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The Broadcasting and Telecommunications Legislative Review Panel
c/o Innovation, Science and Economic Development Canada
235 Queen Street, 1st Floor
Ottawa, ON K1A 0H5

Dear Members of the Panel:

**Submission of the Ontario Educational Communications Authority (TVO) to the Legislative Review Panel**

1. TVO is pleased to provide our comments and recommendations to the Broadcasting and Telecommunications Legislative Review Panel (the "**Panel**") in response to the Call for Comments issued on September 24, 2018.

2. TVO has also participated in the submission filed with the Panel in this process by the Canadian Association of Public Educational Media ("CAPEM"). In that regard, TVO is pleased to express its support for the comments and recommendations made by CAPEM in its submission.

**Background**

3. As noted in the CAPEM submission, designated provincial educational broadcasters such as TVO are regulated by the CRTC as federal programming undertakings but mandated under provincial statute. In Ontario, the Ontario Educational Communications Authority (TVO) has been designated as the public educational broadcaster pursuant to the *Ontario Educational Communications Authority Act*.[1] The OECA reflects Ontario's specific priorities and policies in respect of educational broadcasting.

4. Designated provincial educational broadcasters, including TVO, do not receive subscriber fees. TVO has an annual budget of approximately $60 million, approximately 20% coming from earned revenues including charitable contributions and sponsorship.

5. TVO notes that television continues to remain a highly relevant medium for educational programming:

    - 10 million Ontarians watch TVO on linear television every year including 82% of

[1] R.S.O. 1990, c. O.12, s. 2(1).

children in the 2-10-year old age group.

- TVO enjoyed the most documentaries watched in prime-time of any broadcaster.
- With respect to our current affairs programming, 28% of Ontario viewers regularly watch TVO's current affairs flagship program, The Agenda with Steve Paikin.
- TVO provides educational games and tutoring online services to support foundational math skills to students from kindergarten to grade 10.
- TVO's online channels have achieved over 132M views and growing.

6. TVO is the proud recipient of multiple nationally-recognized awards. In the last fiscal year, TVO and its independent production partners have been recognized with a total of 101 finalists or wins in the Kids, Documentary and Current affairs strands.

7. At the same time, increasing numbers are consuming TVO content on online on-demand platforms, with millions upon millions of online learning opportunities seized.

8. TVO triggers total production budgets for Ontario independent producers of $36 million.

**Designated provincial educational broadcasters serve a diverse and broad set of audiences**

9. Last year alone, TVO created more than 145 million "moments of learning" by means of our entire suite of digital learning and journalism products. These moments of learning are the product of several key strands of TVO's content strategy. With respect to TVO's youngest learners, our TVOkids programming strand delivers a commercial-free service which helps to set up children for early success in school and in life. TVO mPower award-winning games are used in every school district across the province to help develop foundational K-6 math skills. Children played more than 1.3 million *mPower* games in classrooms around the province.

10. For youth audiences, TVO delivers free one-on-one online math tutoring for students in grades 7-10 through *TVO Mathify*, which provides an interactive classroom tool and live, one-on-one, online after-school math tutoring.

11. For teen and early adult years, the TVO ILC helps learners of all ages realize their personal, career, and life goals through online high school courses. Last year, TVO ILC served almost 20k Ontario students.

12. For adult audiences in every community around the province, TVO provides powerful moments of learning which build understanding and engagement in the world. This is achieved through TVO's in-depth journalism programming (such as The Agenda with

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Steve Paikin) and our diverse offering of documentaries, which explore important social, economic and political issues.

**Designated provincial educational broadcasters fulfill the objectives of the Broadcasting Act**

13. As the CAPEM submission explains, TVO and other designated provincial educational broadcasters fulfill several of the broadcasting policy objectives set out in the *Broadcasting Act*. In that regard, the Act expressly recognizes that educational programming, where provided through the facilities of an independent educational authority such as TVO, "is an integral part of the Canadian broadcasting system".[2]

14. However, to properly understand the role and contribution of provincial educational broadcasters going forward in the 21st century, TVO urges the Panel to go beyond the narrow confines of the current *Broadcasting Act*. TVO agrees with CAPEM that provincial educational broadcasters should be identified as a category of "public service broadcasters". This type of broadcaster is characterized by its unique attributes including an educational mandate offering programming strands that, rather than being competitive with the private sector, are in fact complementary. Therefore, public service broadcasters increase the availability of diverse and varied programming to all television audiences in the public interest. In fact, the private for-profit model simply cannot replicate the programming provided by publicly-funded educational broadcasters such as TVO.

**Designated provincial educational broadcasters require a stable distribution model and a workable domestic rights market**

*(i) a stable distribution model*

15. As the CAPEM submission explains, designated provincial educational broadcasters enjoy priority distribution on the basic service of BDUs, which is the primary means by which the broadcasting policy objectives set out in the *Broadcasting Act* with respect to educational television services are realized. While current industry data reveals evidence of cord-cutting and therefore a declining subscriber base among BDUs, in the "immediate longer term", BDUs will nevertheless continue to play a significant role in the Canadian broadcasting system. The availability of TVO to the vast majority of its audiences depends critically on priority distribution on BDUs.

16. Priority distribution of designated provincial educational broadcasters by BDUs reflects the policy determination of the important role played by educational services in the

[2] Section 3(1)(j) of the Act.

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Canadian broadcasting system. This is underscored in view of the fact that the vast majority of our viewers receive TVO through subscriptions to BDU services. As a stand-alone broadcasting service, TVO relies on priority distribution to achieve carriage and to be available to the citizens of Ontario. TVO lacks the bargaining clout to achieve distribution in the absence of such measures.

