2018 PRE-BUDGET SUBMISSION

TO THE HOUSE OF COMMONS

STANDING COMMITTEE ON FINANCE

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ACTRA

Executive Summary

The independent production sector employs a significant number of Canadians across the country. In 2016, the $2.87 billion in independent film and television production generated work for 59,500 full-time equivalent jobs across all regions of the country, contributed $3.59 billion to the national GDP and created $662 million in export value.[i]

Canadian artists already work in a precarious industry. Providing fair intellectual property protections is one measure that would allow Canadian artists to be more productive in what has now become a fast-evolving technological sector: extending performers in audiovisual works the same rights performers have in audio works under the Copyright Act; and extending the private copying levy in the Copyright Act to include all media now used to copy works for audio artists. Restoring balance to the Temporary Foreign Worker Program is a second measure that would create equal protections for Canadian performers in both commercial and film/television production.

As new technologies create new opportunities in the independent production sector they have also created disruption. This sector could be more productive and competitive if an even playing field between digital broadcasters and traditional broadcasters was created within Canada's regulatory system to ensure all are equally contributing to sustainable production funding and Canada's tax system.

Who we are

This is the submission of ACTRA (Alliance of Canadian Cinema Television and Radio Artists) in response to the Standing Committee on Finance's call for submissions as part of its consultations on the 2018 Federal Budget. ACTRA brings to this process the perspective of 23,000 professional performers working in the English-language recorded media in Canada. For close to 75 years, ACTRA has represented performers living and working in every corner of the country who are pivotal to bringing Canadian stories to life in film, television, sound recording, radio and digital media. The ACTRA Performers' Rights Society (PRS) secures and disburses use fees, royalties, residuals and other forms of performers' compensation. The ACTRA Recording Artists' Collecting Society (RACS) administers the royalty and private copying levy due to performers from sound recordings.

The importance of the film and television industry to Canada's economy

Canada's film and television industry is thriving. There is a healthy mix of service and domestic production. People are working. In the most recent year, total film and television production in Canada was $6.8 billion (mix of data from 2016 and 2015) and this represented 140,600 full-time equivalent jobs. While production volume declined by three per cent from the previous year, it remained close to 22 per cent higher than in 2011. Canadian content production, including that produced in-house by broadcasters, was $4.1 billion of the total. Beyond the commercial value, these Canadian productions also have a profound social and cultural value.

The independent production sector employs a significant number of Canadians across the country. The professionals who work in these high-value jobs make the programs that provide Canadian television viewers with a Canadian perspective on our country, our world, and our place in it. In 2016, the $2.87 billion in independent film and television production generated work for 59,500 full-time equivalent jobs across all regions of the country, contributed $3.59 billion to the national GDP and created $662 million in export value.[ii]

This submission looks at measures that could impact this sector positively by answering the two questions the committee posed when seeking submissions:

1. What federal measures would help Canadians to be more productive?
2. What federal measures would help Canadian businesses to be more productive and competitive?

What federal measures would help Canadians to be more productive?

Protecting Intellectual Property Rights of Performers

Budget 2017 laid out a plan to establish an Intellectual Property Strategy for Canada stating, "Intellectual property rights incentivize creativity and the development of new ideas and technologies by helping companies, academics and inventors recoup their investment once new products reach the marketplace."[iii] This is no less true for performing artists, who rely on residuals and royalties that can sometimes outstrip the value of the original performance fees.

While new technology has created opportunities for Canadian performers to be seen by a wider audience, many of the new disruptive business models provide little or no compensation to the creators. Income and profit from digital use flow away from Canada's creative class and, increasingly, to technology giants that operate largely (and sometimes entirely) outside Canada's borders.

These new technologies are also undermining the value of the Copyright Act's private copying levy. In exchange for the right of Canadians to copy music, a levy is charged on the media that was previously used to make the copy (CD, tape). That money provides compensation to the artists whose works are copied. Of course, today we no longer use the CD and cassette tape to make these copies. Thus, Canadian artists are no longer being compensated adequately when their works are copied.

Under the current Copyright Act, audiovisual performers do not have statutory rights in their work, including a right to receive financial compensation for the use of their work. In 2012, the World Intellectual Property Organization (WIPO) concluded the Beijing Treaty, a new treaty that recognizes the rights of audiovisual performers. It has since been signed by 78 nations. Canada has not yet signed or ratified the Treaty.

The review of the Copyright Act is an opportunity to make positive changes.

RECOMMENDATION: Amend the Copyright Act to extend to performers in audiovisual works the rights performers have in audio works, in accordance with WIPO's Audiovisual Performances Treaty (Beijing Treaty).

RECOMMENDATION: Extend the private copying levy to include all media now used to copy works.

Restoring balance to the Temporary Foreign Worker Program

Changing technology has been disrupting the film and television sector – and that is especially true for commercial advertising production. One way that some advertisers are trying to reduce costs is by crossing borders to bypass collective agreements. A 2015 survey in Advertising Age found that 57 per cent of U.S. ad agencies agreed with the statement: "We have worked around the [SAG-AFTRA] contract before, whether shooting abroad, hiring intermediaries or turning to creative that doesn't need actors."

ACTRA is concerned about the potential erosion of requirements to prove that a foreign worker is needed and that no Canadian talent can be found, particularly for television commercial productions. Foreign film and television productions shooting in Canada have access to an expedited process that allows foreign performers to by-pass the Labour Market Impact Assessment process provided they obtain a “letter of no objection” from the relevant union. This balanced approach ensures productions can address labour concerns expeditiously, while also ensuring opportunities for Canadian talent are maximized.

