our members and sustainable partnerships with Canada's creative community. Direct, market-driven investment delivers the best results: it links our global insights—what

¹⁸ See Netflix Intervention (Notice), Appendix B.

¹⁹ Broadcasting Regulatory Policy CRTC 2024-121-1 and Broadcasting Order CRTC 2024-194.

resonates, and just as critically, what does not—to creative decisions on the ground. Departing from the foregoing flexibility would unfairly prejudice our service.

41. From the standpoint of competitive equity, foreign online undertakings are already subject to discriminatory treatment in that programming undertakings (i.e., undertakings which are the closest analogue to the nature of our service) are permitted to meet their CPE (financial) contributions predominantly through expenditures directly on Canadian programming, at their initiative. The sole exception to this flexibility is in respect of BDUs who direct part of their contributions to specified funds. This exception reflects the fact that BDUs do not produce or commission content directly but rather distribute the programming services of other licensed or exempt programming undertakings.
42. The concerns with respect to a fund-centric approach were also cited by representatives of Canadian broadcasters at the oral phase of the public hearing. Rogers expressly noted that it is “not big proponents of funds...[which] generally are less efficient than providing different entities with greater flexibility”²⁰.
43. Finally, CMF did not provide any objective evidence in support of such a policy reversal. Moreover, the evidence on the record is that CMF’s total revenues have actually increased over the previous five-year period, given that the Government has “made whole” CMF’s revenues by providing funding to offset any decline in BDU revenues.²¹

Question 18

Please comment on the following definition of Children’s programming. In so doing, identify and explain whether the Commission should incorporate any additional criteria in this definition:

Children’s audiovisual programming must meet the following criteria:

- *Audiovisual programs, whose intended audience is children aged 12 years and under.*
- *Programming that aims to:*
 - o *Meet children’s needs and interests; and/or*
 - o *Engage children’s creativity; and/or*
 - o *Entertain children; and/or*
 - o *Reflects reality from a child’s point of view; and/or*
 - o *Inform or educate children.*

Response

44. We do not have any principled objection to the above-proposed definition of children’s programming. However, the impetus for this question appears to reflect an assumption that children’s programming is being under-provided due to an ostensible ‘market failure’ or otherwise “at risk”. We have addressed our concerns with respect to this presumptive characterization of the state of the Canadian programming market in our

²⁰ Transcript (Rogers Communications Inc.), 23 May 2025, para. 6266.

²¹ As per data compiled in previous CMF Annual Reports (2015-2024).

response to Question 23 below.

Question 19

What roles and responsibilities during the pre-development, pre-production, production and post-production phases are commonly understood as being a part of the role occupied by a “showrunner” where the role of “showrunner” is credited or acknowledged as being a part of an audiovisual production?

Response

45. Including *showrunner* as a mandatory key-creative role would inject unnecessary rigidity into the point system. The premise of the question also assumes that every audiovisual work credits a showrunner, which is not the case. First, the role is not applicable to feature films and documentaries. Second, even among episodic series—where the concept originates—many productions proceed without a showrunner at all.
46. With respect to productions that do employ a showrunner, there is no fixed, codified set of roles or responsibilities for the showrunner position across the pre-development, pre-production, production, and post-production phases (even when a production provides a showrunner credit). As the Notice itself recognizes, the position is difficult to define: a showrunner may also serve (alone or jointly) as writer, producer, and/or executive producer. Moreover, showrunners do not exercise *de facto* creative control in all cases; rather, control over creative product decisions can often reside across several roles in the production team.
47. In view of the above, we urge the Commission to avoid codifying the roles and responsibilities of showrunners during the pre-development, pre-production, production and post-production phases. Further, we do not support the definition of a showrunner proposed by the Writers Guild of Canada (“WGC”). If the Commission were to adopt the WGC proposed compulsory showrunner definition, it would have the effect of “over-weighting” the points needed in respect of the writer position. Moreover, WGC’s proposed definition is unduly narrow and would not capture actual industry practices with respect to the use of the showrunner position.

Question 20

The Commission has heard from various intervenors on potential levels of CPE contributions. Specifically, it has heard CPE contributions should be set at 5%, 20%, and 30%.

- i. *Please propose a CPE level for Canadian broadcasters (including their online streaming services).*
- ii. *Please propose a level for foreign online streamers.*
- iii. *What elements of the two linguistic markets (French and English) should the Commission consider in establishing any expenditure requirements?*

Response (ii)

48. Netflix respectfully submits that proposals to set CPE contribution requirements for foreign online streamers to levels as high as 20% and 30% would be detrimental and would ignore the constellation of submissions in this proceeding supporting an appropriate contribution level for foreign online streamers that does not exceed the current 5% base contribution established pursuant to BRP 2024-121-1. Such proposals include those of incumbent broadcasters who have advocated that Canadian broadcasting ownership companies should be subject to the same single 5% contribution requirement imposed on foreign online undertakings pursuant to BRP 2024-121.²²
49. Moreover, Netflix continues to have concerns with respect to the initial base contribution obligation. As noted repeatedly on the record of this and prior proceedings, the initial base contribution obligation is not reflective of international trends, which is underscored by the fact that it is applicable only to foreign online undertakings who are mandated to make payments to funds that they cannot access. This proposal is inconsistent with the Policy Direction, which expressly directs the Commission, in exercising its powers under section 11.1 of the Act, to “consider providing flexibility for all broadcasting undertakings in meeting expenditure requirements” and, where appropriate, “to prioritize the imposition of requirements to make expenditures directly on the creation, production and presentation of Canadian programming”.²³ Adherence to the Policy Direction can only be achieved if all broadcasting undertakings, including foreign online undertakings, can effect their contributions commensurate with their nature of the service and business models.
50. We also submit that even a preliminary determination of a single, “one-size-fits-all” contribution requirement would effectively pre-empt Phase 3 of this proceeding, which is intended to set tailored conditions that reflect the very different scale and business models of individual undertakings.
51. We therefore urge the Commission not to view the initial base contribution as a permanent requirement. Rather, the ultimate form of an appropriate CPE level for global online streamers must reflect international industry norms, as follows:
- the CPE level for foreign online streamers should be capped below the Canadian CPE levels for Canadian broadcasters (including their online streaming services) at no more than the 4%²⁴ European median.

²² Rogers Communications Inc. Intervention (Notice), para. 27.

²³ Policy Direction, Sections 12(c) and 12(e).

²⁴ This figure represents the median rate for all adopted investment obligations in Europe for non-domestic SVOD services as of May 2025.

- every qualifying dollar a service already invests in Canadian content should automatically offset the amount payable (a “spend-or-pay mechanism”), mirroring Spain and other jurisdictions and preventing double payment.
52. Imposing substantially higher CPE levels on foreign online streamers, as proposed by some interveners, would not only ignore the different standards reflected in the statutory framework governing online undertakings; it would introduce a number of market distortions. As we noted in our written intervention, an inflexible approach to defining a Canadian program, combined with increased and unworkable investment obligations, will result in an economic imbalance in the current broadcasting system and inevitably lead to bottlenecks, inflationary pressures, and higher input costs.²⁵
53. As we previously explained in the related suite of proceedings to implement the amendments to the Act, international practice confirms that in the vast majority of jurisdictions, the levy is typically the only obligation: in the European Union, jurisdictions that impose a levy set a median rate of approximately 2%, and those that use an investment-only model cluster around a 4% median.²⁶ Imposing an additional, uniform CPE on top of Canada’s existing levy would therefore place Canada well outside global norms.
54. The current CPE levels applicable to traditional Canadian-owned broadcasting undertakings are reflective of a specific context in which Canadian broadcasters were accorded a number of protections and privileges. As certain interveners noted during the oral hearing phase, such regulatory protections are not available to foreign online undertakings. These regulatory protections include Canadian ownership protections, simultaneous substitution rules, in some cases mandatory carriage:

“And so, [traditional Canadian broadcasters] benefit a bit more from regulatory protection from the system, and we feel that their CPE requirements should be commensurate with the protection that they enjoy or are afforded under the system. I think that that is not to say that online services shouldn’t contribute to the system. I think that we just were trying to say that, when you are thinking about equitable contributions to the system, you should be looking at both the obligations as well as the protections under the current system.”²⁷

Response (iii)

55. In considering what elements of the French and English linguistic market should be considered by the Commission in establishing expenditure requirements, we note that,

²⁵ Netflix Intervention (Notice), para. 61.

²⁶ Most recently, the UK Government indicated that it will not adopt a levy proposed by the UK Parliament’s Culture, Media and Sport Committee. Ireland has similarly decided against implementing a content levy on streaming services, despite having legislative authority to do so under the European Union’s *Audiovisual Media Services Directive*.

²⁷ Transcript (FilmOntario), 26 May 2025, para. 7842-43.

as a general proposition, the Commission could consider tools available to incentivize expenditures to linguistic markets reflective of their unique needs. For example, the Commission has previously established incentives such as the 25% CPE credit provided to large private television ownership groups to support the creation of Canadian programming for OLMC.

Question 21

What factors should the Commission consider when it establishes expenditure requirements on undertakings owned by different entities that earn over \$25 million in broadcasting revenue in Canada?

Response

56. As noted in its written comments, Netflix has cautioned that focusing solely on supply-side spending targets—without equal attention to what Canadian audiences actually want—risks weakening the domestic screen sector. Evidence on the record shows that rigid expenditure rules foster inefficient investment, curb licensing opportunities, constrain employment, create capacity bottlenecks, and ultimately reduce the volume of high-quality, export-ready Canadian content.²⁸ Any expenditure obligation must therefore account for demand as well as supply.
57. International experience reinforces this point. Mandatory investment schemes deter market entry and expansion, inflate production costs, and pass those costs to consumers. Spotify's brief exit from Uruguay after higher copyright fees and its recent Canadian price increase citing Bill C-11 illustrate the effect. Studies by Stout & Colangelo (2023), the European Commission (2023), and France's regulator ARCOM—reporting a 30% rise in French production costs in 2023—link such rules to cost inflation and talent shortages. New Zealand's Ministry for Culture and Heritage has issued similar warnings.
58. By contrast, flexible, incentive-based regimes have propelled South Korea, the United Kingdom, Japan, and India to creative leadership. South Korea's targeted incentives now allow domestic titles to capture roughly 80% of local SVOD viewing and helped secure Netflix's US\$2.5 billion commitment. Four of Netflix's ten most-watched titles in early 2024 were UK productions crafted under a tax-credit system rather than quotas. Japan's 50% location rebate drove series such as *Tokyo Swindlers* and *Jujutsu Kaisen* onto Netflix's most-viewed non-English slate. These examples demonstrate that market-oriented policies spur sustainable investment and global reach far more effectively than blanket financial quotas.

Question 22

In determining an expenditure requirement, what should be allowable expenses that count towards fulfilling these requirements? What ratio of expenses should be devoted to direct

²⁸ See Netflix Intervention (Notice), Appendix B: Frontier Economics, *Stimulating Screen Production Investment, Analysing the impact of key policies on the audiovisual sector*, 27 September 2024, §3 & 6.

programming expenses, other direct expenses such as contributions to funds and other more intangible expenses such as training and infrastructure? Additionally, what factors should the Commission consider when establishing these ratios as a part of overall tailored conditions of service?

Response

59. Netflix supports allowing a wide range of tangible and intangible expenditures, including marketing and promotion, skills training, and production infrastructure, to qualify toward CPE requirements alongside direct programming costs. As MPA-Canada pointed out at the hearing, Canadian content now relies less on “shelf space” and more on marketing that connects titles with audiences through influencer campaigns, social media, festival outreach, and other off-service activities.²⁹ Several interveners echoed this view, urging that training and promotion be recognised together with production spend.³⁰

60. The discussion at the hearing captured the issue:³¹

Commission: “From a regulatory machinery perspective, would it make sense to set one overall target for a broadcaster or a streamer and then give the flexibility to contribute toward that target in ways that you see fit across those categories, or would it make sense to set a number of targets, so you’ve got a training target, you’ve got a promotion target, you’ve got a programming investment target? Is there one that seems more effective to you than others?”

Ms. McAlister: “We would have to obviously defer to the Commission as to which would be the most effective, but overall, we support flexibility and an incentives-based model. The act lays out several pockets of potential areas of contribution.”

61. The Commission already permits independent services (those not affiliated with a vertically integrated entity) to apply up to 10% of their CPE to third-party promotional costs and has proposed extending that option to all broadcaster groups.³² Netflix supports broadening this approach and embedding it in an incentive-based scheme that applies uniformly to Canadian and foreign undertakings.

62. Maximum flexibility is essential. Creative teams benefit when services can tailor the mix of direct production, fund contributions, and intangible spend that most effectively drives audience engagement and professional development. The Commission should therefore avoid prescribing fixed ratios at this stage; any such ratios can be calibrated in

²⁹ Transcript (MPA-Canada), 16 May 2025, paras. 2633-2646.

³⁰ See Transcript (National Screen Institute), 15 May 2025, para. 1074; Transcript (Indigenous Screen Office), 20 May 2025, para. 3606; and, Transcript (Kate Sinclair), 22 May 2025, paras. 5833-5835.

³¹ Transcript (MPA-Canada), 16 May 2025, paras. 2552-2553.

³² BNC 2019-91, para. 31.

subsequent deliberations to establish tailored conditions of service.

63. Finally, we share MPA-Canada’s concern that overly prescriptive CPE rules would impose administrative burdens without improving outcomes.

