

**NATIONAL FILM BOARD OF CANADA**

**Broadcasting Public Notice CRTC 2007-70**

**COMMENTS ON THE RECOMMENDATIONS OF  
THE CRTC TASK FORCE REPORT  
ON THE CANADIAN TELEVISION FUND**

**July 27, 2007**

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## EXECUTIVE SUMMARY

1. An innovative and robust audio-visual production industry, including original voices, is essential to ensure the availability of Canadian cultural content to Canadian and international audiences as well as a fundamental component of a healthy Canadian economy. The Canadian Television Fund (CTF) plays a pivotal role in financing the creation of distinctively Canadian programs. The proposed changes in the CRTC Task Force Report on the CTF, if implemented, would have a major impact on the Canadian broadcasting system, the Canadian independent production sector, and the volume of National Film Board of Canada (NFB) coproductions with independent producers that receive CTF financing.
2. The NFB considers that the current process is not adequate to allow a full public discussion of the recommendations of the CRTC Task Force Report on the CTF. Among other things:
  - The Task Force Report’s recommendations were based on private meetings with selected parties and conducted on a confidential basis;
  - There is no public record of the content of these meetings;
  - On the basis of these confidential meetings, the Task Force was unable “to develop any form of consensus on the major issues”;
  - There is no apparent rationale underlying the recommendations of the CRTC Task Force Report and there will be no further opportunity for interested parties to comment on such a rationale, if it is provided; and
  - The contribution agreement between Canadian Heritage and the CTF is a central element in evaluating the overall effectiveness of the CTF’s objectives – but the agreement was not placed on the CRTC’s public file and is not a public document.
3. It is not at all clear which objectives in section 3 of the *Broadcasting Act* would be clearly served by implementing the Task Force Report’s recommendation to establish a separate funding stream within the CTF from BDU funding. The NFB

considers that any CRTC-directed contribution to the CTF should serve to finance implementation of the objectives of section 3 of the *Broadcasting Act*.

4. The implementation of the Task Force Report's recommendations could result in a return to the *status quo ante* that precipitated many of the CTF's governance and administration problems of the past. If that happens, the concern is that many of the governance and administrative problems would reappear.
5. If the CRTC intends to proceed with an analysis of the recommendations of the Task Force Report, the Commission should initiate an oral public hearing process to permit a comprehensive public discussion of the principles underlying the recommendations.
6. Any review of audio-visual content funding should be undertaken within the larger context of an overall Government strategy for the audiovisual sector.

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**INTRODUCTION**

7. This document contains the response of the National Film Board of Canada (NFB) to Broadcasting Public Notice CRTC 2007-70, *Call for comments on the Canadian Television Fund (CTF) Task Force Report*.
8. The NFB is responding to the Commission's Public Notice 2007-70 in accordance with:
  - a. Section 9 of the *National Film Act*, which states that "the Board is established to initiate and promote the production and distribution of films in the national interest."<sup>1</sup> This is the basic, underlying purpose of the NFB. Among other things, it means giving authentic Canadian expression to Canadian values and perspectives as well as communicating these to Canada and the world.
  - b. Section 9 (d) of the *National Film Act*, which identifies as one of the purposes of the NFB "to advise the Governor in Council in connection with film activities".
9. As Canada's national public film production institution, the NFB produces and distributes distinctive, high quality, culturally diverse audiovisual works that

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<sup>1</sup> In the *National Film Act*, "film" means motion pictures, still photographs, photographic displays, filmstrips and such other forms of visual presentation as consist primarily of photographs or photographic reproductions." The definition therefore encompasses all manner of analog and digital audio-visual material, including television programs.

provide Canadians and people around the world with a Canadian perspective. In 2006-07, the NFB completed 127 original film productions: 75 NFB productions and 52 co-productions with private sector partners. Most of this work occurred in the documentary and animation categories. On average, over each of the last five years, more than 17 of the NFB's coproductions received financing from the Canadian Television Fund (CTF). The proposed changes in the CRTC Task Force Report on the CTF, if implemented, would have a major impact on the Canadian broadcasting system, the Canadian independent production sector, and the volume of NFB coproductions with independent producers that receive CTF financing.