However, under changes to the Temporary Foreign Worker program introduced in 2016, foreign nationals who are employed as essential personnel for advertising shoots may be considered under the “business visitor” category within the meaning of section 187 of the Immigration and Refugee Protection Regulations (IRPR).[iv] For this exemption, applicants are neither encouraged or required to obtain a letter of “no objection” from the relevant union. This is an unbalanced approach that deprives Canadian creative talent of work opportunities and undermines confidence in the entire Temporary Foreign Worker program.

RECOMMENDATION: Make a letter of “no objection” from the relevant union mandatory before any Labour Market Impact Assessment exemption is granted to a foreign film or television performer.

RECOMMENDATION: Revise the regulatory update of February 3, 2016, to make it clear that performers taking part in commercial advertising shoots are not “business visitors.” They should be subject to the same process as foreign performers in film and television productions, including obtaining a “letter of no objection” from the relevant union.

What federal measures would help Canadian businesses to be more productive and competitive?

Sustainable funding for film and television production

Budget 2017 committed to a review of both the Broadcasting Act and the Telecommunications Act stating, “Canada’s media industries, and the systems that allow for broadcasting, distribution and the exchange of ideas, are fundamentally changing in the digital age… the Government will look to examine issues such as telecommunications and content creation in the digital age, net neutrality and cultural diversity, and how to strengthen the future of Canadian media and Canadian content creation.”[v] For Canadian performers, these are issues of vital importance. Canada’s film and television industry has developed and grown thanks to the vision laid out in the Broadcasting Act, one that prioritizes Canadian content and ensures broadcasters contribute to its production.

Production funds, like the Canada Media Fund, provide key sources of financing to Canadian film and television production. While traditional broadcasters are required to contribute to these funds, Internet broadcasters, such as Netflix, Amazon Prime and Google (also known as “Over-the-top” or “OTT” broadcasters), have been exempted under the CRTC’s Digital Media Exemption Order.

More and more Canadians are watching programs via Internet broadcasters. The number of households subscribing to an Internet broadcaster doubled from 2012 to 2014 – growing from 17per cent to 33 per cent. That number is projected to reach 53 per cent by 2020.[vi] Meanwhile, for the second consecutive year, television service providers have reported a negative growth rate and household cable subscriptions continue to decline.[vii] A recent study estimated that Netflix, the leading foreign Internet broadcaster, single-handedly redirected $445 million in subscription revenue out of Canada in 2014.[viii] Studies also show “cord cutting” is accelerating at a faster pace in

Canada than even the U.S.[ix] At the same time, these foreign Internet broadcasters that sell their services in Canada enjoy a competitive advantage over Canadian suppliers since they are outside of Canada's provincial and federal sales and income tax regimes.

Many other jurisdictions are grappling with this challenge as they look to maintain sustainable domestic film and television industries. Brazil, France and Germany have incorporated new digital platforms into their film financing regimes.[x]

Yet in Canada, digital platforms are exempted from the regulatory system that applies to traditional broadcasters. Since 1999, the CRTC has exempted all "new media" from regulation and oversight. Nearly two decades later it is clear that this is unsustainable. In its recent report on media, the Standing Committee on Canadian Heritage recommended expanding the current contributions from broadcast distribution undertakings to include contributions from broadband distributors.[xi] Most industry stakeholders are now calling for an end to the CRTC's outdated Digital Media Exemption Order.

RECOMMENDATION: Rescind the Digital Media Exemption Order. The government may do this either through its power under the Broadcasting Act to issue a policy direction to the CRTC, or through an amendment to the Act.

RECOMMENDATION: Bring new digital platforms into the regulatory system and ensure they contribute to sustainable production funding.

RECOMMENDATION: Require all electronic commerce services (above a reasonable sales threshold) that sell film, television, music, broadcasting and other related services to Canadians, or that collect advertising revenues from Canadians, collect and remit GST/HST and PST amounts to federal and provincial governments. Require that all such services pay Canadian income taxes on their Canadian revenues.

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[i] Canadian Media Producers Association (CMPA) - Profile 2016: Economic Report on the Screen-Based Media Production Industry in Canada ("CMPA Profile 2016"), produced in collaboration with the Association québécoise de la production médiatique (AQPM), the Department of Canadian Heritage and Telefilm Canada, (Ottawa: CMPA, 2017);

[ii] Ibid;

[iii] Budget 2017, Chapter One – Skills, Innovation and Middle Class Jobs;

[iv] RCC Programming Delivery Update, February 3, 2016;

[v] Budget 2017, Chapter One – Skills, Innovation and Middle Class Jobs;

[vi] Canadian Television 2020: Technological and regulatory Impacts, Nordicity & Peter Miller, December 2015;

[vii] CRTC Statistical and Financial Summaries for Broadcasting Sector, August 2017;

[viii] Canadian Media in a Digital Universe, Nordicity Report, January 2016;

[ix] Cord-Cutting In Canada Nearly Doubles Its Pace: 1/4 Of Homes Now Cable-Free, by Daniel Tencer, Huffington Post Canada, April 8, 2016;

[x] Netflix (film) taxes, Jerome Dheur, Cullen International, May 23, 2017;

[xi] DISRUPTION: Change and Churning in Canada's Media Landscape, Standing Committee on Canadian Heritage, June 2017.