Question 23

What factors should the Commission consider in determining what types of programming are at risk in the Canadian broadcasting system and who should contribute to supporting that programming?

Response

64. The question presumes that once the Commission designates a genre as “at risk”—news, for example, as many interveners have argued³³—every undertaking must finance its remedy. That conclusion is neither necessary nor proportionate. Targeted measures can address genuine gaps without imposing levies on market segments that continue to function well.
65. The assumption that any shift in audience behaviour signals market failure is similarly flawed. At the hearing, Rogers warned against “deeming” normal market evolution a failure: “[the] fear is that because there’s a perceived market outcome that the Commission is not satisfied with, it may introduce regulatory tools that really aren’t about market failure but actually create market distortions and inefficiencies”.³⁴ The migration of children’s audiences to digital platforms illustrates this point: a change in viewing habits is not, on its own, evidence of failure.
66. International practice confirms that broad cultural objectives are generally achieved through government policy rather than regulator-imposed cross-subsidies. South Korea has committed US\$1 billion—on top of an existing US\$140 million animation fund—to support domestic animation, and the United Kingdom relies on legislated tax credits to bolster children’s content. As 9 Story Media Group observed, such initiatives lie outside the CRTC’s mandate and require legislative action.³⁵

Question 27

Given the realities of global financing and international partnerships, are there public policy benefits to a more flexible approach – such as implementing a sliding scale that links the number of Canadian content points to the level of credit toward CPE? How can the Commission strike the right balance to ensure both the integrity and viability of Canadian storytelling?

³³ See Transcript (BCE Inc.), 22 May 2025, paras. 5095-5097; Transcript (Corus Entertainment Inc.), 16 May 2025, paras. 1918-1920; and, Transcript (Rogers Communications Inc.), 23 May 2025, para. 6214.

³⁴ Transcript (Rogers Communications Inc.), 23 May 2025, para. 6217.

³⁵ Transcript (9 Story Media Group), 27 May 2025, para. 8309.

Response

67. Netflix supports the principled approach whereby additional Canadian content points are applied as a specified credit toward CPE. We are pleased that the Commission has recognized that modern production is dictated by global financing and international partnerships. A flexible framework is therefore a minimum condition for continued growth in Canadian production and exhibition. That flexibility can and should be delivered through the Commission's existing regulatory toolkit, provided that it is applied in a balanced and predictable manner.
68. A sliding-scale system—one that grants CPE credit in direct proportion to the Canadian-content points a project earns—would allow producers to structure financing around creative needs while still rewarding Canadian participation. If an otherwise Canadian team must attach a single foreign specialist (e.g., a seasoned showrunner or executive producer) to secure funding or genre expertise, they would retain most of their credit rather than lose eligibility outright. This mechanism encourages streamers to commission more Canadian projects, broadens opportunities for local crews, and reflects how shows are actually made.
69. For the sliding scale to be meaningful, it cannot “lock in” a fixed list of key positions. Doing so would undercut the very flexibility the model is meant to provide and would not “keep the scale balanced” by leaving room for selective foreign participation.³⁶
70. International experience confirms the value of measured openness, as we have noted in response to Question 14 above.
71. To protect the integrity of Canadian storytelling while keeping projects viable, the Commission could (i) retain a core Canadian requirement in the principal creative roles, (ii) broaden the list of point-eligible positions to reflect modern production practice, and (iii) award CPE credit on a graduated basis as additional Canadian points are added. Such an approach would maintain clear incentives to hire Canadian talent, give producers the flexibility they need to raise financing and quality, and continue the knowledge transfer that has already benefited Canadian crews when international teams film here.

Question 28

Should the Commission consider a sliding scale approach to IP ownership - where a higher number of Canadian key creative positions could offset a lower level of Canadian IP ownership, and vice versa? Would such a model effectively balance the goals of fostering Canadian creative control and significant and equitable financial control and benefit?

Response

72. As we noted in our written intervention, Netflix strongly supports a flexible IP rights

³⁶ Transcript (Meridian Artists), 21 May 2025, para. 4916.

model that allows for various ownership arrangements, rather than mandating full Canadian IP ownership. This approach would incentivize collaboration and maximize flexibility among all of the parties to a production. This is underscored by the complexities and budget challenges relating to production financing in the current environment, which require a flexible approach to IP ownership.

73. Netflix has significant experience on the ground in Canada working with Canadian independent producers. Based on this experience, flexibility should be the watchword: mandating Canadian copyright ownership as a “top-down” requirement would skew the financing equation and limit the ability of producers to negotiate terms that suit their needs (for example, trading IP for upfront funding or reduced risk). A rigid, one-size-fits-all approach stifles industry innovation and hampers adaptability to global trends. Many international collaborations depend on shared or transferred IP rights to secure funding from multiple sources. Therefore restrictive retention policies risk making Canadian projects less attractive as co-production partners.³⁷
74. A sliding scale approach to IP ownership, namely where a higher number of Canadian key creative positions could offset a lower level of Canadian IP ownership (as well as the converse scenario), would ensure that such an outcome is realized. Parties should be permitted to negotiate IP ownership based on their financial contributions, risk profiles, and all other relevant considerations. The sliding scale proposal would also be consistent with the third model noted in paragraph 31 of the Notice (“models that support investment and balance the economic benefits of holding/sharing the IP of a production with incentives to collaborate and partner between Canadians, including Canadian undertakings and foreign online undertakings”).
75. However, for this to be workable, the Commission should refrain from imposing presumptive top-down requirements that require Canadian IP ownership as a condition for a given program to be recognized as “Canadian” (and therefore count toward any CPE requirement). Thus, at a minimum, the sliding scale approach should not mandate IP ownership. As stated in our written intervention, a flexible approach to IP ownership should integrate with the program certification system: IP ownership would only be needed if, for example, a program has not fulfilled sufficient Canadians in key creative positions such that it is unable to adhere to the 51% threshold (as proposed by MPA-Canada for foreign online undertakings). Conversely, if a given program already has achieved a higher number of Canadians in key creative positions (more than 50%), a Canadian IP “bonus” would not be required in order to qualify the program as Canadian.
76. Mandating Canadian IP ownership would have a number of negative impacts, including:
 - It would increase financial risk for investors by limiting their ability to recoup

³⁷ Netflix has noted on the record of previous CRTC proceedings that “no two deals have ever been exactly the same. There’s no “one-size-fits-all” model when it comes to deal-making. Projects are presented to us in many ways and it’s important to ensure that we have the flexibility to figure out how to best partner.” See Transcript (Netflix Services Canada ULC), 30 November 2023, para. 7183.

investment through content exploitation and distribution.

- It would constrain one of the fundamental elements of the production financing equation and have a negative impact on the specific stated outcome in this proceeding, namely “to make room for flexible business models to facilitate the discoverability and exportability of Canadian content, both within Canada and globally” and “to facilitate a financial support ecosystem that encourages a variety of productions and a variety of business broadcast and distribution”.
- It would potentially dissuade investment, particularly in respect of high-risk projects or new creators, skewing toward more tried-and-tested projects, resulting in a high barrier to entry for underrepresented groups and reducing the diversity of Canadian content that is created and made available on online streaming platforms.

Question 29

Should the Commission include points or other incentives for the use, in Canadian programs, of pre-existing Canadian source material such as Canadian-authored novels, plays, or short stories or Canadian musical selections as defined by the Commission- in defining Canadian content, particularly in light of subsections 10(1.1)(a) and 10(1.1)(c) of the Broadcasting Act? How should those points be attributed or, alternatively, what should those incentives be?

Response

77. In principle, Netflix supports awarding points or other incentives when Canadian programs draw on pre-existing Canadian source material. However, reliance on that single criterion is insufficient, as the proposal as articulated appears limited to “pre-existing Canadian source material” and would not fully recognize the “cultural element” within the points system that we proposed in its written submission. The Commission should therefore craft additional criteria to reward adaptations of new source material reflecting a bona fide Canadian cultural element.
78. Accordingly, Netflix supports the detailed proposal set out by MPA-Canada in its written intervention, which provides for either non-mandatory bonus points awarded after the key creatives test or the award of CPE credits to incentivize contributions to Canadian artistic and cultural expression.³⁸

Question 30

The Commission currently collects programming and production expenditures data by programming category. The programming categories are currently divided into 14 groups:

- News (category 1);
- Analysis and Interpretation (category 2(a)),
- Long-form documentary (category 2(b)),
- Other information (category 3 to 5),

³⁸ MPA-Canada Intervention (Notice), para. 41.

- Sports (category 6),
- Drama and Comedy (category 7(a), (b), (f), (g)),
- Films (category 7(c), (d)),
- Animated programs & films (category 7(e)),
- Music/variety (category 8 and 9),
- Game shows (category 10),
- Human interest excluding award shows (category 11(a)),
- Reality television (category 11(b)),
- Award Shows (not incl. in 11(a)),
- Others (category 12 to 15)

- a. *Should the data collection be amended to further group the categories in the reporting to reduce reporting burden? If so, how and if not, why?*

Response

79. The 14 programming categories the Commission relies on are largely historical, crafted to enforce earlier policies such as genre protection and diversity quotas, all of which were uniquely developed for and as part of the closed broadcasting system. Netflix has historically not tracked its catalogue in accordance with these legacy programming categories. Netflix strongly supports modernizing the data-collection scheme by consolidating categories to reduce reporting burden. A logical starting point would be a thematic regrouping aligned with contemporary services—e.g., “animation”, “news”, and “entertainment programming.”

Question 31

If the Commission were to maintain its current co-venture model but incorporate provisions regarding IP ownership, whether the IP would be shared or wholly owned by one party, please provide details on what these provisions could be. (e.g. should the Commission require full Canadian IP ownership for productions with lower Canadian certification points? Should the IP be shared 50/50 between a Canadian production and a non-Canadian production company, which would align with the current co-venture model requiring shared decision-making responsibilities and financial participation and profit-sharing?)

Response

80. We note as a preliminary comment that the ultimate response to this question is dependent on the scope of flexibility the Commission generally accords to IP ownership. As noted in detail in our response to Question 28 above, IP ownership should factor in as an element toward achieving the necessary majority key creative positions (or otherwise be incorporated as a bonus toward CPE requirements if such majority can be achieved without the IP element). Therefore, to the extent that such flexibility rules are incorporated in the new definition of Canadian program that is ultimately adopted, then the co-venture structure would have less prominence in most production financing structures going forward.
81. Subject to the above consideration, as a general principled response, we urge the

Commission to remain flexible regarding copyright ownership including preserving the existing co-venture model. As we noted in our written comments, the salient consideration with respect to the co-venture model is primarily based on its flexibility as to which party owns the copyright in the subject production. Thus, on a preliminary basis, a measure taken by the Commission to incorporate provisions regarding copyright ownership (i.e., presumptive rules regarding either shared or wholly-owned copyright) overlaid onto the current requirements relating to shared decision-making responsibilities and financial participation and profit-sharing would be unduly burdensome and restrictive. There is ample evidence on the record of this proceeding that the co-venture model is a significant lever for Canadian and non-Canadian collaboration to produce high quality bona fide Canadian programming.

82. We note that some interveners have expressed veiled support for the continued application of the co-venture model. However, at the same time these interveners have made such support conditional on the Commission imposing presumptive inflexible requirements that creative control and IP ownership must be held by Canadians, irrespective of the deal structure.³⁹
83. The above proposals would effectively eviscerate the benefits of the co-venture model by seeking to impose an ex ante requirement for outright Canadian creative and financial control, whereas the stated purpose of the co-venture structure is to “offer greater flexibility for Canadian producers who wish to work with foreign producers, by sharing creative and financial decision-making responsibilities”.⁴⁰ This would effectively leave the co-venture model of little assistance in achieving more flexible financing arrangements among a Canadian and foreign partner.
84. As MPA-Canada noted in its written intervention, the core benefit of the co-venture model is the flexibility within the model to structure financing within the requirement that at least 50% of the financing required for the production must be raised or acquired by the Canadian production company. These arrangements permit parties to allocate financing elements such as pre-sales and production services tax credits in a mutually beneficial manner, thereby allowing the Canadian producer to defer part of its financial investment until monies have been recouped from the production.⁴¹
85. In summary, the existing co-venture model supports investment and balances the economic benefits of holding/sharing the IP of a production with incentives to collaborate and partner between Canadians and foreign online undertakings. However, the foregoing proposals would remove this critical benefit from the model.

³⁹ Netflix strongly disagrees with proposals that the Commission should impose rigid requirements for 100% Canadian creative control and IP ownership. See, for example, Transcript (Canadian Broadcasting Corporation/Radio-Canada), 26 May 2025, paras. 7370-7371.

⁴⁰ Canadian Radio-television and Telecommunications Commission, *Canadian Program Certification Guide* (23 March 2023).

⁴¹ MPA-Canada Intervention (Notice), para. 67.

Question 32

In 2019, you released revenue and subscription figures in Canada, but it appears that you have not publicly released this type of information on your service in Canada since then. Why did Netflix not consider, in 2019, that releasing that information was harmful to its business in Canada? What specific harms is Netflix concerned about if similar information is required to be made public in the future?

Response

86. Netflix adopted a region-based reporting model in its Q4-2019 earnings report that was released in January 2020, grouping reporting into Asia-Pacific (APAC), Europe, Middle East & Africa (EMEA), Latin America (LATAM), and the US-and-Canada (UCAN). This regional lens more accurately reflected the manner in which the Company manages its business and the evolving state of the competitive landscape for streaming services. In particular, as Netflix had begun self-producing and licensing more globally held titles, it was decided that it was no longer reflective of the business to release country-by-country data.