10. The present document contains the NFB's comments on the recommendations of the CRTC Task Force Report on the CTF. A brief history of the CTF is presented in the APPENDIX to the submission that clarifies the CTF's historical role to support the creation of Canadian priority programming. Otherwise, the NFB's comments in the present submission are limited to a review of general principles and do not discuss detailed policy guidelines, governance considerations or administrative issues.

## **THE CTF AND THE CANADIAN BROADCASTING SYSTEM**

11. The transformation from analog to digital formats is the basic technological change that is transforming the audio-visual sector at all levels. The transition to digital formats is creating new exhibition platforms that are reshaping the audio-visual environment and attracting audiences away from analog media. Digital technologies offer more flexibility in conception and development, production, distribution, exhibition and the nature of social engagement through media than do analog technologies.
12. The universal nature of digital media is inducing changes in industrial organization by encouraging horizontal integration, vertical integration and cross-media ownership designed to capture economies of scale and of scope. The universal

nature of digital media also favours the globalization of audiovisual production, distribution and public access. In the absence of an overall national strategy, Canada risks falling behind other countries in establishing a domestic and international presence in the new audio-visual environment. In this new environment, the presence of Canadian voices, including voices oriented toward public service, is essential to the maintenance of Canadian individuality and identity. An innovative and robust audio-visual production industry, including original voices, is essential to ensure the availability of Canadian cultural content to Canadian and international audiences as well as a fundamental component of a healthy Canadian economy. The Canadian Television Fund plays a pivotal role in financing the creation of distinctively Canadian programs.

13. According to Broadcasting Public Notice 2007-53, Canadian television licensees spent \$2.1 billion spent on Canadian programming in 2005-06. In comparison, the CTF was involved in the financing of selected “priority” Canadian television programs budgeted at \$848.5 million in 2005-06, or the equivalent of 40% of all of the spending on Canadian television programming, both priority programs and non-priority programs, by CRTC licensees. Documentaries and children’s programming (which are of particular interest to the NFB) represented 38% of the total disbursements and 66% of the total hours financed by the CTF in 2006-07.<sup>2</sup> As a result of its financing of priority programs, including documentaries, children’s programs and drama, the CTF is an essential element in the maintenance of Canadian individuality and identity within the Canadian broadcasting environment.
14. With regard to new media, as a result of the multiple distribution channels available on the Internet, Canadians are turning to foreign, often U.S., web sites because there is a deficiency of domestic choices. The NFB is therefore in favour of additional funding sources for new media but such funding should be incremental

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<sup>2</sup> The annual reporting year for CRTC licensees ends on August 31 while the reporting year for the CTF ends on March 31. To improve the quality of the comparison, the data cited for the CTF in this paragraph represents the average of the two years 2005-06 and 2006-07 as set out in the CTF’s annual Stakeholders Report.

to the total financing already available and not simply transferred from financing destined to television programming, such as the financing of the CTF.<sup>3</sup>

### **THE CRTC TASK FORCE REPORT ON THE CTF**

15. On February 20, 2007, following a period in which Shaw Communications and Quebecor Media raised questions regarding the governance and decision-making of the CTF, the CRTC announced the creation of a Task Force on the CTF to address “the longstanding concerns regarding the operation and governance of the CTF that were raised by various stakeholders, including Shaw and Quebecor.” According to the Commission’s February 20, 2007 news release, the purpose of the Task Force was “to develop a consensus to resolve the concerns raised by stakeholders or, failing that, to set out possible options to resolve any remaining issues.”
16. Amongst other recommendations, the *Report of the CRTC Task Force on the Canadian Television Fund*, dated June 29, 2007 concludes that changes should be made in order that the CTF direct the funds contributed by broadcasting distribution undertakings (BDUs) to a more flexible and market-oriented funding stream providing further support for Canadian “hits”. It is important to note that audience success is already a criterion for access to a CTF Broadcaster Performance Envelope. For 2007-2008, Broadcaster Performance Envelope calculations are based on four performance factors: Historic Access, Above-Average Licensing, Regional Production Licensing, and Audience Success.
17. This recommendation is predicated on the assumption that the BDU contributors should have a more direct role in determining the way in which their contributions are used. However, this does not appear to be the original intention of the Broadcasting Act and this apparent shift in interpretation needs to be discussed publicly.

