Review of the regulatory frameworks for broadcasting distribution undertakings and discretionary programming services

Broadcasting Notices of Public Hearing CRTC 2007-10, CRTC 2007-10-3, and CRTC 2007-10-4

Comments of CBC/Radio-Canada
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Table of Contents

Executive Summary .... **i**

I. Introduction **1**

II. The Regulatory Framework for BDUs **2**

Focus on Consumers *2*

Streamlining Basic Service *5*

Basic Service Prices *9*

Increasing Choice in Discretionary Services *12*

Ensuring Diversity *15*

Strengthening Dispute Resolution *17*

III. Financing within the New Framework **21**

1. Are Subscriber Fees Necessary for Conventional Broadcasters? *22*

The Cornerstone Role of Conventional Broadcasters 22
Financing the Cornerstone Role of Conventional Broadcasters 27
The Threat to the Financing of Conventional Broadcasting 29
What's Driving the Decline? 33

2. The Impact of Subscriber Fees on Other Parties in the Market *38*

a) The Impact on BDUs 38
b) The Impact on BDU Subscribers 40
c) The Impact on Discretionary Services 41

3. Would Fees Warrant Changes in the Carriage Status of Conventionals? ... *43*

4. What Should be the Nature of the Subscriber Fees for Conventionals *44*

IV. Conclusion **47**

Appendix A: Dispute Resolution Proposals

Appendix B: Nordicity Group Ltd.'s Canadian Television: Why the Subsidy?

Appendix C: McCarthy Tétrault's Legal Opinion on BDU Contributions to CTF

Executive Summary

In its 19 October 2007 submission in this proceeding CBC/Radio-Canada focused on two issues: 1) the legal requirement under the *Broadcasting Act* that the licensed services of the Corporation receive mandatory distribution by broadcasting distribution undertakings (BDUs); and 2) the need for a strengthened dispute resolution process.

In light of the expanded scope of this proceeding, CBC/Radio-Canada has updated its earlier submission by presenting in these comments a comprehensive proposal for the regulatory framework for BDUs in an environment where subscriber fees are received by conventional broadcasters.

There are two main parts to these comments: the BDU regulatory framework; and subscriber fees.

Simplifying the BDU Regulatory Framework

In the first part of its submission the Corporation outlines a proposal for a consumer-focused regulatory framework for BDUs which would enhance consumer choice while promoting the objectives of the *Broadcasting Act*. The Corporation's proposal focuses on four key elements of the regulatory framework: the composition and price of basic service; the rules applicable to discretionary services; preserving a diversity of voices; and dispute resolution.

<u>Streamlining the Basic Service Package</u>

In regards to the basic service, CBC/Radio-Canada proposes a streamlined basic service comprising all local over-the-air (OTA) stations, all section 9(1)(h) services as currently defined, any provincial educational channels and any other services which the Commission determines make a unique and very significant contribution to the broadcasting system, such as through the offering of very high levels of Canadian content.

In order to ensure that consumers enjoy the full benefits and purchasing flexibility associated with a streamlined basic service, BDUs would not be permitted to add services to the basic package. However, this restriction would not prevent BDUs from developing bundles and other packaging arrangements involving basic if they chose to do so.

Given that the purchase of the basic service would be mandatory for all BDU subscribers, CBC/Radio-Canada is of the view that while not returning to rate regulation, the Commission must exercise some form of oversight with regards to the basic rate so as to ensure that it is affordable, as required by section 3(1)(t)(ii) of the *Broadcasting Act*. If necessary, a BDU may be required to justify its initial rate for the streamlined basic service.

Enhancing Choice in Discretionary Services

In the area of discretionary services (i.e., all services other than those included in the basic service package), a BDU subscriber would have total freedom as to the services he or she may take, subject only to a requirement that a predominance of the programming services actually received by the subscriber are Canadian. In the Corporation's view, predominance should be interpreted as more than a simple majority (e.g., two thirds).

The combination of a streamlined basic service package with a simple predominance rule would provide a high degree of consumer choice and place significant reliance on market forces in the provision of programming services. BDUs would enjoy corresponding flexibility in marketing and packaging. The carriage obligations of BDUs would be simplified with the only carriage rules being the mandated basic package, the obligation to carry CBC/Radio-Canada licensed services, a 10:1 minority language rule and a general rule providing some protection for Canadian licensed services vis à vis non-Canadian services.

Preserving a Diversity of Voices

With regard to diversity, since BDUs play an integral role in ensuring a diversity of voices in the broadcasting system, the regulatory framework must continue to ensure that there is not excessive consolidation in the BDU market and that BDUs are not permitted to have an undue influence on the content available to Canadians. The Corporation therefore is of the view that the existing provisions relating to notice and prior approval of changes in BDU ownership should be retained.

Dispute Resolution

There was broad agreement among parties filing submissions on 19 October 2007 that the Commission's dispute resolution process needs to be revised and strengthened. There was also broad agreement that establishing a reverse onus in the undue preference provision would be appropriate. CBC/Radio-Canada argued in favour of both of these points in its 19 October 2007 submission and remains convinced that an enhanced approach to dispute resolution is critical.

In Appendix A, the Corporation analyzes the major dispute resolution proposals put forward in the 19 October 2007 round of comments. In light of that analysis CBC/Radio-Canada submits that an appropriate dispute resolution mechanism would involve a panel of three Commissioners hearing the dispute and resolving the dispute on terms they consider appropriate in light of the requirements of the *Broadcasting Act* and the facts before them. The dispute resolution process would be substantially similar to the Part VII Application process under the *CRTC Telecommunications Rules of Procedure*.

Subscriber Fees

Conventional over-the-air broadcasters are the cornerstone of the Canadian broadcasting system attracting about half of all prime time viewing in Canada. Nineteen out of twenty of both last season's most popular English-language Canadian regular series and most popular English-language Canadian specials were broadcast by conventional television broadcasters. For French-language television it was twenty out of twenty in both cases.

While conventional broadcasters are the cornerstone of the broadcasting system, they are handicapped in their ability to generate revenues to finance their operations since they do not have access to subscriber fees. Instead, they are dependent on advertising and government funding – both of which are essential but neither of which is growing in a manner which would enable conventional broadcasters to meet the challenges of the evolving broadcasting environment.

On the contrary, government funding is static and the advertising model is in a state of decline as advertisers shift their money to new platforms like specialty services and the Internet. Based on a study by PricewaterhouseCoopers and other public data, the Corporation estimates that the average PBIT (profit before income tax) for conventional broadcasters will become increasingly negative beginning in 2007.

This is not a sustainable situation. If conventional broadcasters are to continue to play their pivotal role in the Canadian broadcasting system they must be put in the same position as other players and be granted access to subscriber fees.

CBC/Radio-Canada proposes that conventional broadcasters be given the opportunity to apply for a subscriber fee at the time of their next licence renewal. The subscriber fee application would have to demonstrate that the funds are necessary for the broadcaster to fulfill its existing regulatory obligations and/or undertake new programming initiatives in areas considered important by the Commission.

CBC/Radio-Canada believes there are four main considerations which must shape the Commission's approach to subscriber fees for conventional broadcasters:

a) the deterioration in the advertising model threatens the ability of conventional broadcasters to continue to fulfil their existing regulatory obligations, to adapt to the changing broadcasting environment and to undertake new initiatives;
b) conventional broadcasters are handicapped as compared to other industry players by not having access to subscriber fees which are a key revenue generating mechanism;

c) subscriber fees cannot be viewed as a make-whole solution for conventional broadcasters since this would unduly diminish the incentives for efficiency and innovation; and
d) the quantum of the fee must be assessed in the context of introducing the new streamlined basic package.

I. Introduction

1 The Canadian Broadcasting Corporation/Radio-Canada (CBC/Radio-Canada or the Corporation) is pleased to provide these comments in accordance with the procedures established by Broadcasting Notice of Public Hearing CRTC 2007-10, Broadcasting Notice of Public Hearing CRTC 2007-10-3, and Broadcasting Notice of Public Hearing CRTC 2007-10-4.

2 In view of the expanded scope of this proceeding introduced by BNPH 2007-10-3 and BNPH 2007-10-4, in this submission the Corporation has provided its views on the issue of subscriber fees for conventional broadcasters. In addition, pursuant to the Commission's directions, CBC/Radio-Canada has updated its 19 October 2007 submission so as to provide a comprehensive proposal for the regulatory framework that should be applied to broadcasting distribution undertakings (BDUs) in an environment where subscriber fees are received by conventional broadcasters.

3 CBC/Radio-Canada's comments are divided into two main parts. First, in the following section the regulatory framework that the Corporation believes should apply to BDUs in the new environment is described. This is a consumer-focused framework which, if adopted by the Commission, would help ensure that the BDU market would provide Canadians with both enhanced programming choices and improved price competition. In order to enable these consumer benefits, the proposed framework would provide BDUs with increased flexibility in the design of their distribution services while maintaining a strong focus on the objectives of the *Broadcasting Act*.

4 In the second part of these comments CBC/Radio-Canada discusses a number of financial and economic issues, including the specifics of subscriber fees for conventional broadcasters.

II. The Regulatory Framework for BDUs

Focus on Consumers

5 It is a simple but important fact that Canadians today have far more audio and video options than existed when the BDU Regulations were last revised more than a decade ago. The proliferation of platforms – both regulated and unregulated – means that Canadians are increasingly accustomed to being able to choose what they want to watch or hear, instead of having those choices made for them by third parties. Among other things, this means that the Canadian broadcasting system – and BDU distribution services in particular – must provide Canadians with a satisfactory level of choice or face the possibility of losing them altogether.

6 The importance of emphasizing consumer choice and market forces, as well as the need for regulatory flexibility was stressed by numerous parties in their 19 October 2007 submissions.

> The objectives under the *Broadcasting Act* (the Act) will be best achieved by a regulatory framework that focuses on customers and embraces market forces.
>
> Shaw Communications[1]

> Every day, announcements are made by powerful online and international media companies related to new business models designed to support the provision of video content via the Internet and, in some cases, straight to the television, bypassing traditional broadcasters and distributors. Any new regulatory framework for BDUs and discretionary services must not only recognize and reflect these consumer, technological and advertising trends; it must exploit these trends to the benefit of the Canadian broadcasting system as a whole.
>
> Rogers Communications[2]

[1] Shaw Communications 19 October 2007 Comments at paragraph 4.
[2] Rogers Communications 19 October 2007 Comments at paragraph 7.

> Unless the traditional broadcasting platform is able to deliver to consumers the kind of diversity, convenience and innovation that they have come to expect from online sources of content, its ability to continue to achieve the Act's objectives is very much in question.
>
> Cogeco Communications[3]

> Bragg submits that the time has come for a more streamlined approach to regulation which allows consumer demand to play a greater role and grants to BDUs the flexibility they need to adapt to the ever-changing technological landscape and the potential impact of new media on the Canadian broadcasting system.
>
> Bragg Communications[4]

> TELUS considers that any regulatory framework which is not built on the foundation of the empowered consumer will fail to achieve its cultural objectives. In a digital world, all content is discretionary. Attempts to curtail consumer choice are doomed to failure in today's global environment; therefore, the question is: how will we continue to provide attractive choices within the traditionally regulated sector?
>
> TELUS Communications[5]

7 CBC/Radio-Canada agrees with this view that the Canadian system must become more flexible, more market driven and more consumer friendly.

8 For example, at present, many subscribers must buy a large basic package before they can begin to choose the discretionary services they want. Rogers' digital basic service in Toronto includes some 63 channels and sells for $35 and up. Bell ExpressVu's digital basic service includes 76 channels and costs $34 and up. The requirement for subscribers to purchase such a large

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[3] Cogeco Communications 19 October 2007 Comments at paragraph 31.
[4] Bragg Communications 19 October 2007 Comments Executive Summary at paragraph 3.
[5] TELUS Communications 19 October 2007 Comments at paragraph 10.

package of services, with no choice as to its make-up, is clearly contrary to the ideas of flexibility and consumer empowerment which all BDUs support.

9 Establishing a streamlined basic package for all BDUs would be a key step toward a more consumer friendly environment since this would enhance the opportunity for consumer choice from both a programming and financial perspective. Similarly, eliminating a number of current regulatory restrictions including the current distribution and linkage rules, as discussed further below, would enhance the packaging opportunities for discretionary services, including those that would no longer be included in a smaller basic. This would respond to the demands of both BDUs and consumers for greater flexibility and choice.

10 CBC/Radio-Canada notes that major distributors such as Rogers, Shaw and ExpressVu already permit subscribers to purchase many discretionary services on a stand-alone basis or in customized packages. As discussed below, a move away from the current rules to an overall predominance requirement would build on this practice and facilitate even greater packaging flexibility.

11 In the following sections the Corporation presents a proposal for what it believes to be the key elements of the regulatory framework for BDUs:

- the rules for basic service;
- the rules for discretionary services;
- the rules to ensure diversity; and
- the rules for dispute resolution.

12 In CBC/Radio-Canada's view, the framework described below would provide a flexible and consumer friendly environment which would both enhance consumer choice and strengthen the Canadian broadcasting system.

Streamlining Basic Service

13 The starting point for designing a BDU regulatory framework in the new environment is the basic service package. In its 19 October 2007 submission, CBC/Radio-Canada emphasized the importance of retaining the requirement for a basic service package.

> In this proceeding, the Commission has indicated that it is "of the preliminary view that it would be appropriate to retain a requirement that a basic service be provided." Similarly, in its call for comment in the Digital Migration Framework proceeding and in its subsequent decision, the CRTC has supported the continued relevance of basic service.
>
> CBC/Radio-Canada strongly agrees with the Commission's conclusions in this regard. The provision of a basic service has historically been the primary means by which the CRTC ensures the availability of a core group of services to the vast majority of Canadians.[6]

14 The Corporation notes that all of the BDUs commenting on this issue in their 19 October 2007 submissions supported the requirement for a basic service package. There was also a general consensus that a smaller basic makes the most sense.

> With respect to the composition of the basic service on a going-forward basis, Rogers agrees that the requirement to provide a basic service generally serves the policy objectives in the Act, consistent with the Commission's preliminary view as set out BNPH 2007-10. Rogers is strongly of the view, however, that the basic service requirements should be minimized and applied equally to all BDUs, regardless of distribution technology.

[6] CBC/Radio-Canada 19 October 2007 Comments at Appendix A, paragraphs 1 and 2.

Rogers Communications[7]

Shaw proposes maintaining a requirement to distribute a core group of specified services as part of the basic service. For cable BDUs, this would consist of local and regional stations and one CBC in each official language.

Shaw Communications[8]

Bell supports the Commission's preliminary view that it would be appropriate to retain the requirement that a BDU provide a basic service, an approach that has afforded consumers a variety of viewing options at an affordable price. A modestly-priced basic service gives customers a greater choice with respect to the allocation of the majority of their TV viewing budget to discretionary services. They are able to select from a wide array of Canadian and foreign services those for which they are prepared to pay.

Bell Canada[9]

The second rule that Cogeco proposes the Commission retain in its new regulatory framework is the requirement for all BDUs to deliver a core group of services in its basic package. Cogeco agrees that this requirement generally serves the policy objectives in the Act, consistent with the Commission’s preliminary view as set out BNPH 2007-10. Cogeco is strongly of the view, however, that the basic service requirements should be minimized and applied equally to all BDUs, regardless of distribution technology.

Cogeco Communications[10]

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[7] Rogers Communications 19 October 2007 Comments at paragraph 266.
[8] Shaw Communications 19 October 2007 Comments at paragraph 26.
[9] Bell Canada 19 October 2007 Comments at paragraph 184.
[10] Cogeco Communications 19 October 2007 Comments at paragraph 61.

15 In a similar vein, Laurence Dunbar and Christian Leblanc suggested in their report to the Commission that a revised approach to the basic service package would enable a more flexible, market-driven approach overall.

> We believe that if the Commission maintains a strengthened Canadian basic service package with a buy-through requirement, it may be possible to allow market forces and consumer demand to dictate most of the remaining packaging issues.[11]

16 In CBC/Radio-Canada's view, a small, all Canadian basic service package would satisfy the demands of the BDUs for increased flexibility, promote Canadian programming as required by the *Broadcasting Act*, increase reliance on market forces and provide Canadian consumers with increased choice.

17 Like Rogers and Cogeco, CBC/Radio-Canada supports the idea that the basic service requirements should be minimized and applied equally to all BDUs, although the Corporation notes that implementation of those requirements for DTH BDUs should take into account the capacity limitations of satellite technology, particularly with regard to the quantity of local OTA signals that can be carried.

18 DTH providers are not locally-based and cannot economically provide the same local service offering of cable in each unique market across Canada. As a result, in regard to the carriage of local OTA signals in the basic package, CBC/Radio-Canada proposes that DTH providers be required to carry provincially relevant OTA signals from the networks, (i.e. CBC, Radio-Canada, CTV, Global).[12] The Corporation considers that DTH should be permitted to add other licensed OTA signals within the same province, but certainly no more than the total number of OTA signals being carried by the largest cable systems in the

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[11] Dunbar and Leblanc Report, Executive Summary at page xii.
[12] These signals would be distributed on a provincially addressable basis.

same province. Finally, CBC/Radio-Canada believes it is important that the Commission recognize the unique circumstances of the Quebec marketplace. For this market only, the Commission may want to consider expansion of its current "one Radio-Canada signal per time zone" approach for DTH, in order to permit greater regional representation of the public broadcasters' services by satellite operators.

19 Consequently, while the structure of basic should be the same across BDUs, the actual list of services in the basic service package for any particular location may vary slightly according to whether the BDU is terrestrial or satellite.

20 In the Corporation's view, basic should comprise all local OTA signals[13], all section 9(1)(h) services as currently defined, any provincial educational channels and in very limited cases, other services which the Commission determines make a unique and very significant contribution to the broadcasting system such as RDI, CBC Newsworld and TV5. In addition, market-specific circumstances may warrant the inclusion of other programming services in the basic package for all or part of a particular BDU's serving area and this would be accomplished via discrete application to the Commission. For example, a licensed community-based television programming service could apply to the Commission to be included in the basic package for the community it serves.

21 The Corporation notes that there was general agreement among BDUs that many of these services should be included in the basic service package.

22 Under CBC/Radio-Canada's proposed approach the streamlined basic package would be the only mandatory package for BDU subscribers. In order to ensure that this framework would be as consumer friendly and flexible as possible, BDUs would not be permitted to add services to the basic package

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[13] In all circumstances, as is the case today, carriage of one English-language and one French-language CBC/Radio-Canada signal would be required.

since this would decrease consumer choice. Instead, subscribers should be given the opportunity to purchase programming services beyond those included in the basic package at their discretion, either in additional bundles, packages or on a service-by-service basis. The Corporation notes that this approach would not prevent BDUs from offering subscribers bundling opportunities with the basic service that could replicate today's large basic services or other "all in" packages.[14]

23 In CBC/Radio-Canada's view, this streamlined basic service package approach would be extremely flexible and consumer friendly. It would provide all Canadian subscribers with a core set of Canadian programming services in accordance with the policy objectives of the *Broadcasting Act* while at the same time maximizing the opportunity for consumer choice and diversity in packaging. It would, as suggested by Dunbar and Leblanc, "allow market forces and consumer demand to dictate most of the remaining packaging issues" and, in CBC/Radio-Canada's view, would constitute an optimum balance between regulation and reliance on the market in order to achieve the policy objectives of the *Broadcasting Act*.

Basic Service Prices

24 On the issue of the basic service rate, the Corporation understands that the CRTC is unlikely to want to return to *ex ante* rate regulation for BDUs. However, with the basic service package being a required buy-through for all subscribers, CBC/Radio-Canada believes the Commission has an obligation under the *Broadcasting Act* to ensure that a BDU's basic rate is not excessive. This obligation is based in section 3(1)(t)(ii) of the *Broadcasting Act* which

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[14] For example, Canadian OTA signals that are time-shifted from other time zones could be made available to subscribers through bundled additions to basic service, but not through basic service itself. These non-local, time-shifted OTA signals would constitute discretionary services and the terms of carriage, including any affiliation fee, would be a matter of negotiation between the BDU and the broadcaster.

requires the Commission to ensure that BDUs "provide efficient delivery of programming at affordable rates."

25 CBC/Radio-Canada recognizes that in recent years the Commission has relied on market forces to control BDU service pricing. However, as explained in CBC/Radio-Canada's 19 October 2007 filing, the evidence demonstrates that market forces have not significantly constrained BDU pricing. On the contrary, the existence of steady prices increases, along with other evidence, strongly suggests that competition in the BDU market is, at best, weak.

26 Canadian BDU subscribers may in theory have a choice of two or more distributors but that does not mean there is effective competition. In CBC/Radio-Canada's view, its 19 October 2007 evidence, employing a number of standard economic tests, has demonstrated that there is very little effective competition operating in the BDU marketplace:

> A market with a very small number of competitors who have stable market shares, low churn rates, increasing retail prices and high profitability levels cannot reasonably be considered an effective or vigorously competitive market. And yet, this is an accurate description of the Canadian BDU market.[15]

27 In the Corporation's view, the lack of vigorous competition in the BDU market is a matter of serious concern. However, the Corporation also believes that the implementation of a new BDU framework, including the streamlined basic service package discussed above, would provide a further opportunity to test the extent of competition in this market.

28 The most obvious indicator of the level of competition would be the prices charged for a streamlined basic package. In a competitive marketplace, a significant reduction in the number of services within the basic service package

[15] CBC/Radio-Canada 19 October 2007 Comments, para. 83

should result in a corresponding reduction in the price of basic service. This price reduction should occur both because of consumer pressures (i.e., consumers would expect to pay less for fewer services) and because of the reduced cost of the basic package to BDUs (i.e., fewer services, lower infrastructure usage, etc.). Moreover, the sale – in packages or on a stand-alone basis – of programming services that were formerly in the basic package would generate additional revenues that, in a competitive market, would both facilitate and reinforce the need for price reductions for the new streamlined basic.

29 In a non-competitive market this type of significant price reduction would not necessarily occur.

30 As a result, if the Commission were to adopt the new regulatory framework proposed by CBC/Radio-Canada the Commission could easily assess the state of competition in the BDU marketplace. If the rates charged by BDUs for the streamlined basic service package were lower than current basic service rates – significantly lower in the case of BDUs, such as Rogers and ExpressVu whose current basic services are very large – then the Commission could safely rely on market forces to protect the interests of consumers. However, if there was no evidence of material rate decreases, then the Commission could no longer assume that Canadian consumers are being well served or protected by competition in the BDU marketplace. The Commission would have to consider regulatory action in order to properly implement the requirements of the *Broadcasting Act*.

31 In the event that regulatory action were necessary it would likely involve requiring a BDU to file evidence justifying its pricing for basic service. The BDU would presumably identify a range of factors, including its infrastructure and operational costs, as well as the wholesale rates for the services included in the new streamlined basic package. If the Commission were not satisfied with the BDU's explanation, the Commission could mandate a price decrease.

32 Overall, in CBC/Radio-Canada's view a streamlined and affordable basic service package combined with greater choice of discretionary services would be extremely attractive to consumers and help prevent Canadians from leaving the broadcasting system. If the remaining discretionary services were then available on an unconstrained basis, subject only to an overall predominance requirement, the resulting system would be very consumer friendly and rely to a very large extent on market forces.

Increasing Choice in Discretionary Services

33 The general consensus among BDUs filing comments on 19 October 2007 was that the existing distribution and linkage rules should be eliminated in order to provide BDUs with greater packaging flexibility and increased consumer choice. The BDUs suggested that a predominance rule should be instituted instead.

> Bell supports the elimination of all distribution and linkage rules in favour of a simple requirement of preponderance, i.e. the requirement that all Canadian subscribers receive a greater number of Canadian than non-Canadian signals and services chosen from among those made available to them by their respective distribution service providers.
>
> Bell Canada[16]

[16] Bell Canada 19 October 2007 Comments at paragraph 116.

> TELUS recommends that, once the requirement to provide a basic package is met, the only other rule to ensure that Canada's cultural objectives for the broadcasting system are met should be a requirement that subscribers receive a simple preponderance of Canadian programming services.
>
> TELUS Communications[17]

> Rogers strongly agrees with the Commission's statement in BNPH 2007-10 that program packaging should be a matter left more to negotiations between programmers and distributors. In a competitive environment where viewers want and expect as much choice as possible, the ability of distributors to rapidly respond to consumer demand and competitive offerings in a timely fashion is critical. This means that artificial and technology-specific constraints such as the distribution and linkage requirements must be eliminated.
>
> Rogers Communications[18]

34 CBC/Radio-Canada agrees with this general approach. In the Corporation's view, the distribution and linkage rules which the Commission developed over the course of many years are no longer required or appropriate. The Canadian broadcasting industry has matured and does not need to be supported by artificial linkages or distribution constraints. Moreover, the availability of content over numerous unregulated platforms means that packaging restrictions in the Canadian broadcasting system will be viewed with increasing disfavour by Canadians. If consumers cannot exercise choice within the system, they may choose to leave it altogether.

35 In the Corporation's view, once a subscriber has purchased a BDU's streamlined basic service package, that subscriber should have total freedom as to the services he or she may take, subject only to a requirement that a predominance of the programming services actually received by the subscriber

[17] TELUS Communications 19 October 2007 Comments at paragraph 60.
[18] Rogers Communications 19 October 2007 Comments at paragraph 143.

are Canadian. CBC/Radio-Canada therefore supports maintenance of section 6 of the *Regulations*, although the Corporation notes that predominance does not necessarily mean a simple majority. For example, in a situation where a subscriber receives 99 services, in the Corporation's view it does not seem appropriate to say that the Canadian services are predominant if there are 50 Canadian and 49 non-Canadian. In CBC/Radio-Canada's submission, a predominance of services is better seen as a significant majority (e.g., two-thirds).

36 CBC/Radio-Canada notes that this freedom of choice for subscribers does not determine the complete carriage obligations of BDUs. In particular, as indicated in CBC/Radio-Canada's 19 October 2007 submission, all of the Corporation's licensed services must have a right of carriage in order to fulfil the legal requirements of the *Broadcasting Act*.[19]

37 Under CBC/Radio-Canada's proposal, with the exception of the Corporation's services, service carriage outside of basic would be a matter for negotiation, subject to dispute resolution by the Commission. The Commission would retain an undue preference provision in the BDU regulations and any service unable to obtain carriage on a satisfactory basis would have to rely on that provision in order to make its case for Commission intervention.

