



June 21st, 2004

Canadian
Association of
Broadcasters

L'Association
canadienne des
radiodiffuseurs

Via Email

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
1, Promenade du Portage
Hull, Quebec
K1A 0N2

Dear Ms. Rhéaume:

RE: Broadcasting Public Notice CRTC 2004-32 – *Proposed Incentives for English-language Canadian Television Drama – Call for Comments*

The Canadian Association of Broadcasters (CAB), the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services - including private television and radio stations, networks, and specialty and pay and pay-per-view television services – is pleased to submit its response to the above-noted proceeding.

Attached is a copy of the CAB's submission. It should be noted that the CAB was unable to reach consensus on all of the issues raised in PN 2004-32. The recommendations in the document represent the majority point of view of both the Television Board, and the Specialty and Pay Board, of the CAB. Where members differ with the CAB submission or with elements of the CAB's recommendations, they have made their positions clear in their own submissions.

Sincerely,

Glenn O'Farrell
President and CEO

**A Submission to the Canadian Radio-television and
Telecommunications Commission**

With respect to

Broadcasting Public Notice 2004-32

**Proposed incentives for
English-language Canadian television drama –
Call for comments**

Prepared by



**L'Association canadienne des radiodiffuseurs
Canadian Association of Broadcasters**

June 21, 2004

Executive Summary

Despite operating in one of the most fragmented television markets in the world, one characterized by a continuing increase in the number of services, both foreign and Canadian, Canada's English-language private broadcasters have succeeded in attracting significant Canadian audiences to the Canadian drama programs that they offer. English-speaking Canadians have the choice of over 3,750 hours of programming in their own language each week, almost four times what the range of choice was a scant twenty years ago.

Our drama programs must compete for audience with well financed programs from south of our border. The budgets for the highest end Canadian drama are a fraction of those of American drama often broadcast head to head with them. Despite strong efforts to promote their own schedules, Canadian broadcasters must face the relentless publicity machinery for American entertainment products. Our movie theatres and magazine stands provide exposure every day for foreign film and television stars, reality show personalities and television programs. Even though the budgets of American drama are much higher than those of Canadian drama, the licence fees that Canadian broadcasters pay for Canadian drama are much higher than those for foreign drama while the advertising revenues resulting from their broadcast are usually significantly lower.

Canada's private broadcasters remain the major means that Canadians see Canadian drama programs. While the public broadcaster received 52% of the English drama funding provided by the Canadian Television Fund (CTF) in its last round of funding decisions, it only garnered 23% of the viewing to English-language drama by English-speaking Canadians while private conventional stations received 26% and pay and specialty broadcasters 52%. Moreover, the CTF's drama envelope has been oversubscribed for most of its existence.

Against this backdrop, the Commission has wisely decided that the best means to increase the audiences for drama is to give broadcasters incentives to increase the number of hours of drama they broadcast and to reward the increase in viewing and spending on drama. The CAB congratulates the Commission for its creative efforts to provide economic incentives to broadcasters to meet the gap between the cost of licensing Canadian drama and the advertising revenues that are derived from its broadcast.

The CAB notes that the Commission's approach is particularly aimed at providing incentives to the largest national conventional broadcasters who provide the majority, although certainly not all, of first run Canadian drama. These incentives are mostly focused on high point count, high budget drama. Given the constraints on public funding available for drama and the drying up of international sources of funding for Canadian programming, the CAB believes that the Commission must widen its focus so as to find means to engage all broadcasters involved in the value chain of Canadian drama in increasing the audiences to Canadian drama.

The CAB also considers that a focus on original hours of drama is overly limiting, particularly in the context of the limits to funding available for drama. It notes that the Commission's incentives to increase viewership and spending on Canadian drama are tied to the original hours incentives. The CAB recommends that the Commission disentangle these incentives so that the means that broadcasters can use to increase viewing can be more diverse, whether these be increased spending on existing programs, scheduling practices that ensure that Canadian drama is available to more Canadians at more times through the various windows and increased spending on promotion.

The CAB has formulated recommendations to stimulate the key areas for success in meeting the goal of increasing audiences to English-language Canadian drama – the production and financing of programs that can attract audiences, the scheduling of Canadian drama at times that maximize viewing opportunities and the promotion of drama programs so as to make audiences aware of them and create an interest.

The CAB's Television and Specialty and Pay Boards have not been able to reach consensus on the original hours incentive proposed by the Commission, particularly with regard to the use of advertising minutes. The recommendations in this document represent the majority viewpoint of the CAB. Where members differ with the CAB submission or with elements of the CAB's recommendations, they have made their positions clear in their own submissions.