Question 34

In order to identify programming that is representative of the cultural diversity in Canada, should the Commission work with an organization to collect relevant information and coordinate the identification of reflective programming? If so, what organization would be the best positioned to fulfill that mandate? What safeguards should be in place and what information should be collected?

Response

87. Netflix submits that existing organizations with a nexus to public funding and mandates—including the CMF and Telefilm Canada—may collect data and information on programming regarding its cultural diversity elements.

Question 35

In order to effectively participate and monitor the support of Canadian programming, should the Commission require the disclosure of revenues, overall programming expenditures in Canada, and Canadian programming expenditures, and contributions by entity for all broadcasting undertakings carried on in Canada? Should a financial threshold apply to be subject to such a requirement?

Response

88. As noted in detail in the response to Question 6, above, pursuant to the requirements set out in the Digital Media Survey, Netflix currently discloses Canadian revenues, and programming expenditures, all of which are filed annually on a confidential basis and have been accorded confidential treatment by the Commission. To the extent that the Commission alters or derogates from its current practice with respect to confidentiality—particularly through disclosure of revenues, overall programming

expenditures in Canada, and Canadian programming expenditures, and contributions *by entity*—Netflix would have significant concerns in view of the potential for such disclosure to prejudice its competitive position in the market. Therefore, if the Commission elects to codify disclosure requirements (by condition of service), we submit that such requirements should not be made more onerous, in view of the above-noted concerns with respect to disclosure of commercially-sensitive information.

* * *

89. We appreciate the opportunity to file these responses to the RFIs. We look forward to the opportunity to provide comments on the responses by other parties (and certain non-parties) to their respective RFIs as part of our final written submissions.

Yours truly,

Lindsay Doyle

Lindsay Doyle

Director, Global Affairs | Canada

cc. Scott Shortliffe, Vice-President Broadcasting

*****End of document*****

CONFIDENTIAL

Appendix "A"

Reporting Period (July 1, 2020 - June 30, 2021)

Summary (in CAD)		genres (\$ CAD)			
		Long Form Documentaries	Drama/Feature Films	Children's/Youth Programs	All Others
Canadian Programming Expenditures					
Non-Canadian Programming Expenditures					
Total Programming Expenditures					

Reporting Period (July 1, 2021 - June 30, 2022)

Summary (in CAD)		genres (\$ CAD)			
		Long Form Documentaries	Drama/Feature Films	Children's/Youth Programs	All Others
Canadian Programming Expenditures					
Non-Canadian Programming Expenditures					
Total Programming Expenditures					

Reporting Period (July 1, 2022 - June 30, 2023)

Summary (in CAD)		genres (\$ CAD)			
		Long Form Documentaries	Drama/Feature Films	Children's/Youth Programs	All Others
Canadian Programming Expenditures					
Non-Canadian Programming Expenditures					
Total Programming Expenditures					

Reporting Period (September 1, 2023 - August 31, 2024)

Summary (in CAD)		genres (\$ CAD)				Licensed ("Acquisitions")	Owned ("Productions")
		Long Form Documentaries	Drama/Feature Films	Children's/Youth Programs	All Others		
Canadian Programming Expenditures							
Non-Canadian Programming Expenditures							
Total Programming Expenditures							

G

This is Exhibit "G" referred to in the
affidavit of Sydney Grieve
affirmed before me, this 17th
day of December, 2025



A Commissioner for taking affidavits



FILED VIA GCKEY

17 June 2025

Mr. Marc Morin Secretary-General
Canadian Radio-television and Telecommunications Commission
Gatineau, QC K1A 0N2

Dear Mr. Morin:

Re: Prime Video – ABRIDGED RESPONSES to requests for information regarding the proceeding initiated by *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector*, Broadcasting Notice of Consultation CRTC 2024-288, 15 November 2024

Pursuant to the procedures established by the Canadian Radio-television and Telecommunications Commission (**CRTC** or the **Commission**) in a letter dated 29 May 2025, enclosed please find the ABRIDGED RESPONSES from Prime Video to the Commission’s requests for information (**RFIs**) related to the proceeding initiated by *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector*, Broadcasting Notice of Consultation CRTC 2024-288 (**Consultation**).

Prime Video has separately filed its UNABRIDGED AND CONFIDENTIAL RESPONSE to RFI-13.

For purpose of these responses, Amazon relies on the defined terms used in its Initial Comments dated January 20, 2025.

As a preliminary matter, Amazon objects to the compressed timetable for provision of these responses, which are due only two weeks from the date the RFI was issued, overlaps with another consultation, and requests information from Amazon that is not kept in the ordinary course. As set out in Amazon’s extension request dated June 6, 2025, which was denied by the Commission, this unfairly short period of time is prejudicial to its ability to respond in full.

Amazon also notes that the deadline for these responses falls during the hearing of litigation before the Federal Court of Appeal concerning the Commission’s imposition of financial expenditure requirements pursuant to section 11.1 of the Broadcasting Act in Broadcasting Regulatory Policy

2024-121-1 and Broadcasting Order 2024-194, in which Amazon is a party and in which the Court has been asked to rule on some of the very issues the Commission now asks Amazon to address in its response to the RFI. This is procedurally problematic, as set out below.

As a member of Motion Picture Association—Canada (**MPA-Canada**), Amazon supports MPA-Canada's responses to the RFI (particularly given the compressed timeline for response to this RFI). In the time available to it, Amazon provides the following additional responses to supplement those provided by MPA-Canada.

Submissions on Confidentiality

Certain information contained in the enclosed responses (designated with the use of the symbol “#” inserted around the information) has been designated as confidential and is being submitted by Prime Video in confidence pursuant to section 25.3 of the *Broadcasting Act* and Broadcasting and Telecom Information Bulletin CRTC 2010-961, *Procedures for filing confidential information and requesting its disclosure in Commission proceedings* (**Bulletin**).

The Appendix to the Bulletin consists of a list of types of information that the Commission typically receives in broadcasting and telecommunications proceedings and summarizes how the CRTC has historically dealt with such requests. As acknowledged by the Commission, the list is a “guideline only” – a disclosure decision is context-specific and based on the specific circumstances of any particular case. Put differently, the Appendix to the Bulletin is not exhaustive – further categories of information can be treated confidentially, and information that has not been disclosed in the past may be disclosed in the future.¹

Among the types of information that broadcasting undertakings are entitled to designate as confidential is information the disclosure of which could reasonably be expected:

- i. to result in material financial loss or gain to any person;
- ii. to prejudice the competitive position of any person; or
- iii. to affect contractual or other negotiations of any person.²

The greater the degree of competition, the more likely it is that the direct harm from public disclosure

¹ Broadcasting and Telecom Information Bulletin [CRTC 2010-961](#) at [para. 20](#) [**Bulletin**].

² Bulletin at [para. 4](#); *Broadcasting Act*, [S.C. 1991, c. 11](#) at [para. 25.3\(1\)\(c\)](#); *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, [SOR/2010-277](#) at [subs. 31\(1\)](#), incorporating by reference the *Telecommunications Act*, [S.C. 1993, c. 38](#) at [para. 39\(1\)\(c\)](#).

will outweigh the public interest.³

Prime Video's answer to RFI-13 contains confidential information regarding Amazon's financial investments in total programming and in certified Canadian programming throughout the past four years (2020-2024) (**RFI-13 Information**). This information is commercially sensitive business information that is consistently treated as confidential by Prime Video and which is otherwise not available to the public. The requested information, if disclosed, could reasonably be expected to: (i) result in material financial loss for Prime Video, and corresponding financial gain for its competitors; (ii) prejudice Prime Video's competitive position; and (iii) negatively impact Prime Video's contractual or other negotiations.

We note that the Commission previously requested similar information from Amazon, and others, in response to a RFI in Broadcasting Notice of Consultation CRTC 2023-138, *The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content*. However, in that consultation, the Commission expressly stated that such information could be provided “confidentially if desired.”⁴ Prime Video respectfully submits that the Commission's request in this Consultation should have been similarly framed to ensure a consistent recognition of the confidential nature of the requested information. With reference to the Commission's prior treatment of similar, financial information, the Commission should make a determination that Prime Video's current request to designate its RFI-13 Information as confidential is both appropriate and accepted.

However, in the alternative, Prime Video offers the following submissions with respect to the confidential nature of the requested financial information:

- Prejudice to Competitive Position.** The Canadian market for streaming services is highly competitive. Prime Video competes to produce, acquire, and license content from Canadian storytellers. The financial data at issue is recent. The disclosure of Amazon's confidential information would therefore provide its competitors with current and valuable information about Prime Video's business strategies and capabilities in the market. This information could reasonably be used by Prime Video's competitors, to Prime Video's detriment in future procurement processes. Put differently, the requested financial information is recent, useful market intelligence for Prime Video's competitors for the purpose of negotiating competitive arrangements and/or positioning and delivering competitive goods and services. Competitors

³ Bulletin at [para. 17](#).

⁴ [Broadcasting – Staff Letter addressed to the Distribution List](#) (1011-NOC2023-0138), dated December 21, 2023 at [Q.20](#).

should not be able to have access to, and benefit from, Amazon's confidential information and strategic approach in Canada.

- **Impact on Contractual or Other Negotiations.** Prime Video is concerned that public disclosure of its acquisition, production, licensing, and funding expenses may negatively affect its contractual relations with underlying content providers. In particular, the information, if disclosed, would provide content providers with specific insights into Prime Video's programming acquisition strategy and negotiating position. Providers could reasonably use the information in future contractual negotiations. Similarly, Prime Video's competitors could use the information to gain a competitive advantage in future negotiations.
- **Material Financial Loss or Gain.** Should the financial information at issue be disclosed, and Prime Video's competitive and/or negotiating position be negatively impacted, then it reasonably follows that Prime Video would suffer undue and material financial loss, and that its competitors would receive corresponding gains.

Finally, we respectfully submit that the release of Prime Video's RFI-13 Information is not required for third parties to meaningfully participate in the Consultation and comment on the definition of "Canadian program," since the information in question is specific to Prime Video. As such, we do not believe the confidential treatment of this information will undermine the Commission's ability to obtain a full public record in the Consultation. Prime Video's concerns, enumerated above, are not outweighed by the public interest in disclosure.

Accordingly, Prime Video respectfully requests that the Commission not place the RFI-13 Information, filed in confidence, with the enclosed responses on the Commission's public record.

ABRIDGED
RESPONSES TO REQUESTS FOR ADDITIONAL INFORMATION FROM THE COMMISSION

6. Most foreign streaming services argue that publishing certain types of data would cause them commercial harm. The Commission publishes data on its website, not only to inform the public, but also to foster accountability and transparency throughout the broadcasting system. This practice is in the public interest as different parties in the system have access to relevant data and broadcasters are held accountable in meeting their requirements.

a. How can the public interest in access to data about the Canadian broadcasting system be balanced with concerns raised by some foreign streaming services about potential commercial harm? Why do you believe that the balance either supports making such data public, or keeping it confidential?

b. Should any data from foreign streaming services be made public, what measures could mitigate these potential risks of harm while still ensuring interested persons have access to relevant data?

c. Regarding the public release of information about revenues, individual production budgets, and acquisition expenditures, certain interveners proposed that this information could be made publicly available in aggregated form. Do you support such an aggregated approach, and if not, why? If yes, what level of aggregation do you support?

Answer:

In addition to supporting the response of MPA-Canada in this proceeding, Amazon reiterates the arguments raised in its submissions to date regarding the confidentiality and commercial sensitivity of its financial information, including its January 20, 2025 Initial Comments submitted in response to *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector* (Broadcasting Notice of Consultation CRTC 2024-288) and its May 5, 2025 Initial Comments submitted in response to *The Path Forward – Supporting Canadian and Indigenous audio content in Broadcasting* (Notice of Consultation CRTC 2025-52).

Amazon emphasizes the submission of MPA-Canada that, if the Commission determines that public disclosure of any confidential, commercially sensitive information is necessary, it should be disclosed in the aggregate only. Further, and with respect to the types of information listed in the question above (revenues, individual production budgets, and acquisition expenditures), we believe the only type of information in which there may be a public interest for the purpose of helping the public and stakeholders better understand the Canadian broadcasting system, is that of expenditure on Canadian content or programming—in the aggregate.

We do not believe the public interest that may be served in disclosing other commercially sensitive information, such as revenue information, even in aggregate form, overrides the risk of harm to streaming services from the unnecessary publication of their information. This is particularly true because global online streaming and on-demand services invest in production and acquire programming in a highly competitive cross-border environment. Streaming services are therefore in a more sensitive position than traditional broadcasters when it comes to their financial information.

Commercially sensitive information such as acquisition expenditures could also be used by content providers as leverage in contractual negotiations, including negotiations relating to licensing and pricing. Such information may provide content providers with specific insight regarding the programming acquisition strategy employed by Prime Video, which would unfairly compromise Prime Video's negotiating position and any acquisition opportunities it wants to pursue. Given the global nature of Prime video's business, this harm would not be limited to Canada.

ABRIDGED
RESPONSES TO REQUESTS FOR ADDITIONAL INFORMATION FROM THE COMMISSION

To the extent the Commission determines such information should be publicly disclosed (despite there being no “accountability” purpose to justify publishing sensitive non-public information), it must ensure that it is in anonymized aggregate form. To do otherwise would cause Prime Video harm not just in Canada, but possibly in the other jurisdictions in which it operates.

