



*Broadcasting and Telecommunications
Legislative Review:*

Call for Comments

Comments of Corus Entertainment Inc.

January 11, 2019

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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, Ontario K1A 0H5

Dear Panel Members,

**Re: Comments of Corus Entertainment Inc. on the review of
Canada's communications legislation**

Corus Entertainment Inc. (“Corus”, “us” or “we”) is pleased to provide its comments in this consultation. The Broadcasting and Telecommunications Legislative Review Panel (“Panel”) has a mandate to consider three pieces of legislation: the Broadcasting Act (“Act”), the Telecommunications Act and the Radio Communication Act. Each of these decades-old statutes was drafted before the Internet forever disrupted the communications industry. Comprehensive reviews are thus sensible and long overdue, and are of utmost importance as we seek to build an internationally competitive Canadian media industry.

As Canada's largest pure-play, integrated media and content company, with 98 regulated television and radio broadcasting services,¹ Corus will be focusing its comments solely on broadcasting-related issues in this submission.

Mindful that the Canadian media sector is facing urgent challenges, and that legislative changes could be years away, we also propose a number of interim non-legislative policy measures in this submission. The Panel should urge the Government to implement these measures through its policy direction powers under the Act.

The Government provided the Panel with detailed Terms of Reference, which place certain parameters on this review. The Panel should make clear to Government that no legislative or policy option should be removed from the table.

¹ Corus' portfolio of media assets includes: 44 specialty television services, 15 conventional television services, 39 radio broadcasting services, Canada's largest animation studio (Nelvana), Canada's largest independent book publisher (Kids Can Press), a leading animation software company (Toon Boom) and a global content business (Nelvana and Corus Studios).

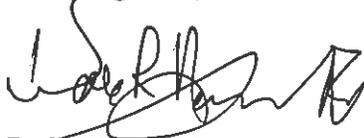
Most notably, in its Interim Report, the Panel should request authority from Government to consider casting aside the current Act in its entirety. With that authority, we urge the Panel to take the initiative to draft a new Act. The new Act should be drafted bearing in mind certain key principles, which would support a vibrant Canadian media sector.

Finally, we encourage the Panel to make clear to Government that it should be empowered to consider greater foreign ownership of the broadcasting sector. Getting larger and drawing from a broader pool of capital is necessary as a matter of pure survival for Canadian media companies.

The Panel will note that Corus is submitting these comments in English on the submission deadline date. It will also be submitting a French version of the submission for the Panel's reference in the days ahead.

We appreciate the opportunity to provide these comments.

Best regards,

A handwritten signature in black ink, appearing to read 'Dale Hancocks', written in a cursive style.

Dale Hancocks
Executive Vice President and General Counsel
Corus Entertainment Inc.

Executive Summary

1. As Corus has discussed in a number of recent policy submissions², and elaborates further in Appendix “A” to this submission, the Canadian media sector is facing critical challenges. The traditional business model underlying Canadian broadcasting is being turned on its head in the digital era. Changes to decades-old legislation, regulation and policy are needed urgently.
2. The Canadian cultural sector has been mired in rolling policy consultations on the future of the media industry since 2015. The Panel’s review is not scheduled to conclude until January 2020, after the next Federal election. Assuming the next Government chooses to implement any of the Panel’s recommendations, it will then likely trigger a multi-year legislative drafting and debate process, likely to be followed by multi-year regulatory consultation process. Meaningful changes to the current framework could be at least five years or more away.
3. The Canadian media sector cannot wait five years or more for change. Accordingly, in this submission, Corus proposes a number of non-legislative policy measures, which the Panel should recommend for immediate implementation. These measures include:
 - Permitting greater broadcaster flexibility over content ownership and programming decisions;
 - Relaxing restrictions on domestic media ownership; and,
 - Amending the Digital Media Exemption Order (“**DMEO**”) to require contributions from Digital Media Broadcasting Undertakings (“**DMBUs**”).

The Government could most easily implement these measures through its policy direction powers under the Act. Such a draft direction is provided in Appendix “B” to this submission. Each of these measures will help lay the groundwork for broader structural changes, and help support a vibrant Canadian media sector at this critical time.