This document contains recommendations to:

- **Permit Canadian broadcasters to count equity investment in Canadian programs as part of their Canadian programming expenses. It also provides recommendations on safeguards.**
- **Provide separate incentives for broadcasters to increase the viewing to drama on their services and to increase their spending on drama.**
- **Reinstate the 150% time credit for 10 point Canadian drama.**
- **Introduce a 125% time credit for lower point count Canadian drama.**
- **Re-consider the recommendation from the McQueen report that afternoon soap operas and late night drama aired just after midnight earn a 150% credit against the Canadian content requirements for the broadcast day.**
- **Provide a time credit for Canadian star system entertainment programs outside prime time.**
- **Redefine original programs to ensure that all broadcasters involved in the pre-production financing package can claim a program as original when they broadcast it.**
- **Redefine original programs to ensure that programs dubbed from one language to another be considered original when broadcast in the second language.**
- **Start a proceeding to explore the implementation of Non-simultaneous Substitution (NSS).**
- **Permit broadcasters to count their third party promotional expenses for Canadian programming as part of their Canadian programming expenses as well as permitting broadcasters to count their third party promotional expenses on Canadian drama as part of the measurement of spending on drama for purposes of a spending incentive.**

Introduction

1. The Canadian Association of Broadcasters (CAB), the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private radio and television services, networks, specialty and pay and pay-per-view services, welcomes the Commission's proposals for incentives to increase the viewing of Canadian drama on Canadian programming undertakings.
2. As pointed out in the CAB's submission to the Commission's original call for comments on means to increase the quantity of drama and Canadian audiences to such drama, private broadcasters consider that the most important goal of this proceeding should be to find means to increase Canadian audiences to Canadian drama. Incentives should spring from this audience-focused approach.
3. We should not underestimate the obstacles in the path of meeting this objective. There are two significant and growing challenges – fragmentation and funding limits. In an increasingly fragmented broadcasting environment, it is already a success that we have been able to maintain the current level of viewing to our own drama.
4. While the average hours tuned to television has not increased over the past 20 years, the number of choices has increased profoundly. In the mid 1980s the average Anglophone Canadian had about 1,000 hours of English-language programming available per week – by 2000 this had almost quadrupled to 3,750 hours. This increased choice has meant reduced audiences to every genre of programming. Even hit foreign drama programs do not draw the audiences that they once did. In fact, over the past few years, the average rating of the top rated drama and comedy programs have dropped by over 15%.
5. Moreover, in an increasingly difficult funding environment where the Canadian Television Fund (CTF) is unable to meet demands for the existing level of drama, and international funding for drama has also reduced substantially, it will be an on-going challenge to producers, broadcasters, government and the Commission to find means to increase audiences to Canadian drama. The precise details of the funding problems were well described in many of the first round submissions.
6. The CAB congratulates the Commission for its proposals to find new and creative means to meet the difficulties in funding and drawing audience to Canadian drama. Canada's private broadcasters agree with the Commission that providing incentives will result in greater progress in meeting the goal of increasing audiences to Canadian drama than will the introduction of new regulatory obligations. This incentive-based approach attempts to provide broadcasters with an economic interest in acquiring, scheduling and promoting Canadian drama so as to increase viewing.
7. The CAB notes that the Commission's approach is to provide advertising incentives based on the number of original hours of drama. The other incentives proposed, viewing and spending, are based upon the original hours incentive as the additional advertising time that becomes available from meeting the new goals for audience and spending, are a percentage of those earned from the number of original hours.
8. The incentives proposed in PN 2004-32 focus to the largest extent on conventional broadcasting. The Commission is clear that its primary focus is on big budget drama, which it believes generally to be provided by conventional television services, like CTV, Global and the CBC. It indicates

that it will look into additional incentives that may be able to provide an additional role for specialty broadcasters.

9. To meet the Commission's goal of increasing the viewing of Canadian drama as a percentage of viewing to all drama on Canadian services from 14% to 20%, the CAB submits that the strategy must include all of those who provide drama programming, including conventional television stations of all sizes, specialty services, both analogue and digital and pay and pay-per-view services. Incentives must take into account the way drama is financed and the way it progresses through the broadcasting system in order to provide broadcasters with the greatest chance to meet the goal of increasing audiences to Canadian drama.
10. The CAB, therefore, suggests some modifications to the Commission's creative introduction of incentives to include a greater focus on increasing audience and to include a wider range of programmers.
11. The CAB also recognizes that the dynamics of drama funding, scheduling and promotion are significantly different in French-language broadcasting than in English-language broadcasting. The recommendations in this document are intended to apply to English-language television only and are not necessarily applicable to French-language television.
12. The recommendations in this document represent the majority viewpoint of the CAB's Television and Specialty and Pay Boards. Where members differ with the CAB submission, or with elements of the CAB's recommendations, they have made their positions clear in their own submissions.

