

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

**Submitted electronically: CRTC Intervention Comment Form**

Dear Mr. Doucet,

**Broadcasting Notice of Consultation – CRTC 2019-90-1**  
***Further call for comments on a new annual digital media survey***

1. This is the submission of ACTRA in response to the further call for comments concerning a new annual digital media survey. ACTRA (Alliance of Canadian Cinema, Television and Radio Artists) brings to this process the perspective of over 27,000 professional performers working in the English-language recorded media sector in Canada. For more than 75 years, ACTRA has represented performers living and working in every corner of the country who are pivotal to bringing Canadian stories to life in film, television, video games, sound recording, radio and digital media.
2. In the first round of this consultation, ACTRA supported the proposed introduction of an annual digital media survey in our 14 May 2019 submission. The Commission has noted Canadians will increasingly rely on the Internet to discover and consume music, entertainment, news and information. ACTRA agrees. It is therefore essential for the Commission to begin collecting data about services providing audiovisual programming to Canadians via the Internet. Understanding the shifts from traditional to digital media in Canada, as well as identifying the various opportunities and risks for traditional broadcasters associated with the digital environment, will be critical for the Commission in the future. It cannot draw meaningful conclusions about these trends without accurate and comprehensive data. An annual digital media survey will provide the mechanism to obtain this crucial information.
3. In our original submission, however, ACTRA also argued the survey would have little value because the CRTC proposed to limit its application to “currently licensed Canadian broadcasting undertakings.” The Canadian broadcasting sector today is heavily

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dominated by foreign services exempted from licencing requirements under the Digital Media Exemption Order.

4. Thus, ACTRA wholeheartedly supports the CRTC's decision to require the annual survey will now cover "the broadcasting activities of digital media broadcasting undertakings, both Canadian and non-Canadian, that provide services in Canada."<sup>1</sup>
5. One of the principal objectives of ACTRA's policy work is to ensure Canadians are able to see our stories, our lives and our perspectives reflected in the cultural expressions that come across our screens. For ACTRA members, telling Canadian stories is not only our livelihood, but also our passion. Canada's cultural policies have been, are, and should continue to be, focused on how we can bring Canadian stories to life. It is through this lens we address our remaining issues concerning the annual survey.
6. A robust digital media survey coupled with inevitable legislative reform in the Canadian broadcasting sector have the potential to re-frame the funding, creation and presentation of Canadian content, both domestically and abroad. Two decades ago, the removal of the requirement on over-the-air (OTA) broadcasters to allocate a portion of their annual revenues to the creation of Canadian programming had a profound impact on funding of English-language programming, which most reflects Canadians to themselves – drama, comedies, documentaries and other genres. Canadian OTA broadcasters instead doubled down on sports and news programming to fulfill their Canadian programming requirements, then outsourced other programming genres to independent producers and exponentially grew their budgets to sub-licence American programming for Canadian audiences. The result is a system with few broadcasters, other than CBC/Radio-Canada, focused on creating strong, narrative-driven programming focused on Canadian realities with Canadian voices and talent.
7. Legislative reform can change that dynamic virtually overnight, and the CRTC's digital media survey can be a mechanism through which broadcasters are held accountable, provided the CRTC asks the right questions and obtains meaningful data. The most popular streaming services today do not offer sports or original news and information programming. They are squarely focused on long- and short-form programming in the genres of drama, comedy and documentaries. Once legislative reform brings these streaming services into the Canadian broadcasting sector, there is the potential for a sea change in the funding of and support for new, original and innovative Canadian programming. Without a comprehensive snapshot of where the industry is presently positioned, however, the CRTC cannot assess where it needs to go to fulfill the objectives of the *Broadcasting Act*.

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<sup>1</sup> While the CRTC may need to establish a threshold that would exempt services whose broadcasting activities are minimal and do not generate significant revenues or subscribers, an exemption would need to be monitored carefully, since the sector is dynamic and continues to evolve rapidly;

## Confidentiality of Data

8. Both in the earlier round of consultations and in the current Public Notice, the Commission states that “multiple interveners ... expressed concerns relating to the commercially sensitive nature of some of the data ... if the data is published, even in aggregate form.” ACTRA rejects these concerns.
9. ACTRA notes those providing audiovisual programming to Canadians via the Internet are fully aware of what they and their competitors are doing. Nielsen has collected data on streaming activities since 2013 and this is factored into advertising rates. Both programming and non-programming expenses must be competitive. The costs associated with most productions are publicly available for various reasons, including for tax credit purposes in many North American jurisdictions. Other information must be filed with regulatory agencies by publicly traded companies.
10. Moreover, once legislative reform comes to fruition, it is evident some measure of Canadian content obligation will flow to digital media undertakings. Depending on the nature of the service, ACTRA expects such obligations to encompass some form of funding, original creation or presentation (or a combination thereof). In the same way today licensed broadcasting undertakings are expected to report on their fulfillment of CRTC obligations and regulations, so too should digital media undertakings report on their fulfillment of their obligations in a comprehensive manner. In this context, confidentiality undermines accountability.
11. Accordingly, while we can reluctantly agree the Commission will publicly release some information in the annual survey only in an aggregate form, this should be kept to a minimum. The regulator, appropriate agencies and interested public parties such as ACTRA must have access to as much detailed data as possible to ensure informed and effective policymaking. The CRTC has years of experience dealing with confidential data and we expect it is capable of making appropriate determinations in relation to the release of this new data. Furthermore, information should only be aggregated for a pre-determined period before it is released in full. ACTRA suggests a seven-year period (the length of a traditional broadcast licence) would be appropriate. After seven years, collected information should be disaggregated and released in full.