² See Corus Submission in Canadian Content in a Digital World, November 2016; Corus Submission in Broadcasting Consultation 2017-359; and Corus Submission in Broadcasting Consultation 2017-359-2

4. The Government has effectively narrowed the scope of this review by excluding certain policy options from consideration and by focusing only on amending existing legislation. The current process is a once-in-a-generation opportunity to reinvent Canadian communications legislation and policy for the digital age. All policy and legislative options should be on the table. Nothing should be excluded. The Panel should make this point clear to the Government in its Interim Report.
5. In particular, the Panel should request authority from the Government to consider casting aside the current Act in its entirety. With that authority, we urge the Panel to take the initiative to draft a new Act.
6. The existing Act should be replaced, not merely amended. Entirely new legislation is needed; one untethered to invalid, out-dated assumptions and structures. In light of the critical challenges faced by the media sector, and the anticipated length of the legislative and policy development process, the most constructive contribution the Panel could make would be to present the Government with draft legislation to replace the current Act.
7. The new Act should be drafted bearing in mind the following key principles:
 - Permit greater foreign ownership of Canadian media;
 - Ensure equitable obligations from all parties in the system;
 - Promote flexible and outcomes-based regulation;
 - Preserve a discrete Canadian rights market; and,
 - Include tools to combat piracy.

Legislation embodying these principles would support a vibrant Canadian media sector as it transitions to a global communications market dominated by non-linear content consumption and multibillion dollar, and in some cases trillion dollar, Internet companies.

8. The Panel should also advise the Government that all policy options must be on the table. For example, greater foreign ownership should be considered. The global media industry is being increasingly dominated by larger and larger entities. Building scale and entering into new arrangements with foreign partners will be necessary for Canadian media as a matter of survival.
9. Competing countries like the United Kingdom,³ Australia⁴ and Germany⁵ have all recognized this fact by permitting greater foreign ownership of their media sectors. Indeed, the Government, itself, appeared to recognize this fact when it entered into an agreement with Netflix in 2017 as part of the Creative Canada framework. In that agreement, a foreign-owned entity was permitted to operate in Canada on certain conditions.⁶ The Panel should be empowered to consider this and all policy options in this review process.

Short-Term Policy Measures

10. The Canadian cultural sector has been engaged in rolling policy consultations on the future of the media industry since 2015. The Panel's review is not scheduled to conclude until January 2020, after the next Federal election. Assuming the next Government chooses to implement any of the Panel's recommendations, it will then trigger a multi-year legislative drafting and debate process, likely to be followed by a multi-year regulatory consultation process. Meaningful changes to the current framework could be at least five years or more away.

³ Foreign ownership of British media assets are subject to regulatory review but not prohibited, with limited exceptions for Channel 5 or an ITV company. British news organization, Sky News, for example, is presently owned by US-based Comcast, and British television service Channel 5 is owned by US-based Viacom.

⁴ Australia requires notification and pre-approval of foreign investment in media assets at different thresholds, but does not restrict it. See, Baker McKenzie LLP, "Foreign Ownership of Media Assets - Registration Requirements," September 20, 2018, <https://www.bakermckenzie.com/en/insight/publications/2018/09/foreign-ownership-of-media-assets>

⁵ There are no restrictions preventing (non-EU) foreign ownership of media interests in Germany. See, Katholieke Universiteit Leuven, Jönköping International Business School, Central European University and Ernst & Young Consultancy Belgium 2009, Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-based Approach, Commission of the European Communities, pp. 258-9. http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/study/germany.pdf

⁶ Recently, Toronto mayor, John Tory, indicated that Netflix was planning to establish a "production hub" in Toronto – *The Canadian Press*, "Netflix interested in opening Toronto production hub: Mayor John Tory," January 9, 2019, <https://www.cbc.ca/news/business/netflix-toronto-production-hub-mayor-john-tory-says-1.4971883>.