A system wide approach to increasing audiences to drama

13. The CAB submits that to meet the goal of increasing the audiences to Canadian drama, the approach must address all the sources of drama to our system and provide incentives to all kinds of broadcasters to play a role. Private broadcasters suggest that there are a number of key aspects to increasing audiences to Canadian drama.
14. First and foremost, we must have well-written, directed and produced drama programs that speak to Canadians. This generally, although not always, calls for a significant level of financing for the programs. As was pointed out in our round 1 submission, Canadian dramas with average budgets that range from \$ 1.3 to \$ 1.9 Million per hour for series and approximately \$ 1.5 Million per hour for mini-series or Movies of the Week (MOWs) must compete for audience attention with American dramas with production budgets several times larger.
15. Secondly, these programs must be scheduled strategically across a variety of platforms to maximize viewer opportunities. This gives rise to two issues:
 - As the Commission notes in paragraph 23 of the PN, the current simultaneous substitution rules are one of the reasons that the acquisition and scheduling of American drama is a better economic proposition. In order to remain financially viable, Canadian conventional broadcasters must use these rules to ensure that they can exploit the rights that they have acquired. This does come at a price, however, and broadcasters must fit Canadian programs in the spaces left in their prime time schedules.

- The PN aims particularly at high cost, high point drama broadcast by the national conventional broadcasters. While they have one of the leading roles to play in providing drama, there are other broadcasters whose roles are equally important. The CAB submits that any strategy to increase viewing must take into account all levels of the value chain of drama broadcasting.
16. Third, there must be sufficient promotion to ensure that a ‘buzz’ is created about our drama productions. Canadian drama programs must compete for attention with well financed US programs that benefit from promotion in Canada in magazines, on radio and even in our cinemas. The CAB believes that we need to provide means to address this aspect as well.

Ensuring the production of high quality drama able to attract audiences

17. The key to ensuring the production of drama programs that can attract significant Canadian audiences is to ensure that there are sufficient resources available to fund these programs. With regard to financial support for Canadian programming, the CAB notes that the economics of production in this country are such that there is an on-going need for public financial support. As noted earlier, the CTF is oversubscribed for drama. Moreover, a significant portion of the funds available for drama was awarded to the CBC/Radio Canada in the most recent funding year. For private broadcasters to be able to provide high impact, high quality drama, they must be able to have on-going and predictable access to the Fund for their programs.
18. While the funding available to the CTF is largely out of the hands of the Commission, if it wishes to see more and better Canadian drama, the Commission must add its voice to the funding debate and clearly recognize that increased government funding and other fiscal measures are the cornerstone requirements for a going-forward Canadian programming strategy. Furthermore, the CAB also submits that the Commission should vigorously support the need for the development of a multi-year Canadian programming plan.
19. Private broadcasters are also concerned about how much of the CTF’s funding has been directed to the CBC in recent rounds of funding. In the most recent year, 52.6% of the English drama stream went to CBC projects. Yet as Figure 2 on page 11 of the CAB’s first round submission points out, in 2001 private conventional broadcasters provided 26% of the audience to Canadian drama, pay and specialty broadcasters a full 52% and the CBC only 23%. Clearly there is an imbalance between the use of public resources and the results in audiences for Canadian drama.
20. Again the CAB recognizes that the Commission has no jurisdiction over the CTF’s decision making. However, the CAB submits that the Commission must bear this funding imbalance in mind when considering the possibilities for increasing the amount of drama aired by private broadcasters. Given the CBC’s privileged access to both Parliamentary and CTF funding, the Commission should hold the Corporation to a high expectation for the provision of Canadian drama.
21. One way to increase the investment in Canadian programs is to give broadcasters incentives to provide additional licence fees and other investment in such programs. At present, in most programs financed by the CTF the licence fees from broadcasters exceed the required thresholds. In fact, the gap between the licence fees paid for Canadian drama and the advertising revenue that can be drawn from it is even larger than what was identified by the Commission in its PN, since

average per hour licence fees are higher than the PN assumed.

