

Appendix “B”

DRAFT

Direction to the CRTC (Private Programming Undertakings) Order

BROADCASTING ACT

Order Issuing Directions to the Canadian Radio-Television and Telecommunications Commission Respecting Policy for Private Programming Undertakings

Whereas all classes and types of programming undertakings play a significant but different role in the implementation of the broadcasting policy for Canada set out in subsection 3(1) of the Broadcasting Act;

Whereas Section 3(1)(s) of the Broadcasting Act states:

- (s) private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,
 - (i) contribute significantly to the creation and presentation of Canadian programming, and
 - (ii) be responsive to the evolving demands of the public;

Whereas Section 3(1)(i)(v) of the Broadcasting Act states that the programming provided by the Canadian broadcasting system should include a significant contribution from the Canadian independent production sector;

Whereas, pursuant to Order in Council PC 2017-1195, the Canadian Radio-television and Telecommunications Commission issued a report on [Date] 2018, on the following matters:

1. the distribution model or models of programming that are likely to exist in the future;
2. how and through whom Canadians will access that programming;
3. the extent to which these models will ensure a vibrant domestic market that is capable of supporting the continued creation, production and distribution of Canadian programming, in both official languages, including original entertainment and information programming;

Whereas the report issued by the Canadian Radio-television and Telecommunications Commission confirmed that:

1. an increasing amount of programming is made available through online and mobile platforms and Canadians are increasingly accessing that programming through these platforms;
2. programming and distribution undertakings are adapting to this new competitive environment in innovative ways; and,
3. private programming undertakings are suffering from significant erosion in their revenue base which is jeopardizing their ability to contribute to the creation and presentation of Canadian programming;

Whereas a strong domestic market is needed in a global environment;

Whereas there should be a strong support, exhibition and distribution model for Canadian programming, as technology evolves;

Whereas the Canadian Radio-television and Telecommunications Commission should ensure the continuing integrity of the Canadian broadcasting system through implementation of the broadcasting policy set out in subsection 3(1) of the [*Broadcasting Act*](#);

Whereas, the Minister of Canadian Heritage has, in accordance with subsection 7(6) of the [*Broadcasting Act*](#), consulted with the Canadian Radio-television and Telecommunications Commission;

Whereas, in accordance with paragraph 8(1)(a) of the [*Broadcasting Act*](#), notice of the proposed *Order Issuing Directions to the Canadian Radio-Television and Telecommunications Commission Respecting Policy for Private Programming Undertakings*, substantially in the form annexed hereto, was published in the [*Canada Gazette*](#) Part I on [Date] and interested persons were invited to make representations to the Minister of Canadian Heritage with respect to the proposed Order;

And whereas, in accordance with paragraph 8(1)(b) of the [*Broadcasting Act*](#), a copy of the proposed Order was laid before each House of Parliament and forty sitting days of Parliament have since expired;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, pursuant to section 7 and subsection 8(3) of the [*Broadcasting Act*](#), is pleased hereby to make the

annexed *Order Issuing Directions to the Canadian Radio-Television and Telecommunications Commission Respecting Policy for Private Programming Undertakings*.

Short Title

1. This Order may be cited as the *Direction to the CRTC (Private Programming Undertakings) Order*

Interpretation

2. In this Order,

broadcasting means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place; (*radiodiffusion*)

CRTC means the Canadian Radio-television and Telecommunications Commission; (*CRTC*)

licence means a licence to carry on a broadcasting undertaking issued by the Commission under this Act; (*licence*)

programming undertaking means an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus; (*entreprise de programmation*)

private programming undertaking means a programming undertaking whose license or CRTC authorization is held by an eligible private Canadian corporation; (*entreprise de programmation privé*)

radio waves means electromagnetic waves of frequencies lower than 3 000 GHz that are propagated in space without artificial guide; (*ondes radioélectriques*)

Directions

3. The CRTC is directed to promote, through conditions of license and regulations, a sustainable market for private programming undertakings by adopting a new regulatory framework that would apply more equitably to all platforms, traditional, online and mobile, that are delivering television.

4. The CRTC is directed to re-evaluate and reconsider local and national ownership limits and levies on transactions with a view to encouraging efficient operating structures among private programming undertakings and recognizing competition from, and the increasing market share of, foreign online services.

5. The CRTC is directed to ensure, by appropriate means, that, with respect to the operation of a private programming undertaking,

- a) required contributions by the undertaking to the creation and presentation of Canadian programming more appropriately reflect its financial and other resources;
- b) the undertaking is granted the greatest possible flexibility in determining the genres of Canadian programming it chooses to acquire and exhibit;
- c) that utilizes radio waves in whole or in part for transmission of programs and reception by the public (a local TV station), has local news obligations that reflect the capacity of the local market to support local news plus any government or CRTC mandated support, and ensures that in any market served by two or more local TV stations, at least one local TV station provides news;
- d) the undertaking is not prevented from or impeded in acquiring or exhibiting Canadian programming from any source; and,
- e) key supporting regulatory mechanisms, such as simultaneous substitution and restrictions on the entry of foreign discretionary services, remain in place.

6. The CRTC is directed not to refuse the transfer of the ownership or control of a programming undertaking for the sole reason,

- a) the national market share of television assets (on acquisition) exceeds 45%, defining the relevant market to include OTT services; and,
- b) one person will own more than one conventional television station in one language in one market or more than 2 AM or 2 FM commercial radio stations in one language in one market.

7. The CRTC is directed not to require tangible benefits when approving changes to the ownership or effective control of commercial radio and television programming undertakings including conventional, pay and specialty undertakings.

8. The CRTC is directed not to refuse to issue or renew a licence to an applicant to carry on a commercial television programming undertaking for the sole reason that,

- a) the applicant proposes to spend less than historic levels in the percentage of its previous year's gross revenues devoted to Canadian Program Expenditures;
- b) the applicant does not propose to acquire a minimum fixed portion of Programs of National Interest from independent producers; or,
- c) the applicant does not commit to specific expenditures on Programs of National Interest.

9. The CRTC is directed to ensure that the Canadian Broadcasting Corporation, commensurate with its relatively greater resources, plays a greater role in:

- a) the provision of local news in markets not served by private programming undertakings; and,
- b) including a significant contribution from the Canadian independent production sector.