



ASSOCIATION DES
PRODUCTEURS DE
FILMS ET DE
TÉLÉVISION DU
QUÉBEC

November 5, 2008

Via CRTC comments/interventions form

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Dear Mr. Morin:

Re: Broadcasting Public Notice CRTC 2008-85, Item #1 – Application by YTV Canada, Inc. to amend the licence of the national English-language specialty programming undertaking known as YTV (Application No. 2008-1188-7)

1. The Canadian Film and Television Production Association (the “CFTPA”) and the Association des producteurs de films et de télévision du Québec (the “APFTQ”) (or collectively the “Associations”) provide these **joint comments** on the above-referenced application.
2. The CFTPA represents the interests of almost 400 companies engaged in the production and distribution of English-language television programs, feature films, and interactive media products in all regions of Canada. The APFTQ represents more than 130 independent film and television production companies in Quebec, acting on behalf of its members with government and industry organizations and encouraging close cooperation among all stakeholders.
3. Our member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences. Independent producers develop projects, structure the financing, hire the creative talent and crews to help turn stories into programs, control the exploitation of the rights, and deliver the finished product. We create high-quality programming in the financially risky genres of drama, comedy, documentary, children’s and youth, and variety and performance programming – largely what the CRTC calls “priority programming” – as well as other programming genres. We also create feature films for theatrical release and content for new digital platforms.
4. Independent producers provide Canadian television viewers with a Canadian perspective on our country, our world, and our place in it. Through the content we produce, we help foster Canadian cultural choices and reflect the rich diversity of this country. As such, the independent production sector plays a vital role in the Canadian broadcasting system, as recognized in the *Broadcasting Act*.

The Application

5. YTV Canada, Inc. (“YTV” or the “applicant”) is the licensee of YTV, a national English-language specialty programming undertaking targeting children, youth, and their families. YTV has filed an application to amend three existing conditions of its licence as follows:

- 1) Amend condition of licence #1(a) to delete the specified percentages of programming targeted to children, youth, and their families by replacing the condition of licence that currently reads:

The licensee shall provide a national, English-language specialty programming service targeted to children, youth and their families. In each broadcast year, a minimum of 30% of the programming distributed on the service shall have as its target audience children up to 5 years of age, a minimum of 48% shall have as its target audience children and youth 6 to 17 years of age, and a maximum of 22% shall have as its target audience families.

With the following condition:

The licensee shall provide a national, English-language specialty programming service targeted to children, youth and their families.

Or, in the alternative with the following condition:

The licensee shall provide a national, English-language specialty programming service targeted to children, youth and their families. In each broadcast year, a minimum of 15% of the programming distributed on the service shall have as its target audience children up to 5 years of age, a minimum of 63% shall have as its target audience children and youth 6 to 17 years of age, and a maximum of 22% shall have as its target audience families.

- 2) Delete condition of licence #5(b) requiring that no more than two feature films be scheduled each week in the evening broadcast period.
- 3) Delete condition of licence #8, which requires that a minimum of 35% of non-Canadian programming be devoted to programs from non-North American sources. Alternatively, the applicant proposes to amend condition of licence #8 by replacing it with the following condition:

In each broadcast year, the licensee shall devote a minimum of 15% of its non-Canadian programming to programs from non-North American sources.

6. The applicant notes that the three conditions of licence were first attached to YTV’s licence more than 20 years ago in the initial 1987 licensing decision and are unduly restrictive and no longer appropriate.

The CFTPA / APFTQ’s Comments

7. At the outset, the CFTPA and APFTQ acknowledge that YTV has made significant contributions to Canadian programming and has been a strong supporter of the independent production sector over the years. The Associations strongly believe, however, that granting all of the amendments requested by the applicant, as a whole, would fundamentally alter YTV’s nature of service and would not be in the interests of Canadian children and youth television viewers.
8. Prior to addressing each of the proposed amendments in detail, we would like to make the following general comments. First, we believe it is worth reminding the Commission that it denied identical or similar proposed amendments only two years ago as part of YTV’s most

recent licence renewal.¹ In fact, as YTV points out in its application, the Commission has rejected YTV's attempt to amend one or more of these conditions of licence on several occasions in the context of YTV's licence renewals over the years.²

