



August 15, 2006

Mr. Leonard St. Aubin
Acting Director General
Telecommunications Policy Branch
Industry, Canada
300 Slater Street, 16th Floor
Ottawa, ON K1A 0C8

By Fax: (613) 998-1256
By Email: telecom@ic.gc.ca

Dear Mr. St. Aubin:

Re: Canada Gazette Part I, Vol. 140, No. 24 — June 17, 2006: Proposed Policy Direction to the Canadian Radio-Television and Telecommunications Commission

1. This is the submission of the Alliance of Canadian Cinema Television and Radio Artists (ACTRA) in the matter of the Proposed Policy Direction to the Canadian Radio-Television and Telecommunications Commission published in the Canada Gazette Part I, June 17th 2006 pages 1606-1610.
2. ACTRA and its predecessor organizations have represented the interests of professional Canadian performers working in the English-language recorded media in every region of Canada for over 60 years. ACTRA's principal function is the collective bargaining needs of the more than 21,000 members and others, whose performances in movies, television shows, sound recordings and digital media entertain, educate and inform Canadians and global audiences.
3. The proposed policy direction would direct the Canadian Radio-television and Telecommunications Commission (CRTC) to rely on market forces to the maximum extent feasible and regulate where there is still a need to do so, in a manner that interferes with market forces to the minimum extent necessary.
4. ACTRA has reviewed the comments of the Society of Composers, Authors and Music Publishers in Canada (SOCAN) and concurs with that organization that the Cabinet proposal would alter the balance between economic and non-economic legislative objectives enacted by Parliament such that the proposal focuses on economic objectives without recognizing the dual nature of cultural goods.

Alliance of Canadian Cinema, Television and Radio Artists

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5. ACTRA also wishes to make the following additional observations in respect of the proposed directive.
6. As noted in the Government's regulatory impact analysis statement "the proposed policy direction draws heavily from the proposal recommended by the Telecommunications Policy Review Panel (TPRP)", which recommended specifically issuing a policy direction under section 8 of the *Telecommunications Act*.
7. The (TPRP) was appointed by the Minister of Industry in April 2005 to review Canada's telecommunications framework. The panel was asked to investigate and report on three areas: regulation, access, and information and communications technologies (ICT) adoption.
8. ACTRA is a founder and member of the Canadian Coalition of Audio-visual Unions (CCAU). On June 2, 2006 the CCAU released a paper that responded to the report of the TPRP which published its report in March of 2006. ACTRA and the CCAU have serious concerns that the recommendations of the TPRP if adopted would adversely affect the current broadcasting policy and statutory obligations required of Canadian broadcasting undertakings and broadcasting distribution undertakings that enjoy the privilege of a broadcast license.
9. The CCAU summary of its response to the TPRP report identified three major problems with the TPRP analysis:
 - The TPRP report says regulatory reform is needed to deal with "convergence" of services – the offering of many services over a single network – and also argues that telecommunications and cable companies currently face different ("asymmetric") regulations. However, this is not the case. Both Acts in the existing regulatory regime are technology neutral and can accommodate the convergence of services. Regardless of the type of carrier or the technology used, telephone services are regulated under the Telecommunications Act and broadcasting services are regulated under the Broadcasting Act.
 - The TPRP assumes that broadcast and telecommunications networks will evolve as 'dumb' networks that simply move content back and forth without processing or selecting the content. These dumb networks would operate without regard to geographic borders and therefore the current broadcast regulatory regime would be unworkable. However, it is by no means certain that this will become the dominant network configuration in the future. Even if it were, networks are already incorporating technological and business limits to protect markets and content within specific territories, thereby refuting the model of the 'borderless' environment. The current regulatory regime has proven to be flexible enough to encompass technological development.

- The panel recommended lifting foreign ownership restrictions, based on its view that there is a relatively low level of competition in the wireless sector. However, any weakness in wireless competition can be traced to industry consolidation over the past several years (the number of wireless providers has dropped from five to three). Regulatory action, perhaps requiring the divestiture of assets in the wireless sector, is the obvious solution, not the lifting of foreign ownership restrictions and the sale of Canada's telecommunications and broadcasting companies.
10. The CCAU written response to the TPRP report is attached to this letter and forms part of ACTRA's intervention.
 11. ACTRA maintains that the TPRP exceeded its mandate to investigate only telecommunications policies. Despite the fact that the TPRP carried out consultations, it did not do so on the broader issues involving the impact of its findings on the broadcasting system. Nor did the TPRP, in its investigations, open consultation to issues of broadcasting policy. The CCAU brought this to the attention of the TPRP in its initial letter of intervention. The TPRP did not have the mandate for a wider consultation on broader issues including those relating to broadcasting and did not conduct such consultations. The TPRP made specific recommendations in its report relating to these wider issues for which it had no mandate to investigate and for which it conducted no formal consultations. The proposed Cabinet direction to the CRTC to encourage it to use "a more market based approach to implementing the *Act*" is therefore flawed as it relies on the report of the TPRP.
 12. ACTRA further maintains that the proposed directive would lead to relaxation of the rules governing foreign ownership of Canadian telecommunications and eventually ownership of broadcasting undertakings.
 13. Control by Canadians of the Canadian communications system is an essential and long-standing principle of Canadian cultural and communications policies. According to the *Broadcasting Act*, "the Canadian broadcasting system shall be effectively owned and controlled by Canadians." *The Telecommunications Act* states, "A Canadian carrier is eligible to operate as a telecommunications common carrier if it is a Canadian-owned and controlled corporation incorporated or continued under the laws of Canada or a province."
 14. Relaxing ownership restrictions in the telecommunications sector would have a serious impact on broadcasting policy. There is a link from telephone companies to culture. As technology converges, telephone, cable and broadcasting companies are competing to provide the same services. As a result, those Canadians who are concerned about the future of Canadian culture must now be concerned equally about the lack of Canadian drama on television, and foreign ownership of telecommunications.

15. ACTRA is also concerned that directing the CRTC to follow “a more market based approach to implementing the Act” is an initial step toward an eventual relaxation of foreign ownership rules. ACTRA has consistently held that the present ceiling of foreign ownership of 47% is appropriate to ensure that the telecommunications industry remains Canadian. ACTRA maintains that the TPRP did not adequately make a compelling argument with supporting facts to justify increasing the percentage of allowable foreign ownership.

16. ACTRA recommends a public hearing before a Parliamentary Committee on the potential impact of the proposed directive on existing policy objectives that have been enacted by Parliament. ACTRA requests that it be invited to appear before the Committee in such a public hearing.

Thank you.

A handwritten signature in black ink, appearing to read 'Stephen Waddell', with a long horizontal line extending to the right.

Stephen Waddell
National Executive Director