38 As indicated in its 19 October 2007 submission, the Corporation supports the Commission's proposal to introduce a reverse onus element to the undue preference provision. In CBC/Radio-Canada's submission there is serious doubt as to whether an undue preference provision could be effective without this amendment.

[19] As explained in the McCarthy Tétrault opinion, this carriage right for CBC/Radio-Canada discretionary services does not extend to basic service carriage or to remuneration, the latter of which would be a matter for negotiation.

39 The only additional limitations imposed on a BDU's carriage freedom would be the predominance requirement identified above, a minority language rule and protection for Canadian licensed services vis-à-vis non-Canadian services.[20]

40 With respect to the minority language rule, CBC/Radio-Canada support's the Commission's suggestion that the BDU *Regulations* include a simple 10:1 rule for minority language services.

41 As far as protection for domestic services from foreign services is concerned, CBC/Radio-Canada agrees with the proposal put forward by Rogers in its 19 October 2007 submission:

> Any non-Canadian service should be authorized for distribution in Canada as long as that service does not threaten the viability of a launched Canadian pay or specialty service.[21]

42 CBC/Radio-Canada believes that this simplified regulatory structure would enhance consumer choice and give BDUs greater flexibility in their service offerings while, at the same time, strengthening the Canadian broadcasting system in accordance with the requirements of the *Broadcasting Act*.

Ensuring Diversity

43 The Commission has emphasized many times the importance of maintaining diversity in the Canadian broadcasting system. If Canada's culture

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[20] CBC/Radio-Canada would note that there is one technical issue which should be addressed by the Commission in this proceeding in regard to the quality of the HD signals being delivered by BDUs. The current language of the Regulations states that the signals "should be of the same quality and in the same format as that received by the BDU…" In a digital world this language is insufficient. CBC/Radio-Canada believes that the Commission must replace this language with a requirement to deliver signals at "the identical bit rate and identical pixel rate" as that received by the BDU.

[21] Rogers Communications 19 October 2007 Comments at paragraph 19.

and democratic system are to remain dynamic and robust, it is essential that Canadians have access to a diversity and plurality of voices.

44 The vast majority of Canadians receive their television services from BDUs. The Commission has recently established new policies intended to ensure that a diversity of voices is maintained in the Canadian broadcasting system.[22] These include a policy restricting cross media ownership in local markets and limits on the ownership of television broadcasting licences and BDUs. These policies are important tools to foster a competitive environment, but they are not an end in themselves. Since BDUs play an integral role in ensuring a diversity of voices in the broadcasting system, the regulatory framework must continue to ensure that BDUs are not permitted to have an undue influence on the content available to Canadians.

45 In keeping with the Commission's recent diversity policies, the BDU regulatory framework must expressly protect against consolidation in the BDU industry that could narrow the opportunities for programming services and give one or more BDUs undue influence on the content available to Canadians. In particular, the current ownership and control provisions relating to notice and prior approval should be retained.

46 The Corporation also notes that the Commission requires up to date ownership information at all times in order to assess whether a particular BDU may be granting itself or an affiliated company an undue preference. Given this informational requirement it is doubtful whether the regime for the carriage of discretionary services could be significantly simplified unless the current ownership notice and approval provisions were retained.

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[22] Broadcasting Public Notice CRTC 2008-4, 15 January 2008.

Strengthening Dispute Resolution

47 In its 19 October 2007 submission, CBC/Radio-Canada placed great emphasis on the need for an effective dispute resolution mechanism.

> The inequality of bargaining power between the Corporation and BDUs means that the Commission must establish an efficient and effective dispute resolution process if the Commission is to be able to achieve its regulatory objectives.[23]

48 The Corporation is pleased to see that it is not alone in recognizing the importance of this issue. A broad range of broadcasters and BDUs expressed the view that timely and efficient dispute resolution will be increasingly important in a regulatory environment where greater reliance is placed on negotiation and market forces:

> In the CAB's view, the Commission's dispute resolution mechanism has the potential to play an important and vital role in maintaining stability within the system as it transitions into an increasingly open market environment. … However, the CAB believes that in order for the Commission's dispute resolution process to be seen as a reliable and trusted service among programming and distribution it must be revised to ensure it is more responsive and timely in resolving disputes.
>
> Canadian Association of Broadcasters[24]

[23] CBC/Radio-Canada 19 October 2007 Comments at paragraph 37.
[24] Canadian Association of Broadcasters 19 October 2007 Comments at paragraphs 120, 121.

> An effective dispute resolution process is necessary to encourage programming licensees and distributors to negotiate in good faith and to come to a mutually agreeable arrangement. The broadcasting industry is an artificially constrained market that involves complicated and unique disputes. A process that disagreeing parties can rely on to resolve issues in a timely fashion is valuable and helpful.
>
> Bell Canada[25]

> As the Commission moves away from a detailed and prescriptive regulatory framework to one that relies more on market forces, the need for a fair, transparent and efficient dispute resolution process will significantly increase. Cogeco therefore strongly believes that the Commission should retain and strengthen its ability to resolve disputes in a fair and timely fashion.
>
> Cogeco Communications[26]

> CCSA therefore recommends that the Commission enhance and resource its dispute resolution function as a principle element of regulatory intervention in a largely deregulated environment.
>
> Canadian Cable Systems Alliance[27]

49 CBC/Radio-Canada strongly supports these views. The streamlining of existing regulatory rules must be accompanied by the enhancement of the Commission's dispute resolution regime. The objectives of the *Broadcasting Act* remain paramount even in a light-handed regulatory environment and only the Commission has the mandate and the powers to implement those objectives by means of timely and efficient dispute resolution.

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[25] Bell Canada 19 October 2007 Comments at paragraph 238.
[26] Cogeco Communications Inc. 19 October 2007 Comments at paragraph 127.
[27] Canadian Cable Systems Alliance 19 October 2007 Comments at paragraph 226.

50 In its 19 October 2007 submission the Corporation identified five key characteristics for an effective dispute resolution regime:

- clarity as to the types of disputes which are covered by the process;
- simplicity and transparency of the process;
- adequate information disclosure;
- timeliness; and
- effective enforcement.

51 While parties differed as to the level of detail in their comments on dispute resolution, in the Corporation's view no one disagreed with the desirability of any of these characteristics.[28]

52 In Appendix A of this submission, the Corporation analyzes the major dispute resolution proposals put forward in the 19 October 2007 round of comments. In light of that analysis CBC/Radio-Canada submits that an appropriate dispute resolution mechanism would involve a panel of three Commissioners hearing the dispute and resolving the dispute on terms they consider appropriate in light of the requirements of the *Broadcasting Act* and the facts before them.

53 The dispute resolution process would be substantially similar to the Part VII Application process under the *CRTC Telecommunications Rules of Procedure*. All applications and subsequent filings would be made public on the Commission's website, subject to any confidentiality claims for competitively sensitive information which the Commission may uphold. Any Commission decision would also be made public on the Commission's website.

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[28] CBC/Radio-Canada notes that in its 19 October 2007 Comments Shaw Communications Inc. gave only limited support to dispute resolution and opposed the Commission's proposal for a reverse onus with respect to an undue preference provision. Nonetheless, Shaw did not make any statements which would suggest that it would prefer a dispute resolution mechanism which did not have the characteristics identified by the Corporation.

54 In CBC/Radio-Canada's view, an application could be processed with or without an oral hearing, as determined by the Commission. If an expedited oral hearing was requested and granted by the Commission, it should take place no later than 15 business days after the close of submissions under the initial written process and a decision should be rendered within five business days of the hearing. In all other cases, a decision would be rendered within 30 business days of the close of submissions.

55 In CBC/Radio-Canada's submission, a dispute resolution process of the type outlined above and discussed in greater detail in Appendix A would be transparent, predictable and practical from the perspective of the demand on Commission and party resources, while also being sufficiently timely as to provide an effective remedy to disputes.

III. Financing within the New Framework

56 In this section the Corporation focuses on the need to introduce subscriber fees for conventional broadcasters in order to ensure that the objectives of the *Broadcasting Act* can be met. In BNPH 2007-10-3, the Commission indicated the range of issues it expected to examine in regard to subscriber fees:

1. Whether the payment of a fee by BDUs is essential for the ongoing viability of conventional television stations and their ability to fulfil regulatory obligations.

2. Empirical evidence as to the impact such a fee would have on:

   - overall fees paid by subscribers and, in particular, fees for basic service;
   - the ability of discretionary services to fulfil their regulatory obligations;
   - broadcasting distribution undertakings.

3. Whether the introduction of such a fee should warrant changes in the distribution status of OTA television stations. For example, should stations receiving such a fee retain priority distribution status as part of the basic service of terrestrial BDUs.

4. If such a fee were to be implemented:

   - whether it should be a specific amount or a negotiated rate;
   - what proportion of the fee should be dedicated to incremental expenditures on Canadian programming, including local programming.

57 In the following sections CBC/Radio-Canada addresses each of the four areas identified by the Commission in BNPH 2007-10-3.

1. Are Subscriber Fees Necessary for Conventional Broadcasters?

<u>The Cornerstone Role of Conventional Broadcasters</u>

58 The fundamental goal of the *Broadcasting Act* is to ensure that Canadians have a diverse range of high quality Canadian programming available to them. Canadian conventional television broadcasters play a cornerstone role in the achievement of that goal.[29] Despite the numerous domestic and foreign television-programming options available to Canadians today, Canadian conventional television stations still attract approximately one-half of all prime-time television viewing in Canada.[30]

59 As demonstrated by CBC/Radio-Canada in the proceeding initiated by BNPH CRTC 2006-5, the drawing power of conventional broadcasters and their effectiveness in promoting Canadian content is readily demonstrated by their stellar performance vis-à-vis the most popular Canadian programs, whether regular series or specials.

60 For example, 19 out of 20 of both last season's most popular English-language Canadian regular series and most popular English-language Canadian specials were broadcast by conventional television broadcasters. This is not a recent phenomenon, but the norm in the Canadian system[31]

61 On the French-language side, Canada's conventional broadcasters provide the most effective vehicle for delivering Canadian content to

[29] "Conventional television broadcasters" refers to over-the-air broadcasters that provide general interest programming. It does not include over-the-air educational, ethnic or other special interest OTA broadcasters.
[30] BBM Nielsen Canada, September 2006 to March 2007. See Table 1, Appendix 2.
[31] Over the past five years only a handful of the most popular English-language Canadian series aired on specialty and pay services. Similarly, over the past five years conventional broadcasters have broadcast, on average, 95 per cent of the most popular Canadian specials.

Francophones in Quebec.[32] Twenty out of twenty of both last season's most popular French-language Canadian regular series and most popular French-language Canadian specials were aired on Canada's French-language conventional broadcasters.[33]

62 Very clearly, Canada's English-language and French-language conventional broadcasters, both public and private, have the ability to draw the greatest number of Canadians together to experience Canadian programming, whether they are following Canada's political future on election night, tuning in to their favourite comedy or drama program, or cheering on their team in the Stanley Cup finals.

63 In their recent report to the Commission, Dunbar and Leblanc have suggested that conventional broadcasters have a lesser importance than the pay and specialty sector in terms of delivering audiences:

> The overall viewing share of specialty and pay services now exceeds that of conventional OTA television. The same is true for overall viewership of Canadian programs. These data suggest that specialty and pay are taking on a bigger role with respect to Canadian content and that presumptions underlying our existing framework may have changed.[34]

64 Dunbar and Leblanc's claims that specialty and pay services account for the largest share of all television viewing – both to domestic and foreign programs – is true only because their study was limited to data from private conventional broadcasters. When viewing data to all conventional broadcasters,

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[32] The currency for the French-language market (BBM's PPM system) is limited to Francophone viewing in Quebec.

[33] See tables 3 and 4, Appendix 2. Over the past four years, not one program broadcast by a French-language specialty or pay services has been among the twenty most popular programs that aired each year. Notably, the prime-time combined viewing share of Canada's French-language public and private conventional broadcasters is approximately twice the combined viewing share of all French-language specialty services available in Canada.

[34] Review of the Regulatory Framework for Broadcasting Services in Canada, Report to the CRTC, August 31, 2007, page xii.

both private and public, is measured, the conclusion is quite different: viewing shares of Canadian conventional and specialty/pay services are on par. In fact, in prime time, Canadian conventional OTA television stations – private and public – account for more of the total viewing to television in Canada than all Canadian specialty and pay services combined.[35]

65 With respect to viewing to Canadian programming, whether measured over the whole day or prime time, Canadian conventional television stations account for well over half of all viewing.[36]

66 Moreover, the Dunbar/Leblanc conclusions overstate the importance of specialty and pay services in two other ways.

67 First, their conclusions appear to be based on all-day viewing and not on prime time, when most Canadians are watching television. As discussed above, Canada's conventional broadcasters, both public and private, have the ability to draw the greatest number of Canadians together to experience Canadian programming, because they do so in prime time.

68 In order to have the greatest possible cultural impact, promote shared Canadian values and Canadian content, Canadian programming must be seen and shared by large numbers of Canadians. This is why prime time is important, and this is what conventional broadcasters – and only conventional broadcasters – consistently deliver.

69 Second, and even more importantly, the Dunbar/Leblanc conclusion does not recognise that the specialty service audiences being examined in their study are largely audiences to repeat programming, not original programming. Conventional broadcasters are the primary source of original Canadian

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[35] BBM Nielsen Canada, September 2006 – March 2007.
[36] Nielsen Media Research, September 2005 – March 2006.

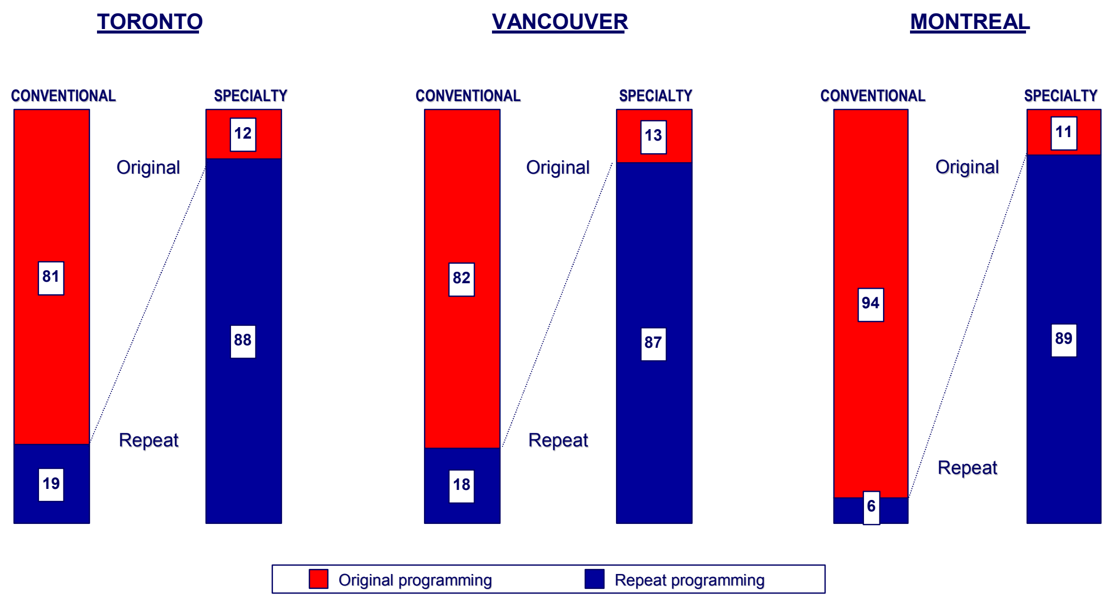
programming viewed during prime time. This is particularly true for drama and comedy programming – the most important category of programming.

70 In order to demonstrate this fact, CBC/Radio-Canada undertook a special analysis of the supply and viewing of original and repeat Canadian drama and comedy programs aired during prime time on English and French TV in Canada.[37] This analysis, which focused on Canadian drama/comedy programming aired in prime time by conventional broadcasters[38] and by those specialty services that offer comedy and drama programming[39] is quite revealing.

71 The study results confirm that the vast majority of viewing to Canadian drama/comedy broadcast by conventional broadcasters is viewing to original drama/comedy programming that has not previously been shown on another service – either conventional or specialty.

[37] This analysis was originally undertaken for the OTA TV Policy Framework proceeding. Analysis excludes Children and Youth programming as well as theatrical films aired on television.
[38] English-language conventional broadcasters included in the study included CBC TV, CTV, Global, CH, CHUM, Sun TV and A-channel. French-language conventional broadcasters included Télévision de Radio-Canada, TVA and TQS.
[39] In the case of English-language specialty services, the analysis included the following specialty services: Showcase, Bravo!, Comedy Network, W, Space, Vision, The Movie Network and MoviePix. For French-language specialty services, the analysis included the following specialty sources: Series+, ARTV, Canal D, Canal Z, Super Écran, Historia, and Canal Vie.

The Contribution (%) of Original and Repeat Programming to the Viewing of Canadian Drama/Comedy on Conventional and Specialty Stations



Source: Special analysis – November 2005 and March 2006, based on prime-time viewing hours reported by NMR (Toronto and Vancouver) and by PPM (Montreal)

72 By contrast, the results reveal that <u>approximately 85% of the Canadian drama/comedy aired – and almost 90% of the Canadian drama/comedy viewed – on specialty services consisted of **repeat** programming</u>.

73 Clearly, without the direct funding, developmental commitment, and prime time shelf-space provided by Canada's public and private conventional broadcasters for original Canadian drama and comedy programming, prime time television in Canada would effectively be devoid of all such programming.

74 Properly defined to include all conventional broadcasters, Dunbar/Leblanc's suggestion that conventional broadcasters are no longer playing a key role in promoting Canadian content is not correct. On the contrary, as a result of their broad programming make-up, mass prime-time audiences, and investment in original programming, conventional broadcasters play the cornerstone role in the Canadian broadcasting system.

Financing the Cornerstone Role of Conventional Broadcasters

75 In Canada, conventional broadcasters finance their operations primarily through advertising and either direct or indirect government funding. In the case of advertising, the revenues generated by a program are linked to the audience's size and demographic characteristics. CBC/Radio-Canada generates a significant portion of its financing from television advertising: Over 50% of CBC Television's budget and over 40% of Radio-Canada television's budget are funded from commercial activities and the majority of this is advertising.

76 On the government funding side, there are a number of mechanisms by which conventional broadcasters obtain financing. This area was canvassed at some length in the Corporation's submission in the BNPH 2006-5 proceeding. In brief, CBC/Radio-Canada receives direct government funding by means of its annual Parliamentary appropriation. Private conventional broadcasters receive indirect government funding, particularly via section 19.1 of the *Income Tax* Act and through the CRTC's rules of simultaneous substitution. Section 19.1 is estimated to be worth approximately $120 million annually[40], while the CRTC's simultaneous substitution rules are estimated to be worth up to $300 million per year to private broadcasters.[41] Both public and private conventional broadcasters benefit indirectly from the government funding provided to the Canadian Television Fund with private conventional broadcasters receiving indirect benefits worth approximately $48 million.[42] In total, private conventional television broadcasters enjoy public preferences worth approximately $468 million annually.

[40] CAB submission to CRTC BPN 2006-72; Appendix 5 – "Emerging Trends in the TV Rights Landscape," p.21
[41] Ibid, p.21
[42] 2007-2008 Canadian Television Fund Broadcaster Performance Envelopes

77 Both advertising and government funding are critical to the financial viability of conventional broadcasters given the size of the Canadian market, and the popularity and below-cost availability of foreign, particularly American, programming. The economics of Canadian television and the need for subsidy mechanisms is examined in detail in a Nordicity study commissioned by CBC/Radio-Canada, "Canadian Television: Why the Subsidy?", which is attached as Appendix B.

78 As demonstrated in the Nordicity study, the nature of the Canadian television market makes it uneconomic to produce and broadcast original Canadian programming in most genres without some form of subsidy:

> While it may be the case that individual television programs in Canada have been or can be profitable, the results of this study are that Canadian firms in this industry cannot, in general, be successful on an ongoing and permanent basis without significant financial support from government. In some cases, such as drama and children's programming, the industry's economic shortfall is more than 50% of the total costs of the productions.[43]

79 In this regard, CBC/Radio-Canada notes that the current requirement that BDUs contribute 5% of their gross revenues in support of Canadian programming is also an essential element of the overall support system for Canadian television. The Corporation also notes that some parties have suggested in public statements that this 5% contribution may be an illegal tax. In CBC/Radio-Canada's view there can be no doubt that the current requirement is legal. In this regard, the Corporation has obtained an opinion from McCarthy Tétrault confirming the legality of the current approach – an approach which the Corporation believes should be retained under the new BDU framework. The McCarthy Tétrault legal opinion is attached as Appendix C.

[43] Appendix B at page 3.

80 In addition to the challenges created by the poor economics of Canadian television, conventional broadcasters have faced significant audience fragmentation and intense competition from specialty services, both domestic and foreign. That competition has increased steadily over the past two decades and continues to intensify with the introduction of new platforms such as the Internet, video-on-demand and wireless mobile services. Given the competition from these new platforms and services, and the poor economics of Canadian television, conventional broadcasters cannot endure further and continuing erosion of their financial model. And yet, that is precisely the prospect they face.

The Threat to the Financing of Conventional Broadcasting

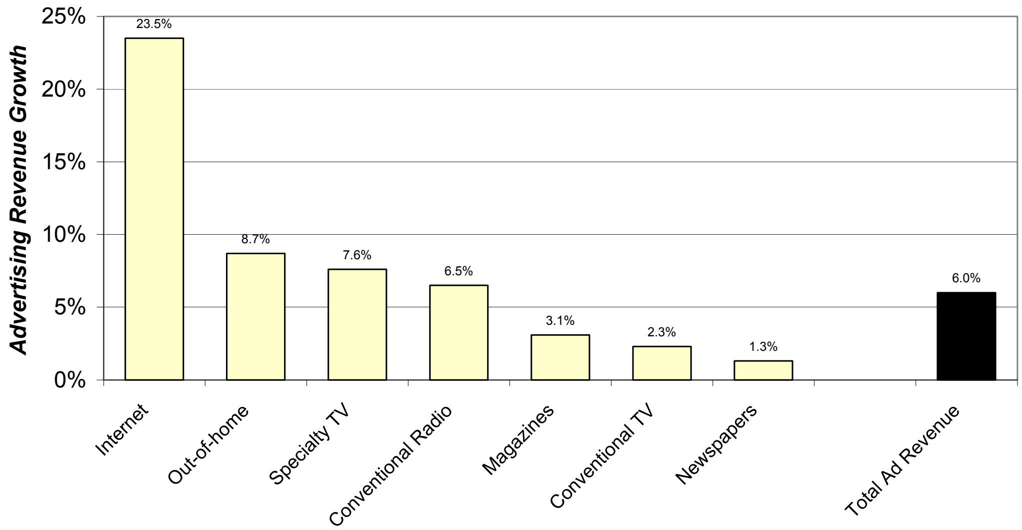
81 At this time, government funding for public and private conventional broadcasters remains relatively unchanged. However, the same cannot be said of advertising where the advent of new platforms is having a serious negative effect on conventional broadcasters. Of the two key sources of financing for conventional broadcasters – advertising and government funding – it is this change in the advertising market which is threatening the financial model of all conventional broadcasters – both public and private – and which has created the need for these broadcasters to have access to subscriber fees.

82 In seven of the last ten years, conventional television advertising has experienced growth of only 2% or less, and in five of those years, growth has been negative. In any industry, this level of performance over a ten year period would not only be considered unhealthy and non-transitory, it would suggest a fundamental weakness in the economics of the industry.

83 Looking forward, the prospects for conventional TV advertising continue to be poor at best. PricewaterhouseCoopers (PwC) has projected that conventional TV advertising in Canada will grow at an annual average rate of 2.3% between the period of 2007 and 2011. This is a weak level of projected growth in itself,

but it is especially weak compared to the performance of total advertising (6%). As shown in the following chart, it is clear that even with a robust total advertising market, advertisers are shifting their ad buys to other media, like the Internet (23.9%), out-of-home (8.7%), specialty TV (7.6%) and even radio (6.5%).

Advertising Revenue Growth by Medium in Canada:
Projected Average Annual Growth between 2007 and 2011



Source: PricewaterhouseCoopers (PwC)

84 PwC's projections were conducted in the spring of 2007, yet already they appear to be overly optimistic.[44] For example, PwC forecasted 2007 growth in conventional TV advertising of 0.2%, but actual results reported by TVB for 2007 were much lower at negative 1.4%. TD Newcrest, in its latest outlook (November 2007), is predicting that the advertising revenue of conventional TV services in Canada will grow by only 1.3% in both 2008 and 2009.[45]

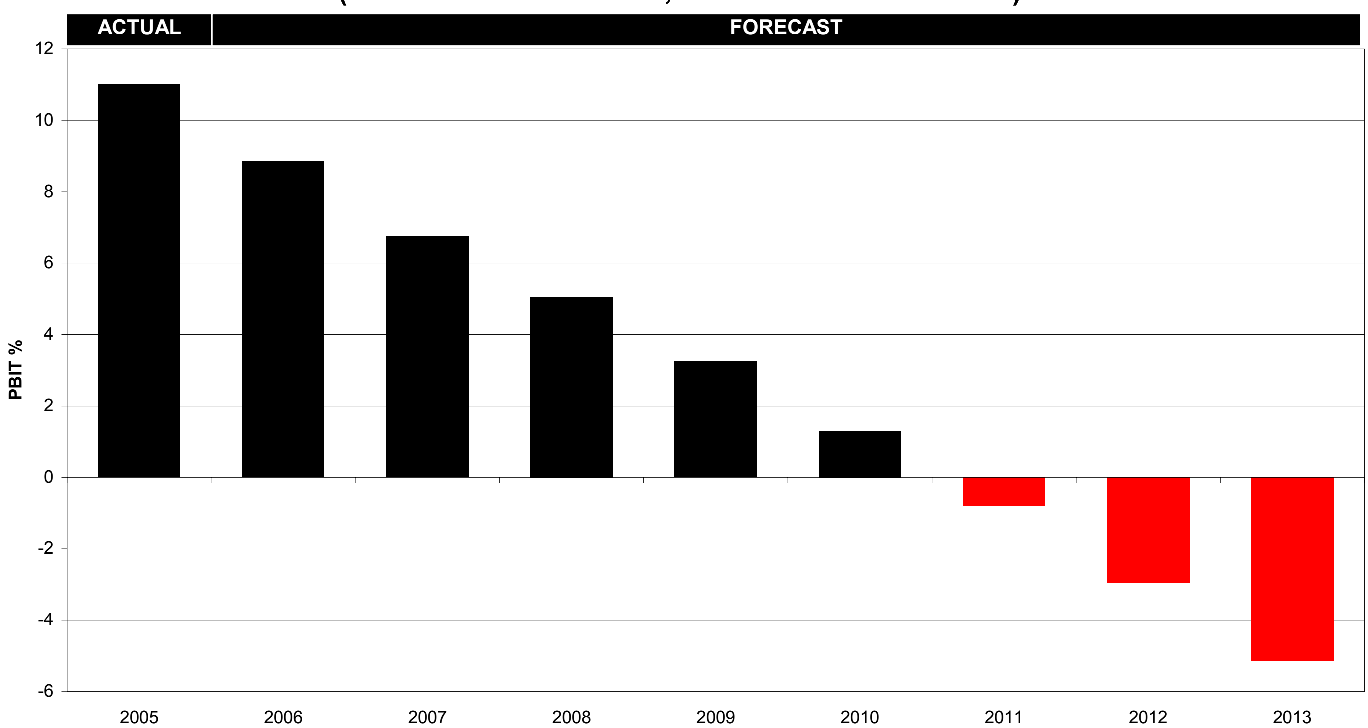
85 With or without any further economic downturns for the economy as a whole, conventional TV advertising growth is clearly on a downward trend. With

[44] The report was published in June 2007.
[45] TD Newcrest Canadian Advertising Forecast as of November 23, 2007

costs growing, government funding flat and advertising revenues failing to keep up with costs, the financial outlook for conventional television is grim.

