



## Broadcasting Notice of Consultation CRTC 2019-91

PDF version

Ottawa, 28 March 2019

Public record: [1011-NOC2019-0091](#)

### Call for comments on the Commission's policy on Canadian programming expenditures

*The Commission calls for comments on a proposal to update its policy on Canadian programming expenditures and, in doing so, to take into account the digital media broadcasting environment.*

*The deadline for the receipt of interventions is **14 May 2019**. Only parties that file interventions may file a reply to matters raised during the intervention phase. The deadline to file replies is **29 May 2019**.*

#### Background

##### The *Broadcasting Act*

1. The broadcasting policy for Canada is set out in section 3 of the *Broadcasting Act* (the Act). Section 3(1)(e) of the Act sets out that “each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming.”
2. Section 3(1)(d)(iv) of the Act sets out that the broadcasting system should be readily adaptable to scientific and technological change. In this regard, section 5(2) of the Act specifies that the Canadian broadcasting system should be regulated and supervised in a flexible manner that, among other things, is readily adaptable to scientific and technological change, facilitates the provision of broadcasting to Canadians, and facilitates the provision of Canadian programs to Canadians.
3. Further, section 3(1)(d)(ii) of the Act sets out that the broadcasting system should encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view.

##### Canadian programming expenditures

4. The Commission views Canadian programming expenditure (CPE) requirements as an effective tool in the achievement of the policy objectives set out in the Act. As such, the Commission requires television programming services to make expenditures

on Canadian programming, which may include expenditures made on the production, acquisition or other investments in such programming. Specifically, television services are generally required to devote a portion of their broadcasting-related revenues to CPE.

5. In its group-based approach to the licensing of private television services, set out in Broadcasting Regulatory Policy 2010-167, the Commission noted that for over fifty years, individual television broadcasting services have been obligated to meet requirements relating to the exhibition of a diversity of Canadian programming. The Commission further noted that the imposition of CPE requirements helps ensure that such programming is of sufficient quality.
6. The Commission last updated the expenses that should be considered eligible CPE in Public Notice 1993-93. Among other things, the Commission clarified its definition of eligible CPE, relaxed certain rules, and clarified certain matters in regard to reporting to the Commission.
7. Since the issuance of Public Notice 1993-93, there have been many changes to the broadcasting environment, relating to, among other things, broadcasting technology, the Commission's regulations, and the way television programs are produced and consumed. To address such changes, as part of its group-based approach, the Commission placed a greater emphasis on CPE by establishing a minimum CPE requirement for each designated group. Further, to help such groups adapt quickly to an evolving environment, the Commission provided them with the flexibility to allocate CPE among their various licensed services.
8. In Broadcasting Regulatory Policy 2015-86, the Commission signaled the need to begin to develop new regulatory frameworks that would be more responsive to the innovative ways in which content can and will be delivered, while still recognizing and valuing the more traditional ways of accessing content in regard to viewers who wish to continue engaging with television in such ways. To support the production of high quality programming, the Commission noted that it was further shifting the focus from a regulatory approach based on exhibition quotas (the number of hours of Canadian programming broadcast) to an approach based on expenditures (the amount of money spent on Canadian programming). Accordingly, the Commission determined that it would impose CPE thresholds on almost all licensed television services.
9. The clear need to respond to the ways in which the media environment has changed and will continue to change was also central to the Commission's 2018 report entitled [\*Harnessing Change: The Future of Programming Distribution in Canada\*](#) (the Report). In the Report, the Commission noted that Canadians will increasingly rely on the Internet to discover and consume music, entertainment, news and information. It also stated, however, that applying regulations designed for traditional television and radio services to digital media poses significant challenges, including those relating to requirements to make financial contributions to Canadian production.

10. The Commission further noted that existing definitions relating to distribution and programming services, and even to broadcasting, are challenged by digital services, and that new legislation was required to address the digital media environment. For example, the Commission called for a renewed licensing model that would include traditional and new players as well as a restructured funding strategy for content. The model would also include national strategies to enable the export of Canadian content, place Canadians at the forefront of new technological development, and develop inclusive leadership in key creative positions that is gender balanced and represents Canada's multicultural nature in both the French- and English-language markets. However, in the Report, the Commission also announced that, in advance of new legislation, it could potentially undertake a number of steps, including updating the definitions of CPE to take into account the digital media environment.