9. The Associations believe that the rationales cited by the Commission for denying the proposed licence amendments in YTV's most recent licence renewal decision continue to apply today. We respectfully submit that the applicant has failed to put forward any compelling new arguments or evidence as to why the Commission should reach a different conclusion only two years later.
10. Secondly, the CFTPA and APFTQ believe it is useful to conduct a reality check of YTV's competitiveness and success in "today's environment", to use the applicant's words. According to the CRTC's statistical and financial summaries for individual specialty TV services, YTV is enjoying incredible success. Its total revenues hit \$89.5 million in 2007, up 14% since 2003. While profit before interest and taxes (P.B.I.T.) dipped slightly in 2007 to \$29.9 million from the level achieved in each of the previous three years, YTV remains one of the most profitable Canadian English-language specialty services in operation. Its subscriber base also reached an all-time high in 2007, topping 9 million. These data do not suggest a service in need of additional flexibility in licence conditions in order to remain competitive and better serve its audience.

Condition of Licence #1(a)

11. The CFTPA and APFTQ **oppose** deleting condition of licence #1(a) in its entirety. In the context of YTV's request to eliminate this condition of licence as part of its last licence renewal application, the CFTPA supported the request as long as YTV made a firm commitment as a condition of licence to continue to air at least some programming for children up to 5 years of age. Unfortunately, it chose not to agree to a specific level as a condition of licence. The APFTQ expressed concern that, without such a condition, the licensee might decide to schedule all programming targeted to preschoolers on Treehouse TV and none on YTV.
12. In its application, YTV repeats the argument it made as part of its last licence renewal in support of removing condition of licence #1(a) that multiple outlets for preschool audiences have emerged since its initial licensing in 1987, including Treehouse TV, Treehouse VOD, Family Channel (including its Playhouse Disney multiplex channel), and Teletoon.
13. YTV was licensed following a competitive process to serve, in part, the preschool demographic. The Associations agree with the CRTC's conclusion expressed in YTV's 2006 licence renewal decision that YTV was licensed to provide a service targeted to "children of all ages", and that Treehouse TV was licensed to "complement, rather than replace, YTV". Indeed, all of the specialty channels cited by YTV that are now serving children and youth audiences were licensed to complement, rather than directly compete with or replace, YTV.
14. We also note that most of the programming services cited by YTV as offering an alternative to YTV do not in fact adequately serve the preschool demographic, with the exception of Treehouse TV, Treehouse VOD, and Playhouse Disney. With respect to Playhouse Disney, however, the Associations note that this multiplex channel, which is an extension of Family Channel's licence, has significantly lower Canadian content exhibition and expenditure requirements than YTV. We trust the Commission will address this competitive inequity as part of Family Channel's next licence renewal.

¹ *Broadcasting Decision CRTC 2006-381*, August 18, 2006.

² In *Broadcasting Decision CRTC 2006-381*, August 18, 2006; *Decision CRTC 2000-140*, May 4, 2000; and *Decision CRTC 92-571*, August 17, 1992.

15. Moreover, the Commission must be cognizant of the fact that allowing YTV to step back from current programming requirements targeted at younger children will significantly diminish opportunities for preschoolers to access such programming since Treehouse TV, Treehouse VOD, and Playhouse Disney are available in far few homes than YTV. We respectfully submit that given its status as a programming service entitled to carriage on the basic packages of broadcasting distribution undertakings, YTV should remain a significant provider of programming for children of all ages.
16. We also agree with the view expressed by the CRTC in 2006 that YTV currently has sufficient flexibility to serve its target audience.
17. Notwithstanding our position expressed above, the CFTPA and APFTQ acknowledge YTV's desire for greater programming flexibility to better serve its audience and thus would accept an amendment similar to its alternative proposal. Specifically, the Associations would accept the following revised condition of licence #1(a):

The licensee shall provide a national, English-language specialty programming service targeted to children, youth and their families. In each broadcast year, a minimum of **20%** of the programming distributed on the service shall have as its target audience children up to 5 years of age, a minimum of **58%** shall have as its target audience children and youth 6 to 17 years of age, and a maximum of 22% shall have as its target audience families. *[changes in bold and italics]*

18. We submit that our alternative proposal strikes an appropriate balance between maintaining YTV's nature of service and commitment to serve children of all ages, as well as its desire for greater programming flexibility to meet the demands of its audience.