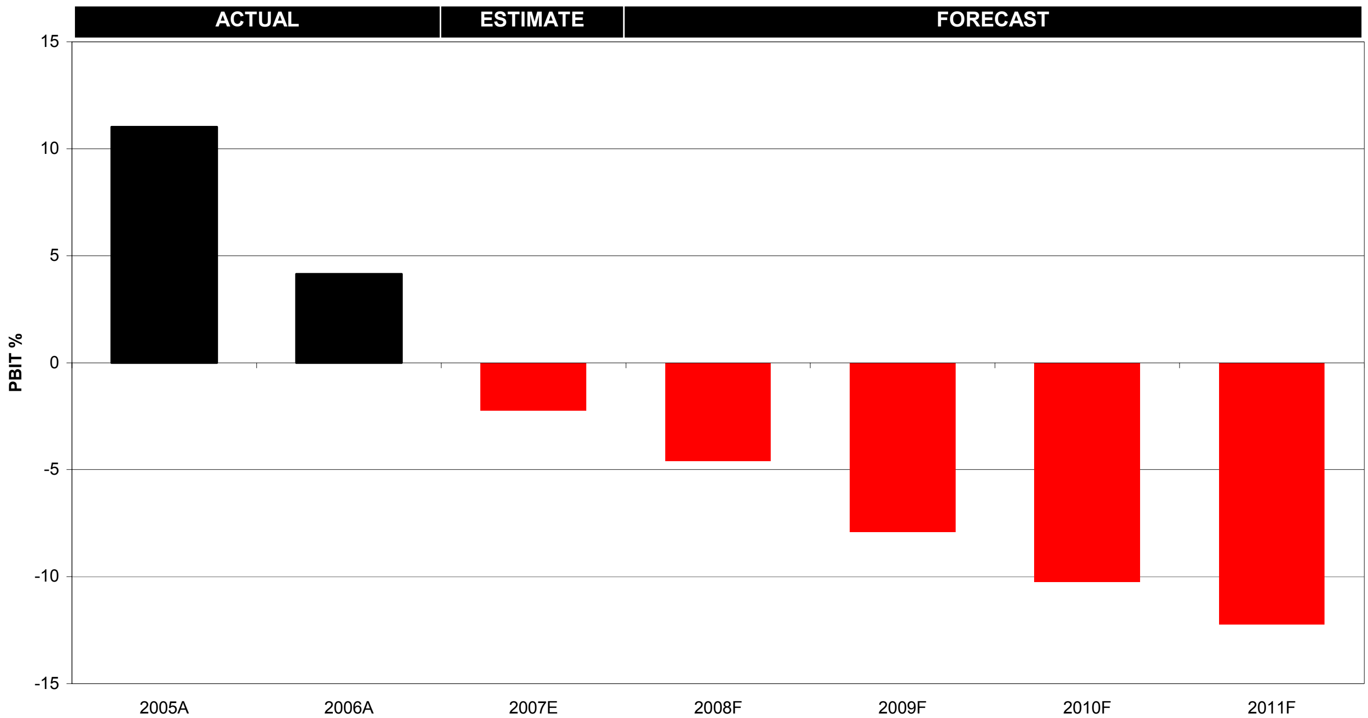
86 In the BNPH 2006-5 proceeding, CBC/Radio-Canada submitted a chart setting out the actual and expected PBIT Margin for private conventional television from 2005 to 2013. The Corporation has updated that chart based on new actuals and revised forecasts. The original and revised charts are set out below and illustrate clearly the ongoing deterioration of the economics of conventional television.

Grid on Conventional TV Industry Profit Margin
(Presented to the CRTC, as of 27 November 2006)



Sources and Assumptions:
Actuals (2005): CRTC Private Conventional TV Statistical Summary, 2001-2005
Revenue Forecast (2006-2013): CAGR 1.9% (PwC, June 2006)
Expense Estimates (2006-2013): Average 5-year historical expense increases of 4.2% between 2001-2005

Profit Grind Update:
Conventional TV Industry PBIT Margin - 2005 to 2011 as of January 25, 2008



Sources and Assumptions:
Actuals (2005-2006): CRTC Private Conventional TV Statistical Summary, 2002-2006
Revenue Estimate (2007): -1.4% (TVB, October 2007); Revenue Forecast (2008-2011): CAGR 2.3% (PwC, June 2007)
Expense Estimates (2007-2011): Average 5-year historical expense increases of 5.2% between 2002-2006

87 Why has the situation deteriorated so quickly in the space of just under two years? There are two reasons.

88 First, actuals for advertising revenues have deteriorated faster than originally expected. Second, the actual rate of increase in expenditures for 2006 has been nearly double the rate experienced in the previous 5 years. The result has been that profit margins of conventional television broadcasters has declined from 11% in 2005 to 4% in 2006.[46]

89 Based on the most recent advertising revenue estimates for broadcast year 2007, and even assuming lower than recent actuals for expenditure

[46] CRTC Statistical Summary, “Private Conventional TV 2002-2006”

increases, the overall convention television industry appears to be approaching non-profitability.

What's Driving the Decline?

90 While conventional broadcasters' expenditures have been rising at a rate consistent with the specialty services, and other media such as radio, revenues have not been increasing as quickly as the specialty services. Specifically, conventional TV advertising revenue is under threat from fragmented traditional TV audiences and a shift in advertising spending strategies to the specialty services, the Internet and other platforms.

91 Over the last decade, Canadian specialty TV services have significantly increased their presence in the market place, primarily at the expense of conventional TV services. Canadian conventional TV services audiences shares decreased from 52.1% to 35.6% in the English-market and from 67.1% to 53.8% in the French-market over the last decade.

92 Looking forward, analysts believe specialty TV advertising revenues will grow at a rate several times faster than conventional TV revenues: 7.6% average annual growth for specialty services between 2007-2011 compared to 2.3% for conventional TV over the same period.[47] This strong growth reflects the fact that advertisers' are placing increasing value on the niche audiences of specialty TV.

93 In addition to the shift of advertising dollars to specialty services, conventional broadcasters also face a more revolutionary change in advertising spending.

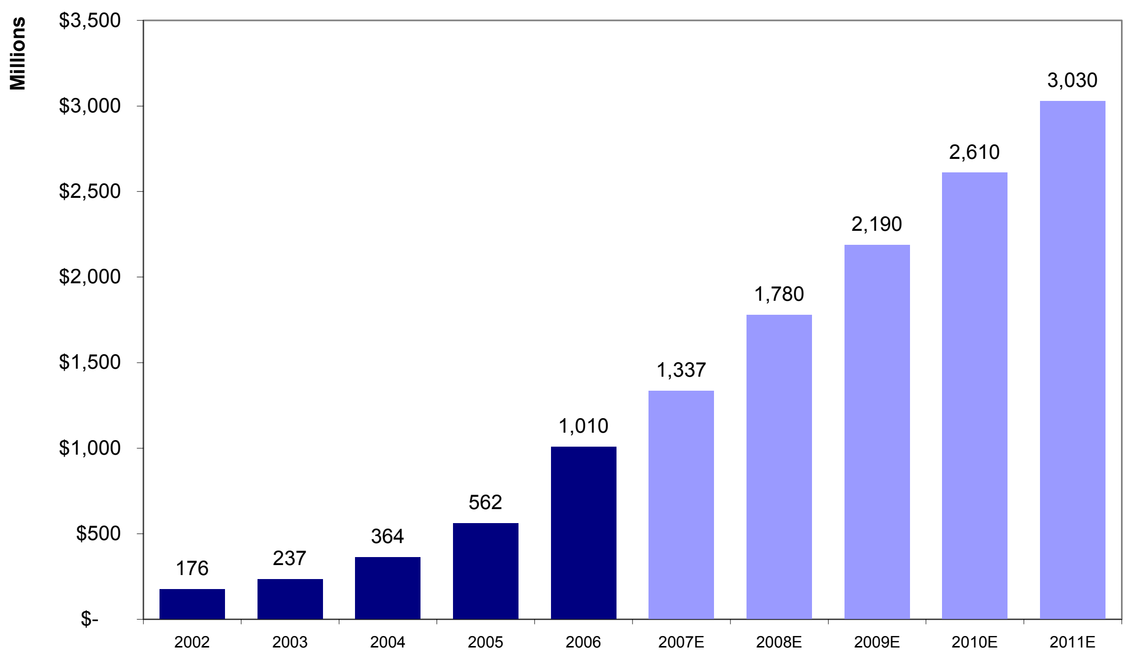
94 Perhaps the biggest threat to conventional TV advertising going forward is advertisers increased desire to pay media companies to attract customers to

[47] PwC, "Global Entertainment and Media Outlook," June 2007.

their products rather than gather mass audiences to promote awareness of it. No medium is capitalizing on this trend better than the Internet which can combine targeted ads to find potential customers, full motion ads to demonstrate products and an on-line sales mechanism to conclude a purchase.

95 The potential of the Internet for advertisers is now clearly being realized. Internet advertising revenue reached $1.01 billion in 2006, which represents an increase of 80% from the year before. IAB projections for 2007 estimate Internet advertising will reach $1.34 billion, which is a level approaching the size of radio advertising in Canada. By 2010 eMarketer forecasts Internet advertising will reach $2.6 billion, an amount equivalent to the current level of conventional TV advertising.[48]

Internet Advertising in Canada



Source: Internet Advertising Bureau (2002-2007E) and eMarketer (2008E-2011E)

[48] eMarketer, “Canada Online Advertising,” (November 2007)

96 This tremendous growth in Internet advertising is coming from a broad-based cross section of industries – retail, automotive, financial, leisure entertainment and packaged goods – the same set of industries who have traditionally advertised on conventional television. These industries have finite advertising budgets and the fact that they are shifting their spending to the Internet necessarily means there is less money available for advertising on conventional television.

97 It is also important to recognize that, to date, Internet advertising involves advertising of a large amount of non-video programming, including search engine advertising, and advertising within directories and classifieds. These ads are unrelated to television programming except insofar as they siphon revenues away from traditional television.

98 While conventional broadcasters may be able to participate in the Internet market over time, it is essential to recognize that any new media ventures they may undertake over the Internet would be exactly that – new ventures in a new medium. In order for conventional broadcasters to participate aggressively in the Internet market they will have to be strong and financially sound in their core market of conventional OTA television. The idea of engaging in two markets, neither of which has a solid business case, is a challenge which no other broadcaster is expected to take.

99 BDUs, specialty services and other programming undertakings are all better positioned to take risks in new media because they have a more solid economic foundation in their core market. In particular, unlike conventional broadcasters, they are not handicapped by being denied access to subscriber fees. Thus, the shift in advertising to the Internet has a disproportionate effect on conventional broadcasters since it weakens their core business more seriously and, because of that core weakness, the Internet represents a less viable opportunity to diversify.

100 In addition to the rise in Internet advertising, there are a number of other developments which also hurt the advertising model of conventional broadcasters. In particular, consumers are adopting new platforms and devices to get what they want, when they want it and where they want it. Video-on-demand and personal video recorders are already having a noticeable impact on viewing and hence on the advertising model of conventional broadcasters. This is especially true in French language markets in Quebec where video-on-demand penetration is much higher than it is in English language markets in Quebec and elsewhere in Canada. [49]

101 Given the changes in the advertising market outlined above and the absence of any increase in government funding, it is clear that conventional broadcasters must have access to subscriber fees if they are to continue to make an important contribution to the Canadian broadcasting system. In CBC/Radio-Canada's view, it is incomprehensible why conventional broadcasters – the biggest contributor to the Canadian broadcasting system – should be forced to operate on the weakest economic footing. There is no justification for handicapping conventional broadcasters in this way.

102 The old advertising model is no longer an avenue for growth and increased government funding is not an option. In these circumstances, the

[49] CBC/Radio-Canada Media Technology Monitor, "Personal TV: Anytime, Anywhere." (2006).

obvious and logical response is to put conventional broadcasters on a level playing field with specialty services, video-on-demand services, BDUs and other service providers by permitting them access to subscriber fees.

2. The Impact of Subscriber Fees on Other Parties in the Market

103 As discussed above, the implementation of subscriber fees for conventional broadcasters is both necessary and appropriate. It would place them on a level playing field with other industry players and provide them with a solid economic foundation, thereby enabling them to continue to fulfil their cornerstone role in the broadcasting system. As noted by the Commission, however, it is appropriate to consider the potential effect on other parties. There are three other parties that could be impacted by the implementation of subscriber fees for conventional broadcasters: 1) BDUs; 2) BDU subscribers; and 3) discretionary services. Each of these is considered, in turn, below.

a) The Impact on BDUs

104 As shown in CBC/Radio-Canada's October 19, 2007 evidence, BDUs have demonstrated over recent years that they can readily increase their revenues through a combination of price increases[50] and new services. Canadians have shown a willingness to accept both. In particular, despite increases in the average price of television distribution services of approximately 27% from 2001 – 2006,[51] the number of BDU subscribers in the industry increased by 11% during the same period.[52]

105 More to the point, this increase in BDU subscriber numbers has occurred as BDUs have implemented significant increases to the price of the basic service package – from typically \$20/month to well over \$30/month – without any material increase in the services offered within that package.[53] Clearly BDUs

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[50] See Appendix D of CBC/Radio-Canada's October 19 2007 submission. For example, Shaw's price increases over the period January 2003 to October 2005 produced an annualised revenue increase of approximately \$135 million.

[51] Based on Statistics Canada CPI data for TV distribution services, See Appendix D of CBC/Radio-Canada's October 19 2007 submission.

[52] Source: Statistics Canada, Catalogue no. 56-001-XIE, and special December 2007 run.

have the ability to price their offerings of television services in such a way as to ensure their financial situation would not be impacted by the imposition of subscriber fees for conventional broadcasters. But financially, would they actually need to do so?

106 In the revised, more flexible regulatory environment envisioned by CBC/Radio-Canada, there are two reasons to believe no financial pressures on BDUs would ensue from the imposition of subscriber fees for conventional broadcasters.

107 First, as indicated in CBC/Radio-Canada's October 19, 2007 evidence, under the new framework, BDUs would be provided with new revenue opportunities, such as new advertising windows, and would not be constrained by unnecessary business restrictions in their pursuit of revenues:

> The Corporation believes that all classes of undertakings should have the opportunity to take advantage of revenue generating mechanisms. In the Corporation's view, no service should be subject to regulatory constraints which would preclude it from generating sufficient revenues from the service it provides.[54]

108 For BDUs, these new opportunities could include advertising on VOD and possibly on the community channel[55]. All of these opportunities would provide BDUs with significant new revenue sources that could be used to offset any financial pressures that might arise from the imposition of subscriber fees for conventional broadcasters.

109 Second, as discussed further below, subscriber fees for conventional broadcasters would not be based on a make-whole approach, but would be

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53 See Appendix D of CBC/Radio-Canada's October 19 2007 submission.

54 Appendix A, page ii

55 CBC/Radio-Canada notes that the Commission intends to conduct a proceeding on community programming in the near future. An analysis of this issue and a general policy decision permiting advertising on community channels could be made in the context of that proceeding.

associated with discrete programming initiatives and also constrained by the market realities for a streamlined basic package (i.e., the need to significantly lower rates for the streamlined basic package as compared to existing larger basic packages). As a result, the total amount of these fees would likely be far lower than the total amount of new revenues that would be available to BDUs.

110 Finally, in addition to new revenue opportunities and revenues from the sale of services formally packaged in basic, the Corporation's regulatory proposal would give BDUs significantly greater pricing and packaging flexibility. Consequently, providing conventional broadcasters access to subscriber fees should not create either marketing or financial difficulties for BDUs.

b) The Impact on BDU Subscribers

111 Under CBC/Radio-Canada's proposed regulatory framework for BDUs, their subscribers would be offered an entirely new packaging approach. This approach would start with a streamlined basic service package, consisting of a small core group of Canadian services at a low price. Subscribers would then be given far greater flexibility and choice in the purchase of discretionary services - some of which would include services they were previously forced to buy in the basic package.

112 The end result for BDU subscribers would be a much lower basic rate combined with much greater choice and flexibility in purchasing discretionary services. This would give them both enhanced programming choice and much more control over their monthly television service expenditures. In this framework, some BDU subscribers would see reductions in their cost of television service even if BDUs were to pass on the entire amount of the subscriber fee for conventional broadcasters.

113 As discussed above, however, the BDU regulatory framework being proposed by CBC/Radio-Canada would not create pressures for BDUs to pass on conventional broadcaster subscription fees to their customers. Based on the significant new revenue opportunities available to them and the reasonable magnitude of the conventional broadcaster fees, which the Commission itself would control, there would be no necessary reason for BDU subscriber rates to increase.

c) The Impact on Discretionary Services

114 In the Corporation's view, a revised regulatory framework (e.g., smaller basic and greater packaging flexibility) would likely benefit some discretionary services and have an adverse effect on others according to their level of market appeal. In this context, granting conventional broadcasters access to subscriber fees could be expected to have little further impact.

115 As noted above, consumers have demonstrated a willingness to expand their spending on television services. In a revised environment where subscribers would have even greater choice as to which services they purchase, there is no reason to believe they would decrease their spending or forgo services they like because of overall spending concerns. Consequently, any adverse effects on individual discretionary services could likely be attributable to lack of market appeal of the service, rather than to conventional broadcasters having access to subscriber fees.

116 Finally, in light of the availability of new revenues sources, BDUs would not face financial pressure to decrease affiliation fees to discretionary services as a result of the introduction of subscriber fees for conventional television. Consequently, discretionary services should not face a rate squeeze associated with the implementation of subscriber fees for conventional broadcasters. The

Commission's dispute resolution process could be invoked by any service that felt it was being disadvantaged in this regard.

3. Would Fees Warrant Changes in the Carriage Status of Conventionals?

117 The introduction of a subscriber fee for conventional television broadcasters would not warrant any changes in the distribution status for this class of licensee.

118 Section 3(1)(t)(i) of the *Broadcasting Act* states that BDUs should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations (i.e., conventional broadcasters). This requirement would not be affected in any way by granting conventional broadcasters access to subscriber fees.

119 The Corporation notes that the importance of this regulatory obligation was confirmed by the Commission in its 2006 Public Notice setting out the *Digital Migration Policy*. In the Public Notice announcing the new policy, the Commission noted that the policy objectives of the *Broadcasting Act*

> …are achieved through the existing obligations under sections 17, 32 and 37 of the Regulations, including the obligation that cable and other terrestrial BDUs generally have regarding the distribution of priority signals, such as local and regional CBC television services, local and regional private television stations, and the services of provincial educational broadcasters. These obligations will continue in a digital environment.[56]

120 Priority carriage for conventional broadcasters has always been an important component of the Commission's regulatory framework for BDUs. It is expressly required by the current version of the *Broadcasting Act*. There is no reason why the distribution status of conventional broadcasters should change in the event they are eligible for a new revenue stream.

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[56] *Digital Migration Framework*, Broadcasting Public Notice 2006-23 at paragraph 107.

4. What Should be the Nature of the Subscriber Fees for Conventionals

121 CBC/Radio-Canada believes there are four main considerations which must shape the Commission's approach to subscriber fees for conventional broadcasters:

e) the deterioration in the advertising model threatens the ability of conventional broadcasters to continue to fulfil their existing regulatory obligations, to adapt to the changing broadcasting environment and to undertake new initiatives;
f) conventional broadcasters are handicapped as compared to other industry players by not having access to subscriber fees which are a key revenue generating mechanism;
g) subscriber fees cannot be viewed as a make-whole solution for conventional broadcasters since this would unduly diminish the incentives for efficiency and innovation; and
h) the quantum of the fee must be assessed in the context of introducing the new streamlined basic package.

122 In light of these four considerations, the Corporation proposes that the Commission should implement a subscriber fee regime for conventional broadcasters in the following manner.

123 First, in the lead-up to conventional broadcasters' licence renewals, the Commission should establish a list of key programming areas that would form the basis for eligibility for a subscriber fee (e.g., drama, local programming, etc.).

124 Second, at the licence renewal proceeding for a conventional broadcaster, that broadcaster could apply for a subscriber fee. The broadcaster would identify those programming areas from the Commission's overall list that the subscriber fee revenues would be used to support and set out in detail the relevant financial and programming information.

125 Third, the Commission would assess the conventional broadcaster's proposal by examining the broadcaster's current and historical activities, any proposed activities and the financial need for a subscriber fee. The Commission

would also consider the appropriateness of the proposed subscriber fee in light of the likely impact on the cost to subscribers of the streamlined basic package.

126 Fourth, based on its analysis, the Commission would approve, modify or deny the subscriber fee requested by the conventional broadcaster.

127 This simple process would focus attention on the programming activities that the Commission considers most important to fulfil the objectives of the Broadcasting Act. It would also ensure that conventional broadcasters would have the financial wherewithal to continue to play their cornerstone role in the broadcasting system.

128 At the same time, since the Corporation's proposed approach is not a make-whole mechanism it would ensure that conventional broadcasters would continue to have an incentive to improve the efficiency and innovativeness of their operations and that they would continue to be subject to market forces.

129 Finally, the proposed approach would enable the Commission to make an overall assessment of the subscriber fees for conventional broadcasters in the context of a streamlined basic package, thereby ensuring that BDU subscribers are not unduly impacted by these changes.

130 CBC/Radio-Canada is confident that this approach to subscriber fees would be both practical and beneficial to the broadcasting system. It would also address the fundamental unfairness that currently exists by giving conventional broadcasters access to a key revenue mechanism – subscriber fees – that other players already rely on.

131 The following calculation illustrates in a simple manner the potential impact of the Corporation's proposal if the Commission were to identify Canadian drama as a key programming area that should be supported by a subscriber fee.

132 In the 2005-2006 broadcasting year conventional broadcasters spent a total of $191 million on original Canadian drama programming. Given that there are approximately 10.4 million BDU subscribers, this is equivalent to $1.53 per subscriber per month, for all conventional broadcasters.

133 This means that providing conventional broadcasters with a subscriber fee of only $1.53 per subscriber per month could enable them to double the amount they spend on Canadian drama, assuming the broadcasters were able to sustain the pre-existing expenditure levels without assistance. Alternately, if it was the Commission's determination that the broadcaster could not sustain its previous levels, some portion of the amount could be used to shore up the spending levels. Given the high level of profitability of BDUs, the new revenue opportunities available to them under the Corporation's proposed new regime and in the context of a streamlined basic package, it is questionable whether all or any of that $1.53 would actually need to be passed on to subscribers.

134 CBC/Radio-Canada recognizes that the Commission may want to identify other important areas that could be supported by subscriber fees. At the same time, the Corporation also notes that the Commission is unlikely to expect conventional broadcasters to double their spending in any particular area of programming. Rather, the Commission would likely be faced with applications by conventional broadcasters that would cover both existing and new programming activities in a number of eligible areas. The purpose of the above calculation is simply to demonstrate that even a modest subscriber fee could provide significant financial help to conventional broadcasters in key areas.

135 Overall, CBC/Radio-Canada believes that the case for subscriber fees is clear. Conventional broadcasters face an increasingly challenging financial situation and are unfairly handicapped when compared to other industry players. The subscriber fee mechanism proposed by the Corporation is simple, targeted and would result in a level of fees that would be modest and, equally importantly, would be completely within the control of the Commission. In the Corporation's

view, this approach is both practical and necessary to ensure that conventional broadcasters can continue to play their cornerstone role in the Canadian broadcasting system.

IV. Conclusion

136 In this submission, CBC/Radio-Canada has provided a comprehensive proposal for the BDU regulatory regime in an environment where conventional broadcasters are eligible to receive subscriber fees.

137 The Corporation's proposal is a consumer-focused framework which, if adopted by the Commission, would help ensure that the BDU market would provide Canadians with both enhanced programming choices and improved price competition. This proposal would also ensure that conventional broadcasters would be placed on a more reasonable and equitable financial footing, thereby enabling them to continue to play their cornerstone role in the Canadian broadcasting system.

Appendix A

Dispute Resolution Proposals

Broadcasting Notice of Public Hearing CRTC 2007-10
Comments

1 In the 19 October 2007 round of comments there were a number of different perspectives put forward as to what would constitute the most effective dispute resolution mechanism. CBC/Radio-Canada has identified three proposals for specific comment:

i) the proposal prepared by Hank Intven of McCarthy Tétrault and submitted as part of the 19 October 2007 comments of Astral Media inc.;

ii) the proposal included in the 19 October 2007 comments of Bell Canada; and

iii) the proposal included in the 19 October 2007 comments of Cogeco Communications Inc.

2 The Corporation discusses each of these proposals, in turn, below.

The Intven Proposal

3 The Intven proposal sets out in detail a regime for resolving carriage disputes between BDUs and programming undertakings. Under this regime a dispute could proceed in one of two ways. If the dispute raises a significant policy issue then the Commission would hold an expedited process to resolve that policy issue and, possibly, the dispute itself. Otherwise, the dispute would be referred to arbitration by a third party arbitrator or possibly a panel of three arbitrators.