22. While the Commission has also proposed an incentive for high cost drama without CTF involvement, most broadcasters believe that it is unlikely that many will take up this incentive for various reasons. However, broadcasters are interested in investing in Canadian programming as at-risk investors. We believe that the Commission can facilitate a greater broadcaster role in investment in two ways:

- **Adopt the proposal to permit broadcasters to count investment in Canadian programming against requirements for expenditures.**
- **Count investment in Canadian drama by broadcasters as part of their drama program spending for purposes of any incentive based upon increased spending.**

23. The CAB recognizes the concerns that the Commission has expressed about ensuring that such investment is truly at risk rather than a loan or a substitute for a licence fee. The Commission has requested comments on mechanisms to ensure this goal is met, and we have provided suggestions in response to the specific question.

A focus on increased viewing and spending

24. The CAB does not have a consensus on the Commission's proposals for advertising incentives based on original hours of drama. The CAB Television Board was unable to reach consensus – the larger conventional broadcasters believe that the original hours advertising proposals could provide them with the incentive to maintain and increase their drama programming. Smaller conventional broadcasters are concerned that the addition of new advertising inventory could have a negative impact on their revenues from advertising.

The CAB Pay and Specialty Board was unable to reach a consensus in this area.

25. The CAB believes that if increased viewing is the objective and increased spending is an important way to make programs more attractive to viewers, the Commission should disentangle its viewing and spending incentives from the original hours proposal.

26. The CAB believes that the Commission should provide an incentive to broadcasters to raise the share of tuning to Canadian drama as a percentage of drama on their stations and services regardless of whether they have done so through original hours of drama, increased licence fees, scheduling on multiple platforms or increased spending on marketing and promotion. The incentive for viewing increases as proposed by the Commission is not available to broadcasters other than through the original hours incentives.

27. The CAB suggests that the Commission modify its proposal for the viewing incentive to provide incentives to each broadcast ownership group that meets the objective for increased viewing to Canadian drama as a percentage of the viewing to drama on all of its services. Later in this document we will have specific comments on some other aspects of this proposal. The CAB proposes that **the Commission provide a separate incentive for broadcasters to increase viewing to Canadian drama that is not based upon the original hours proposals.**

28. The CAB recognizes that increased spending on drama is one way of increasing the production values on the screen. Moreover, an increase in spending can also result in more hours of drama, increased licence fees and investment in programs. For these reasons, we believe that incentives directed at increasing spending may also be an effective means of increasing audiences. For this reason, the CAB proposes that **the Commission provide a separate incentive for broadcasters to increase spending on Canadian drama that is not based upon the original hours proposals.**
29. While there is no consensus on the use of advertising credits for original hours of drama, the CAB recommends that the Commission revisit the proposals for restoration of time credits for Canadian drama. Private broadcasters also submit that the Commission's definition of original drama needs refining to ensure that all of the broadcasters that contribute to the financing and broadcast of Canadian drama are provided incentives to provide a stronger participation in the airing of Canadian drama.

The Case for Time Credits

30. In her report to the Commission on drama, entitled *Dramatic Choices*, Trina McQueen recommended that the Commission provide a number of incentives to broadcasters, including “a) The CRTC should restore the 150 per cent credit for ten out of ten (distinctively Canadian) drama, so that it applies against overall Canadian content.”
31. In its first round submission, the CAB picked up on Ms. McQueen's suggestion in this area and proposed that the Commission consider restoring this credit. The CAB believes that restoration of the time credit would provide all broadcasters with the same incentive that is available to specialty and the smaller conventional broadcasters. Those broadcasters with access to larger budgets and who can provide higher licence fees would have an incentive to, at a minimum, maintain their current levels of Canadian drama and, in fact, increase them.
32. In PN 2004-32, the Commission expressed a concern that the use of time credits would endanger the overall level of Canadian content in the system. The CAB submits that the Commission has overestimated the impact of the time credit on the system. With the current limits on funding and the financial disincentive to broadcast drama, it is unlikely that broadcasters will make wholesale changes to their schedule with the resulting impact of greatly decreasing their Canadian content levels. For example, if each conventional broadcaster were to increase its average weekly hours of drama to 6 (and given the funding limits, this is unlikely) and all of this qualified for a credit, there would be an overall reduction of three hours of Canadian content in their schedules. Three hours represents less than 2% of the weekly total of regulated hours and about 7% of the prime time schedule. This would seem to be an excellent trade off, if the result is a significant increase in both hours of Canadian drama and increased tuning.
33. In addition, the Commission expressed a concern “...that the likely result of a time credit for drama would be to encourage licensees to schedule Canadian programs at off-peak times or in low viewing periods of the year”. We see no reason why time credits would lead broadcasters to do so, anymore than the current credits offered against priority programs. In fact, the number of hours of Canadian content required and the requirements for priority programs leave broadcasters little room to schedule in the manner feared by the Commission. At the end of the day conventional broadcasters must provide 1092 hours of Canadian content in prime time each year and 416 hours of priority programs in peak viewing times each year. It would be very difficult to reach these

