
**Submission of Astral Media Inc. to the
Competition Policy Review Panel**

January 11, 2008

I. Executive Summary

- Astral submits that no changes are required to the current investment rules in the broadcasting sector.
- The broadcasting legislative and regulatory framework in Canada, including the investment rules applicable to broadcasters, has created the conditions necessary to establish a viable domestic broadcasting industry, providing Canadian radio and television channels through which distinctively Canadian programs as well as content from foreign sources are scheduled, promoted and presented in a manner that meet the needs and preferences of Canadian audiences. The end product is in essence a *domestic* good geared for *domestic consumption* to ensure the maintenance of a vibrant Canadian culture and identity.
- The objectives of “competition”, investment flows and export markets are not *per se* the focus of the policy objectives in Canadian broadcasting.
- The broadcasting investment rules are key measures that are designed to achieve domestic public policy goals for the broadcasting industry. They have fostered a highly competitive and commercially successful domestic broadcasting sector in Canada which market forces alone could not have brought about.
- The current broadcasting rules and policies, including the investment rules applicable to broadcasters, are designed to create a distinct Canadian program rights market, a key condition precedent of a viable economic Canadian broadcasting system.
- Under the current rules, the Canadian broadcasting sector continues to provide the world’s broadest programming choices for Canadians and has resulted in a highly competitive broadcasting industry, one of the desired outcomes articulated in the Consultation Paper.
- Changes in the investment rules would risk the unraveling of a nuanced and sophisticated legislative and regulatory framework that has been designed to achieve specific domestic outcomes.

- In the current “convergence” environment, many Canadian media companies are involved in broadcast programming, broadcast distribution and telecommunications common carrier activities. Therefore, there have been suggestions that any changes to the investment rules for telecommunications common carriers should be extended to broadcasting distributors (“BDUs”).
- Proposals to extend liberalized investment rules to BDUs ignores the complexity of the issue. BDUs are not common carriers: they actively control or influence the content offered to subscribers.
- Liberalization of the current rules governing non-Canadian control over BDUs could easily result in an unacceptable level of influence by non-Canadians over the Canadian broadcasting system end product.
- The issue is more complex than simply permitting media companies to govern themselves through separate and distinct corporate entities for broadcasting programming and BDUs.
- If liberalized BDU ownership rules are recommended, a limitation to prevent a non-Canadian who acquires control of a BDU from acquiring an ownership interest in the BDU’s affiliated programming service is warranted. This minimum safeguard would mitigate the impact of foreign BDU control on Canadian programming operations.

II. Introduction

Astral Media Inc. (“Astral”) is pleased to provide these comments to the Competition Policy Review Panel in response to the Consultation Paper published by the Panel on October 30, 2007. Astral supports the comments filed by the Canadian Association of Broadcasters (CAB) and will respond to certain questions and address specific areas of policy related to broadcasting on which the Panel is seeking input from interested parties.

Astral Media is the country's largest broadcaster of English- and French-language pay and specialty television services and is currently involved, on its own or with partners, in 20 licensed properties.

Astral Media is also Canada's largest radio broadcaster. The Company owns 82 radio stations in 8 provinces and features some of the industry's best known brands: Énergie, RockDétente, boom fm, EZ Rock, The Mix and The Bear.

Astral Media Outdoor is one of Canada's most dynamic and innovative outdoor advertising companies with over 7,500 faces located in the largest markets in Québec and Ontario.

Astral Media also operates over 70 websites with a high level of interactivity and a variety of different products and services on-line. Astral Media employs over 2,800 people at its facilities in Montréal, Toronto, and a number of cities throughout Canada.

III. Main Submission

1. The Panel's focus on Investment Rules in Specific Industry Sectors

The Consultation Paper attributes Canada's record of economic success to the "openness to foreign investment" and it identifies the goal of fostering the development of Canadian business and maximizing opportunities for Canadians to capitalize on global trade, investment and competition. Based on this relatively broad and general objective, the Panel concludes that its mandate is "to make recommendations to the government on ways to establish the domestic conditions that both encourage Canadian firms to be active and aggressive investors at home and abroad, and maximize Canada's attractiveness as a destination for new investment and talent".