ABRIDGED
RESPONSES TO REQUESTS FOR ADDITIONAL INFORMATION FROM THE COMMISSION

12. In the public record for this proceeding, numerous interveners state that the following types of **Canadian programming** are at risk: long-form documentaries, drama/feature films, children's/youth programs, music and dance programs as well as variety programs.⁵

a. Please provide the Commission with the following trends data regarding these five types of programming on your services in Canada. Please indicate total:

i. Availability of these five types of programs throughout the past four years (2020-2024).

ii. Availability of these five types of programs which are certified as Canadian throughout the past four years (2020-2024).

iii. Audience measurement data throughout the past four years (2020- 2024) in relation to the five types of programs noted above.

iv. Financial investments in Canadian programming throughout the past four years (2020-2024) in relation to the five types of programs noted above.

Answer:

Prime Video is not in a position to provide a response to this question, as it does not track data in a manner that corresponds with the program-types listed above. Nor was it able, in the time provided for this RFI, to come up with a reliable way to approximate the information requested.

It is important for the Commission to note that Prime Video relies on the metadata provided to it by its content partners. While this metadata can provide information as to genre, this information is not generated by Prime Video and where provided, is often not accurate or reliable.

⁵ Programs containing primarily (i.e. more than 50%) performances of mixed character (e.g. not exclusively music or comedy performances) consisting of a number of individual acts such as singing, dancing, acrobatic exhibitions, comedy sketches, monologues, magic, etc.

ABRIDGED
RESPONSES TO REQUESTS FOR ADDITIONAL INFORMATION FROM THE COMMISSION

13. Please quantify your financial investments in total programming and in certified Canadian programming throughout the past four years (2020-2024). Please disclose separately acquisitions of programming and production of programming (please separate total programming from certified Canadian programming).

Answer:⁶

Estimated Total Programming in millions of CAD \$:

Estimated total programming includes allocations from global investments that are not controlled locally.

Expense Type	1 Sept 2020 – 31 Aug 2021	1 Sept 2021—31 Aug 2022	1 Sept 2022 – 31 Aug 2023	1 Sept 2023- 31 Aug 2024
Acquisition	# #	# #	# #	# #
Production	# #	# #	# #	# #

Estimated Certified Canadian Programming in millions of CAD \$:⁷

The table below sets out the amounts spent over the past four broadcast years by Prime Video to acquire or produce Canadian content within the meaning of CAVCO for inclusion in its SVOD service:

Expense Type	1 Sept 2020 – 31 Aug 2021	1 Sept 2021— 31 Aug 2022	1 Sept 2022 – 31 Aug 2023	1 Sept 2023- 31 Aug 2024
i) Related expenses for the licensing of pre-existing Canadian content (CAVCO)	# #	# #	# #	# #
<i>(a) portion of i) that is on Prime Video in Canada</i>	# #	# #	# #	# #
<i>(b) portion of i) that is not on Prime Video in Canada</i>	# #	# #	# #	# #
ii) Related expenses for the licensing of original Canadian content (CAVCO)	# #	# #	# #	# #
<i>(a) portion of ii) that is on Prime Video in Canada</i>	# #	# #	# #	# #

⁶ We note that expenses are by broadcast year. Under the compressed timeline to respond to this RFI, we were unable to gather additional data in the stub years on either side of these broadcast years because we don't yet store this information in the ordinary course.

⁷ We note that the expenses in the table do not match those previously provided by Prime Video in its January 26, 2024 response to RFI-20 in Broadcasting Notice of Consultation CRTC 2023-138, *The Path Forward – Working towards a modernized regulatory framework regarding contributions to support Canadian and Indigenous content*. Having revisited those estimates, Prime Video identified additional qualifying content and revised the estimates accordingly.

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Expense Type	1 Sept 2020 – 31 Aug 2021	1 Sept 2021— 31 Aug 2022	1 Sept 2022 – 31 Aug 2023	1 Sept 2023- 31 Aug 2024
<i>(b) portion of ii) that is not on Prime Video in Canada</i>	\$-	\$-	\$-	\$-
iii) Related expenses on the production of Canadian content (CAVCO) ⁸	\$-	\$-	\$-	\$-
<i>(a) portion of iii) that is on Prime Video in Canada</i>	\$-	\$-	\$-	\$-
<i>(b) portion of iii) that is not on Prime Video in Canada</i>	\$-	\$-	\$-	\$-

(A) The expenses in the two tables directly above #

#

(B) The expenses in the table directly above include global expenses on Canadian content. Global expenses are not controlled locally. Total expenses are then broken down into separate line items for (a) expenses related to titles that are on the Prime Video service in Canada; and (b) expenses related to titles that are not on the Prime Video service in Canada.

⁸ Amazon produced content does not currently qualify as Canadian content under CAVCO. As we have stated in prior submissions, this includes content that is objectively Canadian—made in partnership with Canadian production companies, shot in Canada, featuring largely Canadian casts, made by Canadian crews, and promoted as Canadian to customers on the Prime Video service.

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14. Can you specifically outline what you believe would be missed opportunities for using Canadian creative talent on projects where Canadians have creative control? If so, can you cite your experience in commissioning content in other countries as examples of what the implications for Canada could be?

Answer:

As set out in our January 20, 2025 Initial Comments submitted in response to *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector* (Broadcasting Notice of Consultation CRTC 2024-288), Prime Video works extensively with Canadian creative talent in its production and post-production work in Canada.

We film some of our largest global Amazon Original productions in Canada. We employ Canadians to staff our crews and our casts, and we use Canadian production companies, including for post-production and visual effects. Our production and post-production projects in 2021-2022 alone were estimated to have contributed \$1.4 billion to Canada’s GDP and more than 13,000 Canadian jobs.⁹

If the Commission directs that creative control of Canadian programs must be held by Canadians, as previously submitted in our Initial Comments, foreign online undertakings may no longer film global productions in Canada.

This would be a loss for Canadian talent and for Canadian production and post-production companies. This is because we work extensively with Canadian creatives on projects where we hold the ultimate creative control. As an example, and as set out in our Initial Comments, *LOL: Qui rira le dernier?* is derived from an international format licensed to Amazon that we have brought to Canada (and more than 20 other countries). While we hold the rights to the format, this program is filmed in Canada, is staffed by Canadians, and boasts Canadian casts and the use of Canadian production companies. For this and the reasons set out in MPA-Canada’s response to the RFI, the reduced investment prompted by a loss of creative control would, in turn, drastically reduce opportunities in Canada for Canadian creative talent and inevitably reduce the discoverability of Canadian talent globally.

Outside of Canada, in countries where Amazon is not restricted from having creative control, we create culturally important projects. Our productions spotlight local talent and local stories and Prime Video provides them a global service for success.

For example, in Australia—where Prime Video is not restricted from having creative control nor from having IP ownership—recent projects that we own or co-produce and have creative control include:

- **Deadloch S1.** This dark comedy *noir* series is a Prime Video Australian original, set against the moody backdrop of Tasmania. Created by a local comedy duo, the series was shot entirely in Australia with a predominantly local cast and crew. It features prominent local Australian and New Zealand talent, and a story deeply rooted in Australian culture (centering on the fictional town of Deadloch as it is shaken by a series of murders). A satire of prestige crime dramas, and a sharp exploration of small-town politics, Deadloch was developed, produced, and promoted as a distinctly Australian story for domestic and global audiences.
- **The Lost Flowers of Alice Hart.** This emotionally charged drama series is also a Prime Video Australian original, adapted from the best-selling novel by Australian Holly Ringland. Directed by an Australian, and produced with a predominantly Australian cast and crew, the series was filmed entirely across regional and coastal Australia, capturing the country’s striking natural landscapes. The series stars Australian talent, alongside international actor Sigourney Weaver in her first major Australian role. Spanning decades, the series explores themes of trauma, identity, and healing, grounded deeply in

⁹ Amazon, “Amazon MGM Studios’ Economic Impact in Canada” (November 29, 2023) (<https://www.aboutamazon.ca/amazon-mgm-studios-economic-impact-in-canada>).

ABRIDGED
RESPONSES TO REQUESTS FOR ADDITIONAL INFORMATION FROM THE COMMISSION

Australian culture and storytelling. The Lost Flowers of Alice Hart was developed, produced, and promoted as a distinctly Australian story for both local and international audiences.

ABRIDGED

RESPONSES TO REQUESTS FOR ADDITIONAL INFORMATION FROM THE COMMISSION

15. *In Motion Picture Association – Canada's intervention and presentation, it emphasized s. 3(1)(f.1) of the Broadcasting Act as guiding the Commission in its approach to regulation of foreign online undertakings in this proceeding.*

In light of the foregoing, explain:

a. What constitutes "equitable" in terms of contributions to support the creation, production and presentation of Canadian programming by foreign online undertakings, and what factors the Commission should consider in identifying appropriate and equitable contributions by foreign online undertakings? In your answer, ensure to respond to the comments made by the Motion Picture Association – Canada at the oral phase of this hearing.

Answer:

The question of what constitutes "equitable" in the context of contribution obligations under the *Broadcasting Act*, including as that term is used in the *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)*, SOR/2023-239 (**Policy Direction**), is currently before the Federal Court of Appeal by way of appeals (see consolidated Court Files No. A-34-25 (lead appeal) and A-35-25, A-39-25, and A-41-25) and by way of applications for judicial review (see consolidated Court Files No. A-225-25 (lead application) and A-304-24, A-308-24, and A-309-24) (collectively, the **Contribution Litigation**).

Amazon, as an appellant and applicant in these proceedings, has challenged Broadcasting Regulatory Policy CRTC 2024-121-1 and Broadcasting Order CRTC 2024-194 (together the **Implementing Decision**), including on the basis that the Commission failed to correctly interpret and apply the "equitable" requirement in section 4 of the Policy Direction given the size and nature of affected undertakings, and as between foreign and domestic undertakings. Other parties to the Contribution Litigation have challenged the CRTC's interpretation and application of "equitable" requirements as they appear in the *Broadcasting Act* and the Policy Direction.

As the Commission is aware, the Contribution Litigation was scheduled to be heard from Monday, June 9 until Thursday, June 12: the same day that this RFI response is due. Given the issues being advanced in the Contribution Litigation, it is likely that the Court of Appeal's reasons will deal with both the correctness of the CRTC's interpretation and application of the term "equitable" and the reasonableness of the CRTC's decision in the context of the base contribution requirement.

The Commission therefore asks Amazon and other RFI respondents to answer a question that is—in part if not in whole—pending before the Federal Court of Appeal.

This is procedurally problematic. The Commission's suggestion that it will make further determinations regarding the meaning of "equitable" at this time risks inconsistent outcomes as between decision-makers on a key point of statutory construction.

It is also premature to seek input on the meaning of "equitable" at this time. The Commission, Amazon, and all other parties to this Consultation will be bound by any determination of the Federal Court of Appeal concerning the meaning of "equitable," or the CRTC's interpretation and application of this term in the context of section 3 of the *Broadcasting Act* and/or section 4 of the Policy Direction. The Court's reasons may include a complete response to the above question. To the extent they do not, they will inform it, and further analysis will need to account for the Court's guidance in its reasons. In light of that fact, the Commission's decision to ask this question now is prejudicial and procedurally unfair.

Amazon has already made extensive written submissions in its memoranda of fact and law in Court Files No. A-35-25 and A-304-24, as well as oral argument at the hearing during the week of June 9, 2025 concerning the meaning of "equitable" in the Contribution Litigation. Amazon relies on its public submissions

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ABRIDGED
RESPONSES TO REQUESTS FOR ADDITIONAL INFORMATION FROM THE COMMISSION

in the Contribution Litigation to respond to this question.

In the event that the Commission does not accept further submissions on the meaning of “equitable” or its application to the issues in this Consultation once the Court of Appeal renders its decision in the Contribution Litigation, this would be procedurally unfair. Amazon asks the Commission for the opportunity to supplement its answer to the above question after receipt of the Court’s decision.

The modernization of Canada’s broadcasting system cannot come at the expense of a fair process, which must be informed by the Court’s determinations regarding the question of “what constitutes equitable.”

ABRIDGED

RESPONSES TO REQUESTS FOR ADDITIONAL INFORMATION FROM THE COMMISSION

16. Non-Canadian online programming undertakings benefit significantly from the Canadian market. However, they are not subject to the same financial contributions and regulatory obligations as Canadian broadcasting undertakings and have not yet made non-financial contributions (such as in broadcasting infrastructure) in Canada on the same scale as Canadian broadcasting undertakings. While it would not be practicable for non-Canadian online programming undertakings to make the same contributions, direct financial contributions may be viewed as the most practicable manner to support the Canadian broadcasting system in a manner that is commensurate with their size and nature.

a. In the absence of comparable contributions, address why online non- Canadian undertakings should not be expected to make equal or greater financial contributions as those of Canadian undertakings in order to equitably support the Canadian broadcasting system.

Answer:

The Commission has not provided the specific contributions made by Canadian undertakings to which it refers in this question, against which it expects non-Canadian undertakings to assess their own obligations. In the absence of such information, this question asks for speculation and is difficult to answer substantively.