Condition of Licence #5(b)

19. The CFTPA and APFTQ acknowledge that YTV has not asked to increase the amount of feature films that it is permitted to broadcast overall, but has requested the flexibility, through the deletion of condition of licence #5(b), to increase the amount of feature films broadcast during the evening broadcast period in a given week. In other words, YTV would still be subject to condition of licence #5(a), which requires it to devote no more than 10% of the broadcast year to feature films.
20. We note that in denying YTV's request to delete this condition of licence as part of its last licence renewal, the CRTC expressed concern that removal of the condition would give YTV the ability to schedule the equivalent of a feature film almost every night of the broadcast week. The Commission also noted that removal of this condition could increase competition for feature film rights.
21. The Commission was further persuaded by the CFTPA's argument that YTV had not provided particulars with respect to its intended use of any additional flexibility to schedule more feature films during the broadcast week. More specifically, in light of the flexibility granted in YTV's 2006 licence renewal decision, the Commission was of the view that YTV had not sufficiently demonstrated the need to remove this condition of licence.
22. The Associations **oppose** deleting this condition entirely but are open to a partial loosening of the condition. We continue to share the CRTC's concern that the removal of this condition would give YTV the ability to schedule the equivalent of a feature film almost every night of the broadcast week. Allowing the broadcast of more feature films during the evening broadcast period, presumably targeted at a young adult/family audience, would effectively result in less air time for children and youth programming in prime time. We submit that this would materially alter YTV's nature of service.

23. Moreover, we submit that YTV has again failed to provide any specifics with respect to how it intends to use any additional flexibility to schedule more feature films in the evening broadcast period, or that the removal of this condition is needed.
24. While we acknowledge that YTV is not required to broadcast a minimum level of Canadian feature films, we are nonetheless disappointed that it has not made specific commitments to broadcast and support Canadian feature films targeted at children and youth as a *quid pro quo* to deleting or loosening condition of licence #5(b).
25. The CFTPA has expressed concern and frustration to the Commission on numerous occasions about the lack of support that Canadian broadcasters, with the exception of pay television services, provide to Canadian theatrical feature films. We have argued that all Canadian broadcast licensees should provide greater support for all genres of Canadian feature films intended for release in theatres as their first window, with subsequent exhibition on broadcast platforms.
26. The lack of financing to ensure that, each year, a critical mass of quality English-language theatrical films are developed, produced, and promoted is one of the biggest challenges facing the English-language theatrical feature film sector. These challenges must be overcome if Canadian English-language theatrical feature films are to achieve a pride of place not only in the domestic theatrical market, but also within the Canadian broadcasting system.
27. We firmly believe that all Canadian broadcasters that are permitted to broadcast foreign theatrical feature films should be required to make firm commitments to support and broadcast Canadian theatrical feature films. In our view, Canadian broadcasting policy can and should be tweaked to help meet the key objective of the federal government's feature film policy that Canadians receive greater access to Canadian films. Specifically, Canadian feature films should receive optimal exhibition on various platforms, including those regulated by the CRTC – over-the-air (OTA) television, specialty services, pay TV services, pay-per-view, and video-on-demand.
28. Accordingly, we urge YTV to make specific commitments to airing and supporting Canadian feature films targeted at children and youth.
29. Notwithstanding our concerns expressed above, the CFTPA and APFTQ are cognizant of the fact that the broadcast of a greater number of feature films during the evening broadcast period could result in an increase in revenues for YTV given the popularity of feature films with audiences, which would ultimately translate into higher expenditures on Canadian programming. Accordingly, in recognition of YTV's desire for greater programming flexibility to better serve its audience, the CFTPA and APFTQ would accept an amendment to condition of licence #5(b) as follows:

In any seven-day period of Sunday to Saturday, in the evening broadcast period, the licensee shall distribute no more than ***three*** feature films. [*change in bold and italics*]

30. We believe that our alternative proposal strikes an appropriate balance between maintaining YTV's nature of service and its desire for greater programming flexibility to meet the demands of its audience.