4 If the dispute were to go to arbitration, the arbitrator would settle the dispute having regarding to guidelines established by the CRTC. The default mode of arbitration would be final offer arbitration, although an alternative method could be used if it was shown to be appropriate. The decision of the

arbitrator would require CRTC approval and, therefore, there would be a follow-up Commission approval process.

5 CBC/Radio-Canada does not support the Intven proposal for three reasons.

6 First, the use of third party arbitrators necessarily turns dispute resolution into a two-stage process: 1) the arbitration; and, 2) the CRTC approval process. This is certain to introduce increased delay and uncertainty. In effect, parties will have an opportunity to argue their cases twice – first to the arbitrator and then to the CRTC during the approval process. This will prolong the dispute resolution process and introduce uncertainty since it will be unclear whether or not the arbitrator's decision will be upheld. When the possibility of a legal appeal from the CRTC decision is also taken into account, CBC/Radio-Canada considers the process far too unwieldy, uncertain and open to excessive delay.

7 Second, under the Intven proposal the arbitrator would be required to refer to a CRTC established set of guidelines when making a decision. The Corporation has concerns about the clarity and comprehensiveness of such guidelines. More importantly, the need to rely on guidelines would provide another basis for a party to disagree with an arbitrator's decision. In the CRTC approval process a dissatisfied party could argue that the arbitrator failed to properly apply the guidelines. This would enhance the opportunity for complexity, delay and uncertainty.

8 Third, the use of an arbitrator – or possibly a panel of three – and the resultant two stage process would add considerable expense to the resolution of a dispute. This expense could conceivably disadvantage a smaller party and, in any event, would not appear to be justified given the other negative aspects (i.e., delay, uncertainty) of the arbitration route.

9 Overall, CBC/Radio-Canada is of the view that the Intven proposal is unnecessarily complex and unsuited to the broadcasting environment. This is especially the case given that most disputes will involve at least some policy elements requiring Commission consideration and determination.

The Bell Canada Proposal

10 Unlike the Intven proposal, Bell Canada's proposal does not rely on third party arbitrators. Bell Canada suggests that parties be given the opportunity to choose the form of arbitration and process, failing which the Chair would appoint a panel of three Commissioners and establish the process to be followed. Bell Canada proposes time frames for processing a dispute and recommends that the Commission issue a public notice to establish a more detailed dispute resolution process.

11 CBC/Radio-Canada agrees with Bell Canada's proposal to the extent that it does not rely on third party arbitrators. However, the Corporation does not agree with the suggestion that parties should be able to choose the form of arbitration and process.

12 In CBC/Radio-Canada's view it is always open to parties conducting a market negotiation to choose to bring in a mediator or arbitrator to help them reach agreement. The parties would have complete control over the extent and nature of that process which would not involve the CRTC at all.

13 On the other hand, if one or more parties decides that it is necessary to seek dispute resolution from the Commission, then it is the Commission that should be in control of that process since it is the Commission's powers under the *Broadcasting Act* that are being relied upon.

14 In CBC/Radio-Canada's view, the second part of Bell Canada's proposal is more in line with nature of the problem and the legal requirements of the *Broadcasting Act*. If one or more parties apply to the Commission for the resolution of a dispute then that dispute should be adjudicated by a panel of three Commissioners and subject to established rules of procedure. In the Corporation's view, parties must know where they stand and how to proceed if CRTC dispute resolution is to be an efficient and effective mechanism which provides parties with an appropriate incentive to resolve issues on their own whenever possible. Ad hoc approaches entail uncertainty, potential delay and unnecessary expense and are not appropriate.

15 While CBC/Radio-Canada supports Bell Canada's suggestion for a three person panel and clear procedural rules, the Corporation does not support Bell Canada's suggested use of final offer arbitration to resolve disputes relating to terms or rates of carriage.

16 As an initial point, CBC/Radio-Canada notes that basic administrative law indicates that the Commission cannot fetter its own discretion. However, in the Corporation's view that is precisely what the Commission would do if it were to let the parties devise alternative solutions to a dispute, one of which the Commission must choose even though a third choice might better suit the objectives of the *Broadcasting Act*. Limiting the Commission's decision-making options in this manner would inappropriately fetter its discretion. Consequently, there is a basic legal problem associated with the use of final offer arbitration.

17 More importantly, in CBC/Radio-Canada's view, final offer arbitration is a blunt instrument which may be acceptable to choose baseball salaries, but is not suited to disputes which require a consideration of the multiple policy objectives under the *Broadcasting Act*. In the Corporation's submission, the Commission must retain its full discretion to act in the public interest when resolving disputes between BDUs and programming undertakings.

18 Consequently, CBC/Radio-Canada submits that final offer arbitration should not be used. The panel of Commissioners should devise a solution to the dispute which they believe best accords with the objectives of the Act in light of the facts before them. In the Corporation's view, the mere existence of an effective dispute resolution mechanism would provide the parties with an adequate incentive to negotiate in good faith and reach agreement wherever possible.

The Cogeco Proposal

19 Cogeco summarized its dispute resolution proposal at paragraph 132 of its 19 October 2007 Comments:

> Cogeco submits that the Commission should establish a consistent process for competitive disputes that is similar to that set out under Part VII of the CRTC Telecommunications Rules of Procedure. Under this process, an applicant applies in writing for specific relief, copying the party adverse in interest, the respondent has 30 days to file an answer to the application, and the applicant has 10 days to reply. All of this takes place in a predictable and transparent fashion without the need for initial Commission or staff intervention. All of the information is placed on the public record unless a claim is made for confidential treatment of certain information and the Commission determination publicly informs future behaviour by industry participants.

20 CBC/Radio-Canada strongly agrees with this approach. The Corporation also notes Cogeco's subsequent emphasis on the need for a public, transparent process – a point which CBC/Radio-Canada stressed in its 19 October 2007 Comments:

> … Cogeco fully agrees with the recommendation of Dunbar and Leblanc that the Commission adopt a more transparent decision-making process when it employs the expedited dispute resolution procedure outlined in PN 2000-65. In particular, we agree that unless a party to a proceeding can demonstrate that information is confidential, all documents relating to the proceeding, including the Commission's final determination, should be placed on the public record.[57]

21 CBC/Radio-Canada also supports Cogeco's suggestion that the Commission should establish timeframes for resolving disputes so as to better ensure timeliness and improve predictability.[58] However, the Corporation does not support Cogeco's implicit acceptance of staff mediation as a potential preliminary requirement prior to Commission adjudication.

22 As noted above, parties can engage in mediation on their own initiative prior to approaching the Commission if they so choose. If they do not choose to do so, then that is their prerogative. As a quasi-judicial tribunal the Commission should be prepared to adjudicate disputes in a timely fashion and should not prolong the process by requiring parties to engage in a mediation process which they declined to undertake on their own. In the Corporation's view, any possible requirement for informal staff mediation should be eliminated.

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[57] Cogeco 19 October 2007 Comments at paragraph 134.
[58] Cogeco 19 October 2007 Comments at paragraph 136.

Summary Regarding Dispute Resolution

23 In summary, CBC/Radio-Canada submits that an appropriate dispute resolution mechanism would involve a panel of three Commissioners hearing the dispute and resolving the dispute on terms they consider appropriate in light of the requirements of the *Broadcasting Act* and the facts before them.

24 The dispute resolution process would be substantially similar to the Part VII Application process under the *CRTC Telecommunications Rules of Procedure*. All applications and subsequent filings would be made public on the Commission's website, subject to any confidentiality claims for competitively sensitive information which the Commission may uphold. Any Commission decision would also be made public on the Commission's website.

25 In CBC/Radio-Canada's view, an application could be processed with or without an oral hearing, as determined by the Commission. If an expedited oral hearing was requested and granted by the Commission, it should take place no later than 15 business days after the close of submissions under the initial written process and a decision should be rendered within five business days of the hearing. In all other cases, a decision would be rendered within 30 business days of the close of submissions.

26 In CBC/Radio-Canada's submission, a dispute resolution process of the type outlined above would be transparent, predictable and practical from the perspective of the demand on Commission and party resources, while also being sufficiently timely as to provide an effective remedy to disputes.

Appendix B

Canadian Television: Why the Subsidy?

Nordicity Group Ltd.

Nordicity Group Ltd.
Le Groupe Nordicité ltée

Canadian Television: Why the Subsidy?

Nordicity Group Ltd.

Prepared for
Canadian Broadcasting Corporation /
La Société Radio-Canada

January 2008

About Nordicity Group Ltd.

Nordicity Group Ltd. (www.nordicity.com), founded in 1979, is one Canada's leading strategy consulting firms for clients in the media/entertainment, culture/content, and telecommunications sectors: broadcasting, print, music, television/film production, new media, art/museums, cable, satellite and terrestrial wireless/wire-line telecommunications.

Our consultants work with clients in both the private and public sectors to make business and policy decisions, and to understand the impacts of policy and regulatory developments.

Nordicity helps businesses make strategic decisions; we also address regulatory and government policy issues for firms, consortia, and industry associations.

Nordicity helps governments and other organizations develop and evaluate policy and regulation.

Our consultants provide clients with strategic planning, business case analysis, market assessment and forecasting, economic analysis, financial modelling, evaluation frameworks, and other tools for strategic and operational decision making.

Nordicity has offices in Ottawa, Toronto, and London (U.K.). We also offer global delivery of our expertise through affiliations with international professional services firms, notably PricewaterhouseCoopers and IBM Business Consulting Services.

Table of Contents Page

Executive Summary ... **1**

1 Introduction ... **1**
1.1 Outline of Report ... 1

2 Estimates of Costs of Canadian Television Production ... **2**
2.1 In-House Production ... 3
2.2 Independent Production ... 4
2.3 Variety Programming ... 5
2.4 Documentary and General Programming ... 6
2.5 Total Production Costs ... 7
2.6 Comparative Analysis of Per-Hour Costs of Drama Programming ... 8

3 Revenues of Canadian Television Production ... **10**
3.1 Advertising Revenues ... 10
3.2 Subscription Revenues ... 13
3.3 Export Value ... 16
3.4 After-Market Export Sales ... 17

4 The Economics of Canadian Television Production ... **19**
4.1 English-Language Market ... 19
4.2 French-Language Market ... 20

5 Summary of Findings ... **21**

6 Conclusion ... **23**

References and Data Sources ... **25**

Appendix A: Analysis and Calculation of Real Production Costs ... **26**

Appendix B: Calculation of Advertising Revenues ... **31**

Appendix C: Calculation of Subscription Revenues ... **38**

Appendix D: Export Value ... **43**

Appendix E: Calculation of After-Market Export Sales ... **44**

Nordicity Group Ltd.
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List of Tables Page

Table 1 Estimates of Total Production Costs for In-House Television Programming 3
Table 2 Estimates of Total Production Costs for Independent Production in 2005-06 4
Table 3 Estimates of Total Production Costs for Variety Programming in 2005-06 5
Table 4 Estimates of Total Production Costs for Documentary and General Entertainment Programming in 2005-06 6
Table 5 Estimates of Total Production Costs, All Genres of Television Programming 7
Table 6 Allocation of Advertising Revenues for Canadian Programming 11
Table 7 Net Advertising Revenues for Canadian Programming 13
Table 8 Allocation of Specialty-Television Subscription Revenues by Genre 14
Table 9 Allocation of Specialty-Television Subscription Revenues to Canadian Programming 15
Table 10 Net Subscription Revenues Attributed to Canadian Television Programming 15
Table 11 Estimates of Export Value for Television Production 16
Table 12 Equity Investment Recovery and Recoupment Rates 17
Table 13 Estimates of After-Market Export Sales 18
Table 14 Economic Surplus/Shortfall, English-Language Television Production 19
Table 15 Economic Surplus/Shortfall, English-Language Television Production 20
Table 16 Calculation of Estimates of Total Production Costs for In-House Television Programming 26
Table 17 Tabulation of In-House Production Expenditures on Variety Programming 27
Table 18 Calculation of In-House Production Expenditures for Other Information and Magazine/General Entertainment / Human Interest / Reality Programming 27
Table 19 Average Production Costs, Canadian Drama 28
Table 20 Average Production Costs, Service Production in Canada 28
Table 21 Average Production Costs, Drama, Australia 28
Table 22 Average Production Costs, Drama, France 29
Table 23 Average Production Costs, Drama, United Kingdom 29
Table 24 Average Production Costs, Drama, United States 30
Table 25 Total Advertising Revenues in the Canadian Television Market, 2006 Broadcasting Year 31
Table 26 Viewing to Canadian Programming in the English-Language Market, September 2005 to August 2006 31
Table 27 Share of Total Viewing to Canadian Programming and Allocation Advertising Revenues in the English-Language Market, September 2005 to August 2006 32
Table 28 Total Advertising Revenues Allocated to the Documentary and General Genre in the English-Language Market 33
Table 29 Estimates of Advertising Revenue by Genre, English-Language Market 34
Table 30 Estimates of Advertising Revenue by Genre, English-Language Market 34
Table 31 Viewing to Canadian Programming in the French-Language Market, September 2005 to August 2006 35
Table 32 Share of Total Viewing to Canadian Programming and Allocation Advertising Revenues in the French-Language Market, September 2005 to August 2006 36
Table 33 Total Advertising Revenues Allocated to the Documentary and General Genre in the French-Language Market 37
Table 34 Estimates of Advertising Revenue by Genre, French-Language Market 37
Table 35 Allocation of Programming by Genre for English-Language Specialty-Television Services 38
Table 36 Allocation of Subscription Revenues for English-Language Specialty-Television Services 40
Table 37 Allocation of Programming by Genre for French-Language Specialty-Television Services 42
Table 38 Allocation of Subscription Revenues by Genre for French-Language Specialty-Television Services 42
Table 39 Calculation of Export Value for Television Production 43
Table 40 Telefilm Canada Equity Recoupment – Probability of Investment Recovery (based on projects between 1996/97 to 2000/01) 44

Table 41 Telefilm Canada Equity Recoupment as a Percentage of Equity Investments (based on projects between 1996/97 to 2000/01) 44
Table 42 Estimate of the Average Investment Recovery Rate for CTF Projects, Drama Genre 45
Table 43 Estimate of the Average Investment Recovery Rate for CTF Projects - Children's, Documentary and VAPA Genres 45

List of Figures Page

Figure 1 Comparison of Average Production Costs for Drama Programming (Real 2006 C$ 000s per hour) 8

Executive Summary

Introduction

Television production around the world is a high-risk business. To be successful, firms in this industry must be willing to finance the development and testing of potentially a large number of unsuccessful productions before arriving at a "hit." For example, over the last ten years, the top four TV networks in America (i.e. NBC, CBS, ABC and FOX) have on average cancelled 62% of their new shows within the first 11 episodes.[1] The same risky business model applies to other countries, including Canada.

In Canada, like in the United Kingdom (U.K.), France, Australia and in most other countries, regulation and government financial support – i.e., government subsidy – currently plays a large role in supporting the creation, production and exhibition of original domestic television programs. For example, the Canadian Radio-television and Telecommunications Commission's (CRTC's) Canadian-content rules provide substantial demand-side stimulus for Canadian television programming. Parliament's financial support for the CBC/Radio-Canada helps to fund Canada's national public broadcaster – a large commissioner of Canadian television content.

On the supply side, the federal government has established several subsidy programs that support television production. The Canadian Television Fund (CTF) has grown to over $270 million (forecasted 2007-08 revenues)[2], and has become the single-largest source of financing support for Canadian television production. The federal tax credit initiative provides an additional $189 million to Canadian television productions.[3] Provincial governments also provide subsidies to Canadian television production; in 2005-06, provincial tax credits for Canadian television production totalled $266 million.[4] Simultaneous substitution rules generate over $300 million annually for Canadian private broadcasters.

All of these subsidy programs are intended to provide economic support for Canadian television production.

In order to gather more information on the economics of television production in Canada, CBC/Radio-Canada commissioned Nordicity Group Ltd. ("Nordicity") to investigate whether financial subsidy is necessary to stimulate the creation of all types of Canadian television programming in both official-language markets in Canada.

In other words, could significant parts of the Canadian television production industry operate on a more market-oriented basis – with content regulation intact, but without the various forms of subsidy that underwrite production expenditures? Could Canadian producers still economically produce Canadian television programs – that viewers will want to watch – without significant subsidy?

While the history of this industry has shown that individual Canadian programs can become "hits," this study looks at the broader question of whether companies in this industry could make a financial go of it, on a permanent basis, without government support. In this regard, Nordicity's analysis examines the overall system-wide cost of producing Canadian television content in each language market and genre. Nordicity then compares this cost to the overall revenue potential of each type of production.

[1] SNL Kagan, "Economics of TV Programming and Syndication 2007," July 2007, p. 33.
[2] Canadian Television Fund, *Stakeholders Report 2007,* p. 13.
[3] CFTPA, p. 40.
[4] *Ibid.*

The Costs of Television Production

Nordicity utilized data from the CRTC, the Canadian Audio-Visual Certification Office (CAVCO) and the Canadian Film and Television Production Association (CFTPA) to estimate the annualized cost of producing the level of television content commissioned by Canadian broadcasters – both in-house and independent production. Nordicity prepared estimates in each language market for six categories or genres of production – news, sports, drama, children's programming, variety programming, and documentary and general programming.

In total, Nordicity found that the production of English-language television programming cost approximately $2.2 billion in 2005-06. Production of French-language programming for Canadian television cost an estimated $762 million in that same year.

Nordicity benchmarked these Canadian results against TV production costs from a number of countries. The costs of Canadian television production in English-Canada appear to be very much in line with the costs of television production in France and the U.K., and far below the levels in the U.S. The costs of Canadian television production in French-Canada appear to be far lower than the English-Canadian costs, and are very close to TV production costs in Australia.

Revenues of Canadian Television Production

Nordicity utilized data from CBC/Radio-Canada Research, Nielsen Media Research, and the CRTC to estimate the annualized advertising revenue of Canadian television production, as well as the amount of specialty-television subscription revenue that could be attributed to Canadian television programming. Nordicity supplemented these estimates of domestic revenues, by preparing estimates of the export value and after-market export sales potential of each genre.

Nordicity found that English-language television production accounted for net advertising revenues of $846.1 million in 2006, plus net subscription revenues of $357.0 million. In terms of international revenue potential, Nordicity found that the 2006 levels of production corresponded with export-value earnings of $185.1 million and after-market export sales potential of $82.3 million. In total, English-language television programming produced in 2006 had a revenue potential of just under $1.5 billion.

For the French-language market, Nordicity found that Canadian television production accounted for net advertising revenues of $244.7 million and net subscription revenues of $109.9 million in 2006. Nordicity found that the 2006 levels of French-language production corresponded with international-revenue potential of $3.3 million. This relatively low level of international sales potential compared to the English-language market reflects the fact that Canada's French-language programming has traditionally had limited international sales potential.

In total, French-language television programming produced in 2006 had a revenue potential of $357.9 million.

The Results

When Nordicity compared the production costs for Canadian English-language television production in each genre to the revenue potential of that genre, it found that all genres except variety displayed an economic shortfall.

Overall, Canadian English-language television production displayed an economic shortfall of $689.9 million in 2006. About one-half of this shortfall, or $352.2 million, occurred in the drama genre. News, sports, children's programming, and documentary and general programming also displayed economic shortfall's ranging from $42.3 million (documentary and general programming) to $123.6 million (news). Only the variety genre displayed a small economic surplus of $7.1 million.

The French-language market displayed an overall economic shortfall of $403.9 million. This shortfall was distributed across all of the major genres. Documentary and general programming as well as drama programming exhibited the largest shortfalls – both in excess of $100 million. Sports, children's and variety programming also displayed shortfalls.

Conclusion

While it may be the case that individual television programs in Canada have been or can be profitable, the results of this study show that Canadian firms in this industry cannot, in general, be successful, on an on-going and permanent basis, without significant financial support from government. In some cases, such as drama and children's programming, the industry's economic shortfall is more than 50% of the total costs of the productions.

Why is it so difficult to make Canadian television programming profitably?

While this study does not investigate the causes of the industry's poor economics, Nordicity believes there may be a number of factors at play, the most important relating to the presence of high-levels of foreign programming (primarily from the U.S.) in the Canadian market.

While American programs are available at low cost to broadcasters in countries around the world, Canada is unique in terms of its geographic proximity and historical access to U.S. TV broadcasts. Canadians have traditionally had easy access to American programming via U.S. border stations, cable and DTH, and Canadian broadcasters who have purchased the Canadian rights for this programming at a relatively low license fee compared to their actual cost. While the cost of foreign programming has risen sharply as Canadian commercial broadcasters bid up the top product, the license fees are still far below the original costs of the program – as little as 10% of the original U.S. production costs, and far below the costs of producing equivalent Canadian product. The high amount of U.S. content available has also resulted in high levels of viewership, particularly by English-language viewers, throughout the day and in prime-time. As well, the U.S. publicity machine strongly promotes the US shows, through print and other media available in Canada. This combination leads to higher profitability and lower production risks – relative to the profitability and production risks of creating a new untested Canadian program.

The implications of the popularity of US programming in English Canada are that, first, on the revenue side, Canadian advertising dollars are in general more heavily focused on the US shows than Canadian shows. In fact, viewing to American programming in Canada now makes up approximately three-quarters of all prime-time viewing in English Canada, and one-third of all prime-time viewing in French Canada. Canadian advertising dollars follow Canadian viewers; as a result of this large draw of Canadian audiences and advertising dollars to foreign programming. There are fewer advertising dollars left to support Canadian television programming. In English-language market, the revenues available for Canadian programming are approximately 75% lower than they would otherwise be.

The second implication, on the cost side, relates to the very high production values that are contained within these American programs. As shown in this study, the costs of U.S. programming far exceed those of any other country in the world. Since so much of this very expensive programming is broadcast and viewed on Canadian television, the acceptable production values for home-grown Canadian television are higher than they would otherwise be, and certainly higher than what would be the case in a more isolated market of Canada's size. Canadians have been spoiled by the availability of a large amount of high-quality popular American TV, and as a result, generally speaking, require Canadian programming to be expensive as well; more expensive than a market the size of Canada would on its own produce. This is particularly evident in the English-language market, whereas significant language and cultural differences permit lower-cost French-language programs to compete against big-budget, U.S. imports for many genres.

While there may be other factors at play in the Canadian industry, Nordicity believes that these two effects – significantly depressed revenues and abnormally high production costs – create the poor economic environment for television programming in Canada.

As a result, Canadian programming cannot in general be profitable in an ongoing and permanent sense, without government intervention.

1 Introduction

In order to gather more information on the economics of television production in Canada, CBC/Radio-Canada has commissioned Nordicity Group Ltd. ("Nordicity") to investigate whether financial subsidy is necessary to stimulate the creation of all types of Canadian television programming in both official-language markets in Canada.

Specifically, CBC/Radio-Canada has asked Nordicity to determine whether the economics of the Canadian television production permit firms within the industry to operate on a more market-oriented basis – with content regulation intact, but without the various forms of subsidy that underwrite production expenditures. Could Canadian producers economically produce Canadian television programs – that viewers will want to watch – without significant subsidy?

1.1 Outline of Report

In the following report, Nordicity addresses the above mandate. Nordicity examines aggregate production economics in both the English- and French-language television markets. For the analysis in each language market, Nordicity looked at the economic differences between the major television genres and program categories, including news, sports, drama, documentaries, children's programming, variety programming, magazine programming, informational/educational programming, and general entertainment and human interest programming.

Because of the limitations in the type of data available for the analysis, Nordicity combined documentaries, magazine programming, informational/educational programming, and general entertainment and human interest programming into a single program category: documentary and general programming.

While individual Canadian programs have been and can be profitable, Nordicity's approach considers production on an aggregate basis. In this regard, Nordicity's analysis examines the overall system-wide cost of producing Canadian television content in each language market and genre. Nordicity then compares this cost to the overall revenue potential of each type of production.

In Section 2 of the report, Nordicity provides an estimate of the real costs of producing Canadian television programming. In addition, as a way of benchmarking and confirming these results, Nordicity provides a comparison of average drama production costs in Canada with those for four peer countries – Australia, France, United Kingdom (U.K.), and the United States (U.S.). As well, Nordicity used foreign-location TV production in Canada, primarily U.S. shows, as another comparative measure.

In Section 3, Nordicity estimates the various sources of domestic and foreign revenues for Canadian television production. Nordicity uses audience statistics to allocate Canadian broadcasters' advertising revenues to Canadian programming in each genre. Nordicity also estimates the revenues earned by each genre from specialty-television subscription revenues, foreign pre-sales, and after-market export sales.

In Section 4, Nordicity compares the costs of production to the revenues that this production can be expected to earn to provide an overall picture of the economics of Canadian television production. Based on this comparison, Nordicity is able to assess the need for public subsidy for each genre within both language markets. In Section 5, Nordicity summarizes the key findings from this analysis.

In the appendices to the report, Nordicity includes the data and detailed calculations that it used to prepare its analysis.

2 Estimates of Costs of Canadian Television Production

Nordicity utilized data from the Canadian Radio-television and Telecommunications Commission (CRTC), the Canadian Audio-Visual Certification Office (CAVCO) and the Canadian Film and Television Production Association (CFTPA) to estimate the annualized cost of producing the level of television content commissioned by Canadian broadcasters – both in-house and independent production. Estimates in each language market were prepared for the following categories of production:

1. In-House production for news and sports,
2. Independent production for drama and children's programming,
3. Variety programming, split between in-house and independent production, and
4. Documentary and general programming, also split between in-house and independent production.

The **in-house production** category includes the two program genres – news and sports – for which the vast majority of television production is done by broadcasters on an in-house basis.

The **independent production** category includes the two genres – drama and children's programming – for which the vast majority of television programming is made by independent producers and then licensed to Canadian broadcasters and broadcasters in other countries.

The **variety programming** category corresponds with the television programming made for the variety genre. Nordicity has isolated the variety genre into its own category because it is characterized by a combination of in-house and independent production. As such, it requires an approach to the calculation of the production costs that is somewhat different from the in-house and independent production categories.

The final category of production, **documentary and general programming** is a *remainder* category that includes a collection of genres with both significant in-house production and independent production. This category includes documentary production, magazine programming, human-interest programming, general entertainment programming, and game shows as well as television programming that falls within the CRTC's *other information* category.

Having determined the costs of each of the various categories of production, Nordicity then aggregated these for each language group.