levels if a broadcaster was to isolate their Canadian drama programs in the manner described.

34. Furthermore, it would be counterproductive for any broadcaster who wished to avail itself of a viewing increase incentive to not take advantage of the audience potentials available during the highest audience periods of the week and year.
35. The Commission could also look at the record of specialty broadcasters in this regard. The 150% time credit is available to them. And specialty broadcasters have been very successful in drawing audiences to their Canadian drama – to the point that they make up 52% of the viewing to Canadian drama.
36. Clearly other significant stakeholders in this area share the CAB's point of view. In its first round submission the Canadian Film and Television Production Association (the CFTPA; representing almost 400 Canadian production companies involved in television film and interactive media) supported this proposal, as did the Friends of Canadian Broadcasting.
37. **The CAB reiterates its recommendation that the Commission reintroduce the 150% time credit for 10-point drama as originally outlined in Public Notice 1984-94. This credit should be available to any broadcaster who airs the program in the first two years following its original viewing and who has participated in the financing of the program.**
38. The Commission has proposed an incentive for original hours of 8 and 9-point drama or for 10-point drama with lower licence fees. Most drama either meets the full ten points or is at 6 or 7 points. It should be borne in mind lower point count drama still provides strong use of Canadian creative and other resources. Such programs have a better chance of attracting foreign broadcasters and distributors, thereby being a cost efficient means of producing Canadian drama with sufficient production values and perhaps star power to attract large Canadian audiences.
39. Moreover, there is an increasing trend for treaty co-productions for drama. Such productions can attract significant investment to Canadian programming. At the same time, Telefilm certifies such productions to ensure that Canadian public policy goals are met. However, such programs usually do not meet 10 points.
40. For these reasons, **the CAB proposes that the Commission provide a new 125% time credit for drama programs with fewer than 10 points broadcast in prime time. The time credit should be available to any broadcaster who airs the program in the first two years following its original viewing and who has participated in the financing of the program.**

The need for an expanded definition of original hours

41. The CAB considers that the definition of original programming should recognize the role that all broadcasters who are part of the pre-production financing package play in bringing Canadian programs to life. **It therefore recommends that the definition of original programming be amended so that the first broadcast of a program by each broadcaster who was part of the pre-production financing be considered an original broadcast.**
42. The Commission's incentives for original hours of drama focus upon the entry point for most high budget series drama and provide an incentive for the first play of such programs only. But in fact, individual programs or series gain audience over a longer shelf life than one original broadcast of

an original hour. It is increasingly common for two or more broadcasters to be part of the financing package of a program, either sharing first window or as part of a more phased-in approach of multiple windows. Increasingly, multiple broadcasters in multiple territories must join together to finance programs that have common interest. In other cases, one ownership group may acquire the rights to broadcast a program or series on a variety of the services it operates, including pay, specialty and conventional broadcast.