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<sup>3</sup> During her opening address for the Banff World Television Festival on June 10, 2007, Heritage Minister Bev Oda pledged a \$29-million renewal of the Canada New Media Fund for two years.



18. According to Broadcasting Public Notice CRTC 2007-70, “It is the preliminary view of the Commission that it is in agreement with the recommendations of the CRTC Task Force Report on the CTF. Accordingly, it intends to implement those recommendations that fall within its powers.”
19. The NFB considers that the current process is not adequate to allow a full public discussion of the recommendations of the CRTC Task Force Report on the CTF. Among other things:
  - The Task Force Report’s recommendations were based on private meetings with selected parties (including the NFB) and conducted on a confidential basis.
  - There is no public record of the content of these meetings.
  - On the basis of these confidential meetings, the Task Force was unable “to develop any form of consensus on the major issues”.
  - There is no apparent rationale underlying the recommendations of the CRTC Task Force Report and, although some submissions in the current process may undertake to provide some sort of rationale, there will be no further opportunity for interested parties to comment on such a rationale, if it is provided.
  - The contribution agreement between Canadian Heritage and the CTF in regard to Canadian Heritage’s contribution of \$120 million annually is referenced on several occasions in the Task Force Report and is a central element in evaluating the overall effectiveness of the CTF’s objectives – but the agreement was not placed on the CRTC’s public file and is not a public document.
20. The CRTC Task Force on the CTF concedes there was no consensus on the appropriate objectives for the Fund, on the influence that BDU contributors should

have on defining the mission and direction of the Fund, or on the CBC envelope within the Fund. The Task Force then proceeds to propose a series of changes, including the creation of a private sector market-oriented funding stream. However, it is not at all clear which objectives in section 3 of the *Broadcasting Act* would be clearly served by implementing the Task Force Report's recommendation to establish such a separate funding stream within the CTF from BDU funding.

21. Article 3 (1)(b) of the *Broadcasting Act* says that the Canadian broadcasting system “makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty.” The contribution of BDUs to the CTF is intended to finance the creation and presentation of Canadian programming, as required by the *Act*. The NFB considers that any CRTC-directed contribution to the CTF should serve to finance implementation of the objectives of section 3 of the *Broadcasting Act*, including that of making “maximum use of Canadian and other resources [emphasis added.]” The *Broadcasting Act* does not make any particular reference to BDUs in this regard, other than to say that “each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming”.

## CONCLUSION

22. The universal nature of digital media favours the globalization of audiovisual production, distribution and public access by Canadians. The unregulated sector is pervasive and includes theatrical feature film distribution and exhibition, the Internet, and mobile video services that provide wireless customers with real-time access to audio-visual content on wireless handsets. It is therefore imperative that more Canadian content be produced, distributed and marketed to ensure that Canadians have access to their own voices. The presence of Canadian voices, including voices oriented toward public service, is essential to the maintenance of

Canadian identity. The Canadian Television fund plays a fundamental role in attaining this objective.

23. To justify a major restructuring of the CTF, the CRTC Task Force Report says that “the Canadian broadcasting system operates in an increasingly competitive global environment” and that “the broadcasting system will benefit from a greater focus on funding for Canadian programs that demonstrate support from Canadian viewers”, without any further explanation. It is worth repeating that audience success is already one of the main criteria of the CTF’s broadcaster performance envelope stream.
24. Public hearings would enable discourse and debate of Task Force Report’s recommendations and ensure their consideration within the context of the objectives of the *Broadcasting Act* and in relation to two recent CRTC reports, the CRTC’s December 14, 2006 report pursuant to section 15 of the *Broadcasting Act*, “The Future Environment Facing the Canadian Broadcasting System” and to Broadcasting Public Notice CRTC 2007-53, *Determinations regarding certain aspects of the regulatory framework for over-the-air television*.
25. Finally, in the new communications-based world of tomorrow, governments must find ways to provide more financing to underwrite research, development and production in the new audio-visual technologies. Any review of audio-visual content funding should be undertaken within the larger context of an overall Government strategy for the audiovisual sector.