In the final part of this section, as a way of benchmarking and confirming these results, Nordicity provides a comparison of average drama productions costs in Canada with those for four peer countries – Australia, France, the United Kingdom (U.K.), and the U.S. As well, Nordicity used foreign location TV production in Canada, primarily U.S. shows as another comparative measure.

In Appendix A, Nordicity provides additional detail on the calculations of production costs.

2.1 In-House Production

The in-house production category includes the two program genres – news and sports – for which the vast majority of television production is done by broadcasters on an in-house basis.

For both news and sports, Nordicity prepared estimates of the annual amount of program expenditures in each language market during the 2005-06 broadcasting year. Nordicity's estimates were based on program-expenditure statistics published by the CRTC in the *Broadcasting Policy Monitoring Report 2007*; estimates were required because the CRTC did not publish program-expenditure statistics on a language-market basis. The estimation approach is detailed in Table 16 (Appendix A).

Canadian television broadcasters – including CBC/Radio-Canada, private conventional broadcasters, and pay and specialty-television services – incurred costs of close to $600 million to produce Canadian news programming in 2005-06. Canadian broadcasters incurred costs of just under $400 million to produce Canadian sports programming in 2005-06.

- News-production costs in the English-language market totalled $461.5 million in 2005-06. Conventional broadcasters bore most of these expenditures, $356.9 million; specialty-television news services accounted for $104.6 million.
- The production of news in the French-language market cost a total of $130.3 million in 2005-06, with $87.8 million in the conventional broadcasting segment and $42.5 million in the specialty-television segment.
- Production of sports programming in the English-language market cost $317.1 million. Of this amount, conventional broadcasters spent $136.3 million; specialty-television services spent $180.8 million.
- Production of sports programming in the French-language market cost broadcasters $54.6 million. Most of this expenditure, $40.0 million, was incurred by specialty-television services; conventional broadcasters accounted for $14.6 million.

Table 1 Estimates of Total Production Costs for In-House Television Programming

($ millions)	**News**	**Sports**
<u>English-language market</u>		
Conventional broadcasters	356.9	136.3
Pay and specialty services	104.6	180.8
Total	**461.5**	**317.1**
<u>French-language market</u>		
Conventional broadcasters	87.8	14.6
Pay and specialty services	42.5	40.0
Total	**130.3**	**54.6**
Total – All languages	**591.8**	**371.7**

Source: Nordicity estimates based on data from CRTC

2.2 Independent Production

The independent-production category includes the two genres – drama and children's programming – for which the vast majority of television programming is made by independent producers and then licensed to Canadian broadcasters and broadcasters in other countries.

To estimate the cost of producing television programming in those two genres, Nordicity obtained production-expenditure statistics published by the CFTPA in *Profile 2007: An Economic Report on the Canadian Film and Television Production Industry* and derived from CAVCO data. The CAVCO data detail the total expenditures made by Canadian production companies to produce a single year's worth of original Canadian television programming. While production expenditures within each genre do vary from year-to-year, a single year of data provides a reasonable estimate for the cost of producing the amount of original television programming required to fulfil Canadian audiences' demand and Canadian broadcaster's exhibition requirements.

Table 2 presents the estimates of the cost of production in 2005-06 for each of the independent-production genres in both language markets.

- In 2005-06, the production of English-language **drama** programming for television cost an estimated $668 million; drama production for the French-language market cost $193 million.
- The production of English-language **children's** programming cost $234 million; while French-language programming in this genre cost $49 million.

Table 2 Estimates of Total Production Costs for Independent Production in 2005-06

($ millions)	Drama	Children's
English-language production	668	234
French-language production	193	49
Total - All languages	**861**	**283**

Source: Nordicity estimates based on data from CAVCO
Note: Bilingual production has been allocated to each language group on a 50/50 basis.

2.3 Variety Programming

The variety programming category corresponds with television programming made for the variety genre. Nordicity has isolated the variety genre as a separate category because it is characterized by a combination of in-house and independent production. Production in the variety genre is eligible for the Canadian Film or Video Production Tax Credit (CPTC) and funding from the Canadian Television Fund (CTF); so, much of the programming is made by independent producers. At the same time, a good deal of the programming on music-video services on the specialty-television tier falls within the variety genre; yet it largely consists of in-house studio production of programming accompanying the music videos. Primarily for this reason, to fully capture the real cost of Canadian variety programming, Nordicity has prepared estimates of both the independent production and in-house production within this genre.

To estimate the total annual cost of variety production in Canada, Nordicity obtained statistics for in-house production published by the CRTC in the *Broadcasting Policy Monitoring Report 2007*. Estimates were required because the CRTC did not publish program-expenditure statistics on a language-market basis. Nordicity used the production-expenditure statistics for Quebec-based broadcasters as a proxy for production in the French-language market; Nordicity used the production-expenditure amount for the rest of Canada as a proxy for the English-language market.

To estimate the independent-production component for the variety genre, Nordicity obtained production-expenditure statistics published by the CFTPA in *Profile 2007: An Economic Report on the Canadian Film and Television Production Industry* and derived from CAVCO data.

Nordicity estimates that the production of variety programming in 2005-06 cost a total of $120.6 million.

- Variety programming in the English-language market cost a total of $56.6 million, with $27.6 million in in-house production and $29.0 million in independent production.
- Variety programming in the French-language market cost a total of $64.0 million, with $3.0 million in in-house production and $61.0 million in independent production.

Table 3 Estimates of Total Production Costs for Variety Programming in 2005-06

($ millions)	**Variety**
English-language production	
In-house production	27.6
Independent production	29.0
Total	56.6
French-language production	
In-house production	3.0
Independent production	61.0
Total	64.0
Total - All languages	**120.6**

Source: Nordicity estimates based on data from CRTC and CAVCO
Note: Independent production in bilingual formats has been allocated to each language group on a 50/50 basis.

2.4 Documentary and General Programming

The **documentary and general programming** category includes production from the genres of documentary, magazine programming, general entertainment and human-interest programming, and game shows. It also includes television programs – other than documentaries – that fall within the CRTC's *other information* category. Nordicity has combined all of these genres into a single program category, in order to accommodate the type of audience and production-expenditure data available for the analysis.

The documentary and general programming category includes certain types of television programming that have experienced significant growth in recent years. For example, the general entertainment and human-interest genre includes reality-TV programs as well as magazine programs. Many of the lifestyle and "how-to" programs that have proliferated in recent years are classified under the CRTC's *other information* category.

This category includes significant amounts of both in-house production and independent production. Nordicity prepared estimates of the costs of production for each segment, by obtaining data published in the CRTC's *Broadcasting Policy Monitoring Report 2007* and the CFTPA's *Profile 2007: An Economic Report on the Canadian Film and Television Production Industry* and derived from CAVCO data.

Nordicity estimates that production in the documentary and general programming category in 2005-06 cost a total of $694 million.

- Documentary and general programming in the English-language market cost a total of $423.2 million, with $146.3 million in in-house production and $277.0 million in independent production.
- Documentary and general programming in the French-language market cost a total of $270.8 million, with $40.8 million in in-house production and $230.0 million in independent production.

Table 4 Estimates of Total Production Costs for Documentary and General Entertainment Programming in 2005-06

($ millions)	Documen-tary	Maga-zine	General Entertain-ment / Human Interest	Games/ Other	Other Infor-mation (excl. Documen-tary)	Total
English-language						
In-house production	--	--	41.9	32.9	71.5	146.3
Independent prod.	253.0	24.0	--	--	--	277.0
Total	253.0	24.0	41.9	32.9	71.5	423.2
French-language						
In-house production	--	--	10.5	12.2	18.1	40.8
Independent prod.	121.0	109.0	--	--	--	230.0
Total	121.0	109.0	10.5	12.2	18.1	270.8
All languages	**374.0**	**133.0**	**52.4**	**45.1**	**89.6**	**694.0**

Source: Nordicity estimates based on data from CRTC, and CAVCO
Note: Independent production in bilingual formats has been allocated to each language group on a 50/50 basis. Some totals may not sum due to rounding

2.5 Total Production Costs

The combination of the production costs from each of the four categories of production – in-house production, independent production, variety programming, and documentary and general programming – provides an estimate of the total annual cost of producing a single-year's worth of original Canadian television programming.

Nordicity estimates that the production of English-language television programming cost approximately $2.2 billion in 2005-06. Production of French-language programming for Canadian television cost an estimated $762 million.

Table 5 Estimates of Total Production Costs, All Genres of Television Programming

($ millions)	News	Sports	Drama	Children's	Variety	Documen-tary and General	Total
English-language market							
In-house prod.	461.5	317.1	--	--	27.6	146.2	952.4
Independent prod.	--	--	668.0	234.0	29.0	277.0	1,208.0
Total	461.5	317.1	668.0	234.0	56.6	423.2	2,160.4
French-language market							
In-house prod.	130.3	54.6	--	--	3.0	40.8	228.8
Independent prod.	--	--	193.0	49.0	61.0	230.0	533.0
Total	130.3	54.6	193.0	49.0	64.0	270.8	761.8
Total – All languages	591.8	371.7	861.0	283.0	120.6	694.1	2,922.2

Source: Nordicity estimates based on data from CRTC and CAVCO
Note: Some totals may not sum due to rounding

Altogether, the production of Canadian television programming during 2005-06 cost an estimated $2.9 billion.

- The production of drama programming accounted for the largest share of production expenditures from a single genre. In 2005-06, the production of drama programming cost $861.0 million, with $668.0 million of this amount devoted to English-language drama programming and $193.0 million devoted to French-language drama programming.

For the other genres, the total costs were:

- news programming - $591.8 million.
- sports programming - $371.7 million.
- children's programming - $283.0 million.
- variety programming - $120.6 million.
- documentary and general programming category - $694.1 million.

2.6 Comparative Analysis of Per-Hour Costs of Drama Programming

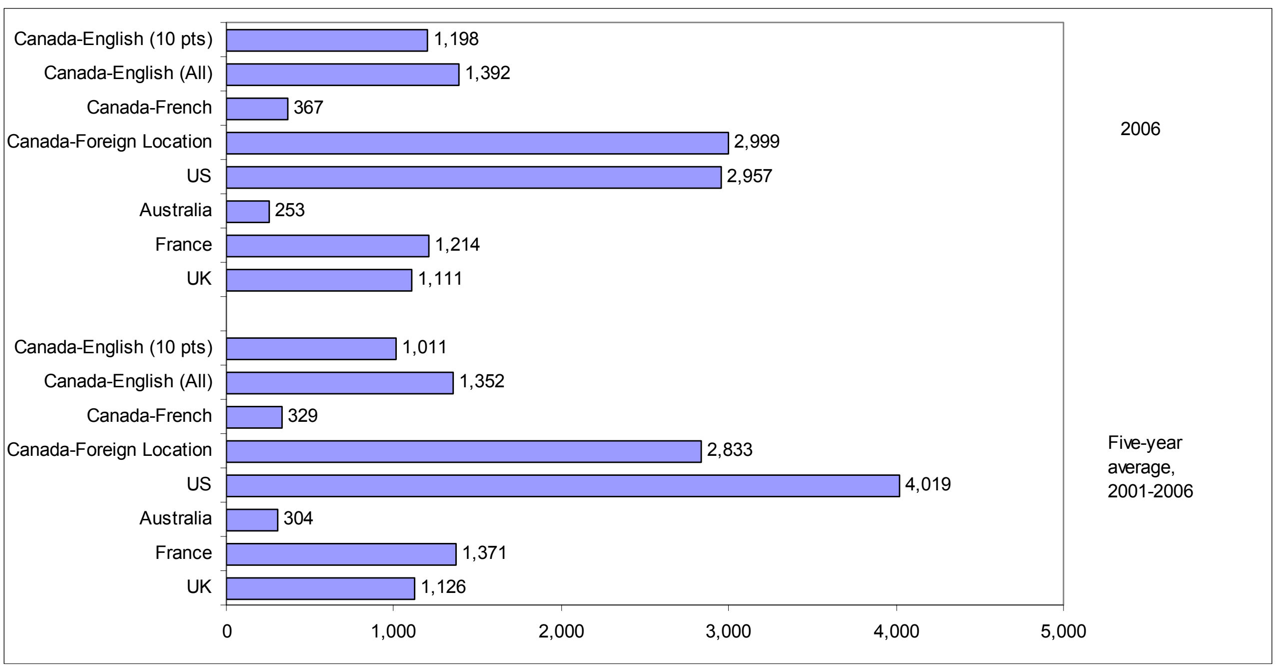
In order to provide a benchmarking comparison of the results in the previous sections, Nordicity undertook a comparison of average drama productions costs in Canada with those for four peer countries – Australia, France, the U.K., and the U.S. As well, Nordicity used foreign location TV production in Canada, primarily U.S. shows, as another comparative measure.[5]

Figure 1 provides a comparison of the average per-hour budgets for drama programming in Canada, Australia, France, the U.S., and the U.K. It also shows four different Canadian production budget averages:

- Separation of English- and French-language budgets,
- The average budgets of ten-point Canadian television programs,
- The average budgets of all Canadian television programs (all Cancon point levels), and
- The average costs of foreign location television production shot in Canada.

The series at the top of the chart compares average per-hour budgets in 2006 (or during the 2005-06 fiscal year); the bottom series compares the five-year averages in Canada and the four peer countries.

Figure 1 Comparison of Average Production Costs for Drama Programming (Real 2006 C$ 000s per hour)



Source: Nordicity estimates based on data from CAVCO, SNL Kagan, Australian Film Commission, Centre National de Cinématographie, Ofcom, Statistics Canada, Bank of Canada, Reserve Bank of Australia, US Bureau of Labor Statistics, and European Central Bank.
Notes: Nordicity converted all of the annual amounts to real (inflation-adjusted) 2006 currency amounts (in each country's domestic currency) and then converted these inflation-adjusted currency amounts to Canadian dollars based on the average market exchange rate that prevailed in each of the five years. See Appendix A for additional data and explanations.

[5] Underlying this comparison approach is an assumption that different quality levels balance out when one examines national production output and uses national averages. This comparison forms the test as to whether a typical hour of television programming in Canada could be produced at a cost different than it currently is being produced by reference to other countries.

2.6.1 Cost Comparisons of Canadian Drama with Peers

From the data in Figure 1, one can see that English-language Canadian drama programs with ten points had an average per-hour cost of $1.2 million in 2006. When one expands the sample of projects to include all English-language Canadian drama production, the average production cost rises to just under $1.4 million per hour. These costs are comparable to the costs of producing an hour of drama programming in the U.K. and France, but are significantly lower than the costs of producing an hour of drama programming in the U.S. In the U.S., it costs about $3 million to produce one hour of drama, or between two and three times what it costs in Canada.[6] The higher cost of U.S. drama production reflects the higher production values built into the programming. The average per-hour cost for TV service production – at $3.0 million in 2006 is still almost three times as expensive as the cost to make a Canadian drama.

The average cost for French-language Canadian drama programming, at $367,000 per hour in 2006, is considerably lower than that of English-language Canadian programming as well as the cost of making a drama program in France. Over the years, the French-language production community has adapted to the smaller market through various production economies, e.g., limited minutes of exterior shots. It is likely, too, that the mix of drama programming contains a higher share of soap-opera-type programming, which features smaller casts and crews and therefore a lower cost structure than other types of prime-time drama programming.[7] What is more, this soap-opera programming found in Canada's French-language market is typically made exclusively for the domestic market.

The same can also be said of Australia's drama programming. In Australia, two long-running soap operas, *Neighbours* and *Home and Away* account for about one-quarter of the total annual hours of drama production. According to the Australian Film Commission, these two series accounted for approximately 100 hours out of the total of 403 hours of drama production produced in 2005-06.[8] This emphasis on the production of soap operas may explain the lower average per-hour production costs observed in Australia, as well. The average per-hour cost for Australian drama programming was $253,000 in 2006; the five-year average was $304,000.

[6] The difference between the $4 million 5-year average cost of producing a U.S. drama and the $3 million average cost in 2006 is due primarily to significant shifts in the currency exchange rates between Canada and the U.S.

[7] CFTPA, p. 36.

[8] Australian Film Commission, *National survey of feature film and TV drama production 2005/06,* 2006, p. 7.

3 Revenues of Canadian Television Production

In this section, Nordicity estimates the various sources of domestic and foreign revenues for Canadian television production. Nordicity uses audience statistics to allocate Canadian broadcasters' advertising revenues to Canadian programming in each genre. Nordicity also estimates the revenues earned by each genre from specialty-television subscription revenues, foreign pre-sales, and after-market export sales.

3.1 Advertising Revenues

The primary economic rationale for producing television programming is to attract audiences that can be used to sell advertising airtime. As such, the analysis of the revenue potential for Canadian television production begins with an analysis of advertising revenues within the Canadian market.

An examination of the **annualized advertising revenue potential** of Canadian programming attempts to present the true *lifetime* economic potential of Canadian television programming within the Canadian market without having to separately calculate the advertising revenue attributed to additional exhibition windows; it also avoids the distortions that may arise due to cross-subsidy within the Canadian broadcasting system. The annualized advertising revenues earned by all Canadian television programming aired by Canadian broadcasters reflects not only the advertising potential of original airings, but also the repeat airings of the programming. During the broadcasting year, Canadian broadcasters air a combination of original and repeat programming; so a single-year snapshot can capture the overall revenue potential of a single year of programming across all exhibition windows.

Nordicity's approach uses advertising revenue statistics from the CRTC and audience-share information from CBC/Radio-Canada Research's analysis of raw audience data supplied by Nielsen Media Research. With these data, Nordicity is able to estimate the portion of Canadian broadcasters' total advertising revenue that can be attributed to Canadian television programming – both original and repeat programming.

Table 6 presents the formulated allocation, by genre, of total advertising revenue in the English-language market. Nordicity estimates that English-language Canadian television programming televised on CBC, private conventional broadcasters, and specialty-television services accounted for a total of over $1.1 billion in advertising revenues during the 2006 broadcasting year. This amount represented 42% of the $2.6 billion in total advertising revenues earned by Canadian English-language broadcasters during the 2006 broadcasting year.

- English-language news programming accounted for an estimated $351.6 million in advertising revenues, or 31% of total advertising revenues earned by Canadian television programming in the English-language market.
- The news genre was followed by Canadian sports programming; it earned an estimated $193.1 million in advertising revenues in 2006, or 17% of the total.
- Canadian drama programming accounted for $158.3 million in advertising revenues in the English-language market.
- Children's programming in the English-language market earned $39.6 million in advertising revenue on specialty-television services; no data were available for the audiences to children's' programming on conventional broadcasters.
- English-language variety programming accounted for $74.2 million in advertising revenues.
- The documentary and general programming category earned $323.4 million in advertising revenues in the English-language market. This accounted for 28% of total advertising revenues attributed to Canadian programming in the English-language market.

Table 6 Allocation of Advertising Revenues for Canadian Programming

($ millions)	News	Sports	Drama	Children's	Variety	Documen-tary and General	Total
English-language market							
CBC	17.7	111.9	24.6	n/d	2.1	24.0	180.3
Private conventional	291.4	1.9	56.8	n/d	14.6	183.0	547.7
Specialty TV	42.6	79.2	76.9	39.6	57.4	116.5	412.2
Total	351.6	193.1	158.3	39.6	74.2	323.4	1,140.2
French-language market							
SRC	15.2	6.4	24.4	--*	3.2	45.6	94.8
Private conventional	63.3	2.9	36.5	--*	11.9	111.1	225.8
Specialty TV	16.0	17.4	17.1	--*	4.4	22.3	77.2
Total	94.5	26.7	78.0	--*	19.5	179.0	397.8
Total – All languages	446.1	219.8	236.3	39.6	93.7	502.5	1,538.0

Source: Nordicity estimates based on data from CRTC, Nielsen Media Research and CBC/Radio-Canada Research
Note: Some totals may not sum due to rounding
n/d – no audience data available
* The sale of advertising for children's programming is prohibited in the French-language market.

Canadian programming in the French-language market accounted for just under $400 million in advertising revenues in 2006, or 70% of the total of $568 million in television advertising revenues in the French-language market.

- French-language news programming accounted for an estimated $94.5 million in advertising revenues.
- Canadian sports programming in the French-language market earned an estimated $26.7 million in advertising revenues in 2006.
- Canadian drama programming accounted for $78.0 million in advertising revenues in the English-language market.
- French-language children's programming is not permitted to include advertising; so advertising revenues for this genre were nil.
- French-language variety programming accounted for $19.5 million in advertising revenues.
- The documentary and general programming category earned $179.0 million in advertising revenues in the French-language market. This accounted for 45% of total advertising revenues attributed to Canadian programming in the French-language market.

The above calculations reflect Canadian broadcasters' *gross* revenues. Before attributing advertising revenues to programming of any type, one must take into account that broadcasters must acquire and maintain an infrastructure for selling advertising airtime. This includes the cost of an advertising sales force, as well as the technical and administrative costs associated with exhibiting the product – television programming – that attracts the advertising revenues. As a result, the analysis should consider *net advertising revenues* that take into these operating costs.

Nordicity converted the gross advertising revenues to net advertising revenues by accounting for the technical, sales, and administrative expenses faced by Canadian broadcasters to raise advertising revenues.

- Financial data contained in the *Financial Summaries* published by the CRTC indicate that in the English-language market, for each dollar of advertising revenue, private conventional broadcasters spent 26 cents on technical, sales and administrative expenses during the 2006 broadcasting year. The CRTC data indicate that broadcasters based in Quebec (a proxy for the French-language market) incurred expenses of 39 cents for each dollar of revenue. Nordicity used these two rates to convert gross advertising revenues into net advertising revenues in the respective language markets.
- Since similar data were not available for CBC/Radio-Canada's television broadcasting operations, Nordicity applied the rate for private conventional broadcasters to CBC/Radio-Canada's advertising revenues. Nordicity also applied these rates to the advertising revenues of specialty-television services.

Table 7 presents the overall net advertising revenues attributed to each genre of programming in both language markets. The amounts include the net advertising revenues earned in the conventional television segment as well as the specialty-television segment.

Table 7 Net Advertising Revenues for Canadian Programming

($ millions)	News	Sports	Drama	Children's	Variety	Documen-tary and General	Total
English-language market	261.3	143.5	117.6	28.1	55.1	240.4	846.1
French-language market	58.1	16.4	48.0	--*	12.0	110.1	244.7
Total – All languages	**319.4**	**159.9**	**165.6**	**28.1**	**67.1**	**350.5**	**1,090.8**

Source: Nordicity estimates based on data from CRTC, Nielsen Media Research and CBC/Radio-Canada Research
* The sale of advertising for children's programming is prohibited in the French-language market.
Note: Some totals may not sum due to rounding

3.2 Subscription Revenues

Canadian television programs also contribute to Canadian specialty and pay television services' ability to earn subscription revenues. Canadian viewers pay monthly fees to broadcasting distribution undertakings (BDUs) to access Canadian news programming on CBC Newsworld, for example, or Canadian sports programming on TSN. Canadian specialty and pay television services, in turn, collect part of these monthly subscriber fees by charging BDUs for carriage of their service.

Detailed data on the subscriber revenues earned by Canadian specialty and pay television services are available from the CRTC. To incorporate these data into this analysis, Nordicity had to develop methods to determine how to allocate these revenues across the eight different genres of television programming, and furthermore, how to determine what portion of subscriber revenues could be attributed to Canadian programming.

To allocate subscriber revenues to each genre, Nordicity examined the nature of each Canadian specialty-television service. For some specialty-television services, the genre allocation was simple: for example, Nordicity allocated 100% of TSN's subscriber revenues to the sports genre.

Some specialty-television services, however, televise programming from different genres. For such television services, Nordicity reviewed the service's licence conditions and its current television-program line-up. The genre allocation for each English-language specialty-television service can be found in Table 35 (Appendix C); the allocation for each French-language service can be found in Table 37 (Appendix C).

Based on this information, Nordicity allocated each service's subscription revenues across the various genres. For CBC Newsworld, for example, Nordicity allocated 70% of revenues to the news genre, and 30% to the documentary genre. This allocation reflected the fact that Newsworld televises both types of programming, but that news programming is likely the primary audience draw for this service. The revenue allocation for each English-language service can be found in Table 36 (Appendix C); the revenue allocation for each French-language service can be found in Table 38 (Appendix C).

Table 8 presents the results of the allocation exercise for specialty-television subscription revenues. Appendix C contains details of the calculations for the allocation exercise.

Table 8 Allocation of Specialty-Television Subscription Revenues by Genre

($ millions)	News	Sports	Drama	Children's	Variety	Documen-tary and General	Total
English-language market	101.4	243.8	151.4	123.0	33.8	245.7	899.1
French-language market	49.0	50.8	30.0	25.6	13.7	60.9	230.0
Total – All languages	**150.4**	**294.6**	**181.4**	**148.6**	**47.5**	**306.6**	**1,129.1**

Source: Nordicity estimates based on data from CRTC
Note: Excludes the revenues of pay-television (except Family Channel), video-on-demand, and pay-per-view services.

In total, Canadian television programming accounted for over $1.1 billion in subscription revenues.

- The documentary and general programming category accounted for the largest share of subscription revenues – $306.6 million.
- It was followed by sports programming, with total subscription revenues of $294.6 million.
- Drama programming accounted for an estimated $181.4 million in subscription revenues to specialty-television services.
- News services earned $150.4 million in subscription revenues.
- Children's services earned $148.6 million in subscription revenues.
- Variety programming on Canadian specialty-television services – particularly music-video services – accounted for $47.5 million in subscription revenues.

Subscription Revenues Attributed to Canadian Programming

The above amounts reflect all programming – domestic and foreign – within each genre on Canadian specialty-television services. Nordicity used the domestic audience share statistics for the specialty-television segment to determine the proportion of subscription revenue within each genre that could be allocated to Canadian programming within each genre.

There was one exception to this approach: For the variety genre in the English-language market, Nordicity used an audience share of 30% rather than the reported share of 96%. The music-video services, such as Muchmusic, comprise the vast majority of the revenues in this segment. Nordicity suspects that the audience statistics reflect viewing to scheduled programming, rather than the actual music videos. Muchmusic's licence requires it to ensure that at least 30% of its music videos are Canadian. Nordicity considers this content-requirement level as a better indicator of audience share than the reported audience statistics.