43. Over the life of a program, viewers may come from the broadcasters who are part of the initial planning of the program's deployment in the Canadian broadcasting system and from additional Canadian licensees who acquire later rights. **All of these exposures of Canadian drama are important to building audiences to our own programs.**
44. Part of the success of US drama programs has been the syndication market. Hit programs such as *Everyone Loves Raymond*, *Seinfeld*, *Frasier* or *Friends* establish credibility with audiences on their first runs through the system (which usually include two or three plays in the first two years). They then go into syndication on conventional stations or specialty services, often running at the same time each night of the week in shoulder prime. This brings a new set of viewers to the program, which also reinforces the popularity of the program bringing some of these viewers to the first run programs still on television for the first time. Many of these programs find themselves new audiences on services that bring them back many years later – good examples of this are *MASH*, *All in the Family* and *Golden Girls*.
45. What is also increasingly true is that the involvement of multiple windows and multiple broadcasters is essential to meeting the financing requirements to make sure that Canadian drama is competitive.
46. The Commission's proposed incentive for original hours does not include the other broadcasters involved in the financing of Canadian drama, even though these broadcasters also are at risk. The CAB suggests that the Commission's approach needs to provide stimulus to encourage increased involvement of all the links in television's value chain.
47. It is for this reason that the CAB believes that the restoration of the 150% credit with its use of a two year window within which broadcasters can make use of the credit would provide a strong stimulus to broadcasters to increase their involvement in drama.
48. The McQueen report suggested that the Commission consider time credits for afternoon soap operas and late night drama. The Commission did not include this proposal in its package of incentives. The CAB believes that increasing drama viewing in other time periods could have an overall positive impact on viewing to Canadian drama and suggests that **the Commission re-consider the recommendation from the McQueen report that afternoon soap operas and late night drama aired just after midnight earn a 150% credit against the Canadian content requirements for the broadcast day.**
49. The CAB considers that feature film can play an important role in increasing audiences to Canadian drama. The pay and pay-per-view industry already is an important component of the financing of Canadian film. But specialty and conventional broadcasters can also ensure that Canadian audiences have access to Canadian feature and other films.

50. The CAB believes that it would be helpful to encourage the broadcast of dubbed or sub-titled programs from the other official language. If a program is an original program in French and two or three years later is dubbed into English this is a new program to the English-language television market. Therefore, **the CAB suggests that the definition of original hours be amended to make it clear that a program is original in a language the first time it is aired in that language even if it has been broadcast previously in another language.**

Measures to ensure more strategic scheduling of Canadian drama

51. As noted earlier, the simultaneous substitution requirements for BDUs have provided an important protection for Canadian broadcasters to exploit the rights that they have purchased for foreign programs in their territories. Absent this measure, conventional television would not be able to attract the revenues needed to meet their multiple regulatory obligations.
52. At the same time, these rules create a scheduling conundrum for conventional television programmers. How can one maximize their revenues for hit foreign programs and still find a good place in the schedule for Canadian drama and other programs?
53. The CAB has presented the case for Non-Simultaneous Substitution (NSS) to the Commission in the past. There have been both technical and rights issues that have been raised and the issue has not gone forward. However, we continue to believe that NSS offers Canadian programmers an important alternative to the American network schedules, and provides the flexibility to maximize both our use of the rights that we have acquired AND the scheduling of our Canadian drama and other programming.
54. **The CAB, therefore, requests that the Commission start a proceeding to investigate how NSS could be implemented.** We would note that we have already had discussions with the CFTPA on this matter and they have indicated a willingness to work with us and the BDUs to find viable solutions.

Increasing promotion of Canadian drama

55. An important aspect of attracting audiences to Canadian drama is ensuring that there is adequate promotion. It is generally agreed that Canadian broadcasters do an excellent job of promoting their schedules, including their drama programs. However, they face the massive US publicity machine with television, radio and magazines making American stars and programs household names. To cut through this saturation of foreign programs, Canadian broadcasters need to do even more promotion of their programming, including in other media. If drama is already not a good value proposition for Canadian broadcasters the addition of more out of pocket expenses makes it even less so.
56. To decrease this imbalance, the CAB proposes that the Commission give broadcasters an incentive to increase their promotion of Canadian programs. We would note that the McQueen Report recommended that the Commission allow third party expenditures on 10-point drama to count as program expenditures. We would supplement this recommendation with the following suggestions:
- **Permit broadcasters to count third party promotional expenses for drama against their Canadian programming spending requirements.**

- **Permit broadcasters to count their third party drama promotion expenses as part of their drama spending in evaluating whether they have increased their spending on drama.**
57. The CAB also believes that it would be worthwhile to consider another of the recommendations of the McQueen Report in this regard. Ms. McQueen recommended that “The CRTC should allow "star system" entertainment magazine programs aired outside prime time to claim either: 50 per cent priority programming credit; or 125 per cent credit against daytime Canadian content credits.” **The CAB believes that such a change would provide a significant stimulus for the development of a Canadian star system.**
58. The CAB believes that with the additional promotional push that implementation of these suggestions would provide for Canadian drama, Canadian audiences would be fully informed of the presence, scheduling and benefits of Canadian drama programs.