**APPENDIX**  
**HISTORY OF THE CTF**

26. The CTF originated with the announcement of the creation of a Cable Production Fund in Public Notice CRTC 1993-73, *Structural Public Hearing*. According to Public Notice 1993-73, the Commission was satisfied that its jurisdiction to require each element of the broadcasting system to contribute to Canadian programming was clear and, “accordingly, the Commission, by majority vote, intends to make certain changes to its cable rate regulation mechanisms, the purpose of which is to provide significant financial support for Canadian programming. Specifically, the Commission intends to link contributions by cable licensees to a production fund to the capital expenditure (CAPEX) component of the cable fee structure.” In other words, initially, contributions by BDUs to the Cable Production Fund voluntary were voluntary.
  
27. The Cable Production Fund was initiated by Public Notice CRTC 1994-10, *The Production Fund*, that set out the basic eligibility requirements for financing from the Fund. These included a definition of the eligible categories of programs, an emphasis on drama, and a minimum requirement of 8 CAVCO points.
  
28. In its convergence report, entitled *Competition and Culture on Canada’s Information Highway: Managing the Realities of Transition*, May 19, 1995, the Commission said that all new licensed distribution undertakings should make a contribution to the development and production of Canadian programming. This general conclusion was given effect in Public Notice 1996-69, *Call for comments on a proposed approach for the regulation of broadcasting distribution undertakings*, wherein the Commission proposed regulations to make BDU contributions mandatory. To justify its regulatory approach, the CRTC said,

Broadcasting distribution undertakings are important participants in the Canadian broadcasting system and play a crucial role in achieving the objectives of the Act.

The Act stipulates in paragraph 3(1)(e) that "each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming". The Commission has determined that all distributors should contribute a minimum of 5% of their gross annual revenues derived from broadcasting activities to achieve this fundamental objective.

29. In September 1996, the Minister of Canadian Heritage announced the creation of the Canada Television and Cable Production Fund (CTCPF) uniting Telefilm Canada's Broadcast Fund and the Cable Production Fund. Consequently, in Public Notice CRTC 1996-159, *Transfer of oversight of the Cable Production Fund (CPF)*, the Commission announced its intention to transfer oversight of the Cable Production Fund to the Ministry of Canadian Heritage. Public Notice 1996-159 said the new Fund would be supplemented by supplementary government funding representing \$250 million over a three-year period commencing in fiscal year 1996-97. The new government funding would be split between Telefilm's Equity Investment Program (EIP) and the Licence Fee Program (LFP), the latter of which had hitherto been administered by the Cable Production Fund.
30. In transferring its responsibility for oversight of the Cable Production Fund to Canadian Heritage in Public Notice 1996-159, the Commission identified three considerations:
  - The continued representation on the CTCPF Board of a wide range of cultural and financial interests in which "a balance of views and a wide range of cultural interests and financial concerns will continue to be represented."
  - The absence of any need for a duplication of supervisory roles. "Further, by having one supervisory body, it would be easier to ensure that one set of guidelines is established in respect of both sources of funding for the Licence Fee Program."

- The need to ensure that the interests of the public and of cable subscribers continue to be represented. “The Commission is satisfied that these interests will be safeguarded through the presence of the Department of Canadian Heritage on the Board of the CTCPF and through the Department's involvement with the Contribution Agreement.”
31. As set out in Public Notice 1997-150, *Broadcasting Distribution Regulations*, the Commission’s revised BDU Regulations required that all Class 1, Class 2 and DTH licensees make pre-determined contributions to independent production funds for the development of Canadian programming as of January 1, 1998. The CTCPF was renamed the Canadian Television Fund (CTF) in 1998. According to the *Broadcasting Distribution Regulations*, 80% of BDU contributions must be directed to the CTF and 20% to one or more approved independent production funds.
  32. For 1999-2000, the Board of Directors of the CTF established new guidelines for access based on two principles: making requirements more Canadian and making decisions more market focused. Consequently, a 10/10 CAVCO point requirement was introduced to place greater emphasis on distinctively Canadian programs.
  33. For the year 2006-07, Telefilm assumed the administration of all CTF disbursements (both licence fee top-ups and equity investments) under the direction of the Board of Directors of the CTF. In the current year, 2007-08, the CTF expects to receive \$150 million from BDUs, \$120 million from Canadian Heritage, \$3.5 million in interest payments and \$2.1 million from (investment) recoupment.

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