### **Call for comments**

11. In light of the above, the Commission calls for comments on the following questions and issues relating to updating its CPE policy, taking into account the new realities of the digital media environment.

### **General questions**

12. The Commission invites responses to the following questions regarding the overall approach it should take for updating its CPE policy:

Q1. What principles or priorities should guide an updating of the CPE policy by the Commission?

Q2. What impact would changes to the CPE policy have on the Canadian television programming production and distribution industries?

Q3. How can the Commission's CPE policy incent innovation in the production of Canadian programming and its distribution in Canada and abroad?

- Are there ways to incent innovation on digital media platforms in particular?
- How can the Commission's CPE policy incent agreements and partnerships to facilitate the export of Canadian content?

Q4. Are there barriers in the Commission's CPE policy that hinder the achievement of policy objectives set out in the Act, such as the reflection of linguistic duality (including official language minority communities), the multicultural nature of Canadian society, and the special place of Indigenous peoples within that society?

## Digital media broadcasting

13. In regard to the production of Canadian content, the Commission highlighted in the Report the need to be nimble, innovative and continuously capable of rapidly adapting to change. It stated that as society and technology change, it is essential for regulation to effectively adapt to these changes and enable platforms and services to do the same.
14. Currently, digital media broadcasting undertakings operate under the Exemption order for digital media broadcasting undertakings<sup>1</sup> (the Exemption order), set out in the appendix to Broadcasting Order 2012-409. Unlike licensed programming undertakings, digital media broadcasting undertakings are not subject to exhibition and expenditure requirements.
15. In light of the above, the Commission invites responses to the following questions relating to digital media broadcasting and CPE:

Q5. Should the Commission consider expenditures made for digital media programming as eligible expenditures for the purpose of meeting the CPE requirements of licensed television services?

- If yes, how might the Commission adapt its current CPE policy to allow for this?
- Also, should the Commission establish a cap on the CPE requirements of licensed television services that can be met using expenditures made for digital media programming? If yes, what should be the percentage of the requirement that can be met using expenditures made for digital media programming?

Q6. If the Commission decides to consider digital media programming expenditures as eligible CPE, should eligibility be limited to certain types of content? For example, should eligibility be limited to expenditures made for Canadian programming certified under the existing Canadian content certification rules?

Q7. Should expenditures relating to the repurposing of certified Canadian programming originally made for traditional platforms also be considered?

Q8. Should the Commission limit or specify the types of digital media broadcasting undertakings for which expenditures on digital media programming would be considered eligible?

- If yes, what criteria should be used to determine eligibility?
- How should the Commission implement such a limit? For example, should it establish a new category of eligible digital media broadcasting undertakings?

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<sup>1</sup> Formerly known as the Exemption order for new media broadcasting undertakings

Q9. In calculating the CPE requirements imposed on licensed television services, should the Commission also take into consideration the revenues of those digital media broadcasting undertakings that claim expenditures associated with digital media programming towards meeting their CPE requirements?

- If yes, how should the Commission define the revenues of digital media broadcasting undertakings?
- Also, comment on the possibility of allowing licensees to opt-in to an approach in which they would be permitted to count expenditures made for digital media programming as eligible CPE only if their revenues from both traditional broadcasting undertakings and the above-noted digital media broadcasting undertakings are included in the calculation of their CPE requirements.

Q10. How should the Commission implement such changes to its CPE policy, and when should those changes take effect?

### **Audit of accounting practices and existing control measures**

16. Examining current accounting practices and control measures relating to CPE would allow the Commission to verify whether such practices and measures are effective in the current broadcasting environment. Accordingly, the Commission sets out questions below relating to amortization practices, the allocation of revenues and expenditures by platform, the possibility of carrying over under-expenditures relating to CPE under the group-based approach, and measures that could address non-compliance.

### **Amortization**

17. Given the lack of a uniform industry standard or practice for amortizing expenditures, broadcasting licensees have adopted various amortization methods. Provided that they align with Canadian accounting standards, are consistently applied from year to year, and can be supported by rationale during audits of licensees' annual reports, the Commission has generally accepted the various amortization methods. However, the Commission considers that it would be appropriate to seek information on the methods used by licensees in order to assess their impact on CPE.