Consulting Broadcasters on Audience Measurement

59. In its first round submission, the CAB outlined the problems that result from the use of different types of audience measurement. It proposed the striking of an all-industry task force comprised of professional media research analysts to develop appropriate means to measure the actual viewing to Canadian programming in the country.
60. In the section of PN 2004-32 dealing with viewing incentives, the Commission recognized that there are different approaches to measuring audiences and that there is some need to refine a method of coding Canadian drama programs so that audience measurement is accurate. In paragraph 81 of the Notice, the Commission indicated that it is currently working with the CTF, Telefilm, Mediastats and interested government departments to refine a methodology that will facilitate the addition of country of origin and program genre for each program captured by both the BBM Canada and Nielsen Media Research people meter databases.” Once adopted this methodology would be used to establish a baseline for viewing to drama in 2003-2004 with a view to developing the viewing objective for the next five years.
61. The CAB urges the Commission to include representatives of the broadcast industry as part of the working group to develop this method. Our members work with audience data every day and have intimate knowledge of the strengths and weaknesses of various systems. They also are responsible for logging their Canadian programs. The CAB believes that they can bring practical expertise to the refinement of the methodology. Moreover, they have a vital stake in ensuring accuracy of the system since it is their stations and services that could benefit from the viewership incentives.
62. Further in paragraph 81 the Commission indicates that it would “review the results of the project for the 2003/04 broadcast year, as they become available, with a view to setting an overall industry objective early in the 2004/05 broadcast year.” The Commission does not indicate what criteria or process will be used to establish the industry objective. The CAB proposes that the Commission include consultation with the broadcasting industry in the establishment of an ambitious but attainable objective.

The Commission's Questions

In this section of the document, the CAB provides replies to the Commission's specific questions in the Notice.

1. *For the purpose of the proposed incentives, please comment on the following definition for an original program:*

An original program is a program that has never before been distributed by any licensee of a broadcasting undertaking and that will be distributed for the first time by the licensee.

As outlined in our main submission, the CAB believes that the Commission should make some amendments to this definition to provide stimulus to all the sources of drama.

Overall the CAB believes that the definition of original programming should reflect the involvement of all broadcasters who are part of the pre-production financing package. **It therefore recommends that the definition of original programming be amended so that the first broadcast of a program by each broadcaster who was part of the pre-production financing be considered an original broadcast.**

For purposes of the time credits proposed by the CAB, it would like to suggest some further refinements.

The CAB proposes that the Commission return to the definition of an original hour used in PN 1984-54 for purposes of time credits so that each licensee will receive a dramatic programming credit for each showing of a drama occurring within a two year period from the date of first showing.

The CAB proposes that the definition of original hours be amended to make it clear that a program is original in a language the first time it is aired in that language even if it has been broadcast previously in another language.

2. *The Commission proposes incentives for Canadian drama programs directed to children when such programs are broadcast at times of the day that are appropriate for children. Should the Commission define these time periods? If so, what specific hours of the day should be considered as appropriate for television viewing by children?*

The CAB believes that the restoration of the time credit for drama should also include children's drama scheduled in appropriate times. The Commission used this definition from 1984 until the removal of the time credits for major national broadcasters in 1999. To our understanding there were no difficulties in its implementation. Moreover, the appropriate times for children's viewing vary by age group. Preschoolers watch television at much different times than do children of school age. And younger school age children have different viewing times than pre-teens. Therefore, the CAB considers that there is no need to be more specific.

3. *Is two-and-a-half additional minutes of advertising for each original hour of high cost, 10-point Canadian drama broadcast in peak time an appropriate incentive reward? If not,*

what would be the appropriate incentive?

The CAB has no consensus on the use of the original hours incentive. It has proposed that the Commission restore the former 150% credit for 10-point drama and that it provide a 125% credit for other drama against the Canadian content requirements.

4. *Will the proposed incentive of an additional four minutes of advertising for drama programs that are not funded by the CTF help reduce pressure on the CTF, while still encouraging broadcasters to acquire new Canadian drama?*

The CAB's members generally considered that it was very unlikely that any broadcaster would want to invest the money up front for such drama. It should be borne in mind that these decisions are often made one or more years in advance of the broadcast date. The risk to the broadcaster of providing the additional revenue needed in advance for the possibility of recouping additional advertising minutes a year or more later makes this an unattractive proposition.

5. *How can the Commission best ensure that revenues derived from the additional four minutes of advertising for drama programs that are not funded by the CTF flow through to Canadian drama production?*

As noted in the previous answer, the CAB doubts that any broadcaster would want to take up this incentive. This is made even less attractive by the possible introduction of a requirement for detailed accounting tracking.