The Panel's mandate includes terms of reference to examine the investment restrictions that are currently in place on foreign and domestic ownership of firms in specific industry sectors, among them telecommunications and broadcasting.¹ The stated focus of the Panel's inquiry is whether there are "alternative and equally effective mechanisms" to the current investment and/or foreign ownership restrictions in these sectors "that have less impact on Canada's competitiveness but nevertheless meet the objectives of the various sectoral investment regimes currently in place".

Three questions have been raised by the Panel with respect to the impact of sectoral investment regimes:

1. What changes, if any, are required to Canada's sectoral investment regimes to minimize or eliminate negative impacts on Canada's competitiveness?
2. What have been the impacts of these investment regimes on productivity and competitiveness in the specific sectors?
3. Are there alternative mechanisms that would achieve the non-economic policy objectives of the sector while also ensuring maximum competitiveness of firms operating in the sector?

¹ See Chapter 3 of the Consultation Paper, "Sectoral Investment Regimes"; see also Appendix 2. The Consultation Paper focuses on sector-specific legislation and/or policies on foreign investment in five different sectors.

2. The current investment rules are integral to Canada’s successful broadcasting industry

Astral submits that no changes are required to the current investment rules in the broadcasting sector as the reasons for such rules remain valid. The broadcasting legislative and regulatory framework in Canada, including the investment rules applicable to broadcasters, has been established over the last five decades to reflect the underlying strategic and cultural importance of the broadcasting sector.

That framework has created the conditions necessary to establish a viable domestic broadcasting industry, providing Canadian radio and television channels through which distinctively Canadian programs as well as content from foreign sources are scheduled, promoted and presented in a manner that meet the needs and preferences of Canadian audiences. The end product is in essence a *domestic* good geared for *domestic consumption* to ensure the maintenance of a vibrant Canadian culture and identity.

The objectives of “competition”, investment flows and export markets are not *per se* the focus of the policy objectives in Canadian broadcasting. In fact, the very “restrictions” identified by the Panel are in reality key measures that are designed to achieve domestic public policy goals for the broadcasting industry.

The above dynamic has been accurately characterized in the Consultation Paper, which makes the following observations:²

- Investment restrictions and controls in the telecommunications and broadcasting sectors were introduced to promote important aspects of the economy deemed essential to Canada’s sovereignty, cultural identity, national security and overall economic well-being.
- Restrictions in some cases were imposed to deal with a perceived inability of market forces to support the development of domestic activity.
- Each sectoral regime is unique and is based upon a distinct policy rationale.

² See Consultation Paper, pages 20; 43.

- In the specific case of the broadcasting sector, there are limitations on the degree to which market forces alone can ensure the provision of a range of Canadian news and entertainment programming in the broadcasting sector.
- The ownership rules for broadcasters and broadcasting distribution undertakings (“BDUs”) ensure that Canadian programming “is made from a Canadian perspective and with Canadian audiences in mind.”

It is precisely the above considerations that provide the rationale for the investment rules in the broadcasting sector. This rule along with a multivariate set of policies- the key elements of which are summarized in Appendix “A” to our submission- have fostered a highly competitive and commercially successful domestic broadcasting sector in Canada. It has enabled our broadcasting system to achieve successes where market forces alone could not guarantee outcomes, given the disparate strengths of the contiguous Canadian and U.S. broadcasting markets.