18. Accordingly, the Commission invites responses to the following questions:

Q11. What are the industry's current practices or methodologies for amortization? Provide examples of different types of amortization schedules used based on a range of circumstances.

Q12. Should the Commission provide more guidelines on a standard practice or methodology for amortizing programming expenditures?

- If yes, what should be the standard practice or methodology for amortizing programming expenditures?

#### **Allocation of revenues and expenditures by platform**

19. The Commission would like to better understand how licensees operating licensed television services and digital media broadcasting undertakings allocate revenues and expenditures by platform when a program is shown on both platforms.

20. Accordingly, the Commission invites responses to the following questions:

Q13. How are revenue and expense allocations currently made between licensed television services and digital media broadcasting undertakings?

Q14. Is there a need, going forward, for guidelines or standard practices relating to such allocations?

- If yes, propose possible guidelines or standard practices in this regard.

Q15. Should the Commission require that the allocation of CPE by platform be proportional to revenues garnered on each platform?

#### **Carrying over under-expenditures relating to CPE under the group-based approach**

21. Under the group-based approach, television licensees are granted a certain flexibility in regard to under-expenditures relating to CPE. Specifically, in each broadcast year of a licence term, excluding the final year, a licensee may expend an amount on Canadian programming that is up to 5% less than the minimum required expenditure for that year. In such a case, the licensee must expend the full amount of the previous year's under-expenditure in the next broadcast year, in addition to the minimum required expenditure for that year.

22. In updating its CPE policy, the Commission would benefit from additional information relating to the above-noted flexibility (for example, the impact that such flexibility has on the way that licensees allocate CPE among their various services and on how they report their expenditures to the Commission).

23. Accordingly, the Commission invites responses to the following questions:

Q16. What has the measure relating to CPE under-expenditures allowed broadcasters to achieve as part of the group-based approach? Are there similar or different benefits achieved by permitting the same flexibility to other services not operating under the group-based approach?

Q17. Does the measure relating to CPE under-expenditures continue to be appropriate?

- If yes, should the Commission change the 5% level of under-expenditures? For example, should all licensees have the same limit, or should services that are not part of a group designated under the group-based approach be granted greater flexibility than services that form part of a designated group?

#### **Measures to address non-compliance**

24. For licensees of television services who are in non-compliance with regulatory requirements, the Commission may consider recourse to various measures, including the issuance of a mandatory order, the granting of a short-term licence renewal, or the suspension, revocation or non-renewal of a broadcasting licence. In regard to requirements relating to CPE, in recent licence renewal decisions for designated groups, the Commission imposed conditions of licence allowing it to verify a licensee's compliance up to two years following the end of the previous licence term. This measure addresses the difficulty of verifying a licensee's compliance during the licence renewal process, since the licensee has until the end of the licence term to meet its requirements.

25. In this regard, the Commission invites responses to the following questions:

Q18. Are the current measures for addressing non-compliance relating to CPE adequate?

- If no, propose other measures that the Commission could take to address non-compliance.

#### **Eligibility of various expenditures as Canadian programming expenditures**

26. The Commission seeks clarification on certain types of expenditures that relate to Canadian programming, that may or may not currently be eligible as CPE, or that are inconsistently reported by licensees in their annual financial returns.

27. One example relates to expenditures associated with promoting Canadian content. In this regard, in Broadcasting Regulatory Policy 2015-86, the Commission stated that promotion has an important role to play in the discoverability of Canadian content. As a result, it 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 CPE, up to a maximum of 10% of their requirement.

28. In addition, there is uncertainty regarding certain subcategories of programming expenditures, such as capital investments in Canadian productions and script and concept development expenditures. In this regard, the Commission notes that the reporting of such subcategories of expenditures may not be consistent.

29. Similarly, expenditures relating to the dubbing of programming in Canada are currently considered as eligible CPE. However, the reporting of such expenditures by licensees may also not be consistent, depending on the origin of the programming being dubbed.

30. Finally, given certain misconceptions regarding the types of revenues that may be included or excluded from the calculation of a service's gross revenues for the purpose of calculating CPE requirements, the Commission finds that clarification in this regard may be required.