## Data to be Collected in the Annual Survey

12. With respect to the information that should be provided by the broadcasting undertakings in the annual survey, we are pleased the CRTC has modified its original list in a manner that satisfies concerns we raised in the earlier process. For ACTRA, there are two remaining issues about the data related to programming expenses.
13. **The data should be filed according to the CRTC’s Television Program Categories (i.e., by genre) since it is essential to monitor the extent to which Canadian Programs of National Interest (PNI) are being provided via the Internet.** Drama and scripted comedy are the most culturally significant program categories and continue to be the most

underrepresented in the Canadian system. The Commission may wish to initially prioritize the most important categories, including PNI, children's and youth programs, and local/regional news and information.

14. The collection of this data can and should inform Commission policymaking with respect to the potential obligations of newly regulated digital media undertakings, most of whom do little to no sports and news programming and focus almost exclusively in the area of drama, comedy and documentary programming. If these digital media undertakings have the expertise and financial strength to create compelling programming in these important genres of programming, there is no reason why that experience and financing should not also contribute to the creation of Canadian programming.
15. **Data filed in the categories “Expenses for producing programming” and “Expenses for producing Canadian programming” should be divided between programs commissioned by, and those produced directly by, the broadcasting undertaking.**
16. Over the years, audiovisual industries have changed from a vertically integrated model (highlighted by Hollywood's ownership of the production, distribution and exhibition of its movies) to a more dispersed model. Until the late 1980s, broadcasters produced most or all of their programs in facilities they owned and controlled. This has changed dramatically, and the role of Canada's independent producers is now recognized in the *Broadcasting Act*.
17. Given the rapid pace of change we are currently witnessing, the structure of the industry could change again and, if it does, we need to ensure we have comparative data. Already, we see the emergence of “streamer-branded content,” and long-term exclusive deals with filmmakers and other talent. Both Twitter and Facebook have experimented with broadcasting professional sports programming. Amazon Prime Video Canada has sub-licensed news programming from Global TV. Netflix has announced all casting decisions for its North American-based productions will be made by a U.S.-based team of executives. The balance between the production of original, Canadian productions and service work production for foreign streamers has begun to swing perilously in favour of the streamers.
18. According to *Profile 2020*,<sup>2</sup> broadcaster in-house production remains important. It was 12 per cent of the total volume of television and film production in the reported year, and 30 per cent of the total volume of Canadian content television production. In-house production is an important metric when assessing an undertaking's commitment to a genre of programming. An undertaking's in-house programming receives dedicated resources, funding and promotional support. This support, in turn, allows that programming to thrive. That programming becomes indelibly linked to the culture and

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<sup>2</sup> [Profile 2020](#), Economic Report on the Screen-Based Media Production Industry in Canada. Canadian Media Producers Association.

brand of the undertaking, in the way that CBC programming is distinctive and HBO programming looks, feels and sounds like no other content.

19. Streaming services, both foreign and domestic, have the capacity to not only commission but to create – and we must demand they do. U.S. streamers will prioritize U.S. markets first unless we require them to dedicate actual resources and funding to creating Canadian content, specific to our market. However, before we can request a commitment from them specific to the Canadian market, the CRTC needs to know what they are currently doing in Canada today, both in terms of content commissioned to independent producers and in-house content created by both foreign and domestic streamers in their own facilities. There is no reason why digital media undertakings should not be doing both.
20. ACTRA believes it is important to track these specific trends in the digital media world and thus urges the CRTC to require digital media companies to separate programming expenses between “in-house” and “commissioned” works.
21. Lastly, ACTRA recommends the Commission collect data related to employment for all digital media undertakings. The most successful and popular streaming services today are U.S.-based and U.S.-controlled entities with a primary focus on U.S. markets. The Commission should be aware of who is making decisions with respect to Canadian programming, the number of Canadian-based staff involved in the undertaking, and the percentage of overall staff that Canadian employees comprise in the overall undertaking. This is data ACTRA has always encouraged the CRTC to collect, but in a new regulated environment, which includes non-Canadian undertakings, it is especially important to do so.
22. Additionally, in the context of collecting employment data, the Commission should also ensure it requires all broadcasting undertakings to report on what measures have been undertaken to promote and sustain a diverse workforce, including racialized employees, those of Indigenous descent, members of the LGBTQ+ community, and persons living with a disability.

### **Quarterly Reporting of Key Data**

23. Finally, given the significance of the digital media broadcasting sector and the exponential growth rates likely to continue in the foreseeable future, ACTRA would support a requirement that **relevant high-level data on revenues and subscriber numbers should be provided on a quarterly basis**. This data will help both the public and the Commission keep track of new digital media undertakings who may be outgrowing any future exemption order and arriving on the cusp of regulation. Furthermore, in the event of a funding obligation being imposed on digital media undertakings, which is tied to revenues and/or subscribership, high-level data will allow stakeholders to hold digital media undertakings to account for the allocation and expenditure of their contributions to the growth and presentation of Canadian content.

24. ACTRA congratulates the Commission on this important initiative and appreciates the opportunity to share these further comments regarding the annual digital media survey.

Thank you,

A handwritten signature in black ink that reads "Marie Kelly". The signature is written in a cursive, flowing style.

Marie Kelly  
National Executive Director  
ACTRA

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