In the aggregate, these rules and policies have a common (if unstated from a legislative standpoint) objective: to create a distinct Canadian program rights market. This territorial objective is the key condition precedent of a viable economic Canadian broadcasting system. This not only produces very significant economic benefits but also ensures that Canadian audiences benefit from what may well be the broadest choice set of programming in the world, at prices that may be the lowest. Consider the following:

- The private broadcasting sector is a competitive and economically significant industry, with over 150 licensed Canadian conventional television stations and over 170 pay and specialty television services in operation, earning more than \$5 billion in revenues while the private commercial radio sector earned over \$1.4 billion in 2005/06. More than 23,000 Canadians are currently employed in the broadcasting sector.
- The mix of popular foreign programming made available for acquisition by Canadian broadcasters under the benefit of distinct Canadian rights market has enabled broadcasters to cross-subsidize the creation of Canadian television programming, in a magnitude of \$1.5 billion in investments in Canadian programming in 2005/06.

- Private conventional, pay and specialty television broadcasters make substantial commitments through license fees to fund independently produced Canadian television programming. This has contributed to a vibrant television and film production sector and Canadian talent which bring a unique Canadian sensibility and perspective to choices about content.
- Private radio stations play a major role in the success Canadian musical and vocal talent, with substantial financial contributions through copyright payments and Canadian talent development expenditures as well as through significant levels of airplay of Canadian artists.
- Canadian broadcasters compete for advertisers, viewers and programming. Despite a small number of integrated players, every broadcast channel available to Canadian radio listeners, television viewers and subscribers of BDUs competes against every other channel, providing consumers with a broad choice set. This choice set continues to be robust even in an increasingly consolidated environment.
- Notwithstanding the increasing availability of foreign programming services on Canadian distributors, Canadian television services have increased their market share. The share of total viewing attracted by Canadian television programming services increased from 75.2% in 2002/03 to 78.7% in 2005/06.
- Canadian consumers have access to an unparalleled mix of foreign and domestic entertainment and information choices. No other jurisdiction provides the extent of diversity of access in terms of content. And this broad spectrum of programming is made available to subscribers, regardless of the mode of broadcast distribution. On a relative basis to the United States, Canadian BDUs offer consumers less expensive access to a broader set of programming choices.

More specifically, the Canadian-ownership and control rules provide the necessary conditions to enable the creation of distinct Canadian content that reflects and promotes Canadian values, stories and perspectives. It ensures the following outcomes:

- Decisions relating to all aspects of content: promotion, scheduling and packaging, reflect a sensibility that is more attuned to Canadian cultural values;

- It supports and encourages the creation of a distinct Canadian rights market by eliminating the incentive that a strategic foreign owner of a Canadian broadcaster and/or BDUs would have to create a continental or North American rights market;
- It precludes the incentive on the part of a U.S.-based media company to lever its position to “collapse” or “converge” the disparate regulatory and legislative regimes governing each jurisdiction, which may place further pressure on the existing Canadian broadcasting regulatory framework.³
- Canadian owners have to respond to only one set of laws, regulations and practices, the enforcement of which is made easier because they and their assets are based in Canada.

In view of the foregoing, it is not necessary to change the current investment rules in the broadcasting sector. On the contrary, such changes would risk the unraveling of a nuanced and sophisticated legislative and regulatory framework that has been designed to achieve specific domestic outcomes. Therefore, any perceived gains in productivity and/or competitiveness must take full account of the Canadian broadcasting, legal and regulatory framework as well as the broader Canadian public interest to maintain, support and promote Canadian cultural values.

In that regard, the Panel has already put forward a prudent approach by tempering the unqualified linkage between investment rules and competitiveness by noting that a balance must be struck in policy formation for open economies like Canada’s by capitalizing on opportunities that globalization provides while at the same time “ensuring that the national interest is accorded appropriate weight”.⁴ Astral concurs with such an approach.

³ For example, the U.S. and Canada employ distinct and disparate regimes under which programming services secure access. In the U.S. market, in view of the scale economies, programming services are not guaranteed access but rather negotiate access onto BDU platforms and, in many cases, secure access through payments flowing from programmers to broadcast distributors. Such arrangements are justified by the scale differences and prospective advertising revenues that can be earned in the larger scale U.S. distribution market. In Canada payments flow from the BDU to the programming service, providing additional financial capacity to underwrite additional production. Another common practice among vertically integrated BDU-programming services particularly in the U.S. is to confer exclusive distribution to affiliated programming services; in this scenario, U.S. BDU customers are not able to access unrelated programming services without subscribing to an additional BDU platform such as satellite. This model has been expressly rejected under the Canadian regulatory model pursuant to which access rules ensure that each and every Canadian programming service is made available to all platforms.