It is also prejudicial for the reasons set out above: the issue of how to construe what an “equitable” contribution may be, as between non-Canadian and Canadian undertakings, is a contested issue in the Contribution Litigation concerning the Commission’s decision on financial contribution requirements.

In requesting a response to the above question, the Commission risks inconsistent outcomes as between decision-makers on a key issue—the construction of the term “equitable” as it relates to a contribution-related policy in the Act. It does so pending the Federal Court of Appeal’s imminent guidance on this very issue. This is procedurally problematic.

Further, this question appears premised on the view that the non-Canadian online undertakings do not already contribute to the Canadian broadcasting system. Amazon has set out for the Commission the extensive contributions that it makes to the Canadian broadcasting system—including its January 20, 2025 Initial Comments submitted in response to *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector* (Broadcasting Notice of Consultation CRTC 2024-288).

As set out in those Initial Comments, Amazon invests significantly in Canadian production and post-production work and more generally—including by way of its investment in Pinewood Studios in Toronto, and providing financial support to key cultural organizations in Canada. We urge the Commission to consider carefully the submissions we have filed to date in this regard.

Amazon asks the Commission for the opportunity to supplement its answer to the above question after receipt of the Federal Court of Appeal’s decision in the Contribution Litigation.

ABRIDGED
RESPONSES TO REQUESTS FOR ADDITIONAL INFORMATION FROM THE COMMISSION

21. What factors should the Commission consider when it establishes expenditure requirements on undertakings owned by different entities that earn over \$25 million in broadcasting revenue in Canada?

Answer:

Amazon relies on its submissions and the submissions of MPA-Canada in The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector (Broadcasting Notice of Consultation CRTC 2024-288) in response to this question and the question below.

As set out in those submissions, the primary consideration for the Commission must be accounting for contributions to the broadcasting system made by foreign online undertakings. A fair and flexible approach to assessing expenditure requirements must expressly account for investments made. The approach should be the same regardless of whether the entity earns over \$25 million in broadcasting revenue in Canada; such a revenue threshold is arbitrary and should not determine expenditure requirements.

Foreign online undertakings are in the business of producing content in Canada for Canadians (and their global audiences). Their investment in Canadian creative talent and the Canadian broadcasting system must be taken into account when assessing any expenditure requirement.

In addition, the Commission must provide flexibility in how they assess this investment. All types of investments should be accounted for in assessing expenditure requirements—including production-related expenditures, whether or not the production qualifies for CPE credit, and non-production-related expenditures (e.g., training initiatives for Canadian creators and workers, and investments in Canadian production infrastructure such as production studio space).

To the extent the Commission is considering exemptions for certain niche services, such exemptions should be available for any undertaking offering those services, regardless of whether they also provide other content. To do otherwise would mean imposing stricter requirements on an undertaking, simply because it offers a broader range of content to Canadians: this is unfair and counterproductive. Exemptions for niche services could be considered and incorporated through tailored conditions of service.

ABRIDGED
RESPONSES TO REQUESTS FOR ADDITIONAL INFORMATION FROM THE COMMISSION

22. In determining an expenditure requirement, what should be allowable expenses that count towards fulfilling these requirements? What ratio of expenses should be devoted to direct programming expenses, other direct expenses such as contributions to funds and other more intangible expenses such as training and infrastructure? Additionally, what factors should the Commission consider when establishing these ratios as a part of overall tailored conditions of service?

Answer:

As set out in Amazon's Initial Comments in this Consultation, it is Amazon's position that the Commission should not impose expenditure requirements, particularly given our extensive existing investment in the Canadian broadcasting landscape.

Further, and as set out in MPA-Canada's submissions in this Consultation—and as required under the Act and Policy Directive—the Commission must provide flexibility regarding how an undertaking meets expenditure requirements. This includes in how allowable expenses are assessed. All in-Canada production and post-production funding should count—it contributes directly to the employment of Canadian creatives and talent—regardless of whether the program in question is “Canadian.” And this production and post-production funding should count regardless of form (e.g., whether by direct funding, or licensing fee).

Promotional expenditures with third parties relating to Canadian programs should be counted as eligible expenditures, as should promotional expenditures relating to Canadian programming undertakings. These promotional expenditures, made both in and outside of Canada, help Canadians and viewers around the world discover and engage with Canadian programs.

As set out in response to the above question, a flexible approach to allowable expenses must be inclusive and broad in scope to ensure that it accounts for the nature of a foreign online undertaking's business. A wide range of expenses must therefore be allowable, including non-production related expenses such as training initiatives and investment in production infrastructure. As such expenses contribute just as much to Canadian and Indigenous content as more direct expenses, they must count on a 1:1 ratio with direct expenses.

ABRIDGED**RESPONSES TO REQUESTS FOR ADDITIONAL INFORMATION FROM THE COMMISSION**

27. Given the realities of global financing and international partnerships, are there public policy benefits to a more flexible approach - such as implementing a sliding scale that links the number of Canadian content points to the level of credit toward CPE? How can the Commission strike the right balance to ensure both the integrity and viability of Canadian storytelling?

Answer:

As set out in Amazon's Initial Comments in this Consultation, it is Amazon's position that the Commission should not impose expenditure requirements on Amazon, particularly given our extensive existing investment in the Canadian broadcasting landscape.

If the Commission determines that expenditure requirements should be imposed, Amazon supports flexibility in respect of any such requirements, including the implementation of a sliding scale as suggested in the question above. In the absence of more detail, it is difficult to make submissions; however, Amazon proposes a sliding scale which functions in a proportional manner, *e.g.*, if a program merits a certain number of Canadian content points, then credit proportional to those points could be awarded in turn (*i.e.*, if a program merits 4 out of 9 points, then it could be awarded partial credit in expenditure value).

Amazon would be pleased to explore a sliding scale approach further with the Commission, particularly when the new definition of what amounts to Canadian content has been implemented.

ABRIDGED**RESPONSES TO REQUESTS FOR ADDITIONAL INFORMATION FROM THE COMMISSION**

28. Should the Commission consider a sliding scale approach to IP ownership - where a higher number of Canadian key creative positions could offset a lower level of Canadian IP ownership, and vice versa? Would such a model effectively balance the goals of fostering Canadian creative control and significant and equitable financial control and benefit?

Answer:

Amazon supports the submissions of MPA-Canada in response to this question and relies on its submissions in *The Path Forward – Defining “Canadian program” and supporting the creation and distribution of Canadian programming in the audio-visual sector* (Broadcasting Notice of Consultation CRTC 2024-288). In particular, and to ensure that foreign online undertakings continue to invest in and support Canadian productions, Canadian ownership of IP cannot be mandatory—even with the application of a sliding-scale approach.

When we produce Canadian programs, it is critical to our business that our ownership of the IP reflects the extent of our investment. For productions where Amazon wholly-owns the IP, we invest significantly above the total cost of production, inclusive of producer fees, to be able to effectively exploit that production in all of the countries where we operate—not just Canada.

Mandatory Canadian IP ownership—even with the application of a sliding-scale approach to IP ownership—will reduce the incentive to invest in the production in Canada of our high-quality, large-scale programs. The significant investment that we would otherwise make to produce and promote a program to global audiences would not make commercial sense.

*** END OF DOCUMENT ***

H

This is Exhibit "H" referred to in the
affidavit of Sydney Grieve
affirmed before me, this 17th
day of December, 2025



A Commissioner for taking affidavits

e-document	T-3985-25-ID 1
F I L E D	FEDERAL COURT COUR FÉDÉRALE October 10, 2025 10 octobre 2025 Robert Mvondo
TOR	1

Court File No.

FEDERAL COURT OF CANADA

B E T W E E N:

(Court Seal)

CANADIAN BROADCASTING CORPORATION/SOCIÉTÉ-
RADIO CANADA

Applicant

and

INFORMATION COMMISSIONER OF CANADA

Respondent

APPLICATION FOR REVIEW UNDER s. 41 of the *Access to Information Act***NOTICE OF APPLICATION****TO THE RESPONDENT:**

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

-2-

Date _____ Issued by _____
(Registry Officer)

Address of
local office: 180 Queen Street West, Suite 200
Toronto ON M5V 3L6

TO: Information Commissioner of Canada
30 Victoria Street
Gatineau ON K1A 1H3

Respondent

AND TO: Matt Malone
matt.malone@uottawa.ca

APPLICATION

This is an Application by the Canadian Broadcasting Corporation/Société Radio Canada (“**CBC/SRC**”) for review by the Federal Court pursuant to subsection 41(2) of the *Access to Information Act*, RSC 1985, c A-1 (“**ATIA**”) in respect of the Final Report of Caroline Maynard, Information Commissioner of Canada (the “**Commissioner**”), dated August 20, 2025, Office of the Information Commissioner of Canada (“**OIC**”) file number 5823-04722 (the “**Final Report**”), and the Order contained therein (the “**Disclosure Order**”) to disclose certain information (the “**Gem Records**”), the disclosure of which has been requested under the *ATIA*.

The Applicant makes Application for:

1. A *de novo* determination by the Federal Court pursuant to subsections 41(2) and 44.1 of the *ATIA* of the application of sections 68.1 and 18 of the *ATIA* to the Gem Records;
2. An order setting aside the Disclosure Order;
3. A declaration that the Gem Records are exempt from disclosure pursuant to section 68.1 and/or section 18 of the *ATIA*;
4. An order granting CBC/SRC its costs of this Application; and
5. Such further and other relief as Counsel may advise and this Honourable Court may permit.

The Grounds for the Application are:

Background

6. The Applicant, CBC/SRC, is a federal Crown corporation. CBC/SRC is a Canadian public broadcaster which operates television, radio, and digital streaming broadcast networks across Canada. CBC/SRC offers programming across its networks.

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7. CBC/SRC is governed by the *Broadcasting Act*, SC 1991, c 11, and the *Telecommunications Act*, SC 1993, c 38. CBC/SRC operates in a highly competitive environment in which foreign and domestic private and community broadcasters and other digital streamers offer their own programming on their respective distribution platforms.

8. CBC/SRC owns and operates CBC Gem (“**Gem**”), a digital streaming service. CBC/SRC offers Gem as both a free service and a paid-subscription service. CBC/SRC offers a variety of programming content on Gem, including journalistic, entertainment, sporting, and programming content available only to registered users and paid subscribers of the platform.

The ATIA request

9. On or about February 6, 2024, CBC/SRC received an access request to provide the following information (the “**Request**”):

“Number of paid subscribers to Gem”

10. In response to the Request, CBC/SRC identified certain relevant and responsive records (as defined above, the “**Gem Records**”).

11. On or about March 5, 2024, CBC/SRC responded to the Request (the “**Response**”). CBC/SRC advised it would not disclose the Gem Records in response to the Request. As a result of the Response, the requester submitted a complaint to the Commissioner, which was forwarded to CBC/SRC on March 11, 2024 (the “**Complaint**”).

12. On or about March 13, 2024, the Commissioner notified CBC/SRC that it intended to commence an investigation into the Complaint pursuant to section 32 of the *ATIA*, and on or about May 7, 2024, the Commissioner notified CBC/SRC that an investigation had been commenced.

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13. On or about May 7, 2024, the Commissioner requested that CBC/SRC provide representations regarding the application of sections 68.1 and 18 of the *ATIA* to the Gem Records identified in the Request.

14. On or about September 9, 2024, CBC/SRC provided its written representations to the Commissioner setting out why the Gem Records are not disclosable. CBC/SRC explained that, pursuant to section 68.1 of the *ATIA*, the Gem Records are excluded from Part 1 of the *ATIA* as the Gem Records relate to CBC/SRC's journalistic, creative or programming activities. Gem is a digital streaming network which solely exists to transmit programming content to its audience. Under the *Broadcasting Act*, CBC/SRC is established for the purpose of "[originating] programs, [securing] programs from within or outside Canada by purchase, exchange or otherwise and [making] arrangements necessary for their transmission". CBC/SRC fulfils this object, in part, by offering programs through its free and paid Gem service.

15. CBC/SRC further explained the Gem Records do not "relate to [CBC/SRC's] general administration", and therefore the Gem Records are not excepted from the section 68.1 exclusion.

16. CBC/SRC additionally submitted that, if section 68.1 did not apply to exempt the disclosure of the Gem Records entirely, it exercised its discretion to refuse the Request under section 18 of the *ATIA*. CBC/SRC explained that the Gem Records are commercially sensitive and that their disclosure could reasonably be expected to prejudice the competitive position of CBC/SRC or interfere with contractual or other negotiations of CBC/SRC.

17. CBC/SRC operates in the digital programming environment in which other digital broadcasters offer free ad-supported and paid ad-free digital streaming platforms, and attract paying subscribers as well as registered users to their respective platforms. CBC/SRC additionally negotiates with broadcast distribution undertakings for the terms and conditions of carriage of CBC/SRC's programming, including programming otherwise available on Gem's paid service.

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18. On July 14, 2025, the Commissioner issued its initial report to CBC/SRC pursuant to section 37(1) of the *ATIA*, which contained the findings of the Commissioner's investigation and the order which the Commissioner intended to make to require CBC/SRC to disclose the Gem Records.

19. On August 14, 2025, CBC/SRC informed the Commissioner it would not implement the Commissioner's intended order.

The Final Report and Disclosure Order

20. On August 20, 2025, the Commissioner issued the Final Report to CBC/SRC pursuant to section 37(2) of the *ATIA*. The Final Report contained the Commissioner's Disclosure Order which requires CBC/SRC to disclose the Gem Records.