31. In light of the above, the Commission invites responses to the following questions:

Q19. Should the Commission establish an open list (i.e., a non-exhaustive list) of types of expenditures that are either eligible or ineligible as CPE?

- If yes, which types of expenditures should be considered eligible as CPE, and which types of expenditures should be considered ineligible as CPE?

Q20. Should expenditures made towards the promotion of a certified Canadian production be eligible as CPE?

- If yes, what types of promotional expenditures should be considered?
- How should promotional expenditures be integrated into the Commission's CPE policy?
- Is the current limit of 10% of the required CPE amounts currently imposed on independent broadcasters appropriate?
- Would it be appropriate to extend the eligibility of promotional expenditures as CPE to all licensees?

Q21. Should expenditures relating to the dubbing in Canada of all programming be eligible as CPE?

- If yes, under which circumstances should such expenditures be eligible as CPE?

Q22. Propose a definition of the term "gross revenues" as it relates to a licensed television service for the purpose of calculating CPE requirements.

### **Understanding the impact of changes to the Canadian programming expenditures policy on Canadian broadcasters operating digital media broadcasting undertakings**

32. The Commission considers that it would be appropriate to further its own understanding of the revenues and expenditures of Canadian broadcasters relating to digital media broadcasting within the context of this update of the CPE policy.

Accordingly, the Commission intends to send a [letter](#) to certain Canadian broadcasters that operate both traditional and digital media broadcasting undertakings, to request data on revenues and expenditures associated with their digital media broadcasting activities, including the online windows associated with licensed services and any other digital media broadcasting undertakings, for the 2015-2016, 2016-2017 and 2017-2018 broadcast years. The Commission expects to publish some of the collected data on an aggregated basis.

33. This request will apply to both licensed Canadian services and their related digital media broadcasting undertakings that operate under the Exemption order.<sup>2</sup> Although such undertakings are not subject to requirements relating to the exhibition of or expenditures on Canadian programming, the Exemption order requires that they submit such information regarding their digital media broadcasting activities, as well as other information that is required by the Commission in order to monitor the development of broadcasting in digital media.

## Procedure

34. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answers, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website under "[Statutes and Regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
35. The Commission invites interventions that address the questions and issues set out above. The Commission will accept interventions that it receives on or before **14 May 2019**. Only parties that file interventions may file a reply to matters raised during the intervention phase. The deadline for the filing of replies is **29 May 2019**.
36. The Commission encourages interested persons and parties to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.
37. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line **\*\*\*End of document\*\*\*** should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.

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<sup>2</sup> This request will not apply to licensees of hybrid video-on-demand services given that they already provide the Commission with such data as part of their annual financial returns.

38. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
39. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:

**by completing the**  
[\[Intervention/comment/answer form\]](#)

or

**by mail to**  
CRTC, Ottawa, Ontario K1A 0N2

or

**by fax at**  
819-994-0218

40. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that filing, or where required, service of a particular document was completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed or served. The Commission advises parties who file or serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.
41. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
42. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

### **Important notice**

43. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, fax, email or through the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, email addresses, postal/street addresses, telephone and fax numbers, etc.

44. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
45. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
46. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

### **Availability of documents**

47. Electronic versions of the interventions and of other documents referred to in this notice, are available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) by visiting the "Have your say!" section, then selecting "our open processes." Documents can then be accessed by clicking on the links in the "Subject" and "Related Documents" columns associated with this particular notice.
48. Documents are also available at the following address, upon request, during normal business hours.

Les Terrasses de la Chaudière  
Central Building  
1 Promenade du Portage, Room 206  
Gatineau, Quebec  
J8X 4B1  
Tel.: 819-997-2429  
Fax: 819-994-0218

Toll-free telephone: 1-877-249-2782  
Toll-free TTY: 1-877-909-2782

Secretary General

### **Related documents**

- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *Let's Talk TV—The way forward—Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015

- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, Broadcasting Order CRTC 2012-409, 26 July 2012
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *A group-based approach to the licensing of private television services*, Broadcasting Regulatory Policy CRTC 2010-167, 22 March 2010
- *The reporting of Canadian programming expenditures*, Public Notice CRTC 1993-93, 22 June 1993