Condition of Licence #8

31. The CFTPA and APFTQ note that as part of YTV's last licence renewal in 2006, the Commission approved the removal of then-condition of licence #6, which required YTV to devote no more than an average of one hour per evening broadcast period to drama programs produced in any one country other than Canada, excluding feature films and specials. The

Commission determined that removal of this condition would provide YTV with greater flexibility to meet the needs of its target audience, while still ensuring, by virtue of the retention of condition of licence #8 (then-condition of licence #10), that non-Canadian programming originates from a diversity of international sources.

32. In denying YTV's request to delete condition of licence #8 just two years ago, the CRTC noted that the condition was designed to ensure that YTV provides programming from a variety of international sources. The Commission also expressed concern that removal of the condition may result in greater competition for programming rights amongst licensees (of both conventional and specialty television services), and could result in increased costs and a diminution in the quality of the services that are available.
33. The Commission concluded that there was a continuing need to ensure that YTV acquires non-Canadian programming from outside of North America, as this contributes to the objective of the *Broadcasting Act* that programming be drawn from international sources, as well as local, regional, and national sources.
34. For the reasons articulated by the Commission in 2006, as well as those expressed below, the CFTPA and APFTQ **oppose** deleting condition of licence #8 or even reducing the current minimum of 35% to 15% as alternatively proposed. In our view, condition of licence #8 supports the key principle of diversity of voices and programming in the Canadian broadcasting system. Removal of this condition would be counter to the conclusions reached by the Commission about the importance of diversity of programming sources in its recently completed comprehensive review of diversity of voices and programming in the Canadian broadcasting system.³
35. Condition of licence #8 provides Canadian children, youth, and their families with more diverse programming choices and global perspectives than would otherwise be the case without the existence of this condition. The increasingly multi-ethnic and multi-cultural nature of Canadian society demands that we ensure that Canadian children, youth, and their families receive programming from around the world that speaks to their culture and beliefs. We believe this principle is especially important with respect to children and youth programming.
36. With respect to the argument made by YTV that this condition of licence does not apply to its competitors and is therefore unfair, we in fact believe that a similar condition should apply to other licensed Canadian children's/youth broadcasters and urge the Commission to consider this issue as part of their next licence renewals. This would increase diversity of programming choices for Canadian children, youth, and family television audiences.
37. We note that YTV does not make any mention in its application about the significant output agreement that its parent company Corus Entertainment Inc. has with MTV Networks International, parent company of Nickelodeon, a highly successful U.S. specialty channel targeted at kids.⁴ This agreement provides Corus with Canadian rights to Nickelodeon broadcast and digital media content for its TV, Internet, and mobile platforms. The existence of this agreement is likely the main reason behind YTV's request to amend condition of licence #8. While we recognize that Corus would want to maximize its output agreement with MTV Networks International for Nickelodeon content in order to justify the investment made, in our respectful submission that should not result in the elimination or watering down of condition of licence #8 and a lessening of diversity of programming choices for Canadian children, youth, and their families.

³ *Broadcasting Public Notice CRTC 2008-4*, January 15, 2008.

⁴ See, for example, Corus news release, *MTV Networks International and Corus Entertainment Expand Nickelodeon Content Partnership into Digital Space – Corus to Represent Nickelodeon Digital Assets in Canada*, January 8, 2008.

Conclusion

38. In closing, the CFTPA and APFTQ are concerned that granting all of the amendments requested by the applicant, as a whole, would have the effect of fundamentally altering YTV's nature of service and would not be in the interests of Canadian children and youth television viewers. For the reasons set out above, we **oppose** the amendments as proposed by YTV. In some cases, we have proposed alternative amendments that we believe strike an appropriate balance between maintaining YTV's nature of service and its desire for greater programming flexibility to meet the demands of its audience.
39. The CFTPA and APFTQ appreciate the opportunity to comment on YTV's application. A true copy of this intervention has been sent to the applicant.

All of which is respectfully submitted.

Sincerely,

[Original signed by Guy Mayson]

Guy Mayson
President and CEO

[Original signed by Claire Samson]

Claire Samson
President and CEO

cc: YTV Canada

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