This Application

21. The Gem Records contain information that relates to CBC/SRC's journalistic, creative or programming activities within the meaning of the exclusion contained at section 68.1 of the *ATIA*. The Gem Records do not relate to CBC/SRC's general administration. As such, the Gem Records are excluded from disclosure under section 68.1 of the *ATIA*.

22. Further, and in the alternative, the Gem Records contain commercially sensitive information which has substantial value or is reasonably likely to have substantial value, the disclosure of which could reasonably be expected to prejudice the competitive position of CBC/SRC or to interfere with contractual or other negotiations of CBC/SRC within the meaning of the exemption contained at section 18 of the *ATIA*. CBC/SRC reasonably exercised its discretion under section 18 of the *ATIA* to refuse disclosure of the Gem Records.

23. Pursuant to section 41(2) of the *ATIA*, CBC/SRC seeks review of the matter that is the subject of the Commissioner's Final Report and Disclosure Order, being whether the Gem Records are excluded from Part 1 of the *ATIA* pursuant to section 68.1 of the *ATIA* and are exempt from disclosure pursuant to section 18 of the *ATIA*.

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18. CBC/SRC relies on:

- (a) *Federal Courts Act*, RSC 1985, c F-7;
- (b) *Federal Courts Rules*, SOR/98-106;
- (c) *Access to Information Act*, RSC 1985, c A-1, ss. 18, 41, 44.1, 68.1;
- (d) *Broadcasting Act*, SC 1991, c 11; and
- (e) *Telecommunications Act*, SC 1993, c 38.

19. Such further and other grounds as counsel may advise and this Honourable Court permit.

This Application will be supported by the following material:

20. Affidavits of representatives of CBC/SRC to be sworn and filed; and

21. Such further and other materials as counsel may advise and this Honourable Court permit.



October 10, 2025

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Lawyers for the Applicant, the Canadian
 Broadcasting Corporation/Société-Radio Canada

I

This is Exhibit "I" referred to in the
affidavit of Sydney Grieve
affirmed before me, this 17th
day of December, 2025



A Commissioner for taking affidavits



Number: C1459837

CERTIFICATE OF CONTINUATION

BUSINESS CORPORATIONS ACT

I Hereby Certify that AMAZON.COM.CA, INC., which was duly registered as an extraprovincial company under the laws of British Columbia with certificate number A0115966, has continued into British Columbia from the Jurisdiction of NOVA SCOTIA, under the Business Corporations Act, with the name AMAZON.COM.CA ULC on January 9, 2024 at 03:27 PM Pacific Time.



ELECTRONIC CERTIFICATE

*Issued under my hand at Victoria, British Columbia
On January 9, 2024*

T.K. SPARKS
Registrar of Companies
Province of British Columbia
Canada

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Court File No.

FEDERAL COURT OF APPEAL

B E T W E E N:

MOTION PICTURE ASSOCIATION – CANADA, NETFLIX
SERVICES CANADA ULC, AMAZON.COM.CA ULC, BUENA
VISTA INTERNATIONAL, INC., FUBOTV INC., PARAMOUNT
ENTERTAINMENT CANADA ULC, PLUTO INC., SONY
PICTURES ENTERTAINMENT INC., CRUNCHYROLL, LLC,
CULVER MAX ENTERTAINMENT PRIVATE LIMITED, AND
UNIVERSAL PICTURES SUBSCRIPTION TELEVISION LIMITED

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

**MEMORANDUM OF FACT AND LAW OF THE APPLICANTS
(Motion for Leave to Appeal)**

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AND TO: **Attorney General of Canada**
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OVERVIEW

1. The Applicants seek leave to appeal Broadcasting Regulatory Policy CRTC 2025-299 issued by the Canadian Radio-television and Telecommunications Commission's ("CRTC") on November 18, 2025 ("**Decision**"). The Decision concerns the CRTC's determination to disclose online undertakings' confidential financial information that they are obliged to file with the CRTC, among other subjects. This determination violates the statutory confidentiality process and substantive confidentiality regime newly enacted by Parliament, putting the Applicants at serious risk of competitive and other harm. The CRTC's violation of its statutory confidentiality obligation undermines the integrated scheme Parliament mandated in the *Online Streaming Act*, which in 2023 amended the *Broadcasting Act*.

2. The CRTC made two errors of law and jurisdiction in the Decision concerning what the CRTC labelled its "Publication of financial data" decision:¹

- (a) The CRTC misinterpreted the statutory confidentiality process mandated at s. 25.3 of the *Broadcasting Act*, by erroneously deciding in advance to publish future sensitive financial information without giving the Applicants an opportunity to designate it as confidential and make representations at the time the information is provided.

¹ [Decision](#), paras. 202-214, Motion Record ("MR") Tab 2.

- (b) The CRTC misinterpreted the scope of the phrase “disclosure is in the public interest” at s. 25.3 of the *Broadcasting Act* by failing to construe this phrase in the context of the *Broadcasting Act* as a whole.

3. The *Online Streaming Act* made the radical change to the Canadian regulatory broadcasting regime of adding a new category of regulated entities to the CRTC’s jurisdiction: online undertakings (including foreign streaming services operated by most of the Applicants). As part of that regulatory package, the *Online Streaming Act* also authorized the CRTC to require online undertakings to provide certain information to it, subject to a completely new confidentiality provision. In the Decision, the CRTC exercised its new jurisdiction over foreign online undertakings, including to collect information, but departed from Parliament’s intent to impose a rigorous confidentiality regime concerning such information.

4. This departure from the statute must be overturned.

5. Contemporaneously with this motion for leave to appeal, the Applicants also make an application for judicial review of the same aspect of the Decision. If the Court finds that any ground asserted on this motion is not a question of law or jurisdiction, the Applicants submit such grounds are properly subject to judicial review under the *Federal Courts Act*.

PART I - FACTS

A. The Applicants

6. Motion Picture Association – Canada (“**MPA-Canada**”) is the Canadian affiliate of the Motion Picture Association (“**MPA**”). The MPA is the voice and advocate of major

international producers and distributors of film, television and streaming programming for global audiences. MPA-Canada participated in the CRTC proceeding leading to the Decision on behalf of members of the MPA. The other Applicants are, directly or indirectly, such members (“**MPA Companies**”).²

7. Under the Decision, the MPA Companies’ confidential information that they are required to provide to the CRTC will be disclosed to the public, to their serious detriment as discussed below.

B. The New *Broadcasting Act* Confidentiality Regime

8. In 2023, the *Broadcasting Act* was amended by the *Online Streaming Act* to add “online undertakings” (including foreign streaming services) as a sub-set of “broadcasting undertakings” governed by the *Broadcasting Act*.³ The *Online Streaming Act* also added the following provisions to the *Broadcasting Act*.

9. With respect to collecting information from broadcasting undertakings (which, as noted above, now include – but are not confined to – online undertakings), the *Broadcasting Act* now empowers the CRTC to,

9.1(1) ...in furtherance of its objects, make orders imposing conditions on the carrying on of broadcasting undertakings that the Commission considers

² MPA-Canada Submission re Broadcasting Notice of Consultation CRTC 2024-288 dated January 20, 2025 (“**Intervention**”), p. 1, para. 1 and footnote 1, Affidavit of Sydney Grieve, affirmed December 17, 2025 (“**Grieve Affidavit**”), Exhibit A, Motion Record (“**MR**”), Tab 3-A. A brief description of the MPA Companies and their relevant services is set out in the Grieve Affidavit, paras. 2-20, MR Tab 3.

³ *Online Streaming Act*, SC 2023, c.8 (“**Online Streaming Act**”), Book of Authorities (“**BOA**”), Tab 3, s. 2(1), amending the definition of “broadcasting undertaking” in s. 2(1) of the *Broadcasting Act*, SC 1991, c. 11 (“**Broadcasting Act**”), BOA, Tab 2, and adding the defined term “online undertaking” to s. 2(1) of the *Broadcasting Act*.

appropriate for the implementation of the broadcasting policy set out in subsection 3(1), including conditions respecting...

(o) ***the provision to the Commission***, by persons carrying on broadcasting undertakings, of any other information that the Commission considers necessary for the administration of this Act, including

(i) ***financial or commercial information***,

(ii) information related to programming,

(iii) ***information related to expenditures*** made under section 11.1, and

(iv) information related to audience measurement, other than information that could identify any individual audience member; [emphasis added]⁴

10. However, Parliament circumscribed the CRTC's ability to disclose information submitted to it in confidence by adding s. 25.3 to the *Broadcasting Act*. Subsection 25.3(1) establishes categories of information that a person may designate as confidential when filing with the CRTC:

25.3(1) ***A person who submits*** any of the following information to the Commission ***may designate it as confidential***:

(a) information that is a trade secret;

(b) ***financial, commercial***, scientific or technical information that is ***confidential*** and that is ***treated consistently in a confidential manner by the person who submitted it***; or

(c) information the ***disclosure*** of which could reasonably be expected

(i) to result in ***material financial loss or gain to any person***,

(ii) to ***prejudice the competitive position*** of any person, or

(iii) to ***affect contractual or other negotiations*** of any person. [emphasis added]

⁴ [*Online Streaming Act*](#), s. 9, adding [s. 9.1\(1\)\(o\)](#) to the *Broadcasting Act*, BOA, Tab 3.

11. Subsection 25.3(2) of the *Broadcasting Act* provides that once the information is designated as confidential, the CRTC cannot disclose it without first complying with steps laid out in other provisions:

25.3 (2) Subject to subsections (4), (5) and (7), ***if a person designates information as confidential and the designation is not withdrawn by that person, no person*** described in subsection (3) ***shall knowingly disclose the information, or knowingly allow it to be disclosed***, to any other person in any manner that is intended or likely to make it available for the use of any person who may benefit from the information or ***use it to the detriment of any person to whose business or affairs the information relates***. [emphasis added]

12. With respect to information submitted otherwise than in the course of proceedings before the CRTC (the situation at issue on this motion), s. 25.3(5) of the *Broadcasting Act* requires the CRTC to perform several mandatory steps, absent which it cannot disclose designated confidential information:

25.3(5) If ***designated information*** is submitted to the Commission otherwise than in the course of proceedings before it, the Commission may, while protecting the privacy of Canadians,

(a) disclose the information or require its disclosure ***if, after considering any representations from interested persons***, the Commission considers that the information is ***relevant to a matter arising in the exercise of its powers or the performance of its duties and functions*** and determines that the ***disclosure is in the public interest***; [emphasis added]

13. Accordingly, the CRTC cannot disclose information, unless

- (a) the person submitting the information has had an opportunity to designate that information as confidential;
- (b) the CRTC has afforded the person the opportunity to make representations about that information and considered those representations;

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- (c) the information is relevant to a matter arising in the exercise of the CRTC's powers or the performance of its duties and functions;
- (d) disclosure is in the public interest; and
- (e) any disclosure is done in a manner that protects the privacy of Canadians.

14. Section 25.3(4) of the *Broadcasting Act* provides similar procedural protections and imposes a similar public interest requirement where information is disclosed in the course of a proceeding.

C. The Decision

15. The Decision is part of a series of related CRTC determinations to implement the changes brought about by the *Online Streaming Act*. It focuses on changing the definition of “Canadian program” and also addresses data collection and publication.⁵ Still to come from the CRTC are determinations about Canadian programming expenditures (“CPEs”) and other contributions that must be made by traditional Canadian broadcasting undertakings and online undertakings, among other subjects.

16. With respect to data collection, the CRTC determined that in addition to other data it collects, all broadcasting undertakings, including online undertakings, “that currently are or may become subject to CPE requirements will be required to file with the Commission,

⁵ [Decision](#), paras. 1,4, 5 and 185, MR, Tab 2. The CRTC stated that the certification framework would be implemented, following consultation, through regulations defining “Canadian program”. The Applicants will await such regulations before determining whether they require this Court’s intervention.

via the annual returns, data on CPE”.⁶ As a result, while the CRTC has not yet made a determination about the substance of the CPEs it is contemplating, it has already decided to collect information about CPEs from broadcasting undertakings.

17. With respect to the CRTC publishing financial data of broadcasting undertakings (“**Financial Data**”), it used strong language under the heading “Commission’s decisions”, to determine that it

intends to publish the following information as it relates to audio-visual activities *on an annual basis, aggregated at the entity level*:

- annual Canadian gross broadcasting revenues less excluded revenue;
- CPE; and
- other contributions.⁷

18. The CRTC explained what it meant by “aggregated at the entity level”:

For greater clarity, this publication will be at the entity level, which, depending on each undertaking’s ownership structure, is either an individual broadcasting undertaking or a broadcasting ownership group.

The Commission recognizes that large online undertakings are not always part of a broadcasting ownership group, and that in such cases, the data disclosure above would apply to a single undertaking.⁸

19. In other words, a business that has multiple online undertakings might have its Financial Data summed together for those affiliated online undertakings, while in other cases the Financial Data of a single undertaking will be disclosed.⁹ Depending on the

⁶ [Decision](#), paras. 204, 217, MR, Tab 2.

⁷ [Decision](#), para. 212, MR, Tab 2.

⁸ [Decision](#), paras. 210, 211, MR, Tab 2.

⁹ The harms to a business related to disclosure are addressed below.

circumstances of a particular broadcasting ownership group, the CRTC disclosing the Financial Data of that group may reveal confidential information about the individual entities within that group, for example if one of the group members is clearly much larger than the other (in such a circumstance, the online undertaking must be able to make timely representations to describe this situation and the risks to it).