Table 9 Allocation of Specialty-Television Subscription Revenues to Canadian Programming

($ millions, unless otherwise specified)	News	Sports	Drama	Children's	Variety	Documentary and General	Total
English-language market							
Gross subscription revenues	101.4	243.8	151.4	123.0	33.8	245.7	899.1
Audience share to Canadian programs	98%	59%	30%	39%	30%	--*	--
Revenues attributed to Canadian programming	99.4	143.9	45.4	48.0	10.1	116.9	463.6
French-language market							
Gross subscription revenues	49.0	50.8	30.0	25.6	13.7	60.9	230.0
Audience share to Canadian programs	97%	75%	39%	39%	80%	--	--
Revenues attributed to Canadian programming	47.5	38.1	11.7	10.0	11.0	24.5	142.8
Total – All languages	**146.9**	**182.0**	**57.1**	**58.0**	**21.1**	**141.4**	**606.4**

Source: Nordicity estimates based on data from CRTC, Nielsen Media Research and CBC/Radio-Canada Research
* Weighted average of viewing shares for documentary (55%) and general entertainment / human interest / magazine (43%)
** Weighted average of viewing shares for documentary (46%) and general entertainment / human interest / magazine (34%)
Note: Some totals may not sum due to rounding

Nordicity used the same approach for the French-language market. One exception was the children's genre. Because there were no audience share data for the French-language children's genre, Nordicity imposed the rate of 39% from the English-language market.

Nordicity excluded pay television services (except Family Channel), video-on-demand, and third-language/ethnic services from the analysis. While these services do televise Canadian programming, Nordicity assumed that foreign programming comprised the main audience draw for these services.

Nordicity converted the gross subscription revenues to net subscription revenues by accounting for the technical, sales, and administrative expenses faced by Canadian specialty-television services. On a national basis, for each dollar of revenue (advertising + subscription) Canadian specialty-television services spend 23 cents on technical, sales and administrative expenses. Nordicity used this rate to convert gross subscription revenues into net subscription revenues.

Table 10 Net Subscription Revenues Attributed to Canadian Television Programming

($ millions)	News	Sports	Drama	Children's	Variety	Documentary and General	Total
English-language production	76.5	110.8	35.0	36.9	7.8	90.0	357.0
French-language production	36.6	29.4	9.0	7.7	8.4	18.9	109.9
Total	**113.1**	**140.1**	**44.0**	**44.6**	**16.2**	**108.8**	**466.9**

Source: Nordicity estimates based on data from CRTC
Note: Some totals may not sum due to rounding

Based on this approach, the estimated amount of net subscription revenues attributed to Canadian programming was $466.9 million in 2006, attributed among genres as follows:

- Sports - $140.1 million
- News - $113.1 million.
- Documentary and general programming - $108.8 million.
- Children's - $44.6 million.
- Drama - $44.0 million.
- Variety - $16.2 million.

3.3 Export Value

Many Canadian television programs also earn revenues from pre-sales to broadcasters outside of Canada; these foreign pre-sales contribute to covering the cost of production, when domestic audience potential – i.e., broadcaster demand – is not sufficient to cover the cost of production. The CFTPA measures the value of pre-sales of Canadian television and film production using its export value measure. Export value is equal to the sum of financing from foreign broadcasters and distributors as well as advances from Canadian distributors that are related to the foreign distribution of Canadian programming.

To estimate the export value of Canadian television programming, Nordicity obtained aggregate financing statistics from CAVCO. By using the same methodology as that used in the CFTPA's *Profile 2007*, Nordicity arrived at the following estimates for the export value of Canadian television programs produced in 2005-06. Nordicity assumed that news and sports programming had no export value.

In total, Canadian television programming produced in 2005-06 had an export value of $188.4 million. All but $3.3 million of this amount was attributed to programming originally made for the English-language market.

- In the genres of drama, children's and documentary and general programming, English-language production accounted for virtually all of the export value.
- Variety programming posted a small export value in 2005-06; all of the export value was attributable to French-language production.

Table 11 Estimates of Export Value for Television Production

($ millions)	News	Sports	Drama	Children's	Variety	Documentary and General	Total
English-language production	0.0	0.0	122.4	27.3	0.0	35.3	185.1
French-language production	0.0	0.0	0.4	0.2	0.3	2.4	3.3
Total	**0.0**	**0.0**	**122.9**	**27.5**	**0.3**	**37.7**	**188.4**

Source: Nordicity estimates based on data from CFTPA and CAVCO

3.4 After-Market Export Sales

Canadian television programs can also earn revenues from after-market export sales. Many Canadian television programs, particularly in the English-language market, are able to earn export sales through foreign pre-sales. Some successful Canadian television programs also earn foreign revenues from after-market export sales – that is, sales outside of the pre-financing structure of the television project.

Nordicity developed a model for estimating the after-market export sales for the CTF-supported genres. The model is based on published data for the after-market sales performance of programming that received equity investments from Telefilm Canada through the CTF.

The Telefilm Canada data indicate the average probability of recovery (recovery rate) and recoupment rate for Equity Investment Program (EIP) projects produced between 1996-97 and 2000-01. The data indicate that across all genres, 63% of EIP projects recorded some recovery or recoupment of Telefilm Canada's equity investment. The data also indicate that among the projects that did record some recoupment, the average rate of recoupment was 7.4%, or 7.4 cents for every dollar of equity investment.

Table 12 presents the different recovery rates and recoupment rates for each genre of EIP-supported projects.

Table 12 Equity Investment Recovery and Recoupment Rates

Genre	Recovery rate	Recoupment as a percentage of equity investment
Children's	79%	15.3%
Drama	70%	6.9%
Documentary	63%	8.4%
Variety	55%	4.7%
Feature film	30%	3.3%
Total	**63%**	**7.4%**

Source: Nordicity Group tabulations based on data from Telefilm Canada, see Nordicity Group Ltd., *Analysis of Canadian Television Fund Equity Financing Recoupment*, 2006.
Note: Figures include only recoupment from equity investments; figures exclude Telefilm recoupment from projects contracted prior to 1996/97. Figures only include revenues for projects contracted between 1996/97 and 2000/01.

Nordicity used Telefilm Canada's recoupment statistics and average financing structures in each genre to derive the following rates of return that can be applied to overall budgets. The calculations of the rates of return are detailed in Appendix E. Nordicity assumed that the in-house genres and all genres of French-language production had no after-market export sales.

Table 13 Estimates of After-Market Export Sales

($ millions)	News	Sports	Drama	Children's	Variety	Documen-tary and General	Total
Rate of return	--	--	6.1%	10.9%	2.8%	5.5%	--
Total budgets English-language, independent production only)	0.0	0.0	668.0	234.0	29.0	277	1,208.0
Estimate of after-market export sales	**--**	**--**	**40.7**	**25.5**	**0.8**	**15.2**	**82.3**

Source: Nordicity estimates based on data from CFTPA , CAVCO and Telefilm Canada
Note: some totals may not sum due to rounding

Nordicity estimates that a single year of Canadian television production has the potential to generate $82.3 million after-market export sales, whose estimated genre breakdown is as follows:

- Drama - $40.7 million.
- Children's - $25.5 million.
- Variety - $0.8 million.
- Documentary and general programming - $15.2 million.

4 The Economics of Canadian Television Production

In this section, Nordicity combines the estimates from Sections 2 and 3 to determine if there is a need for subsidy of Canadian television production.

4.1 English-Language Market

In the English-language market, only one genre posted an economic surplus; all other genres of television production posted economic shortfalls. Even the news and sports genres – long considered profitable genres for Canadian programming – posted economic shortfalls on an aggregate basis.

- Production of news programming in 2006 totalled $461.5 million, but earned only $337.8 million in revenues, resulting in an economic shortfall of $123.6 million.
- Expenditures on the production of Canadian sports programming in 2006 totalled $317.1 million; however, Canadian sports programming earned revenues of only $254.3 million. Thus, sports programming posted an economic shortfall of $62.8 million.
- Drama production posted the largest economic shortfall. It earned revenues of $315.8 million compared to total production expenditures of $668.0 million. Thus, there was an economic shortfall of $352.2 million.
- The children's genre also posted an economic deficit of over $100.0 million. Production expenditures of $234.0 million earned only $117.9 million from domestic advertising, subscriber revenues, and foreign sales. This resulted in an economic shortfall of $116.1 million.
- Production of variety programming totalled $56.6 million in 2006, and generated revenues of $63.7 million, yielding an economic surplus of $7.1 million.
- The documentary and general programming category posted an economic shortfall of $42.3 million, with costs of $423.2 million and total revenues of $380.9.

Table 14 Economic Surplus/Shortfall, English-Language Television Production

($ millions)	News	Sports	Drama	Children's	Variety	Documen-tary and General	Total
Cost of production	**461.5**	**317.1**	**668.0**	**234.0**	**56.6**	**423.2**	**2,160.4**
Net advertising revenue	261.3	143.5	117.6	28.1	55.1	240.4	**846.1**
Net subscriber revenue	76.5	110.8	35.0	36.9	7.8	90.0	**357.0**
Export value	0	0	122.4	27.3	0.0	35.3	**185.1**
After-market export sales	0	0	40.7	25.5	0.8	15.2	**82.3**
Total revenues	**337.8**	**254.3**	**315.8**	**117.9**	**63.7**	**380.9**	**1,470.5**
Economic surplus/ (shortfall)	**(123.6)**	**(62.8)**	**(352.2)**	**(116.1)**	**7.1**	**(42.3)**	**(689.9)**

Source: Nordicity estimates based on data from CAVCO, CRTC, CFTPA, Nielsen Media Research, CBC/Radio-Canada Research and Telefilm Canada
Note: Some totals may not sum due to rounding

On an overall basis, Nordicity estimates that there was an economic shortfall of $689.9 million associated with the production of Canadian television programming in the English-language market. In other words, while the revenue potential of English-language Canadian television production was $1,470.5 million, the cost of producing the television content to generate this revenue was actually $2,160.4 million.

4.2 French-Language Market

In the French-language market, none of the major television-programming genres in this analysis posted an economic surplus. .

- Production of news programming in 2006 totalled $130.3 million; it earned revenues of $94.7 million, resulting in an economic shortfall of $35.6 million.
- Expenditures on the production of Canadian sports programming in the French-language market in 2006 totalled $54.6 million; and earned revenues of $45.8 million. Thus, sports programming posted an economic shortfall of $8.8 million.
- Drama production earned revenues of $57.4 million compared to total production expenditures of $193.0 million. Thus, there was an economic shortfall of $135.6 million in this genre.
- The children's genre posted the largest economic shortfall, on a percentage basis, in the French-language market. It posted an economic shortfall of $41.1 million, which was equal to 84% of production expenditures of $49.0 million.
- Production of variety programming totalled $64.0 million in 2006, but generated revenues of only $20.7 million, resulting in an economic shortfall of $43.3 million.
- The documentary and general programming category posted an economic shortfall of $139.4 million, with costs of $270.8 million and total revenues of $131.4 million.

Table 15 Economic Surplus/Shortfall, French-Language Television Production

($ millions)	News	Sports	Drama	Children's	Variety	Documen-tary and General	Total
Cost of production	**130.3**	**54.6**	**193.0**	**49.0**	**64.0**	**270.8**	**761.8**
Net advertising revenue	58.1	16.4	48.0	0.0	12.0	110.1	**244.7**
Net subscriber revenue	36.6	29.4	9.0	7.7	8.4	18.9	**109.9**
Export value	0	0	0.4	0.2	0.3	2.4	**3.3**
After-market export sales	0	0	0	0	0	0	**0**
Total revenues	**94.7**	**45.8**	**57.4**	**7.9**	**20.7**	**131.4**	**357.9**
Economic surplus/ shortfall	**(35.6)**	**(8.8)**	**(135.6)**	**(41.1)**	**(43.3)**	**(139.4)**	**(403.9)**

Source: Nordicity estimates based on data from CFTPA, CAVCO, CRTC, Nielsen Media Research, CBC/Radio-Canada Research and Telefilm Canada
Note: Some totals may not sum due to rounding

On an overall basis, Nordicity estimates that there was an economic shortfall of $403.9 million associated with the production of Canadian television programming in the French-language market. In other words, while the revenue potential of French-language Canadian television production was $357.9 million, the cost of producing the television content to earn this revenue was actually $761.8 million.

5 Summary of Findings

The preceding analysis has found that the vast majority of Canadian television production would likely not occur without the various subsidy programs in place to support it. The results show that all the major genres of Canadian television programming – with the exception of English-language variety programming – earn revenues that fall well short of its real cost. These results are based on an analysis of 2006 production and television viewing data. However, Nordicity does not believe that 2006 was in any way an unusual year for Canadian television, or that its conclusions would vary significantly with the use of data from different years.

<u>The Costs of Television Production</u>

Nordicity utilized data from CAVCO, CRTC, and CFTPA to estimate the annualized cost of producing the level of television content commissioned by Canadian broadcasters – both in-house and independent production. Nordicity prepared estimates in each language market for six categories or genres of production – news, sports, drama, children's programming, variety programming, and documentary and general programming.

In total, Nordicity found that the production of English-language television programming cost approximately $2.2 billion in 2005-06. Production of French-language programming for Canadian television cost an estimated $762 million in that same year.

Nordicity benchmarked these Canadian results against TV production costs from four other countries. The costs of Canadian television production in English-Canada appear to be very much in line with the costs of television production in France and the U.K., and far below the levels in the U.S. The costs of Canadian television production in French-Canada appear to be far lower than the English-Canadian costs, and are very close to TV production costs in Australia.

<u>Revenues of Canadian Television Production</u>

Nordicity utilized data from CBC/Radio-Canada Research, Nielsen Media Research, and the CRTC to estimate the annualized advertising revenue of Canadian television production, as well as the amount of specialty-television subscription revenue that could be attributed to Canadian television programming. Nordicity supplemented these estimates of domestic revenues, by preparing estimates of the export value and after-market export sales potential of each genre.

Nordicity found that English-language television production accounted for net advertising revenues of $846.1 million in 2006, plus net subscription revenues of $357.0 million. In terms of international revenue potential, Nordicity found that the 2006 levels of production corresponded with export value earnings of $185.1 million and after-market export sales potential of $82.3 million. In total, English-language television programming produced in 2006 had a revenue potential of just under $1.5 billion.

For the French-language market, Nordicity found that Canadian television production accounted for net advertising revenues of $244.7 million and net subscription revenues of $109.9 million in 2006. Nordicity found that the 2006 levels of French-language production corresponded with international-revenue potential of $3.3 million. This relatively low level of international sales potential compared to the English-language market reflected the fact that Canada's French-language programming has traditionally had limited international sales potential.

In total, French-language television programming produced in 2006 had a revenue potential of $357.9 million.

The Results

When Nordicity compared the production costs for Canadian English-language television production in each genre to the revenue potential of that genre, it found that all genres except variety displayed an economic shortfall.

Overall, Canadian English-language television production displayed an economic shortfall of $689.9 million in 2006. About one-half of this shortfall, or $352.2 million, was concentrated in the drama genre. News, sports, children's programming, and documentary and general programming also displayed economic shortfall's ranging from $42.3 million (documentary and general programming) to $123.6 million (news). Only the variety genre displayed a small economic surplus of $7.1 million.

The French-language market displayed an overall economic shortfall of $403.9 million. This shortfall was distributed across all of the major genres. Documentary and general programming as well as drama programming displayed the largest shortfalls – both in excess of $100 million. Sports, children's and variety programming also displayed shortfalls.

6 Conclusion

While it may be the case that individual television programs in Canada have been or can be profitable, the results of this study show that Canadian firms in this industry cannot, in general, be successful, on an on-going and permanent basis, without significant financial support from government. In some cases, such as drama and children's programming, the industry's economic shortfall is more than 50% of the total costs of the productions.

Why is it so difficult to make Canadian television programming profitably?

While this study does not investigate the causes of the industry's poor economics, Nordicity believes there may be a number of factors at play, the most important relating to the presence of high-levels of foreign programming (primarily from the U.S.) in the Canadian market.

While American programs are available at low cost to broadcasters in countries around the world, Canada is unique in terms of its geographic proximity and historical access to U.S. TV broadcasts. Canadians have traditionally had easy access to American programming via U.S. border stations, cable and DTH, and Canadian broadcasters who have purchased the Canadian rights for this programming at a relatively low license fee compared to their actual cost. While the cost of foreign programming has risen sharply as Canadian commercial broadcasters bid up the top product, the license fees are still far below the original costs of the program – as little as 10% of the original U.S. production costs, and far below the costs of producing equivalent Canadian product. The high amount of U.S. content available has also resulted in high levels of viewership, particularly by English-language viewers, throughout the day and in prime-time. As well, the U.S. publicity machine strongly promotes the US shows, through print and other media available in Canada. This combination leads to higher profitability and lower production risks – relative to the profitability and production risks of creating a new untested Canadian program.

The implications of the popularity of US programming in English Canada are that, first, on the revenue side, Canadian advertising dollars are in general more heavily focused on the US shows than Canadian shows. In fact, viewing to American programming in Canada now makes up approximately three-quarters of all prime-time viewing in English Canada, and one-third of all prime-time viewing in French Canada. Canadian advertising dollars follow Canadian viewers; as a result of this large draw of Canadian audiences and advertising dollars to foreign programming. There are fewer advertising dollars left to support Canadian television programming. In English-language market, the revenues available for Canadian programming are approximately 75% lower than they would otherwise be.

The second implication, on the cost side, relates to the very high production values that are contained within these American programs. As shown in this study, the costs of U.S. programming far exceed those of any other country in the world. Since so much of this very expensive programming is broadcast and viewed on Canadian television, the acceptable production values for home-grown Canadian television are higher than they would otherwise be, and certainly higher than what would be the case in a more isolated market of Canada's size. Canadians have been spoiled by the availability of a large amount of high-quality popular American TV, and as a result, generally speaking, require Canadian programming to be expensive as well; more expensive than a market the size of Canada would on its own produce. This is particularly evident in the English-language market, whereas significant language and cultural differences permit lower-cost French-language programs to compete against big-budget, U.S. imports for many genres.

While there may be other factors at play in the Canadian industry, Nordicity believes that these two effects – significantly depressed revenues and abnormally high production costs – create the poor economic environment for television programming in Canada.

As a result, Canadian programming cannot in general be profitable in an ongoing and permanent sense, without government intervention.

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Appendix A: Analysis and Calculation of Real Production Costs

Table 16 Calculation of Estimates of Total Production Costs for In-House Television Programming

Row	Item	Source / Calculation	News ($ millions unless specified otherwise)	Sports ($ millions unless specified otherwise)
	Expenditures by conventional broadcasters			
	2004 Data ($M)			
1	Private conventional English	CRTC	267.3	8.4
2	CBC English	CRTC	129.8	161.4
3	Total English	1+2	397.1	169.8
4	Total conventional French (private + SRC)	CRTC	97.7	18.2
5	Total conventional	3 + 4	494.8	188
	2004 shares			
6	English	3 ÷ 5	80%	90%
7	French	4 ÷ 5	20%	10%
8	Total	6 + 7	100%	100%
	2006 Data ($M)			
9	CBC/SRC OTA	CRTC	116.6	141.5
10	Private conventional	CRTC	328.1	9.4
11	Total conventional	9 +10	444.7	150.9
	Estimates of program costs for 2006 ($M)			
12	English conventional	6 × 11	356.9	136.3
13	French conventional	7 × 11	87.8	14.6
14	Pay and specialty - English	CRTC	104.6	180.8
15	Pay and specialty - French	CRTC	42.5	40.0
16	Total English	12 + 14	461.5	317.1
17	Total French	13 + 15	130.3	54.6
18	Total - All languages	16 + 17	591.8	371.7

Source: CRTC and Nordicity calculations

Table 17 Tabulation of In-House Production Expenditures on Variety Programming

Specialty-Television Music Service	Expenditures on In-House ($)
English-language market	
MuchMusic	21,256,114
MuchLoud	6,884
MuchMore	5,682,487
MuchRetro	14,812
MuchVibe	26,634
CMT	609,110
Total	**27,596,041**
French-language market	
MusiMax	613,628
MusiquePlus	2,392,837
Total	3,006,465

Source: CRTC

Table 18 Calculation of In-House Production Expenditures for Other Information/General Entertainment / Human Interest / Reality Programming

	Other Information (Lifestyle, how-to shows) ($ millions)	Gen. Ent. / Human Interest – Reality ($ millions)
Estimates of program costs for 2006 ($M)		
English conventional	29.9	17.0
French conventional	7.9	7.2
Pay and specialty - English	41.6	24.9
Pay and specialty - French	10.2	3.3
Total English	71.5	41.9
Total French	18.1	10.5
Total - All languages	89.6	52.4

Source: Nordicity calculations based on data from CRTC

Comparative Analysis of Per-Hour Costs of Drama Programming

- Nordicity calculated average per-hour production costs for Canadian programming using data from CAVCO. All amounts were converted to inflation-adjusted dollars using Statistics Canada's Consumer Price Index.

Table 19 Average Production Costs, Canadian Drama

	2001/02	2002/03	2003/04	2004/05	2005/06	Five-year average
Real 2006 dollars (C$ 000s) per hour						
English-language - 10-point production	927	1,087	843	770	1,198	1,011
English-language - All point levels	1,540	1,453	1,052	1,031	1,392	1,352
French-language - All point levels	328	317	273	305	367	329

Source: Nordicity calculations based on data from CAVCO and Statistics Canada
Note: Five-year average is a weighted average based on all projects during the five-year period; it is not a simple average of five annual averages.

- Nordicity also calculated average per-hour production costs (based on global budgets) for service production of foreign television series shot in Canada; the data were based on service-production projects that received the Film or Video Production Services Tax Credit (PSTC). All amounts were converted to inflation-adjusted dollars using Statistics Canada's Consumer Price Index.

Table 20 Average Production Costs, Service Production in Canada

	2001/02	2002/03	2003/04	2004/05	2005/06	Five-year average
Real 2006 dollars (C$ 000s) per hour						
TV series	3,228	3,022	2,655	2,817	2,999	2,833

Source: Nordicity calculations based on data from CAVCO and Statistics Canada
Note: Five-year average is a weighted average based on all projects during the five-year period; it is not a simple average of five annual averages.

- Nordicity used data for the annual number of hours of original production and total annual spending on original production to calculate the average per-hour cost of adult drama and documentary programming in Australia. All amounts were converted to inflation-adjusted dollars using Australia's inflation rate.

Table 21 Average Production Costs, Drama, Australia

	2001/02	2002/03	2003/04	2004/05	2005/06	Five-year average
Hours of production	628	547	476	527	433	--
Total budgets (Current A$ millions)	246.0	155.0	141.0	168.0	129.0	--
Average per-hour budget (Current A$ 000s)	392	283	296	319	298	--
Price level adjustment (2006 = 1.000)	1.128	1.097	1.067	1.035	1.000	--
Average per-hour budget (Real 2006 A$ 000s)	442	311	316	330	298	--
Exchange rate (C$/A$)	0.85	0.91	0.96	0.92	0.85	--
Average per-hour budget (Real 2006 C$ 000s)	375	283	303	304	253	304

Source: Nordicity calculations based on data from Australian Film Commission, Reserve Bank of Australia, and Bank of Canada

- Nordicity used data for television programming that received financial support from the Centre National de Cinématographie, to calculate average production costs in France. Nordicity's calculations are based on statistics for the annual number of hours of original production and total annual spending on original production.

Table 22 Average Production Costs, Drama, France

	2001/02	2002/03	2003/04	2004/05	2005/06	Five-year average
Average per-hour budget (Current € 000s)	915	896	867	773	855	--
Price level adjustment (2006 = 1.000)	1.089	1.067	1.044	1.022	1.000	--
Average per-hour budget (Real 2006 € 000s)	996	955	906	790	855	--
Exchange rate (C$/A$)	1.48	1.58	1.62	1.51	1.42	--
Average per-hour budget (Real 2006 C$ 000s)	1,474	1,509	1,467	1,192	1,213	1,371

Source: Nordicity estimates based on data from Centre National de Cinématographie, European Central Bank, and Bank of Canada.
Note: Statistics only include productions that received financial support from Centre National de Cinématographie.

- Nordicity's calculation of average budgets for production in the U.K. are based on data for the licensing costs of public service broadcasters (BBC, ITV1, Channel 4, 5, S4C) in the U.K.

- Drama costs include in-house production by broadcasters as well as broadcaster-commissioned original programming produced by production companies. To calculate average per-hour budgets, broadcasters' per-hour costs have been inflated to account for the fact that broadcasters typically cover 85% of the total budgets of external commissioned programming; production companies cover the balance of production budgets largely through sales of international rights and secondary-window rights. Statistics published by Ofcom in Ofcom, *The future of children's television programming*, October 3, 2007 support this assumption. Ofcom reports that broadcaster payments for first-run commissions account for 86% of the total cost of production of UK live-action children's drama programming (see Ofcom, *The future of children's television programming*, Figure 55, p. 67).

Table 23 Average Production Costs, Drama, United Kingdom

	2001/02	2002/03	2003/04	2004/05	2005/06	Five-year average
Average broadcaster costs per hour (Real 2006 £ 000s)	381	398	437	448	452	--
Average per-hour budget (Real 2006 £ 000s) (See note 1)	448	468	514	527	532	--
Exchange rate (C$/£)	2.36	2.29	2.38	2.21	2.09	--
Average per-hour budget (Real 2006 C$ 000s)	1,058	1,072	1,224	1,165	1,111	1,126

Source: Nordicity estimates based on data from Ofcom, Bank of Canada.

- To estimate the average per-hour production costs for American television programming, Nordicity obtained data for average licence fees for productions aired by U.S. broadcast TV networks (CBS, NBC, ABC, FOX, CW, WB, and UPN). Nordicity used the assumption that U.S. network broadcast licence fees account for 63% of total production costs, to gross-up the licence-fee data to produce estimates of average per-hour production costs. Nordicity used U.S. inflation rates and exchange rates to convert all amounts to real 2006 Canadian dollars.

Table 24 Average Production Costs, Drama, United States

	2001/02	2002/03	2003/04	2004/05	2005/06	Five-year average
Average per-hour license fee (Current $ 000s)	1,821	1,746	1,894	1,832	1,648	--
Average per-hour production cost*	2,890	2,771	3,006	2,908	2,616	--
Price level adjustment (2006 = 1.000)	1.121	1.096	1.067	1.032	1.000	--
Average per-hour cost (Real 2006 $ 000s)	3,239	3,036	3,209	3,002	2,616	--
Exchange rate (US$/C$)	1.57	1.40	1.30	1.21	1.13	--
Average per-hour budget (Real 2006 C$ 000s)	5,085	4,250	4,171	3,633	2,957	4,019

Source: Nordicity estimates based on SNL Kagan, Bureau of Labor Statistics and Bank of Canada
* Conservatively assuming the TV network license fees represent the top end of a range between 57% and 63% of the total production cost (Kagan, *TV Program Investor*, Dec. 27, 2005).

