

ACTRA

14 May 2019

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 *Call for comments on a new annual digital media survey*

1. This is the submission of ACTRA in response to the 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 25,000 professional performers working in the English-language recorded media sector in Canada. For 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. ACTRA supports the proposal to introduce an annual digital media survey and urges the CRTC to require all services that provide audiovisual programming to Canadians through the Internet, including foreign over-the-top (OTT) services, complete it.
3. In various public processes over the past two decades, ACTRA has written extensively about how the Internet is becoming the principal conduit through which creative works of all kinds are distributed. Aside from visual arts and crafts, all other creative works can be digitized easily. Internet distribution has grown exponentially, and the growth rates continue to soar.
4. In these processes, ACTRA has consistently advocated for the CRTC and the government to implement policies and measures to ensure Canadian cultural expressions, including dramas and scripted comedies, are available and discoverable regardless of the technologies of production or distribution.

Alliance of Canadian Cinema, Television and Radio Artists

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5. As a starting point, policymakers must create a level playing field between Canadian suppliers and those from outside the country who are providing audiovisual materials to Canadians. Appropriate rules and regulations should be applied to OTT services, including that they offer Canadian programming choices and highlight these to Canadian audiences, and that they make a financial contribution to the production of Canadian programs. ACTRA also believes the government should provide authority to the CRTC to regulate Internet Service Providers (ISPs) and Wireless Service Providers (WSPs) under the *Broadcasting Act*, since these providers operate as broadcasting distribution undertakings (BDUs) for part of what they do.
6. The companies that now dominate the Internet are in the business of collecting and using a vast array of data. While it started with Amazon, Facebook and Google, programming content has been increasingly at the heart of this data collection and analysis with the emergence more recently of Netflix, Amazon Prime Video, Hulu and other OTT services. These companies are driven by data and are using it to create the sophisticated algorithms that curate our access to the virtually unlimited supply of content now available on the Internet. While there is a limitless supply, the algorithms increasingly lead us to the same content.
7. In the Internet age, information about how we are now consuming audiovisual content is essential for cultural policymakers. ACTRA notes the public policy discussions around digital media have been hampered by a lack of data and concrete information about the services Canadians are listening to and watching. Thus, **ACTRA fully supports the CRTC's proposal to collect information about digital media by requiring broadcasting undertakings to complete an annual digital media survey.**
8. Initially, the CRTC proposes to require "all currently licensed Canadian broadcasting undertakings (radio, television and distribution)" to provide such information. This is a good first step. While "the proposed survey would place an additional burden on Canadian licensees," this burden is surely very modest. Most of these undertakings are established public companies that must keep track of their revenues and expenses and must have their financial statements audited. Given the information is essential for Canadian policymakers, including the CRTC, and is for purposes of regulating the broadcasting system through which they are earning revenues (and making profits), this minor burden is a small price for them to absorb.
9. But, ACTRA is disappointed the CRTC is proposing to limit the survey in this way. With due respect to our excellent Canadian broadcasters, the reality is foreign services are the dominant players in the Canadian digital marketplace (and globally) when it comes to acquiring audiovisual programming and making it available via the Internet. Without information from foreign services, which provide programming to Canadians, the collected data will reflect only a small part of the Canadian experience and policymakers will continue to be hamstrung.
10. Thus, **ACTRA strongly urges the Commission to require all those providing audiovisual programming services to Canadians, including foreign OTT services, to complete the**

annual digital media survey. The Digital Media Exemption Order (DMEO) is clear that providing audiovisual programming content over the Internet is an activity covered by the *Broadcasting Act*. While a broadcasting undertaking “delivered and accessed over the Internet” is exempt from the requirement to hold a CRTC licence for such activities, it is subject to this obligation:

“(4) The undertaking submits such information regarding the undertaking’s activities in broadcasting in digital media, and such other information that is required by the Commission in order to monitor the development of broadcasting in digital media, at such time and in such form, as requested by the Commission from time to time.”

11. **ACTRA believes foreign OTT and other programming services would comply with a Commission request to participate in the annual digital media survey.** In this connection, we note other countries are beginning to regulate OTT and other on-demand services provided over the Internet. In its new Audiovisual Directive, the European Union requires Member States to impose minimum content requirements to ensure each service has sufficient European content in its catalogue, and it gives scope to Member States to include a national content quota. France also requires on-demand audiovisual services to highlight French productions. Member States may also, following the lead of Germany and France, impose a requirement on these services to allocate a percentage of revenues they earn in each market for local production.
12. Netflix announced it would “reluctantly” conform to these EU requirements and other companies soon followed. Thus, ACTRA can see no reason why foreign services operating in Canada would not comply with a CRTC request for them to complete an annual survey on their operations in Canada.
13. With respect to confidentiality, ACTRA notes these broadcasters 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. Expenses must be competitive. Production expenses are provided for many different purposes, including for tax credits in many North American jurisdictions. Thus, it is essentially only the policymakers and public interest entities like ACTRA that do not have access to all of the detailed data.
14. The CRTC has years of experience dealing with confidential data and we expect it is capable of making appropriate determinations in this respect. ACTRA does insist ALL of the data collected be released publicly in the aggregate.
15. ACTRA believes data should be collected on a service-by-service basis, consistent with how the Commission collects data from traditional broadcasters. This is essential to analyzing the data and documenting future trends.
16. With respect to the data that should be collected in the annual digital media survey, ACTRA proposes some additions.

17. On the revenue side, the data should include the number of viewers/subscribers as well as revenues generated from advertising, subscription fees, and pay-per-view/play charges. ACTRA urges the Commission to include pay-per-view revenues since this is a different model from one based on a subscription.
18. Relevant data, including availability, promotion and viewership, should be provided by programming genre for all programs offered by the service, divided between certified Canadian content productions and foreign works. The data should include whether the program is original to the digital media service or has been repurposed from a linear broadcaster or other use.
19. Finally, the data should include expenses related to certified Canadian content productions, including program-specific promotional expenses, also divided by genre. Services should be required to identify Canadian content productions obtained from independent producers.
20. It is critical for policymakers to understand how many Canadian programs are offered to Canadians, how these are highlighted or promoted, and how many Canadians choose to watch them. Accordingly, ACTRA urges the Commission to include viewership numbers in the data and to expand the Canadian programming expenses as we have outlined.
21. ACTRA appreciates the opportunity to share these comments regarding a new, annual digital media survey. We look forward to providing further comments in the next phase of this proceeding once we have had an opportunity to review the comments from other industry stakeholders with respect to the proposed 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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