20. The CRTC determined that it would disclose the Financial Data because it is *always* in the public interest to do so, because it “fosters transparency” and “taking into account existing practices for publication of traditional undertakings’ data and information”.¹⁰ The CRTC did not contemplate any further consideration on a case-by-case basis as Financial Data, and confidentiality designations are filed in the future.

21. The CRTC called this its “general approach” to “apply going forward, beginning with data collected in regard to the 2025-2026 broadcast year”¹¹, i.e., the year ending August 31, 2026. It made this determination even before receiving any broadcasting undertakings’ 2025-2026 Financial Data, confidentiality designations and representations about that information’s confidentiality and applying the statutory test under s. 25.3 of the *Broadcasting Act*.

22. In the Decision,¹² the CRTC brushed aside a 2024 decision implementing another aspect of the *Online Streaming Act* where the CRTC approved, correctly, a third party administered framework for the payment of certain financial contributions to various

¹⁰ [Decision](#), para. 210, MR, Tab 2.

¹¹ [Decision](#), para. 213, MR, Tab 2.

¹² [Decision](#), para. 206, MR, Tab 2.

industry funds that ensured that each contributing foreign online undertaking's specific financial information remained confidential.¹³ It approved that framework after certain online undertakings objected to disclosure under s. 25.3.¹⁴ The Decision provides no explanation for why the CRTC's interpretation of the s. 25.3 test changed between 2024 and 2025.

23. The following is the grand total of the CRTC's statutory interpretation analysis in the Decision about the confidentiality issue:

Paragraphs 9.1(1)(n) and (o) of the Act authorize the Commission to require that it be provided with various types of information, while subsections 25.3(4) and (5) authorize the Commission to make certain information provided to it available in the public interest.¹⁵

...

Under section 25.3 of the Act, the Commission is required to balance the protection of such confidential data and disclosure of information in the public interest, thereby maximizing transparency while safeguarding sensitive information.¹⁶

PART II– ISSUES

24. The Applicants seek leave to appeal the Decision on the following errors of law or jurisdiction:

¹³ Broadcasting Regulatory Policy CRTC [2024-121-1](#) and Broadcasting Order CRTC [2024-194](#) dated August 29, 2024 (“**BRP-2024-121-1 and BO-2024-194**”), BOA Tab 12. This CRTC determination is the subject of a pending appeal and judicial review decision by this Honourable Court.

¹⁴ BRP-2024-121-1, paras. 71-77, BOA Tab 12.

¹⁵ [Decision](#), para. 12, MR, Tab 2.

¹⁶ [Decision](#), para. 204, MR, Tab 2.

- (a) Did the CRTC misinterpret the statutory confidentiality process mandated at s. 25.3 of the *Broadcasting Act*?
- (b) Did the CRTC misinterpret the scope of the phrase “disclosure is in the public interest” at s. 25.3 of the *Broadcasting Act*?

25. The Applicants submit that they have an arguable case and that the answer to these questions is yes.

PART III - SUBMISSIONS

A. Test for Leave to Appeal

26. Under s. 31(2) of the *Broadcasting Act*, an appeal lies to this Court, with leave, from a “decision” or order of the CRTC on a question of law or a question of jurisdiction. A “decision” includes “a determination made by the Commission in any form”.¹⁷ As discussed below at paragraphs 28 and 30, in the Decision, the CRTC made a determination about disclosure of the Financial Data at issue.

27. The test for leave to appeal is whether the applicant has established “an arguable case” that the CRTC’s decision was based on an error of law or jurisdiction.¹⁸

28. Questions of law or jurisdiction are reviewable on a standard of correctness.¹⁹

¹⁷ *Broadcasting Act*, [s. 2\(1\)](#) definition of “decision”, BOA, Tab 2.

¹⁸ *CKLN Radio Inc. v Canada (Attorney General)*, [2011 FCA 135](#) at [para. 6](#), BOA, Tab 14.

¹⁹ *Bell Canada v. British Columbia Broadband Association*, [2020 FCA 140](#) at [paras. 80-81](#), BOA, Tab 7, citing *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#) at [para. 37](#), BOA, Tab 13.

B. The CRTC Erred in Deciding to Publish the Applicants’ Confidential Information Without Following the Statutory Process

29. The CRTC decided that even if an Applicant correctly designates certain information as confidential under s. 25.3(1) of the *Broadcasting Act*, no matter the circumstances and regulatory context at that time, and no matter what representations an Applicant makes at the time, that disclosure will be in the public interest. Full stop.

30. That approach violates the *statutory* multi-step confidentiality procedure Parliament imposed, as described in paragraph 12 above. Notably, the CRTC erred because

- (a) it did not wait for Financial Data to be designated as confidential; and
- (b) it did not permit and consider each broadcasting undertaking’s representations about its own Financial Data, the risk of harm it faces at that time, the CRTC’s relevant powers, duties and functions, and how to assess the public interest in the circumstances of the day.

31. Section 25.3 precludes the CRTC from taking what it called, in the Decision, its “general approach” to the disclosure of Financial Data.²⁰ Rather it had to maintain a flexible approach that left the CRTC room to apply s. 25.3 on a case-by-case basis once a broadcasting undertaking makes a confidentiality designation about particular information.²¹

²⁰ [Decision](#), para. 213, MR, Tab 2 This Court has recognized that the use of the phrase “general approach” is not determinative of whether a policy is merely a guideline or is mandatory in nature; *Ha v. Canada (Minister of Citizenship & Immigration)*, 2004 FCA 49 at paras. 73-75, citing *Ainsely Financial Corp. v. Ontario (Securities Commission)* (1994), 21 O.R. (3d) 104.

²¹ *Delta Air Lines Inc. v. Lukács*, [2018 SCC 2](#) at para. 18, BOA, Tab 15.

32. The purpose of s. 25.3 is clearly to restrict the disclosure of confidential information provided to the CRTC and the multi-step process mandated by s. 25.3 of the *Broadcasting Act* is not unique in federal law. Other federal statutes that deal with similar subjects are relevant context for a statutory construction exercise.²² The confidentiality provisions of the *Access to Information Act* are relevant context to the construction of s. 25.3 of the *Broadcasting Act*. The Supreme Court of Canada has held that under the *Access to Information Act*, providing third parties with notice and an opportunity to be heard before releasing confidential information is necessary to the balancing of interests required by that statute and to ensuring procedural fairness to those third parties.²³

33. Similarly, the Ontario Divisional Court has found that procedural fairness requires that parties whose information is subject to disclosure be able to make submissions on whether there is a public interest in disclosure that outweighs their right to confidentiality.²⁴ Properly determining whether there is a public interest in disclosure “requires a full and complete balancing of interests”, which can only be achieved if the parties whose information is being disclosed have the opportunity to be heard.²⁵ The same is required under s. 25.3 of the *Broadcasting Act*, on a statutory basis.

²² *R. v. Ulybel Enterprises Ltd.*, [2001 SCC 56](#) at para. [30](#), BOA, Tab 19.

²³ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012 SCC 3](#) at paras. [78-80](#), BOA, Tab 17 [*Merck Frosst*].

²⁴ *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2014 ONSC 3295](#) at paras. [8](#), [4-6](#), BOA, Tab 17 [*Ontario v Privacy Commissioner*].

²⁵ *Ontario v Privacy Commissioner* at para. [8](#), BOA, Tab 18.

34. Taking into account the text, context and purpose of s. 25.3, the CRTC cannot be allowed to prejudge the issue in November 2025, based on broad categories of information and without the designations and representations that will not be filed until after August 2026. It was improper for the CRTC to even venture a view about

- (a) what will be relevant to the regulatory regime when the CRTC is still in the midst of figuring out what that regulatory regime should be; and
- (b) what will be in the public interest in approximately a year, when the facts in the industry and calibration of the CRTC's many objectives may differ from today.

35. The only correct procedural approach is for the CRTC to wait for a confidentiality designation of specific information, take into consideration any representations at that time, and then apply the statutory test about disclosure.

C. The CRTC Failed to Correctly Interpret “Public Interest” in Its Statutory Context

36. The words of a statute are to be read “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”.²⁶

37. Even a broad power to make orders or impose conditions “in the public interest” must be interpreted within the context of the statute in which it is found and any related

²⁶ *Bell ExpressVu Limited Partnership v. Rex*, [2002 SCC 42](#), at [para. 26](#), BOA, Tab 8.

statutes.²⁷ The discretion conferred is to be exercised “within the confines of the statutory regime and principles generally applicable to regulatory matters”.²⁸ The CRTC has itself recognized, citing a decision of this Court, that with respect to its mandate of regulating and supervising the Canadian broadcasting system in the public interest, “[t]he public interest is reflected in the numerous objectives of the Act and of Canadian broadcasting policy set out in section 3(1).”²⁹

38. The CRTC erred in law by failing to give effect to these extricable principles of statutory interpretation.

39. In particular, and as elaborated upon below, the CRTC erred in law by failing to recognize that

- (a) the interests in disclosure to the public and not disclosing confidential information both had to be considered;
- (b) the public interest override of confidentiality under s. 25.3(5) cannot be based on a general public interest in transparency;
- (c) the public interest override of confidentiality under s. 25.3(5) cannot be based on levelling the playing field among traditional and online undertakings; and

²⁷ *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)* [2006 SCC 4](#) at paras. 7, 49-50, BOA, Tab 5 [*ATCO Gas*].

²⁸ *ATCO Gas* at para. 50, BOA, Tab 5.

²⁹ *BCE Inc., Re*, [CRTC 2012-574](#) at para. 13, BOA, Tab 6, citing *Genex Communications Inc. c. Canada (Procureur général)*, [2005 FCA 283](#) at para. 3, BOA, Tab 16.

- (d) the scope of the s.25.3(5) “public interest” phrase takes its meaning from the balance of the *Broadcasting Act*.

i. *Disclosure and non-disclosure must both be considered*

40. On its face, s. 25.3 of the *Broadcasting Act* requires the CRTC to address both the interest in not disclosing confidential information and the interest in disclosing that information. In the Decision, the CRTC focused on the interest in disclosure, not giving due consideration to the interest in keeping the Financial Data undisclosed.

41. This dual requirement is unexceptional. For example, similarly, the *Access to Information Act*, whose very purpose is to enhance accountability and transparency by providing a right of access to information in records under the control of a government institution,³⁰ restricts the disclosure of confidential information in a similar manner to the *Broadcasting Act*’s s. 25.3:

20(1) Subject to this section, ***the head of a government institution shall refuse to disclose any record requested under this Part that contains***

...

(b) ***financial, commercial, scientific or technical information that is confidential information*** supplied to a government institution by a third party ***and is treated consistently in a confidential manner by the third party;***

...

(c) ***information the disclosure of which*** could reasonably be expected to result in material financial loss or gain to, or ***could reasonably be expected to prejudice the competitive position of, a third party;*** or

...

³⁰ *Access to Information Act*, [R.S.C. 1985, c. A-1](#) (“*Access to Information Act*”), s. 2, BOA, Tab 1.

20(6) *The head of a government institution may disclose all or part of a record requested under this Part that contains information described in any of paragraphs (1)(b) to (d) if*

(a) *the disclosure would be in the public interest as it relates to public health, public safety or protection of the environment;* and

(b) *the public interest in disclosure clearly outweighs in importance any financial loss or gain to a third party*, any prejudice to the security of its structures, networks or systems, *any prejudice to its competitive position* or any interference with its contractual or other negotiations.³¹ [emphasis added]

42. The Supreme Court of Canada has stressed the important *dual* interests this mandatory exemption is designed to protect:

Broad rights of access to government information serve important public purposes.

...

Providing access to government information, however, also engages other public and private interests. *Government, for example, collects information from third parties for regulatory purposes, information which may include trade secrets and other confidential commercial matters.* Such information may be valuable to competitors and disclosing it may cause financial or other harm to the third party who had to provide it. Routine disclosure of such information might even ultimately discourage research and innovation. Thus, *too single-minded a commitment to access to this sort of government information risks ignoring these interests and has the potential to inflict a lot of collateral damage. There must, therefore, be a balance between granting access to information and protecting these other interests in relation to some types of third party information.*³² [emphasis added]

43. The Supreme Court concluded that the head of a government institution has “*equally important*” duties to disclose and not to disclose and must take both duties equally

³¹ Access to Information Act, s. [20\(6\)](#), BOA, Tab 1.

³² Merck Frosst at paras. [1, 2](#), BOA, Tab 17.

seriously.”³³ These same principles equally apply to the CRTC in applying s. 25.3 of the *Broadcasting Act*, but the CRTC did not follow them in the Decision, as discussed below.

ii. *The public interest override of confidentiality under s. 25.3(5) cannot be based on a general public interest in transparency*

44. The CRTC erred in law by finding that disclosing Financial Data “is in the public interest as it fosters transparency”.³⁴

45. The “public interest” override under s. 25.3(5) of the *Broadcasting Act* cannot be the general public interest in regulated entities being transparent simply outweighing the competitive and other harms to such entities arising from disclosure. Section 25.2 of the *Broadcasting Act* expressly makes information transparency “[s]ubject to section 25.3” even in the context of a proceeding.³⁵ In other words, the CRTC was incorrect to conclude that transparency “is the default under the Act”.³⁶

46. Similarly, the CRTC erred by relying on s. 18 of the Policy Direction.³⁷ This provision directs the CRTC to provide “information to the public on a periodic basis regarding the achievement of the Canadian broadcasting policy objectives”.³⁸ On its face it does not, and cannot be interpreted as circumventing the statutory s. 25.3 confidentiality regime.