Appendix B: Calculation of Advertising Revenues

- Based on CRTC data, Nordicity tabulated the total advertising revenues earned by Canadian broadcasters during the 2006 broadcasting year (September 2005 to August 2006).

Table 25 Total Advertising Revenues in the Canadian Television Market, 2006 Broadcasting Year

($ millions)	English-Language Market	French-Language Market	Total
Conventional TV			
Private conventional ad revenues	1,693	327	2,020
CBC/SRC ad revenues	224	115	339
Total conventional ad revenues	1,917	442	2,359
Specialty TV ad revenues	724	126	850
Grand total ad revenues of Canadian services	**2,641**	**568**	**3,209**

Source: CRTC

- Using raw data from Nielsen Media Research, CBC/Radio-Canada Research tabulated the total hours of television viewing to programming in each genre and in each major sector (CBC/Radio-Canada, private conventional, and specialty-television) of the Canadian television market. CBC/Radio-Canada Research also calculated the share of total viewing that was to Canadian programming and the total hours represented by this share.

Table 26 Viewing to Canadian Programming in the English-Language Market, September 2005 to August 2006

	Total Viewing Hours (Adults 25 to 54)	Share of Total Viewing to Canadian Programming	Canadian Viewing
News			
CBC	61,024,753	100%	61,024,753
Private conventional broadcasters	648,207,201	100%	648,207,201
Specialty TV services	218,760,613	98%	215,414,897
Other Information (excluding Documentary)			
CBC	49,131,625	100%	48,982,698
Private conventional broadcasters	186,866,252	79%	148,268,166
Specialty TV services	502,231,750	56%	278,929,390
Sports			
CBC	386,946,451	100%	386,893,178
Private conventional broadcasters	88,637,694	5%	4,248,353
Specialty TV services	683,350,495	59%	400,734,345
Variety			
CBC	8,457,983	87%	7,380,630
Private conventional broadcasters	127,933,246	25%	32,574,377
Specialty TV services	302,082,851	96%	290,267,508
Game Shows			
CBC	--	--	--
Private conventional broadcasters	58,545,819	0%	23,980
Specialty TV services	13,016,768	17%	2,276,356
General Entertainment / Human Interest			
CBC	12,378,923	91%	11,255,991
Private conventional broadcasters	921,108,128	24%	220,475,558

Specialty TV services	267,163,957	43%	113,802,933
Documentary			
CBC	26,076,177	87%	22,708,751
Private conventional broadcasters	53,082,259	72%	38,282,741
Specialty TV services	352,738,061	55%	194,016,142
Drama			
CBC	230,408,422	37%	85,112,208
Private conventional broadcasters	1,681,024,017	8%	126,342,841
Specialty TV services	1,316,906,844	30%	388,748,577
Other Genres			
CBC	--	--	--
Private conventional broadcasters	1,090,592	1%	15,596
Specialty TV services	4,816,766	0%	652
Kids			
YTV & Teletoon E	222,996	39%	86,429
Total – All Genres			
Total CBC	774,424,334	80%	623,358,209
Total private conventional broadcasters	3,766,495,209	32%	1,218,438,812
Specialty TV services	3,661,068,105	51%	1,884,190,799
Total	**8,201,987,648**	**45%**	**3,725,987,820**

Source: CBC Research and Nielsen Media

- Nordicity used the data in Table 25 and Table 26 to calculate the share of total viewing accounted for by each genre and sector. For example, the viewing of Canadian drama on CBC accounted for 11.0% of total viewing of programming on CBC. In other words, 11.0% of the $224 million in ad revenues earned by the CBC can be attributed to Canadian drama programming on the CBC; this amounts to $24.6 million.

Table 27 Share of Total Viewing to Canadian Programming and Allocation Advertising Revenues in the English-Language Market, September 2005 to August 2006

Genre and Sector	Share of total viewing that is to Canadian programming	Share of total advertising revenues ($ millions)
Drama		
CBC	11.0%	24.6
Private conventional broadcasters	3.4%	56.8
Specialty TV services	10.6%	76.9
Total	7.3%	158.3
Documentary		
CBC	2.9%	6.6
Private conventional broadcasters	1.0%	17.2
Specialty TV services	5.3%	38.4
Total	3.1%	62.1
Variety		
CBC	1.0%	2.1
Private conventional broadcasters	0.9%	14.6
Specialty TV services	7.9%	57.4
Total	4.0%	74.2

News		
CBC	7.9%	17.7
Private conventional broadcasters	17.2%	291.4
Specialty TV services	5.9%	42.6
Total	11.3%	351.6
Sports		
CBC	50.0%	111.9
Private conventional broadcasters	0.1%	1.9
Specialty TV services	10.9%	79.2
Total	9.7%	193.1
General Entertainment / Human Interest		
CBC	1.5%	3.3
Private conventional broadcasters	5.9%	99.1
Specialty TV services	3.1%	22.5
Total	4.2%	124.9
Game Shows / Other		
CBC	0.0%	0.0
Private conventional broadcasters	0.0%	0.0
Specialty TV services	0.1%	0.5
Total	3.1%	0.5
Other Info		
CBC	6.3%	14.2
Private conventional broadcasters	3.9%	66.6
Specialty TV services	7.6%	55.2
Total	5.8%	136.0
Total		
CBC	80.5%	180.3
Private conventional broadcasters	32.3%	547.7
Specialty TV services	51.5%	372.6
Total	48.5%	1,100.6

Source: Nordicity calculations based on data from CBC/Radio-Canada Research and Nielsen Media Research

- So that the advertising-revenue data correspond with the production-cost data, Nordicity constructed a genre called documentary and general, by summing the advertising revenues earned in the genres of documentary, general entertainment and human interest, game shows and other, and other information. Table 28 details the advertising-revenue amounts in the documentary and general category

Table 28 Total Advertising Revenues Allocated to the Documentary and General Genre in the English-Language Market

Sector	Total advertising revenues
CBC	24.0
Private conventional broadcasters	183.0
Specialty television advertising	116.5
Total	323.4

Source: Nordicity calculations based on data from CBC/Radio-Canada Research and Nielsen Media Research

- Nordicity then summed the advertising-revenue estimates in each genre and broadcaster category to arrive at the overall estimates of advertising revenue in the English-language market detailed in Table 29.

Table 29 Estimates of Advertising Revenue by Genre, English-Language Market

Genre	Advertising revenues ($ millions)
News	351.6
Sports	193.1
Drama	158.3
Children's	--*
Variety	74.2
Documentary and general	323.4
Total	**1,100.6**

Source: Nordicity calculations based on data from CBC/Radio-Canada Research and Nielsen Media Research
* Advertising revenue for the children's genre was estimated using a different procedure. This procedure is described below.

- For the children's genre, Nordicity used the advertising revenue statistics reported by the specialty-television services that televise children's programming; specialty-television services account for the vast majority of television ad sales for the children's genre. To estimate the portion of advertising attributable to Canadian programming, Nordicity applied the audience share of Canadian children's programming in the specialty-television segment; this share was 39% during the 2006 broadcasting year. This approach yielded an estimate of $39.6 million for the annual amount advertising revenues generated by children's programming in the English-language market.

Table 30 Estimates of Advertising Revenue by Genre, English-Language Market

Genre	YTV	Teletoon (English)*	Treehouse	BBC kids	Discovery Kids	Total
National ad revenue ($)	54.581,002	46,274,726	111,034	355,660	244,315	101,566,737
Canadian share	39%	39%	39%	39%	39%	39%
Estimate of ad revenue attributable to Canadian programming ($M)	21.3	18.0	0.0	0.1	0.1	39.6

Source: Nordicity calculations based on data from CBC/Radio-Canada Research and Nielsen Media Research
* 75% of Teletoon's advertising revenue was allocated to the English-language market.

- The overall result of the allocation of advertising revenues in the English-language market to Canadian programming can be found in Table 6 (Section 3.1)

* Nordicity conducted a similar advertising-revenue-allocation exercise for the French-language market. The viewing levels for the French-language market are detailed in Table 31.

Table 31 Viewing to Canadian Programming in the French-Language Market, September 2005 to August 2006

	Total Viewing Hours (Adults 25 to 54)	Share of Total Viewing to Canadian Programming	Canadian Viewing
News			
SRC	78,546,177	100%	78,546,177
Private conventional broadcasters	336,308,655	100%	336,308,655
Specialty TV services	131,759,636	97%	127,385,319
Other Information (excluding Documentary)			
SRC	82,807,938	99%	81,973,175
Private conventional broadcasters	290,852,191	98%	286,316,978
Specialty TV services	102,933,125	92%	95,041,245
Sports			
SRC	33,368,491	100%	33,226,965
Private conventional broadcasters	16,315,747	96%	15,642,801
Specialty TV services	184,134,192	75%	138,606,698
Variety			
SRC	16,389,187	100%	16,331,587
Private conventional broadcasters	63,379,520	100%	63,236,608
Specialty TV services	43,973,385	80%	35,316,239
Game Shows			
SRC	18,364,208	100%	18,364,208
Private conventional broadcasters	51,865,207	100%	51,865,207
Specialty TV services	4,050,876	2%	66,735
General Entertainment / Human Interest			
SRC	142,946,314	88%	125,195,228
Private conventional broadcasters	272,427,986	77%	208,579,672
Specialty TV services	41,977,765	34%	14,318,675
Documentary			
SRC	10,012,680	97%	9,729,910
Private conventional broadcasters	49,079,640	70%	34,515,207
Specialty TV services	148,798,819	46%	68,468,519
Drama			
SRC	210,307,424	60%	125,583,701
Private conventional broadcasters	642,725,289	30%	194,140,459
Specialty TV services	348,465,145	39%	136,785,115
Other Genres			
SRC	--	--	--
Private conventional broadcasters	14,846,308	62%	9,170,501
Specialty TV services	201,390	89%	178,558
Total – All Genres			
Total SRC	592,742,418	82%	488,950,950
Total private conventional broadcasters	1,737,800,543	69%	1,199,776,087
Specialty TV services	1,006,294,332	61%	616,167,102
Total	3,336,837,292	69%	2,304,894,138

Source: CBC/Radio-Canada Research and Nielsen Media Research

- The allocation of advertising revenues to Canadian programming in the French-language market is detailed in Table 32.

Table 32 Share of Total Viewing to Canadian Programming and Allocation Advertising Revenues in the French-Language Market, September 2005 to August 2006

Genre and Sector	Share of total viewing that is to Canadian programming	Share of total advertising revenues ($M)
Drama		
SRC	21.2%	24.4
Private conventional broadcasters	11.2%	36.5
Specialty adv.	13.6%	17.1
Total	13.7%	78.0
Documentary		
SRC	1.6%	1.9
Private conventional broadcasters	2.0%	6.5
Specialty adv.	6.8%	8.6
Total	3.4%	17.0
Variety		
SRC	2.8%	3.2
Private conventional broadcasters	3.6%	11.9
Specialty adv.	3.5%	4.4
Total	3.4%	19.5
News		
SRC	13.3%	15.2
Private conventional broadcasters	19.4%	63.3
Specialty adv.	12.7%	16.0
Total	16.3%	94.5
Sports		
SRC	5.6%	6.4
Private conventional broadcasters	0.9%	2.9
Specialty adv.	13.8%	17.4
Total	5.6%	26.7
General Entertainment / Human Interest		
SRC	21.1%	24.3
Private conventional broadcasters	12.0%	39.2
Specialty adv.	1.4%	1.8
Total	10.4%	65.3
Game Shows / Other		
SRC	3.1%	3.6
Private conventional broadcasters	3.5%	11.5
Specialty adv.	0.0%	0.0
Total	2.4%	15.1
Other Info		
SRC	13.8%	15.9
Private conventional broadcasters	16.5%	53.9

Specialty adv.	9.4%	11.9
Total	10.0%	81.7
Total		
SRC	82%	94.9
Private conventional broadcasters	69%	225.8
Specialty adv.	61%	77.2
Total	69%	397.8

Source: Nordicity calculations based on data from CBC/Radio-Canada Research and Nielsen Media

- Nordicity also constructed a documentary and general category for the analysis of the French-language market (Table 33).

Table 33 Total Advertising Revenues Allocated to the Documentary and General Genre in the French-Language Market

Genre and Sector	Total advertising revenues
CBC	45.6
Private conventional broadcasters	111.1
Specialty adv.	22.3
Total	179.0

- Nordicity then summed the advertising-revenue estimates in each genre and broadcaster category to arrive at the overall estimates of advertising revenue in the French-language market detailed in Table 34.

Table 34 Estimates of Advertising Revenue by Genre, French-Language Market

Genre	Advertising revenues ($ millions)
News	94.5
Sports	26.7
Drama	78.0
Children's	--*
Variety	19.5
Documentary and general	179.0
Total	**397.8**

Source: Nordicity calculations based on data from CBC/Radio-Canada Research and Nielsen Media Research
* The sale of advertising for children's programming is prohibited in the French-language market.

Appendix C: Calculation of Subscription Revenues

Table 35 Allocation of Programming by Genre for English-Language Specialty-Television Services

Service	News	Sports	Drama	Documentary	VAPA	Children's	General Ent. / Human Interest / Magazine	Total
AnimalPlanet	0%	0%	0%	70%	0%	10%	20%	100%
BBCCanada	0%	0%	40%	10%	10%	0%	40%	100%
BBCKids	0%	0%	0%	0%	0%	100%	0%	100%
Biography	0%	0%	0%	100%	0%	0%	0%	100%
BITE TV	0%	0%	33%	33%	0%	0%	34%	100%
Book TV	0%	0%	30%	50%	0%	0%	20%	100%
BPM: TV	0%	0%	0%	0%	100%	0%	0%	100%
Bravo	0%	0%	33%	33%	34%	0%	0%	100%
Christian	0%	0%	20%	0%	0%	0%	80%	100%
CLT	0%	0%	33%	33%	0%	0%	34%	100%
CMT	0%	0%	0%	0%	70%	0%	30%	100%
Cool TV	0%	0%	0%	0%	100%	0%	0%	100%
CountryCan	0%	20%	30%	20%	10%	0%	20%	100%
CourtTV	0%	0%	20%	20%	0%	0%	60%	100%
CTV Newsne	100%	0%	0%	0%	0%	0%	0%	100%
Deja View	0%	0%	80%	0%	0%	0%	20%	100%
DiscHealth	0%	0%	0%	50%	0%	0%	50%	100%
Discov HD	0%	0%	0%	50%	0%	0%	50%	100%
DiscovCiv	0%	0%	0%	50%	0%	0%	50%	100%
Discovery	0%	0%	0%	50%	0%	0%	50%	100%
DiscovKid	0%	0%	0%	0%	0%	100%	0%	100%
Documentar	0%	0%	0%	100%	0%	0%	0%	100%
Drive-In	0%	0%	100%	0%	0%	0%	0%	100%
ESPN Class	0%	100%	0%	0%	0%	0%	0%	100%
FashionTV	0%	0%	0%	0%	0%	0%	100%	100%
Fight Net	0%	100%	0%	0%	0%	0%	0%	100%
FineLiving	0%	0%	0%	0%	0%	0%	100%	100%
Food Net.	0%	0%	0%	0%	0%	0%	100%	100%
FoxSports	0%	100%	0%	0%	0%	0%	0%	100%
G4TechTV	0%	0%	0%	0%	0%	0%	100%	100%
HGTV	0%	0%	0%	0%	0%	0%	100%	100%
History TV	0%	0%	30%	60%	0%	0%	10%	100%
HPItv	0%	100%	0%	0%	0%	0%	0%	100%
ichannel	0%	0%	30%	70%	0%	0%	0%	100%
IFCC	0%	0%	90%	10%	0%	0%	0%	100%
Leafs TV	0%	100%	0%	0%	0%	0%	0%	100%
Lonestar	0%	0%	80%	0%	0%	0%	20%	100%
MenTV	0%	0%	30%	0%	0%	0%	70%	100%
Moviola	0%	0%	90%	10%	0%	0%	0%	100%
MSNBC Can.	100%	0%	0%	0%	0%	0%	0%	100%
MTV Canada	0%	0%	0%	0%	0%	0%	100%	100%
Much Music	0%	0%	0%	0%	60%	0%	40%	100%
MuchLoud	0%	0%	0%	0%	60%	0%	40%	100%
MuchMore	0%	0%	0%	0%	60%	0%	40%	100%

Service	News	Sports	Drama	Documentary	VAPA	Children's	General Ent. / Human Interest / Magazine	Total
MuchRetro	0%	0%	0%	0%	60%	0%	40%	100%
MuchVibe	0%	0%	0%	0%	60%	0%	40%	100%
Mystery	0%	0%	100%	0%	0%	0%	0%	100%
Natl Geo	0%	0%	0%	100%	0%	0%	0%	100%
NatlHockey	0%	100%	0%	0%	0%	0%	0%	100%
Newsworld	70%	0%	0%	30%	0%	0%	0%	100%
NHL Netwrk	0%	100%	0%	0%	0%	0%	0%	100%
One: MBS - Not found	0%	0%	0%	0%	0%	0%	100%	100%
Outdoor Life Network	0%	10%	0%	0%	0%	0%	90%	100%
Pet Net	0%	0%	0%	0%	0%	0%	100%	100%
Pulse 24	100%	0%	0%	0%	0%	0%	0%	100%
PunchMuch	0%	0%	0%	0%	100%	0%	0%	100%
RaptorsNBA	0%	100%	0%	0%	0%	0%	0%	100%
Razer	0%	0%	60%	0%	0%	0%	40%	100%
Business News Network	100%	0%	0%	0%	0%	0%	0%	100%
SC Action	0%	0%	100%	0%	0%	0%	0%	100%
SC Diva	0%	0%	100%	0%	0%	0%	0%	100%
Scream	0%	0%	100%	0%	0%	0%	0%	100%
SexTV	0%	0%	33%	33%	0%	0%	34%	100%
Showcase	0%	0%	100%	0%	0%	0%	0%	100%
SilverScre	0%	0%	100%	0%	0%	0%	0%	100%
Slice	0%	0%	0%	0%	0%	0%	100%	100%
Space	0%	0%	90%	10%	0%	0%	0%	100%
Sports PPV	0%	100%	0%	0%	0%	0%	0%	100%
SportsNet	0%	100%	0%	0%	0%	0%	0%	100%
Star!	0%	0%	0%	0%	0%	0%	100%	100%
TCN	0%	0%	50%	0%	50%	0%	0%	100%
The Score	0%	100%	0%	0%	0%	0%	0%	100%
Travel+	0%	0%	0%	0%	0%	0%	100%	100%
TreasureHD	0%	0%	0%	50%	0%	0%	50%	100%
TreeHouse	0%	0%	0%	0%	0%	100%	0%	100%
TSN	0%	100%	0%	0%	0%	0%	0%	100%
TV Land	0%	0%	100%	0%	0%	0%	0%	100%
TVtropolis	0%	0%	100%	0%	0%	0%	0%	100%
Vision TV	0%	0%	30%	20%	0%	0%	50%	100%
Weather	100%	0%	0%	0%	0%	0%	0%	100%
Wild TV	0%	100%	0%	0%	0%	0%	0%	100%
WNetwork	0%	0%	50%	0%	0%	0%	50%	100%
WTSN	0%	100%	0%	0%	0%	0%	0%	100%
Xtreme	0%	100%	0%	0%	0%	0%	0%	100%
YTV	0%	0%	0%	0%	0%	100%	0%	100%
Teletoon	0%	0%	10%	0%	0%	90%	0%	100%
Family Channel	0%	0%	0%	0%	0%	100%	0%	100%

Source: Nordicity analysis based on data from CRTC

Table 36 Allocation of Subscription Revenues for English-Language Specialty-Television Services

Service	News	Sports	Drama	Documentary	VAPA	Children's	General Ent. / Human Interest / Magazine	Total
AnimalPlanet	0	0	0	2,066,747	0	295,250	590,499	2,952,496
BBCCanada	0	0	1,677,990	419,497	419,497	0	1,677,990	4,194,974
BBCKids	0	0	0	0	0	4,235,786	0	4,235,786
Biography	0	0	0	4,364,606	0	0	0	4,364,606
BITE TV	0	0	115,015	115,015	0	0	118,500	348,530
Book TV	0	0	951,346	1,585,577	0	0	634,231	3,171,153
BPM: TV	0	0	0	0	720,923	0	0	720,923
Bravo	0	0	6,871,828	6,871,828	7,080,065	0	0	20,823,721
CLT	0	0	4,462,420	4,462,420	0	0	4,597,645	13,522,485
CMT	0	0	0	0	3,012,665	0	1,291,142	4,303,807
Cool TV	0	0	0	0	612,494	0	0	612,494
CountryCan	0	618,852	928,277	618,852	309,426	0	618,852	3,094,258
CourtTV	0	0	940,956	940,956	0	0	2,822,868	4,704,780
CTV Newsne	12,739,318	0	0	0	0	0	0	12,739,318
Deja View	0	0	2,532,158	0	0	0	633,040	3,165,198
DiscHealth	0	0	0	2,592,282	0	0	2,592,282	5,184,564
Discov HD	0	0	0	70,000	0	0	70,000	140,000
DiscovCiv	0	0	0	1,176,554	0	0	1,176,554	2,353,108
Discovery	0	0	0	20,631,489	0	0	20,631,489	41,262,978
DiscovKid	0	0	0	0	0	2,858,868	0	2,858,868
Documentar	0	0	0	3,912,386	0	0	0	3,912,386
Drive-In	0	0	2,907,890	0	0	0	0	2,907,890
ESPN Class	0	2,002,630	0	0	0	0	0	2,002,630
FashionTV	0	0	0	0	0	0	3,590,892	3,590,892
Fight Net	0	209,168	0	0	0	0	0	209,168
FineLiving	0	0	0	0	0	0	2,506,709	2,506,709
Food Net.	0	0	0	0	0	0	8,014,911	8,014,911
FoxSports	0	3,352,183	0	0	0	0	0	3,352,183
G4TechTV	0	0	0	0	0	0	4,697,403	4,697,403
HGTV	0	0	0	0	0	0	11,148,596	11,148,596
History TV	0	0	6,260,072	12,520,145	0	0	2,086,691	20,866,908
HPItv	0	1,414,014	0	0	0	0	0	1,414,014
ichannel	0	0	837,698	1,954,630	0	0	0	2,792,328
IFCC	0	0	4,801,273	533,475	0	0	0	5,334,748
Leafs TV	0	1,784,736	0	0	0	0	0	1,784,736
Lonestar	0	0	2,774,178	0	0	0	693,545	3,467,723
MenTV	0	0	1,221,826	0	0	0	2,850,927	4,072,753
Moviola	0	0	2,725,695	302,855	0	0	0	3,028,550
MTV Canada	0	0	0	0	0	0	5,171,457	5,171,457
Much Music	0	0	0	0	7,394,446	0	4,929,631	12,324,077
MuchLoud	0	0	0	0	234,875	0	156,584	391,459
MuchMore	0	0	0	0	2,765,759	0	1,843,840	4,609,599
MuchRetro	0	0	0	0	296,120	0	197,414	493,534
MuchVibe	0	0	0	0	415,883	0	277,255	693,138
Mystery	0	0	5,452,480	0	0	0	0	5,452,480
Natl Geo	0	0	0	4,851,249	0	0	0	4,851,249

Service	News	Sports	Drama	Documentary	VAPA	Children's	General Ent. / Human Interest / Magazine	Total
NatlHockey	0	5,851,054	0	0	0	0	0	5,851,054
Newsworld	43,505,000	0	0	18,645,000	0	0	0	62,150,000
NHL Netwrk	0	5,173,368	0	0	0	0	0	5,173,368
Outdoor Life Network	0	817,660	0	0	0	0	7,358,936	8,176,596
Pet Net	0	0	0	0	0	0	217,141	217,141
Pulse 24	2,247,544	0	0	0	0	0	0	2,247,544
PunchMuch	0	0	0	0	754,245	0	0	754,245
RaptorsNBA	0	2,964,145	0	0	0	0	0	2,964,145
Razer	0	0	2,343,463	0	0	0	1,562,309	3,905,772
Business News Network	14,963,211	0	0	0	0	0	0	14,963,211
SC Action	0	0	5,572,137	0	0	0	0	5,572,137
SC Diva	0	0	5,134,146	0	0	0	0	5,134,146
Scream	0	0	3,795,692	0	0	0	0	3,795,692
SexTV	0	0	708,535	708,535	0	0	730,006	2,147,076
Showcase	0	0	27,721,330	0	0	0	0	27,721,330
SilverScre	0	0	873,339	0	0	0	0	873,339
Slice	0	0	0	0	0	0	17,712,869	17,712,869
Space	0	0	15,417,525	1,713,058	0	0	0	17,130,583
Sports PPV	0	3,352,183	0	0	0	0	0	3,352,183
SportsNet	0	88,660,425	0	0	0	0	0	88,660,425
Star!	0	0	0	0	0	0	12,620,917	12,620,917
TCN	0	0	9,746,704	0	9,746,704	0	0	19,493,408
The Score	0	12,629,316	0	0	0	0	0	12,629,316
Travel+	0	0	0	0	0	0	3,656,122	3,656,122
TreasureHD	0	0	0	103,765	0	0	103,765	207,530
TreeHouse	0	0	0	0	0	9,390,706	0	9,390,706
TSN	0	112,106,498	0	0	0	0	0	112,106,498
TV Land	0	0	3,303,719	0	0	0	0	3,303,719
TVtropolis	0	0	11,731,479	0	0	0	0	11,731,479
Vision TV	0	0	3,329,574	2,219,716	0	0	5,549,290	11,098,580
Weather	27,939,366	0	0	0	0	0	0	27,939,366
Wild TV	0	83,770	0	0	0	0	0	83,770
WNetwork	0	0	13,656,051	0	0	0	13,656,051	27,312,102
Xtreme	0	2,799,810	0	0	0	0	0	2,799,810
YTV	0	0	0	0	0	34,052,614	0	34,052,614
Teletoon	0	0	2,654,186	0	0	23,887,670	0	26,541,855
Family Channel	0	0	0	0	0	48,250,199	0	48,250,199
Total revenues	101,394,439	243,819,811	151,448,983	93,380,636	33,763,103	122,971,092	152,347,810	899,125,875

Source: Nordicity analysis based on data from CRTC

Table 37 Allocation of Programming by Genre for French-Language Specialty-Television Services

Service	News	Sports	Drama	Documentary	VAPA	Children's	General Ent. / Human Interest / Magazine	Total
Argent	100%	0%	0%	0%	0%	0%	0%	100%
ARTV	0%	0%	60%	0%	0%	0%	40%	100%
Canal D	0%	0%	0%	100%	0%	0%	0%	100%
Canal Vie	0%	0%	0%	30%	0%	0%	70%	100%
Évasion	0%	0%	0%	0%	0%	0%	100%	100%
Historia	0%	0%	30%	60%	0%	0%	10%	100%
LCN	100%	0%	0%	0%	0%	0%	0%	100%
MUSIMAX	0%	0%	0%	0%	100%	0%	0%	100%
MusiquePlu	0%	0%	0%	0%	100%	0%	0%	100%
Mystère	0%	0%	100%	0%	0%	0%	0%	100%
RDI	100%	0%	0%	0%	0%	0%	0%	100%
RDS	0%	100%	0%	0%	0%	0%	0%	100%
RIS	0%	100%	0%	0%	0%	0%	0%	100%
Séries+	0%	0%	100%	0%	0%	0%	0%	100%
TV5	20%	20%	30%	10%	0%	0%	20%	100%
VrakTV	0%	0%	0%	0%	0%	100%	0%	100%
Ztélé	0%	0%	80%	0%	0%	0%	20%	100%
Teletoon	0%	0%	10%	0%	0%	90	0%	100%

Source: Nordicity analysis based on data from CRTC

Table 38 Allocation of Subscription Revenues by Genre for French-Language Specialty-Television Services

Service	News	Sports	Drama	Documentary	VAPA	Children's	General Ent. / Human Interest / Magazine	Total
Argent	939,452	0	0	0	0	0	0	939,452
ARTV	0	0	6,992,039	0	0	0	4,661,359	11,653,398
Canal D	0	0	0	18,836,947	0	0	0	18,836,947
Canal Vie	0	0	0	6,155,166	0	0	14,362,053	20,517,219
Évasion	0	0	0	0	0	0	5,786,454	5,786,454
Historia	0	0	2,853,438	5,706,877	0	0	951,146	9,511,461
LCN	10,198,578	0	0	0	0	0	0	10,198,578
MUSIMAX	0	0	0	0	5,967,542	0	0	5,967,542
MusiquePlu	0	0	0	0	7,728,042	0	0	7,728,042
Mystère	0	0	587,766	0	0	0	0	587,766
RDI	36,081,000	0	0	0	0	0	0	36,081,000
RDS	0	45,063,395	0	0	0	0	0	45,063,395
RIS	0	4,011,453	0	0	0	0	0	4,011,453
Séries+	0	0	8,889,820	0	0	0	0	8,889,820
TV5	1,752,123	1,752,123	2,628,185	876,062	0	0	1,752,123	8,760,616
VrakTV	0	0	0	0	0	17,680,967	0	17,680,967
Ztélé	0	0	7,142,569	0	0	0	1,785,642	8,928,211
Teletoon	0	0	884,729	0	0	7,962,557	0	8,847,285
Total	48,971,153	50,826,971	29,978,545	31,575,051	13,695,584	25,643,524	29,298,778	229,989,606

Source: Nordicity analysis based on data from CRTC

Appendix D: Export Value

- To estimate the export value of Canadian television programming, Nordicity obtained aggregate financing statistics from CAVCO. By using the same methodology as that used in the CFTPA's *Profile 2007*, Nordicity prepared estimates of the export value of Canadian television programs (independent production only) produced in 2005-06. Nordicity assumed that news and sports programming had no export value.