6. *Is an increase of 0.4 percentage points in annual spending on Canadian drama an appropriate trigger for an incentive reward? If not, what would be the appropriate increase?*

Yes this is acceptable goal to trigger an incentive. As noted in the text of this submission, the CAB believes that this incentive along with the viewing incentive should be disentangled from the original hours incentive. Our specific recommendations were:

- **The Commission should provide a separate incentive for broadcasters to increase viewing to Canadian drama that is not based upon the original hours proposals.**
- **The Commission should provide a separate incentive for broadcasters to increase spending on Canadian drama that is not based upon the original hours proposals.**

In measuring the increase in spending, the CAB believes that the Commission should expand the definition of what is included in spending in the following manner.

The CAB proposes that the Commission:

- **Count investment in Canadian drama by broadcasters as part of their drama program spending for purposes of any incentive based upon increased spending.**
- **Permit broadcasters to count third party promotional expenses against Canadian programming spending requirements.**

- **Permit broadcasters to count their third party drama promotion expenses as part of their drama spending in evaluating whether they have increased their spending on drama.**

7. *Is the reward for achieving the viewing or expenditure targets (25% of the minutes earned through the broadcast of original hours of drama) appropriate? If not, what would be the appropriate incentive?*

As noted in this submission the CAB believes that the major goal should be the increase in viewing to Canadian drama as a percentage of viewing to all drama. We believe that this requires the incentive for viewing to be a separate incentive not tied to the original hours proposal.

Similarly, the CAB suggests that the incentive for spending also be disentangled from the original hours proposal.

8. *Is it necessary, or appropriate, to place a cap on the number of extra advertising minutes earned? If so, what should that cap be?*

The CAB did not reach a consensus on the original hours incentives proposed and therefore has no recommendation on any cap on additional advertising minutes.

9. *Will the proposed incentive program for drama impact negatively on other program categories such as documentary? If so, what could be done to minimize any negative impact?*

If the Commission makes one genre of programming more attractive than other by providing incentives for such programs, it is quite possible that broadcasters will make programming decisions to benefit from such incentives. Therefore it is possible that there will be a reduction in other kinds of programs.

At the same time, the funding gap inherent in drama makes drama a higher risk than other categories of programs. Therefore, it is unlikely that there will be a complete retreat from other program genres.

10. *Please comment on the Commission's proposed five-year viewing and expenditure targets. Should such targets be established for a shorter period of time, such as three years? If so, what would be appropriate viewing and expenditure targets over a three-year period?*

The CAB believes that a five-year review is preferable. Three years is too short a period and would really mean that the review would be based on data derived from two years of the new scheme. Producers and broadcasters need regulatory certainty and if the policy constructs change too frequently it is difficult to make longer-term plans. In particular, increasing viewing depends on a longer-term approach with multiple windows for Canadian drama, increased promotion and establishing these programs as an important part of an average Canadian's habits. Too short a review will not present an accurate picture.

11. *How should the Commission ensure that broadcaster equity investments are demonstrably at risk investments? Are any other safeguards necessary or appropriate?*

Since the Commission's call for public comments on Canadian drama, a number of conventional and specialty broadcasters, both formally and informally, have begun discussing the possibility of the inclusion of equity investment as qualifying Canadian Programming Expenditures for their services as is currently the case for Pay Television Licensees. It would appear that this concept is gaining support as well from the independent production community as well as from Telefilm Canada.

Should this concept be deemed advisable, the Commission could easily implement this change by altering its existing policy definitions contained in Public Notice CRTC 1993-93.

Through these ongoing discussions, it is clear some issues need to be addressed in order to ensure that implementation will not have a detrimental effect on the existing levels of specialty or conventional broadcaster support for Canadian programming. In order to assuage these concerns, we recommend that equity investments made by specialty licensees should be eligible Canadian programming expenditures under the following circumstances:

- **The investment is at risk.**
The equity investment cannot be an advance or a loan and must be an at risk investment.
- **Equity Investments will be a separate and distinct negotiation.**
The licensee cannot require equity participation as a precondition to the licensing of the production.

While some have expressed the point of view that a minimum level of licence fees be required before counting any equity investment, others feel that this may be counter-productive. Among other issues, such a proposal would effectively prohibit broadcaster investment in projects they were not licensing. Any programming through CTF already requires a significant minimum licence fee, thus obviating the need for any such cap here. Any non-CTF funded programming would be clearly incremental to the system and would be subject to free and open negotiation to be produced at all.

The simple safeguards cited above should be sufficient to prevent any potential abuse while allowing for a potential return on the investment and thereby stimulating additional funding possibilities for Canadian programming.

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