³³ *Merck Frosst* at para. 84, BOA, Tab 17.

³⁴ [Decision](#), para. 214, MR, Tab 2.

³⁵ *Broadcasting Act*, s. 25.2, BOA, Tab 2.

³⁶ [Decision](#), para. 204, MR, Tab 2.

³⁷ [Decision](#), para. 202, MR, Tab 2.

³⁸ *Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)*, [SOR/2023-239](#) (“Policy Direction”), BOA, Tab 4.

47. In this statutory scheme, transparency cannot be the public interest justification for mandating disclosure of confidential information. Otherwise, there would be no need for s. 25.3 of the *Broadcasting Act*. If transparency is simply another word for disclosure, it cannot both be the public interest goal and equal to the result. Otherwise, the entire regime to protect confidentiality is a mirage. From the detailed language of s. 25.3, Parliament intended there to be meaningful protection of confidential information, otherwise the *Online Streaming Act* would not have amended *Broadcasting Act* to add s.25.3. As a result, if specific information is correctly designated as confidential under s. 25.3 of the *Broadcasting Act*, for example because it is financial or commercial information that is treated consistently in a confidential matter by the person who submitted it or its disclosure could reasonably be expected to prejudice the competitive position of any person, the default position cannot be that it is subject to being disclosed simply as a matter of transparency, as the CRTC determined in the Decision.

iii. *The public interest override of confidentiality under s. 25.3(5) cannot be based on “levelling the playing field”*

48. In mandating public interest disclosure for online undertakings, the CRTC saw itself as “levelling the playing field” as between traditional Canadian broadcasting undertakings, which have historically been subject to disclosure requirements, and newly regulated online undertakings.³⁹ There is no such applicable public interest because traditional Canadian broadcasting undertakings and online undertakings are now **both** subject to the recently enacted statutory confidentiality regime. Parliament has already levelled that playing field

³⁹ [Decision](#), paras. 208 and 214, MR, Tab 2.

by effectively increasing the confidentiality protection for traditional Canadian broadcasting undertakings to the same approach as for the newly regulated online undertakings.

49. Thus, the CRTC erred in law when it assessed the “public interest” as requiring it to treat online undertakings in the same manner as traditional broadcasting undertakings despite the legacy disclosure regulation of traditional broadcasting undertakings having to be updated to conform with s. 25.3. The legacy disclosure regime relied upon by the CRTC as applying to traditional Canadian broadcasting undertakings was imposed *before* the *Broadcasting Act* was amended to add s. 25.3. Traditional broadcasting undertakings *now* have an equal right to the protections of s. 25.3 as online undertakings (this provision applies to any “person” who submits confidential information to the CRTC).⁴⁰ As a result, the pre-amendment confidentiality rulings of the CRTC concerning traditional broadcasting undertakings can and must be revisited. The correct approach is that all broadcasting undertakings, online or traditional, have the same protections afforded by s. 25.3.

iv. *The scope of the s. 25.3(5) “public interest” phrase takes its meaning from the balance of the Broadcasting Act, which makes clear the “public interest” is informed by the potential harm of disclosure*

50. The CRTC public interest override in s. 25.3(5) of the *Broadcasting Act* expressly ties into “the exercise of its powers or the performance of its duties and functions”. There are dozens of duties and functions that the CRTC must follow when implementing the broadcasting policy set out in s. 3(1) and having regard to the regulatory policy set out in s.5(2) of the *Broadcasting Act*.⁴¹ For example, there is a binding regulatory policy that

⁴⁰ *Broadcasting Act*, s. [25.3\(1\)](#), BOA, Tab 2.

⁴¹ *Broadcasting Act*, s. [5\(1\)](#), BOA, Tab 2.

regulation should be only as broad as required to “contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1)”.⁴²

51. In this regard, s. 25.3(5), correctly interpreted to protect confidentiality except to the extent, on balance, the public interest requires it be overridden, mandates the CRTC to consider the minimum disclosure that would meet its statutory objectives. In other words, the public interest override of confidentiality analysis, “achieved by balancing the public interest in disclosing information versus any potential harm that could result from its disclosure”,⁴³ must be only as broad as necessary to implement the CRTC’s mandate. The CRTC did not do so in the Decision.

52. This approach, working out the minimum disclosure taking into account the situation of a particular broadcasting undertaking that has designated Financial Data confidential, is consistent with the multiple references, in both the amended broadcasting policy in s. 3(1) and the amended regulatory policy in s. 5(2) of the *Broadcasting Act*, to the requirement for measures to be “appropriate” in light of the nature and characteristics of the regulated broadcasting undertaking. For example, s. 5(2)(a.1) of the *Broadcasting Act* requires the CRTC to take into account “the nature and diversity of the services provided by broadcasting undertakings, as well as their size, their impact on the Canadian creation and production industry ... their contribution to the implementation of the broadcasting policy ... and any other characteristic that may be relevant in the circumstances”.⁴⁴

⁴² *Broadcasting Act*, s. [5\(2\)\(h\)](#), BOA, Tab 2.

⁴³ [Decision](#), para. 203, MR, Tab 2.

⁴⁴ See, for example, *Broadcasting Act*, ss. [3\(1\)\(a.1\)](#), [\(e\)](#), [\(f.1\)](#) and ss. [5\(2\)\(a.1\)](#), [\(h\)](#), BOA, Tab 2.

53. Also, Parliament can be taken to know that the CRTC can make a determination about minimum disclosure by publishing aggregated information. The CRTC has previously determined that financial information aggregated at the industry level would satisfy the public interest in disclosure. In Broadcasting Regulatory Policy CRTC 2022-47, the CRTC determined that data collected in its Annual Digital Media Survey would not be disclosed at the level of individual digital media broadcasting undertakings (“**DMBUs**”) (as online undertakings were then called), stating that “the Commission considers that the DMBU-level data that would be provided in response to the survey is commercially sensitive, is consistently treated in a confidential manner by the parties, and could reasonably be expected to prejudice the competitive positions of the respondents if disclosed”.⁴⁵

54. Similarly, in Broadcasting Decision CRTC 2023-34, another decision concerning the publication of data collected in the Annual Digital Media Survey, the CRTC weighed the “key harms” of risk of disclosure of confidential and sensitive commercial information and possible damage to the competitive position of those whose data was at issue against the benefits of enabling members of the public, including those involved in the broadcasting industry, to better understand the Canadian broadcasting system and make informed decisions and submissions to the Commission on matters of policy.⁴⁶ The CRTC concluded that aggregating the data by industry segment would serve the public interest while

⁴⁵ Broadcasting Regulatory Policy CRTC [2022-47](#) dated February 23, 2022 at para. 143 (“**BRP-2022-47**”), BOA Tab 10. See also Broadcasting Regulatory Policy CRTC [2024-65](#), dated March 21, 2024 at para. 203, BOA Tab 11.

⁴⁶ Broadcasting Decision CRTC [2023-34](#) dated February 15, 2023 (“**CRTC 2023-34**”) at para. 12, BOA Tab 9.

precluding the disclosure of confidential survey microdata and mitigating the risk of harm to survey respondents.⁴⁷

55. In the Decision, the CRTC erred in law by determining that the Financial Data should be disclosed at the entity level, not aggregated across the industry or industry segments, without addressing what was the minimum disclosure that satisfied the public interest (as required by the correct construction of s. 25.3).

56. The correct interpretation of s. 25.3, including both its procedural and substantive confidentiality / public interest aspects, is not merely of theoretical interest.

57. At this point, the Applicants have neither filed the information that the CRTC has already decided to disclose, nor had any opportunity to designate any of it as confidential. They are obviously not in a position to make comprehensive representations concerning the disclosure of information that has not yet been designated and the future public interest balancing that must be done. However, the following general observations can be made:

- (a) Releasing entity-level data would provide competitors material insights into each MPA Company's business model, cost structure, and strategic priorities, thereby prejudicing its competitive position.⁴⁸
- (b) Foreign streaming services operate under fundamentally different business models and competitive dynamics from traditional Canadian broadcasting

⁴⁷ [CRTC 2023-34](#) at paras. 23-25, BOA Tab 9.

⁴⁸ Netflix, Response to Requests for Information re: Broadcasting Notice of Consultation CRTC 2024-288, dated June 12, 2025, para. 10, Grieve Affidavit, Exhibit F, MR, Tab 3-F.

undertakings. The potential harm that foreign online undertakings would incur from the release of confidential and competitively sensitive information on the public record would extend beyond Canada, since their international competitors could also use these figures to approximate expenditures in other jurisdictions. This is very different from Canadian companies that operate only in Canada.⁴⁹

- (c) In the highly competitive global streaming environment, if disclosed, this information could be used to gain unfair advantages in negotiations with content providers, advertisers, distributors and other business partners.⁵⁰

58. The Canadian Broadcasting Corporation / Societe-Radio Canada very recently raised similar concerns about the public disclosure of its confidential information in an application for judicial review:

CBC/SRC explained that the Gem Records are *commercially sensitive and that their disclosure could reasonably be expected to prejudice the competitive position of CBC/SRC or interfere with contractual or other*

⁴⁹ MPA-Canada, Response to Requests for Information re: Broadcasting Notice of Consultation CRTC [2024-288](#), dated June 12, 2025, para. 11, Grieve Affidavit, Exhibit B, MR, Tab 3-B; Amazon Response to Requests for Information regarding Broadcasting Notice of Consultation CRTC 2024-288, page 5, Grieve Affidavit, Exhibit G, MR, Tab 3-G.

⁵⁰ MPA-Canada Post-hearing Reply Submission re Broadcasting Notice of Consultation CRTC [2025-52](#) dated December 11, 2025 (“**Final Submission**”), p. 4, para. 12, Grieve Affidavit, Exhibit D, MR, Tab 3-D; MPA-Canada Submission re: BNC 2019-90-1 Annual Digital Media Survey, dated July 30, 2021, para. 21, Grieve Affidavit, Exhibit E, MR, Tab 3-E; MPA-Canada RFI Response, June 12, 2025, para. 11, Grieve Affidavit, Exhibit B, MR, Tab 3-B.

negotiations of CBC/SRC.⁵¹ [emphasis added]

59. Furthermore, many foreign online undertakings or their owners are publicly-traded companies that are subject to their own established domestic financial and operational regulatory requirements and practices for accounting, data management, and limited disclosures.⁵² Subsection 8(f) of the Policy Direction issued to the CRTC in connection with the modernization of the regulatory framework expressly directs the CRTC to consider “foreign regulatory regimes that affect online undertakings.” However, the CRTC did not address the harm associated with it disclosing data that could be material to persons trading in public markets. This is an example of the downside of the CRTC making a disclosure determination without the benefit of timely and comprehensive representations.

PART IV- ORDER SOUGHT

60. The Applicants respectfully request an order granting them:

- (a) leave to appeal the Decision to this Court; and
- (b) costs of this motion.

December 18, 2025

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Goodmans per: LE
GOODMANS LLP
 Counsel for the Applicants

⁵¹ Notice of application for judicial review filed on October 10, 2025 with the Federal Court of Canada by the Canadian Broadcasting Corporation / Societe-Radio Canada, para. 22, Grieve Affidavit, Exhibit H, MR, Tab 3-H.

⁵² Final Submission, p. 4, para. 12, Grieve Affidavit, Exhibit D, MR, Tab 3-D

PART V - LIST OF AUTHORITIES

TAB	DESCRIPTION
Legislation and Regulatory Authorities	
1.	<i>Access to Information Act</i> , R.S.C. 1985, c. A-1
2.	<i>Broadcasting Act</i> , S.C. 1991, c. 11 .
3.	Online Streaming Act , SC 2023, c.8
4.	<i>Order Issuing Directions to the CRTC (Sustainable and Equitable Broadcasting Regulatory Framework)</i> , SOR/2023-239 .
Case Law	
5.	<i>ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)</i> 2006 SCC 4
6.	<i>BCE Inc., Re</i> , CRTC 2012-574
7.	<i>Bell Canada v. British Columbia Broadband Association</i> , 2020 FCA 140
8.	<i>Bell ExpressVu Limited Partnership v. Rex</i> , 2002 SCC 42
9.	Broadcasting Decision CRTC 2023-34 dated February 15, 2023
10.	Broadcasting Regulatory Policy CRTC 2022-47 dated February 23, 2022
11.	Broadcasting Regulatory Policy CRTC 2024-65 , dated March 21, 2024
12.	Broadcasting Regulatory Policy CRTC 2024-121-1 and Broadcasting Order CRTC 2024-194 dated August 29, 2024
13.	<i>Canada (Minister of Citizenship and Immigration) v. Vavilov</i> , 2019 SCC 65
14.	<i>CKLN Radio Inc. v Canada (Attorney General)</i> , 2011 FCA 135
15.	<i>Delta Air Lines Inc. v. Lukács</i> , 2018 SCC 2
16.	<i>Genex Communications Inc. c. Canada (Procureur général)</i> , 2005 FCA 283
17.	<i>Merck Frosst Canada Ltd. v. Canada (Health)</i> , 2012 SCC 3
18.	<i>Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)</i> , 2014 ONSC 3295

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TAB	DESCRIPTION
19.	<i>R. v. Ulybel Enterprises Ltd.</i> , 2001 SCC 56

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