Writers Guild of Canada

May 8, 2014 **Filed Electronically**

Mr. John Traversy
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Traversy:

Re: Broadcasting Notice of Consultation CRTC 2014-162

Application by DHX Media Ltd. (DHX), on behalf of 8504601 Canada Inc. (8504601 Canada), for authority to effect a change to its ownership and effective control through a transfer of shares to DHX (application 2013-1804-8); and application to amend the broadcasting licence for Family Channel (application 2013-1818-9)

1. The Writers Guild of Canada (WGC) is the national association representing more than 2,200 professional screenwriters working in English-language film, television, radio, and digital media production in Canada. The WGC is actively involved in advocating for a strong and vibrant Canadian broadcasting system containing high-quality Canadian programming. While the WGC's mandate is to represent our members, in advocating a strong Canadian broadcasting system that offers Canadians a variety of programming, we also play a role in balancing competing interests in the broadcasting system.

2. The WGC **supports** the above-referenced applications, subject to the following comments and concerns.

Independent Production

3. The WGC's primary concern regarding the applications is the request to amend the broadcasting licence for Family Channel, as follows:

   - amend its condition of licence pertaining to the proportion of expenditures to be made to independent producers for the production of programs of national interest, in order to reduce the minimum requirement from 75% to 60%.

   - add the following condition of licence:

   > The licensee may exhibit programming that has been produced by the licensee or by a person related to it, provided that in each year, the amount of such programming, exclusive of filler programming, does not exceed 40% of its overall Canadian programming schedule.

A Member of the International Affiliation of Writers Guilds

366 Adelaide Street West
Suite 401
Toronto, Ontario M5V 1R9

Tel 416 979-7907
1-800-567-9974
Fax 416 979-9273
info@wgc.ca www.wgc.ca

4. The policy rationale for supporting independent production is traditionally viewed as to support a diversity of voices and expression.[1] Its importance to the Canadian broadcasting system is enshrined in section 3(1)(i) of the *Broadcasting Act*, which states that: "the programming provided by the Canadian broadcasting system should: (v) include a significant contribution from the Canadian independent production sector". The Commission has historically interpreted "significant contribution" to mean 75% of certain types of programming in certain circumstances—75% of programs of national interest (PNI) for designated groups currently[2], and 75% of "priority programming" for over-the-air broadcasters prior to the group-based licensing policy[3]. The "75% rule" for independent production has not been applied unvaryingly in all cases—it has traditionally been applied to genres deemed of particular importance (and, due to their higher cost, at particular risk) in the broadcasting system, such as drama and documentary, and some broadcasters have been permitted greater flexibility while others, such as pay channels[4], have been permitted little or none at all. But when the Commission has sought to strike a balance between independent and in-house/broadcaster-affiliated production, it has typically done so with a 75/25 ratio, which the WGC believes is generally appropriate.

5. That said, the WGC understands from the Canadian Media Production Association (CMPA) that DHX will commit to a condition of licence for Family Channel that at least 60% of the expenditures for PNI must be made to an independent production company for the acquisition or commissioning of <u>original, first-run</u> Canadian programming. The WGC understands that this would form part of the following combination of conditions of licence for Family Channel: 1) a minimum PNI expenditure requirement of 16% of the previous year's gross revenues; 2) a minimum of 60% of that PNI expenditure requirement going to independent production; and 3) the entirety of that amount to independent production going to original, first-run Canadian programming. The WGC considers that this package of commitments, considered together, would benefit the creation of Canadian programming and the broadcasting system as a whole.

6. The WGC considers, however, that these conditions of licence, while appropriate for DHX as an independent broadcaster, should not set a precedent for all other broadcasters, particularly for those in a designated group. The WGC believes that the Commission should set licence terms and conditions on a case-by-case basis for independent broadcasters, and wishes to stress that the proposed condition of licence for DHX includes a requirement for original, first-run programming that other broadcasters may not have.

<u>Tangible Benefits Package</u>

7. The WGC supports the tangible benefits package proposed in the DHX applications.[5] In particular, we applaud the initiatives for screenwriting and development. We are pleased to see the importance of writing recognized as a key pillar of a healthy and vibrant broadcasting system. We support the inclusion in the benefits package of the "Family and Children's Development Fund" of $1.5 million, to be administered by the Canada Media Fund, and the "From Script to Screen" initiative, valued at $600,000 and to be administered by the Canadian Film Centre.

<u>Access to Data and Reporting</u>

8. The WGC would like to take this opportunity to again request that the Commission make publicly available certain information from the broadcast sector, such as PNI spending, on a service-by-service basis. In the present application, the WGC was unable to assess DHX's proposal for a 16%

[1] See *Blockbusters and Trade Wars: Popular Culture in a Globalized World*, Peter S. Grant and Chris Wood (2004), pg. 275-281
[2] Broadcasting Regulatory Policy CRTC 2010-167, paras 93-95
[3] E.g. Broadcasting Regulatory Policy CRTC 2008-4, para 147
[4] *Pay Television Regulations, 1990*, s. 3(1)(f)
[5] The WGC relies on the Commission's expertise in determining the appropriate value of the transaction.

PNI condition of licence for Family Channel on the merits of the individual service, because we do not know what Family's historical PNI spending was. The PNI level for Family Channel was last determined when Family was part of the Astral group, with 16% being Astral's overall group PNI requirement. We and other stakeholders, not having service-by-service information on historical spending, could not determine what the historical PNI amount for Family itself was, nor could stakeholders determine how much of that PNI was historically spent on original, first-run programming versus repeats or Canadian library content. In this example, this information would have been very useful in assessing DHX's proposed conditions of licence for the services subject to this application.

9. The WGC again reiterates its request to provide this kind of information publicly for all licensed programming undertakings, at the individual service level. It is very difficult for the WGC and other stakeholders to formulate and present effective policy proposals to the Commission in the absence of such data.

<u>Conclusion</u>

10. We thank the Commission for the opportunity to provide our comments related to this transaction.

Yours very truly,

Maureen Parker
Executive Director

c.c.: National Council, WGC
Mark Gosine, Executive Vice President - Legal Affairs, General Counsel, Corporate Secretary, DHX Media Ltd. (mark.gosine@dhxmedia.com)

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