⁴ See Chapter 3, “Sectoral Investment Regimes”; see also Appendix 2. The Consultation Paper focuses on sector-specific legislation and/or policies on foreign investment in five different sectors.

Broadcasting is a relatively mature industry with less need for investment flows relative to other areas of the communications sector, such as new emergent wireless applications. This relative need for capital infusion was specifically identified in the recent report of the Telecommunications Policy Panel Review, which noted that the approach to the liberalization of ownership rules should take into account other public policy considerations, including the state of supply, existing regulation and general economic circumstances.⁵

The end of regulation in an IP world?

It has been argued that domestic measures to protect broadcasting markets are no longer applicable in the new digital environment, which is characterized by the proliferation of Internet Protocol (IP) technology, an essentially borderless technology available over ubiquitous networks. In this environment, territorial protection has less relevance or is less achievable.

However, the evidence is to the contrary. To date, several developments have taken place in which program rightsholders have sought to replicate a territorial rights paradigm even over digital on-line networks, including the Internet. Practices such as “geo-traffic management” have been applied in an Internet context to ensure that Internet users in specified jurisdictions receive content tailored for their market, which may or may not be available depending on its exclusive acquisition by other types of content providers. For example, U.S. network product cannot be accessed by Internet subscribers in Canada.

For high-value audiovisual product, these measures are necessary in order to have an orderly marketplace of the exploitation of rights. These examples demonstrate the “axiom” that what has been deemed impossible due to technological change often turns out to be achievable, in view of the magnitude of what is at stake. Clearly, rightsholders have the inclination and the ability to invest in the necessary technological measures to protect their investment and maximize the exploitation revenues from such investments.

Finally, Astral submits that the Panel should be mindful of the fact that investment rules and other regulatory measures to ensure a distinct program rights market are not

⁵ See Report of the Telecommunications Policy Review Panel, Afterword, page 11-18. This point was raised in the Panel's Report in the context of a suggested approach to foreign ownership rules in the Canadian telecommunications sector. Astral submits that this approach is even more appropriate for the broadcasting sector, for the reasons noted herein.

exclusive to Canada. Canadian broadcasters enjoy limited opportunities in export markets to establish investments in view of similar restrictions in other jurisdictions. For example, the U.S. *Communications Act* of 1934 allows the Federal Communications Commission (FCC) to deny radio licences to corporations with greater than 25-percent foreign investment (if the public interest is served by this refusal). As the Report of the Telecommunications Policy Review Panel noted, in the age of wireless communications, this public interest safeguard has a very broad application. In addition, the U.S. government retains considerable discretion over the review of all foreign direct investment for purposes of protecting national security.⁶

If other jurisdictions have elected to preclude unfettered access to their markets in the form of investment restrictions and other measures, in Astral's view, policy makers in Canada should approach this issue with caution and prudence.

⁶ Report of the Telecommunications Policy Review Panel, 2006, Afterword, page 11-24.

3. The impact of changes to investment rules in a convergence environment

(i) *An integrated environment*

As a result of vertical and horizontal ownership consolidation and due to technological “convergence”, many Canadian media companies are involved in broadcast programming, broadcast distribution and telecommunications common carrier activities.⁷ The table below illustrates the degree of integration among the major media players in Canada.