- Financing statistics supplied by CAVCO indicate that in 2005-06, foreign sources of financing accounted for the following percentages of financing in the independent production genres in the English-language market:
  - Drama, 18.3%
  - Children's, 11.7%
  - Variety, 0.0%
  - Documentary, 14.0%

- In the French-language market, the percentages of financing from foreign sources were considerably smaller:
  - Drama, 0.2%
  - Children's, 0.4%
  - Variety, 0.4%
  - Documentary, 2.0%

- Nordicity multiplied the foreign-financing percentages by the total cost of independent production in each genre to arrive at estimates of export value for each genre. For the documentary and general genre, the type of available data only permitted Nordicity to estimate the export value of independently produced documentary programming. Nordicity's estimates of export value in each genre are presented in Table 39.

Table 39 Calculation of Export Value for Television Production

($ millions)	News	Sports	Drama	Children's	Variety	Documen-tary and General*
English-language production						
Total cost of independent television production	--	--	668.0	234.0	29.0	277.0
Estimated share of television financing from foreign sources	--	--	18.3%	11.7%	0.0%	14.0%
Export value	--	--	122.4	27.3	0.0	35.3
French-language production						
Total cost of independent television production	--	--	193.0	49.0	61.0	121.0
Estimated share of television financing from foreign sources	--	--	0.2%	0.4%	0.4%	2.0%
Export value	--	--	0.4	0.2	0.3	2.4

Source: Nordicity estimates based on data from CFTPA and CAVCO
* Estimates of export value are based only the total cost of production of independent production in the documentary genre.

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Le Groupe Nordicité ltée

Appendix E: Calculation of After-Market Export Sales

- Nordicity developed a model for estimating the after-market export sales for the CTF-supported genres. The model is based on published data for the after-market sales performance of programming that received equity investments from Telefilm Canada through the CTF.

- The Telefilm Canada data indicate the average probability of recovery (recovery rate) and recoupment rate for Equity Investment Program (EIP) projects produced between 1996-97 and 2000-01. The data indicate that across all genres, 63% of EIP projects recorded some recovery or recoupment of Telefilm Canada's equity investment. The data also tell us that among the projects that did record some recoupment, the average rate of recoupment was 7.4%, or 7.4 cents for every dollar of equity investment.

Table 40 Telefilm Canada Equity Recoupment – Probability of Investment Recovery (based on projects between 1996/97 to 2000/01)

	Total number of projects with Telefilm Canada equity investment	Total number of projects with recoupment (as of August 2005) of equity investment	Percentage of equity investment with some investment recovery
Drama	220	154	70%
Children's	95	75	79%
Documentary	554	349	63%
Variety and performing arts	40	22	55%
Feature film	70	21	30%
Total	**979**	**621**	**63%**

Source: Nordicity Group tabulations based on data from Telefilm Canada, see *Analysis of Canadian Television Fund Equity Financing Recoupment*
Note: Figures include only recoupment from equity investments; figures exclude Telefilm recoupment from projects contracted prior to 1996/97. Figures only include revenues for projects contracted between 1996/97 and 2000/01.

Table 41 Telefilm Canada Equity Recoupment as a Percentage of Equity Investments (based on projects between 1996/97 to 2000/01)

	Recoupment ($ 000s)	Equity investments ($ 000s)	Recoupment as a percentage of equity investment
Children's	8,314	54,398	15.3%
Drama	20,371	297,076	6.9%
Documentary	6,057	72,354	8.4%
Variety and performing arts	**329**	**6,965**	**4.7%**
Feature film	**2,402**	**73,247**	**3.3%**
Total	**37,475**	**504,040**	**7.4%**

Source: Nordicity Group tabulations based on data from Telefilm Canada, see *Analysis of Canadian Television Fund Equity Financing Recoupment*
Note: Figures include only recoupment from equity investments; figures exclude Telefilm recoupment from projects contracted prior to 1996/97. Figures only include revenues for projects contracted between 1996/97 and 2000/01.

- Nordicity used the Telefilm Canada's recoupment statistics and average financing structures in each genre to derive rates of return that could be applied to overall budgets (the total cost of production). The calculation of the rate of return for the drama genre is detailed below. Nordicity assumed that the in-house genres and all genres of French-language production had no after-market export sales.

- The financing of production is such that only certain financing elements are recoverable. The distributor typically recovers its advance first, before equity investors begin to recover their investments. Nordicity's model, therefore, assumed that distributors recovered their investment in 70% of projects. The average investment by distributors in CTF drama projects was 6%. This rate of investment recovery translates into an implied recovery rate of 4.2% (70% × 6%) when viewed as a share of total project financing.

Table 42 Estimate of the Average Investment Recovery Rate for CTF Projects, Drama Genre

Type of financing	Average share of financing	Recovery rate for project investors	Implied investment recovery rate as a share of total financing
Broadcaster licence fees	24%	0%	0%
CTF-LFP	17%	0%	0%
Canadian distributor	6%	70.0%	4.2%
Foreign licence fees	6%	0%	0%
Tax credit and other public	20%	0%	0%
Investor equity	27%	6.9%	1.9%
Total	**100%**	**--**	**6.1%**

Source: Nordicity Group calculations based on data from CAVCO, Telefilm Canada, and CTF.

- Using Telefilm Canada's recovery rate of 6.9% and given that equity financing typically comprises about 27% of total project financing for CTF drama projects, Nordicity calculated that, on a total-financing basis, the implied recovery rate for equity investors was 1.9% (6.9% × 27%).

- Adding the estimates for distributor-advance and equity-investor recoveries yields an overall recovery rate of 6.1% (4.2% + 1.9%) of total project financing. Therefore, Nordicity assumed that CTF-supported projects earned after-market sales revenues equal to 6.1% of total project budgets. While, it is generally true that non-CTF projects have higher exportability than CTF projects, to be conservative, Nordicity applied the rate of 6.1% across all types of Canadian drama production – CTF and non-CTF. These calculations can be found in Table 13.

- Table 43 presents the data underlying the calculation of the equity-investment recovery rates for the children's, documentary and VAPA genres.

Table 43 Estimate of the Average Investment Recovery Rate for CTF Projects - Children's, Documentary and VAPA Genres

	Average share of financing	Recovery rate for project investors	Implied investment recovery rate as a share of total financing
Children's			
Canadian distributor	9%	79.0%	7.1%
Investor equity	25%	15.3%	3.8%
Total recovery rate	--	--	**10.9%**
Documentary			
Canadian distributor	6%	63.0%	3.8%
Investor equity	20%	8.4%	1.7%
Total recovery rate	--	--	**5.5%**
VAPA			
Canadian distributor	4%	55.0%	2.2%
Investor equity	13%	4.7%	0.6%
Total recovery rate	--	--	**2.8%**

Source: Nordicity Group calculations based on data from CAVCO, Telefilm Canada, and CTF.

Appendix C

Legal Opinion on BDU Contributions to CTF

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January 16, 2008

By Courier

Canadian Broadcasting Corporation/Société Radio-Canada
1400 Boul. René-Lévesque Est, 2e étage
Montreal, Québec
H2L 2M2

Attention: Me. Pierre Nollet
Vice-President, General Counsel and Corporate Secretary

Dear Mr. Nollet,

Re: Status of Canadian Television Fund contributions by BDUs

You have asked for our opinion with respect to whether the levy on broadcasting distribution undertakings ("BDUs") to support the Canadian Television Fund ("CTF") is an illegal tax.

Our opinion considers the statutory authorization for the requirement of BDUs to contribute to the CTF, and the existing case law which distinguishes a regulatory charge from a "tax". As is discussed in more detail below, our conclusion is that the levy at issue is a valid regulatory charge and is not an *ultra vires* tax.

Statutory authority to require contributions to be made to the CTF

The authority to require BDUs to contribute to the CTF may be found in paragraph 3(1)(*e*) of the *Broadcasting Act*. This provision explicitly states that each element of the Canadian broadcasting system shall contribute to the creation and presentation of Canadian programming. BDUs are one of the elements of the Canadian broadcasting system, along with the other types of broadcasting undertakings contemplated by the *Act*. (Section 2 of the *Broadcasting Act* defines a broadcasting undertaking as including a distribution undertaking, a programming undertaking and a network.)

Section 5 of the *Act* states that the Commission is to regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1), and paragraph 10(1)(k) provides that the Commission may make regulations respecting matters at it deems necessary for the furtherance of its objects.

Pursuant to paragraph 3(1)(*e*), therefore, distribution undertakings are expected to make a contribution "in an appropriate manner" to the Canadian broadcasting system, and the Commission therefore is given the discretion to enact regulatory measures to provide for the contribution towards the creation and presentation of Canadian programming. In that regard, as noted by Le Dain J. in the Federal Court of Appeal, the courts will take a broad view of what is embraced by section 3, having regard to the discretion that has been committed to the Commission to determine what may be necessary in a particular case for the furtherance of its policy objectives.[1]

In its public notice announcing the implementation of the levy, the CRTC made the following statement:[2]

> a) Proposed regulatory framework
>
> 121. Having considered all of the evidence, the Commission is of the view that all distribution undertakings, with the exception of Class 3 terrestrial distribution undertakings, should be required to contribute a minimum of 5% of their gross annual revenues derived from broadcasting activities to assist in meeting the objective set out in paragraph 3(1)(*e*) of the Act.

Thus, the Commission has specifically grounded the BDU obligation to make contributions to the CTF on paragraph 3(1)(*e*) of the Act.

The mandatory contributions that are made by BDUs to support the CTF are collected pursuant to sections 29 and 44 of the *Broadcasting Distribution Regulations,* SOR/97-555 (the "*Regulations*").

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[1] *Canadian Broadcasting League v. CRTC et al.,* [1983} 1 F.C. 182, 138 D.L.R. (3d) 512, 43 N.R. 77, affirmed [1985] 1 S.C.R. 174.

[2] *New Regulatory Framework for Broadcasting Distribution Undertakings*, Public Notice CRTC 1997-25, March 11, 1997, at para.121.

The distinction between a "fee" and a "tax"

We now address whether the levy on BDUs to support the CTF could be considered to be a "tax". If it were to be so considered, this would *ultra vires* the Commission, since the *Broadcasting Act* does not grant the Commission jurisdiction to tax broadcasting undertakings. Such authorization would be necessary because it is a fundamental principle of Canadian law that taxes may only be levied with the authority of Parliament. This principle was first enunciated in the *Bill of Rights 1688* and is now enshrined in section 53 of the *Constitution Act, 1867*.[3]

The distinction in law between a "fee" or "regulatory charge" and a "tax" is well established.[4] There have been a number of Supreme Court of Canada or appellate level cases which have considered the differences between these types of levies.

The test that the Supreme Court of Canada[5] has indicated should be used to identify whether a levy is a tax (the "*Lawson/Eurig/Westbank* Test") is whether the charge:

1. is compulsory and enforceable by law;

2. is imposed under the authority of the legislature;

3. is levied by a public body;

4. is intended for a public purpose; and

5. has no reasonable nexus between the quantum charged and the cost of the service provided or the regulatory scheme it is intended to support.

---

[3] *Kingstreet Investments Ltd. v. New Brunswick*, 2007 SCC 1; *Eurig Estate (Re)*, [1998] 2 S.C.R. 565 ["*Eurig*"]

[4] Indeed, the Federal Court of Appeal has stated in *Canadian Association of Broadcasters v. Canada*, 2006 FCA 208 at para. 7 that "legal distinction between a fee and a tax is fundamental and, as Major J. said in *Eurig Estate (Re)*, [1998] 2 S.C.R. 565 at para. 41, a power to prescribe a fee does not include a power to impose a tax."

[5] *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction*, [1931] S.C.R 357 at 363 ["*Lawson*"]; *Eurig, supra* at paras 15 & 21 ["*Eurig*"]; *Westbank First Nation v. British Columbia Hydro and Power Authority*, [1999] 3 S.C.R. 134 at paras. 21-22 ["*Westbank*"]

The Supreme Court of Canada has stated that many charges will have elements of taxation and elements of regulation, but the central task for the court is to determine whether the levy's primary purpose is, in pith and substance: (1) to tax (i.e., to raise revenue for general purposes); (2) to finance or constitute a regulatory scheme (i.e., to be a regulatory charge or to be ancillary or adhesive to a regulatory scheme); or (3) to charge for services directly rendered (i.e., to be a user fee).[6]

We will consider each of the headings of the *Lawson/Eurig/Westbank* Test in turn, as they relate to the contributions to the CTF that are mandated by the *Regulations*.

(i) Compulsory and enforceable by law

This requirement may be fulfilled if there is a legal or practical compulsion or necessity to pay the charge in order to comply with one's legal obligations. A charge may be compulsory and enforceable by law even where it is only paid by persons who voluntarily engage in the regulated activity or business. Charges may be enforceable by law if, to remain in a business, a company is compelled to pay an annual levy and the failure to do so could result in all services provided by the government entity being cancelled, if the charge could form a lien on property, and/or if the charge could be recovered by distress or by court action.[7]

Sections 29 and 44 of the *Regulations* state that a licensee "shall contribute" to the CTF where certain thresholds are met, so contributions to the CTF would be seen as compulsory and enforceable by law for those broadcasting undertakings who are obliged, pursuant to the *Regulations* and/or as a condition of licence, to pay such charges.

(ii) Imposed under the authority of the legislature

[6] *Westbank, supra* at para. 30. See also *R. v. Breault* (2001), 198 D.L.R. (4th) 669 (N.B. C.A.) at paras. 64-68 ["*Breault*"]; *Surdell-Kennedy Taxi Ltd. v. Surrey (City)*, 2001 BCSC 1265 at para. 42 (S.C.) ["*Surdell-Kennedy*"], citing *Urban Outdoor Trans Ad v. Scarborough (City)* (2001), 196 D.L.R. (4th) 304 (Ont. C.A.) at paras. 32-36 ["*Urban Outdoor*"]

[7] *Eurig, supra* at para. 17; *Pleau v. Nova Scotia* (Supreme Court, Prothonotary) (1998), 186 N.S.R. (2d) 1 at para. 22 (S.C.) ["*Pleau*"]; *Air Canada v. BC*, [1989] 1 S.C.R. 1161 at 1214-15 [Wilson J's dissent] ["*Air Canada*"]; *Westbank, supra* at para. 35; *Urban Outdoor* , *supra* at para. 30

Charges are imposed under the authority of the legislature if they are imposed pursuant to a statutory power.[8]

Contributions to the CTF are imposed and collected in accordance with the *Regulations* that are enacted pursuant to the *Broadcasting Act.* As such, there is little doubt that such charges would be seen as being imposed under the authority of the legislature.

(iii) Levied by a public body

A government body created by statute is a public body. The CRTC is a public authority constituted under the C*anadian Radio-television and Telecommunications Commission Act.*[9]

The recitals to the *Regulations* state:

> Whereas, pursuant to subsection 10(3) of the *Broadcasting Act*, a copy of the proposed *Broadcasting Distribution Regulations*, substantially in the annexed form, was published in the *Canada Gazette, Part I*, on July 12, 1997, and a reasonable opportunity was given to licensees and other interested persons to make representations to the Canadian Radio-television and Telecommunications Commission with respect thereto;
>
> Therefore, the Canadian Radio-television and Telecommunications Commission, pursuant to subsection 10(1) of the *Broadcasting Act,* hereby makes the annexed *Broadcasting Distribution Regulations*.

As such, we have little difficulty in concluding that the CTF contributions are levied by a public body.

(iv) Intended for a public purpose

In considering this factor, courts may characterize a levy as a tax where its primary purpose is, in pith and substance, to raise revenue for general purposes, rather than

[8] *Westbank, supra* at para. 36; *Breault, supra* at para. 51
[9] *St. Francis Xavier University (Re), (1999),* 7 M.P.L.R. (3d) 165 (N.S. S.C.), [1999] N.S.J. No. 450 at paras. 21-23 (N.S. S.C.); *Canadian Radio-television and Telecommunications Commission Act,* R.S.C. 1985, c. 22, as amended.

being a charge for a service or to finance or constitute a regulatory scheme.[10] In other words, to be considered as a "regulatory charge", the levy must be "ancillary or adhesive to a regulatory scheme" as opposed to being intended to raise revenue for general treasury.[11]

The Supreme Court of Canada has indicated that a charge which has the characteristics outlined in the *Lawson/Eurig/Westbank* Test may be found to be a tax unless it is imposed "primarily for regulatory purposes, or as necessarily incidental to a broader regulatory scheme."[12] Taxes, on the other hand, are levied by the state "for the support of government and for all public needs."[13] Thus, taxes need not relate to a particular regulatory scheme or purpose, but may be imposed for general public usages.

It is clear that the contributions to the CTF that are imposed upon broadcasting undertakings are not imposed in order to raise revenue for the general purposes of the federal treasury. The CTF was created to support the production and broadcast of Canadian television programs. In other words, it is an industry funding mechanism, and (unlike taxes) the monies collected by the CTF are not used for general public purposes like health care, national defence, public schools or housing, police, etc. Thus, the mandatory CTF contributions would be seen as a regulatory charge (i.e. as financing or constituting a regulatory scheme for certain industry participants) rather than a tax.

(v) Nexus between the charge and the regulatory scheme

In order for a charge to be 'connected' or 'adhesive' to a regulatory scheme, *Westbank* provides that there must be a "relationship between the charge and the scheme itself." The Supreme Court of Canada stated:

---

[10] *Westbank, supra* at paras. 30 & 31; *Breault* at paras. 64-68; *Surdell-Kennedy, supra* at para. 42 (S.C.) citing *Urban Outdoor* at paras. 32-36
[11] *Westbank, supra* at para. 30
[12] *Reference re Proposed Federal Tax on Exported Natural Gas,* [1982] 1 S.C.R. 1004 at 1070 ["*Exported Natural Gas*"]
[13] *Black's Law Dictionary* (7th ed.) *s.v.* "tax", citing Thomas M. Cooley, *The Law of Taxation* at 61-63

> This will exist when the revenues are tied to the costs of the regulatory scheme, or where the charges themselves have a regulatory purpose, such as the regulation of certain behaviour.[14]

Where the charges are used to defray the costs of the regulatory scheme, the courts will not require that the amounts collected correspond precisely with those costs, but there must be a demonstrable and reasonable connection between them. If there is an insufficiently close relationship or "nexus" between the amount of the charge and the corresponding regulatory scheme, then the charge may constitute a form of taxation.[15] However, if the levy has some relationship with the cost of operating the broader regulatory framework that allows the affected entity to operate as it does, then the levy may be seen as a regulatory charge.[16]

For example, in *Ontario Homebuilders' Association*, *620 Connaught*, and *Mount Cook National Park Board*,[17] the levy at issue was found to be a fee because, *inter alia*,

1. the levy was either less than the overall regulatory costs of the regime to which it related or was limited to actual costs; and

2. the monies were directly utilized in a manner which defrayed the costs of that regime.

In the *Mount Cook* case, *supra*, the levy stayed within the system to which it adhered. North J. expressly referred to the closed system of the regime when he wrote:

> I see no reason at all then, why the Board should not charge a licence fee for this privilege which will return to it a profit to add to its general revenue.[18]

---

[14] *Westbank, supra* at para. 44
[15] *Eurig, supra* at paras. 15 & 21-22
[16] *Connaught Ltd. v. Canada (AG)*, 2006 FCA 252 ["*620 Connaught*"] (appeal heard by the Supreme Court of Canada on November 16, 2007 and currently under reserve) ; *Canada (Attorney General) v. Cie de Publication la Presse*, 63 D.L.R. (2d) 396, [1967] S.C.R. 60 ["*La Presse*"]
[17] *Ontario Homebuilders' Association v. York Region Board of Education*, [1996] 2 S.C.R. 929, para. 9 (p.11) and paras. 55-56 (p. 37) ["*Ontario Homebuilders*"]; *Allard Contractors v. Coquitlam*, [1993] 4 S.C.R. 371; *Mount Cook National Park Board v. Mount Cook Motels Ltd.*, [1972] NZLR 481 at 491 (NZ CA) ["*Mount Cook*"]; *620 Connaught Ltd.*, paras. 9, 44 & 58.
[18] *Mount Cook, supra*, at p. 487

At issue in the *Ontario Homebuilders* case were educational development charges imposed by a school board as a condition of obtaining a building permit. The purpose of these charges was to permit school boards to raise the local share for the costs of new school construction on land undergoing residential and non-residential development when that development created the need for new schools. The court applied the general criteria discussed above as to when a charge is a fee as opposed to a tax, and concluded that the scheme was lawful as it was ancillary to a valid regulatory scheme for the provision of educational facilities as a component of land use planning.

The CTF funds that are collected are similarly "put back into the system". i.e., the monies that are contributed by broadcasting undertakings are then used by the CTF to finance Canadian-made dramas, children's and youth programming, documentaries, and variety and performing arts programs. Given the policy set out by section 3(1)(*e*) of the Act that undertakings should contribute "to the creation and presentation of Canadian programming", it is clear that such CTF contributions may be seen as furthering a regulatory purpose. It would thus appear that there is a nexus between the levies that are collected and the regulatory scheme at issue.

Taking the foregoing into account, in our view, CTF contributions would be seen as a regulatory charge that is 'connected' or 'adhesive' to a regulatory scheme and/or has a regulatory purpose.

These charges for the CTF therefore differ from the Part II licence fees which were the subject of the Federal Court of Canada's recent decision.[19] In that case, the fees are paid directly into the Consolidated Revenue Fund and are, according to the evidence, used solely for public purposes. They are not, in anyway, used to defray costs arising from the broadcasting regulatory scheme. The Court found that even though there was an argument that some of the fees offset the costs of regulating the broadcasting spectrum that the evidence, in fact, demonstrated that this is not the case. There is no correlation, nor is there any attempt to allocate even a portion of the fees to Industry Canada to address those costs.

[19] *Canadian Association of Broadcasters, et al. v. Canada*, [2006] F.C.J. 1861 (appeal heard by the Federal Court of Appeal on December 4 & 5, 2007 and currently under reserve).

Conclusion

Based on the foregoing, we have concluded that the mandatory contributions to the CTF that are imposed by the *Regulations* are a valid regulatory charge and not an *ultra vires* tax. Such contributions are:

- compulsory and enforceable by law,
- imposed under the authority of the legislature, and
- levied by a public body.

However, that is as close as they come to being a tax. The CTF contributions:

- are not utilized for a general public purpose, and
- there is a reasonable nexus between the quantum charged and a relevant regulatory scheme. Indeed, the contributions themselves have a regulatory purpose.

Thus, in pith and substance, the mandatory contributions to the CTF are intended to be a regulatory charge that finances or constitutes a regulatory scheme, rather than a tax that raises revenue for general purposes.

We trust this opinion covers the matters you wished to explore. Please feel free to contact the undersigned if you need anything further.

Yours very truly

McCarthy Tétrault LLP

Per: Peter Grant

Peter S. Grant

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