

March 30, 2009

Robert A Morin
Secretary General
Canadian Radio-Television and
Telecommunications Commission
1 Promenade du Portage
Gatineau, Quebec
J8X 4B1

c/o : procedure@crtc.gc.ca

Dear Secretary General,

Re: CRTC 2009-113

1. ELAN is the English-language Arts Network-Quebec and we represent English-speaking artists in Quebec. We began in 2004 and now have over 1,500 members, including about 200 members in the film and television disciplines.
2. ELAN would like to appear before the Commission at the public hearing on April 27, 2009, to discuss in more detail the issues we briefly raise in this intervention.
3. We are very concerned about the decline of English-language television production in this province over the last decade. We discussed this in some detail in our submission of November 20, 2008, for the PN CRTC 2008-12 hearing on official language minority broadcasting. We also attached the ACTRA-DGC study "Going...Going...Gone: The Decline of English-language Production in Quebec", June, 2008, for your information.

Comment on the 1:1 program expenditure ratio

4. We have seen that over-the-air English-language broadcasters have reduced the percentage of their Canadian program expenditures from 53% of total expenditures in 1998 to approximately 40% in 2006. This decline occurred after the implementation of the CRTC's 1999 TV Policy eliminated minimum financial expenditure requirements for off-air broadcasters.

5. We estimate that about \$800 million has been transferred from Canadian production to foreign production by English-language off-air broadcasters over the last decade. This represents Canadian production with total budgets up to \$3 billion. Of this amount, we suggest that English-language Quebec production lost about \$500 million.

6. For that reason, we believe it is essential that the CRTC re-establish a minimum program expenditure requirement.

7. In 2008, off-air broadcasters spent \$767 million on foreign programs, and only \$616 million on Canadian programs. During the previous five years, the cost of foreign programming had grown by 26% while Canadian programming grew only 8%, less than inflation.

8. CRTC Chair, Konrad von Finckenstein, recognized this problem when he told the CFTPA on February 19th this year:

“The *Broadcasting Act* calls for no less than the predominant use of Canadian creative and other resources in the creation and presentation of programming, so this is a matter of concern for us. At first blush, we are inclined to introduce a condition of licence for English-language broadcasters requiring a 1 to 1 ratio between Canadian and non-Canadian programming expenditures.”

9. As long as the 1 to 1 ratio applies to all broadcasters, both conventional and specialty, who have a minimum 50% Canadian content quota, then we recommend this ratio be put in place as soon as possible.

10. The broadcasters will argue that the drop in advertising revenue and the fragmentation of the TV audience means they can't afford to spend less on American programs. We think they can't afford to continue spending as much as they are spending, and a general cap on foreign spending would help their balance sheets without giving a competitive advantage to one broadcaster or another.

11. The broadcasters will also argue that they have long term “output deals” with Hollywood producers that require that they buy poor programs along with the popular programs even if they can't broadcast everything they buy. This doesn't sound like an “output deal”, but does sound like “tied selling” which is illegal under Section 77 of the Competition Act, or would be if the seller were located in Canada.

12. Unfortunately, the CRTC does not have regulations against “tied selling”, but implementing the 1 to 1 ratio would not only support the predominant use of Canadian creative resources, it would help the private broadcasters deal with questionable sales practices. They clearly do not have the leverage to resist

negotiating with Hollywood studios owned by companies as large as General Electric.

Local Programming Improvement Fund

13. The LPIF was established by the Commission (PN CRTC 2008-100) to provide financial support for incremental local programming, particularly news and current affairs. Both public and private broadcasters are eligible to use the LPIF. The CRTC estimated that a 1% increase in BDU program fees would raise \$60 million in the first year for this fund.

14. We believe that a fund to support an incremental improvement in local programming is important, but we are concerned that the demographic requirement for eligibility for the fund is not consistent with the Official Languages Act.

15. The relevant definition of local market eligibility for the LPIF (CRTC 2008-100, ¶360) is:

“The fund will be made available to stations serving markets in which the population with a knowledge of the official language of the station (i.e. English or French) is less than one million. Accordingly, the metropolitan markets of Vancouver, Calgary, Edmonton, Toronto, Anglophone Ottawa-Gatineau, and Montreal do not qualify, and stations serving those markets will therefore not qualify for funding from the LPIF.” (emphasis added)

16. According to Statistics Canada’s 2006 census, the total population of Montreal is 1,593,275. The number whose mother tongue is English is 212,000. The number who speak English most often at home is 337,000. Those who use it most often at work is 296,000. The number with “a knowledge” of English is 1,017,000. Of course, these numbers overlap, and also refer to people who speak English and another language with equal fluency.

17. If the “knowledge of English” definition is used, then Montreal broadcasters are not eligible to access the LPIF because there are more than one million “Anglophones” in Montreal. If any of the other definitions are used, then Montreal is eligible to access this fund.

18. The Office of the Commissioner of Official Languages uses “mother tongue” or “language spoken most often at home” to define an official language minority community. It never uses “knowledge of the official language”.

19. Furthermore, in his November 20, 2008, submission for the CRTC's review of official language minority programming (PN CRTC 2008-12), the Commissioner of Official Languages Graham Fraser wrote:

“30. I propose that the CRTC modify the criteria of the LPIF so that stations serving urban OLMCs in metropolitan markets can benefit from this fund in order to produce their programming.”

20. We support this recommendation by the Commissioner of Official Languages. We request that the LPIF's linguistic criteria be amended to use a definition of official language minority community compatible with the definition used by the Commissioner of Official Languages. If this were done, Montreal English-language broadcasters would be eligible for LPIF support.

Access to Relevant Information

21. ELAN would like to request that the CRTC make aggregate financial information on broadcast revenues and expenditures available by language. That is not now the case, and that causes great difficulty for submissions by an official language minority community.

Sincerely,

Guy Rodgers

President

English-language Arts Network of Quebec

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