Activity	CTV-globemedia	Bell/ExpressVu	Quebecor/Videotron	Shaw/Star Choice/Corus	Rogers	Cogeco	CanWest Global/Alliance	Astral
Radio	✓			✓	✓	✓	✓	✓
Television	✓		✓	✓	✓	✓	✓	✓
Broadcast Distribution		✓	✓	✓	✓	✓		
Production Companies	✓		✓	✓				
Newspapers	✓		✓				✓	
Magazines			✓		✓		✓	
Film/TV Distribution			✓				✓	
Internet		✓	✓	✓	✓	✓		
Telephony, Networking		✓	✓	✓	✓	✓		
Wireless		✓			✓			

With respect to technological convergence, BDUs are increasingly employing their distribution platforms for IP-based telecommunications services (for example, VOIP products). Moreover, cable operators are using their cable platforms to provide IP broadband connectivity to subscribers. From a marketing standpoint, broadcasting,

⁷ The impact of convergence has been amplified by the advent of Internet protocol (IP) networks which have permitted many types of applications to be distributed over a single network and capable of handling every kind of application including voice data, audio and video.

Internet and telecom (telephony) services are now being bundled as a single product offering.

In this new environment, there has been an increasing focus on BDUs as telecommunications common carriers.⁸ These developments have, in turn, raised several pressures on the current relationship between telecommunications and broadcasting policy and regulation. However, when telecommunications services are provided by companies that are licensed as BDUs, the ownership and control of their facilities is subject to the provisions of the *Broadcasting Act*, not the *Telecommunications Act*. Thus, even if the *Telecommunications Act* were amended to permit greater foreign ownership or control of Canadian telecommunications common carriers, these companies would remain subject to the foreign ownership and control provisions of the *Broadcasting Act*.

It is argued that this could potentially disadvantage their shareholders, in terms of the benefits that might result from a transfer of ownership to a foreign investor, and weaken their competitive position in the Canadian telecommunications marketplace. Therefore, there have been suggestions that any changes to the investment rules for telecommunications common carriers should be extended to BDUs.

- (ii) *BDUs are the “crosswalk” between the telecommunications and broadcast sectors with respect to public policy*

Astral acknowledges that telecommunications and broadcasting services may be offered by single integrated companies. However, it must be underscored that these activities fall under very distinct public policy frameworks and face different challenges. In today’s convergence environment, the key role that BDUs have traditionally played in meeting the cultural objectives set out in the *Broadcasting Act* has been understated.

Astral’s concern is that proposals for ownership liberalization over ‘carriage’, namely to extend liberalized investment rules to BDUs, ignores the complexity of the issue. Unlike a common carrier, which is prohibited under the *Telecommunications Act* from controlling the content or influencing the meaning or purpose of telecommunications carried by it to the public⁹, one of the central roles of a BDU is to *actively* control or influence the content that it offers to subscribers: a BDU makes critical decisions about

⁸ A role recognized by the Commission beginning in Telecom Decision CRTC 96-1.

⁹ *Telecommunications Act* (Canada), section 36.

which services to market, promote and offer to its subscribers, as well as the appropriate level of resources that should be devoted to such marketing and promotion. It also negotiates vital wholesale prices and sets program packages, sets retail prices and program promotion channels.¹⁰

Therefore, the liberalization of the current rules governing non-Canadian control over BDUs could easily result in an unacceptable level of influence by non-Canadians over the broadcasting system. The potential for influence is magnified by the fact that under the current rules, non-Canadian media companies are permitted to take significant minority ownership stakes in Canadian programming services. If non-Canadian BDU control is permitted alongside existing cross-ownership of programming services, it becomes far more difficult to ensure continued Canadian control over programming decisions, thereby placing the “checks and balances” of our current system at risk.

(iii) *Structural separation is insufficient*

In today’s highly integrated environment, if you remove one of the “links” in the chain, and permit non-Canadian control of the distribution pipeline, it becomes more difficult to achieve the overarching objective of a distinct Canadian broadcasting system, even under a scenario in which the programming ownership rules remain unchanged and even if existing conduct rules are strengthened. Strengthened conduct rules, while essential, are insufficient to combat the potential for undue influence in a scenario of foreign control of a BDU.