17. In view of the foregoing, TVO submits that any new legislation should continue to codify priority distribution for public interest services if they are to effectively continue to contribute to the creation/presentation of Canadian programming as public interest broadcasters.

*(ii) a workable domestic rights market*

18. Currently TVO generally acquires regional (Ontario) rights for programming. However, various BDUs distribute TVO's signal extra-provincially. (The rights for such programming distribution arrangements are subject to the distant signal regime under the Copyright Act).

19. The viability of the Canadian broadcasting system is based on a well-defined geographic/territorial market for rights to exhibit content. The underpinning of a vibrant domestic content creation and distribution market depends critically on the availability of and the ability to acquire stable program rights, on fair terms. However, the evolution of digital distribution models for programming have had a distinct impact on the Canadian domestic programming rights market. TVO has seen first-hand the impact on domestic broadcasters from the entry of global players into the Canadian market.

20. We echo the submissions of CAPEM that sufficient tools and institutions are needed to ensure a strong Canadian presence that can compete against global media giants in our domestic market. Canada's legacy broadcasting regulatory framework successfully advanced the *Broadcasting Act's* cultural objectives in an environment of a "closed" broadcasting system. However, external forces affecting content formation and distribution on a global basis have challenged this system. New platforms have bypassed legacy programmers and distributors as the primary beneficiaries of user growth. In turn, these platforms are playing a more prominent role in content creation.

21. The model is increasingly one of scale, producing an unlimited supply of high-quality programming, all of which is available direct-to-consumer via multiple OTT options. This new paradigm has in turn weakened the effectiveness of traditional regulatory measures raising the question as to what the appropriate regulatory models are to ensure that the "educational media content" strategy described above can continue to be realized.

22. The CAPEM submission has explained how tools that were effective in the "closed system" are now less effective in an environment where global OTT distribution has become the watchword of the Internet. Competing with the vast scale of OTT players means that smaller domestic broadcasters are increasingly subordinate to worldwide licensing arrangements even for domestic content. The CRTC has pointed out that online providers have an advantage because this scale may not be possible for legacy services to replicate domestically or even through international partnerships.[3] Designated educational broadcasters have been subjected to similar pressures to those affecting other players in the traditional broadcasting system.

**Democracy, News and Citizenship**

23. With respect to the questions in the Terms of Reference relating to "Democracy, News and Citizenship", the Panel's Call for Comments has recognized that the free flow and exchange of information supports the democratic process and democratic institutions and that Canadians are increasingly exercising their citizenry through digital participation. However, it has recently been observed by international regulatory authorities that, in digital platform environments, consumers are not necessarily exposed to news sources of their choosing: the range of news sources available on a digital platform is increasingly determined by algorithms that curate news feeds, search results, and news aggregations; and the sharing and interaction behaviour of other social media users in their network (including publishers).[4] While issues relating to authenticity and quality of news are not new or confined to journalism accessed via digital platforms, these risks are potentially magnified in the digital/online space. The risk of exposure to less reliable news and potential filter bubbles is higher.[5]

24. The foregoing potential for the proliferation of false or misleading information underscores the increasing importance of independent, trusted, accurate, diverse, as well as local and Canadian sources of news and information are essential for an informed citizenry, civic participation, and democratic process.[6]

25. TVO agrees with the Panel that in this rapidly evolving communications landscape, legislation should appropriately address the implications of these changes for the rights of

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[3] *Harnessing Change: The Future of Programming Distribution in Canada*, CRTC May 2018, Market Insight 13: Pure-play online competitors harness global reach.

[4] Australian Competition and Consumer Commission, *Digital Platforms Inquiry—preliminary report, 10 December 2018, page 283.* https://www.accc.gov.au/focus-areas/inquiries/digital-platforms-inquiry/preliminary-report (hereinafter, the "ACCC Report").

[5] ACCC Report, page 285.

[6] Call for Comments, Section C. (Improving the rights of the digital consumer).

digital citizens and digital consumers.

26. *The Shattered Mirror* (2017) described in detail the economic forces challenging the newspaper industry. In Ontario, so many small towns are not well-served with quality local news and information. It is not clear that there is a sustainable for-profit business model in the current environment in which the advertising market is now dominated by global digital platforms such as Facebook and Google. This dynamic has been recently accurately summarized by the regulatory authority in Australia:

> It is apparent that markets for journalism are imperfect. Competition may not be a strong discipline for quality of news, particularly where the number of media organisations is relatively low, and the number of unconstrained voices in the public sphere are relatively high and consumers have little visibility as to quality controls. For the purpose of protecting the health of the 'public sphere', there may be a market failure if reliable news and journalism were systematically under-produced, or, perhaps due to reasons related to information asymmetry, systematically under-consumed.[7]

27. A designated provincial educational broadcaster like TVO plays a key role in filling this gap with public and charitable funding to aid in the delivery of local-oriented programming including current affairs. In 2017, TVO launched the *Ontario Hubs* with the support of more than $4.5 million in donations, including one of the largest Canadian gifts ever made in support of journalism. The *Ontario Hubs* offer a critical voice to communities that are increasingly under-represented in current affairs analysis.

28. This is a further rationale for including provincial designated provincial educational broadcasters in the objective of a new legislative framework.

29. TVO thanks the Broadcasting and Telecommunications Legislative Review Panel for the opportunity to provide these comments.

Sincerely,

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[7] ACCC Report, page 291.