It has been argued that if liberalized ownership rules are extended to BDUs, the above-noted dangers could easily be remedied if Canadian media companies simply reconfigured their operations into “structurally separate” affiliates, pursuant to which BDU and programming operations would be completely separate, from a legal or accounting standpoint. Under this approach, it is argued that non-Canadian investors could then acquire control of a BDU without jeopardizing Canadian control of programming undertakings.¹¹

¹⁰ In addition to these “programming” decisions, BDUs are also required by specific rules and regulations to carry content in a specific priority.

¹¹ The TPR Panel called for the establishment of ‘carriage legislation’ that regroups BDUs and telcos and for clearly separate but compatible ‘content’ rules. The TPR Panel also recommended liberalized foreign ownership rules in the telecom sector. However, the TPR Panel acknowledged that there are reasonable concerns about foreign ownership of broadcasting. Hence, it proposed a liberalization for BDUs but not for ‘content’ companies.

In response to this argument, Astral notes that the issue is more complex than simply permitting media companies to govern themselves under newly liberalized rules through separate and distinct corporate entities for programming and broadcasting distribution.¹² Structural separation cannot change the fact that, ultimately, the parent shareholder will have an interest in affecting the outcomes of both of its affiliates. Therefore, increasing leverage will be prevalent even under this corporate form.

Moreover, there is a strong probability that non-Canadian control of the BDU platform would be acquired by a foreign *strategic player* (for example a dominant distributor of television and film programming). Under this scenario, the potential for trying to influence programming decisions is commensurately increased. Once the investment rules are eliminated for BDUs, there will be no discretion on part of policy makers to discriminate among investors -- financial versus strategic. A strategic owner of the BDU platform will have an incentive to favour its own services: for example, an American owner would favour existing American services. Such influence could be brought to bear, for example, by placing pressure on Canadian broadcasters seeking access to the BDU platform to purchase the U.S. investor's affiliated library of programming.

The ability to influence programming decisions will be amplified as BDUs gain more control over pricing, packaging and promotion decisions (following, for example, increased regulatory flexibility to employ "pick and pay"). Under this scenario, BDU promotion and marketing (and the price it will pay for the service) become the key influencers in consumer awareness and take up. As noted above, it is unlikely that any remedial measure would effectively address these concerns.

We have managed under the current rules to strike a balance and allow a non-Canadian to enjoy significant minority ownership interests in both Canadian programming undertakings and BDUs. However, once a non-Canadian investor is also permitted to control the distribution platform, then we create significant market power in a single entity whose paramount interests are not guided by Canadian sensibilities and have no particular reason to further Canadian broadcast public policy objectives.

¹² Even assuming that there would be separate management and boards of directors, with no interlocking or overlapping management or directors.

(iv) *Conclusion: further investment limitations will be needed in an environment of non-Canadian control of BDUs*

If ultimately changes to the BDU ownership rules are recommended, we would urge policy makers to recognize that a change made to one policy lever will inevitably have consequences for other policy goals. In such event, we submit that a limitation that prevents a non-Canadian who acquires control of a BDU from acquiring any ownership interest in the BDU's affiliated programming service must be introduced. This limitation would apply notwithstanding that the BDU's affiliated programming service was held in a "structurally separate" affiliated company.

This minimum safeguard would mitigate the impact of foreign BDU control on our broadcasting operations by precluding a non-Canadian investor that acquires control of a BDU under newly liberalized ownership rules from holding an ownership interest in the BDU's affiliated programming service. This, in our view, is a minimum requirement to reduce the inherent risk that foreign control of BDUs imposes on our existing broadcasting policy objectives.

Astral is pleased to have the opportunity to respond to the foregoing issues raised in the Consultation Paper and to participate in this phase of the Panel's deliberations.

All of which is respectfully submitted, this 11th day of January, 2008.

ASTRAL MEDIA INC.



Sophie Emond
Vice President
Regulatory and Government Affairs

Appendix “A” - Legislative and Regulatory Measures promoting a competitive Canadian Broadcasting Sector

- **CRTC Licensing** Through CRTC-licensing of Canadian-based services to serve the Canadian territorial market, program rights holders are persuaded to sell exhibition rights for the Canadian market to licensed Canadian broadcasting services, enabling such services to acquire programming and assemble programming packages for distribution by broadcasting distribution undertakings (BDUs) in the Canadian market.
- **Overseeing the Entry of Foreign Programming Services** Foreign services that are competitive with Canadian offerings, for example, the U.S.-based cable networks MTV and HBO, are not authorized for distribution in Canada. The purpose of this policy is to ensure that a Canadian programming service will be able to acquire program rights over an existing pool of foreign programming for airing in the domestic market, which in turn provides the means to fund high quality Canadian programming.
- **Canadian Ownership and Effective Control:** Legislation under the *Broadcasting Act* provides for investment limitations by non-Canadians in licensed Canadian broadcasting undertakings¹³. While minority investments are permitted in Canadian broadcasters and BDUs, effective control or “control-in-fact” is prohibited.
- **Canadian Content Exhibition and Expenditure Rules:** Canadian television and radio broadcasting licensees are required to provide "shelf space" for Canadian programming by exhibiting specified levels of Canadian programming during prime time and throughout the broadcast day (while radio licensees devote a significant part of their play lists to Canadian music). Broadcasters also contribute to Canadian content through direct financial contributions to the broadcasting system¹⁴.
- **Funding and Tax incentives:** Canadian producers, film distributors and broadcasters access a combination of public and private funds as a means of contributing to the creation and promotion of Canadian programming. Funding sources include the Canadian Television Fund¹⁵, Telefilm Canada, provincial and federal tax credit programs and different regionally-based private independent funds. Section 19 of the

¹³ Pursuant to the *Direction to the CRTC (Ineligibility of Non-Canadians)*, SOR/97-192, as amended by Order-in-Council P.C. 1998-1268.

¹⁴ This is achieved either through conditions of licence or pursuant to policies requiring financial expenditures in connection with the acquisition of control of other licensees.

¹⁵ The CTF is a private-public initiative with an annual budget of close to \$230 million a year, consisting of the Equity Investment Program (EIP), administered for the CTF by Telefilm Canada, a crown corporation, and the Licence Fee Program (LFP), administered by the CTF, a private-sector organization.

Income Tax Act preclude Canadian companies from deducting from their taxable income any expenditure related to advertising in non-Canadian media, are another example of measures which support the creation and promotion of Canadian content.

- **BDU Access Rules:** require Canadian broadcasting distributors to ensure that Canadian programming services are provided with the necessary shelf space so that their business plans can be realized, in turn enabling them to meet their commitments for exhibitions of and expenditures on Canadian content.
- **“Simultaneous substitution” rules:** these rules are designed to protect the value of the program rights purchased by domestic Canadian broadcasters, primarily from U.S. holders of programming rights.¹⁶ These rules require each cable company, upon request by the Canadian broadcaster holding the Canadian territorial broadcast rights, to insert the signal of a local or regional Canadian TV station on the channel of a more distant station showing the same program at the same time. The simultaneous substitution regime ensures that the integrity of program rights purchased by Canadian broadcasters.¹⁷
- **Copyright Protection:** existing copyright legislation has proven to be useful in ensuring the protection of existing program rights of Canadian broadcasters, in many cases even addressing infringement on an on-line basis (e.g., iCraveTV).

¹⁶ The CRTC’s official rationale for this regulatory edict is based on its responsibilities under the *Broadcasting Act*, the economics of the broadcasting business and what it refers to as the logic of the local license. The CRTC has the duty to foster a strong, financially viable domestic broadcasting industry. When Canadian broadcasters buy programs from American and Canadian producers or networks, they pay substantial sums of money to have exclusive distribution rights in their home markets.

¹⁷ Similar measures have been adopted by the Federal Communications Commission (FCC) in the U.S., which has adopted and enforced measures to protect program rights ranging from network non-duplication rules, syndicated exclusivity measures, simultaneous substitution and distant signal rules.