11. As we have discussed in a number of recent policy submissions,⁷ and elaborate further upon in Appendix “A” to this submission, the Canadian media sector is facing critical challenges. It cannot wait five years or more for change. Accordingly, Corus proposes a number of non-legislative policy measures, which the Panel should recommend for immediate implementation. These measures include:

- Permitting greater broadcaster flexibility over content ownership and programming decisions;
- Relaxing restrictions on Canadian media ownership; and
- Amending the DMEQ to require contributions from DMBUs.

The Government could implement these measures through its policy direction powers under the Act. We propose a model for such a Direction in Appendix “B” to this submission.⁸ Each of these measures will help lay the groundwork for broader structural changes, and help support a vibrant Canadian media sector at this critical time.

a) Permitting greater broadcaster flexibility over content ownership and programming decisions

12. For too long, the Canadian broadcasting system has been filled with regulatory disincentives to investment in Canadian content. As a result, “broadcasters have little or no stake in export success, and therefore have no reason to use their leverage – including as acquirers – in the international marketplace to further export.”⁹ The Canadian Radio-television and Telecommunications Commission (“**Commission**” or “**CRTC**”) has recognized this in recent years.¹⁰ To build a truly competitive Canadian media sector, all media companies must be permitted to fully monetize their investments in content.

⁷ See Corus Submission in Canadian Content in a Digital World, November 2016; Corus Submission in Broadcasting Consultation CRTC 2017-359; and Corus Submission in Broadcasting Consultation CRTC 2017-359-2.

⁸ Corus included this draft Direction in its Phase II submission in in Broadcasting Consultation CRTC 2017-359-2.

⁹ Lawson Hunter, Kenneth G. Engelhart and Peter Miller, Strengthening Canadian Television Content: Creation, Discovery and Export in a Digital World, CD Howe, December 2017, pages 16-17.

¹⁰ Broadcasting Regulatory Policy CRTC 2015-86, paras 117 and 121.

13. One such regulatory disincentive are rules requiring broadcasters to spend a fixed portion of their previous year's gross annual revenues on "Programs of National Interest," and to acquire a majority of that programming from independent producers. This obligation to spend a fixed amount on the most expensive genre of programming, the rights to which the broadcasters largely cannot monetize in international markets, remains a huge impediment. It is an obligation Canadian broadcasters literally cannot afford as other, more profitable, lines of their business decline.
14. These regulatory barriers are reinforced by similar limits in the federal financing framework. Presently, CMF rules permit Canadian broadcasters to utilize only 7.5% of their performance envelope monies on in-house and affiliated programming within the documentary genre, and only 15% on the combined drama, children's and youth, variety and performing arts, and flex genres.¹¹ They also restrict Canadian broadcasters from participating in international distribution revenues.¹²
15. These rules were perhaps fair when the market was closed, but in an open market they simply serve to hamstring Canadian companies in their attempts to participate in global export markets. To build a truly competitive Canadian cultural sector, we need a model much more in line with the United States and United Kingdom – the most successful exporters of audiovisual content. These countries encourage broadcaster-affiliated productions and studio systems, which sell content around the world. Accordingly, we urge the Government to direct the Commission to eliminate all remaining barriers to ownership of content across the regulatory framework. It should also immediately lift all restrictions on affiliated productions in its contribution agreement with the CMF.

¹¹ CMF Performance Envelope Program Guidelines 2018-19, section 2.1.1.

¹² Ibid, section 3.2.TV.5

16. In addition, the regulatory framework remains filled with restrictions around the programming decisions that can be made by Canadian media companies. In a global media environment, Canadian media undertakings should be granted the greatest possible flexibility to determine the type of programming to acquire and exhibit, and from where to source that content. The Government should, thus, take immediate action to remove all limits on programming decisions made by private sector media undertakings.
17. As the Government acknowledges, a healthy Canadian broadcasting sector remains critical to the Canadian content ecosystem.¹³ At the same time, we understand that *all* segments of the Canadian media sector must remain strong, including independent producers.
18. Canadian broadcasters and independent producers have a clear stake in one another's success. We have worked together on projects large and small, in every genre, for decades, and we will continue to do so. In a small market with global ambitions, we understand there can be no monopoly on talent and good ideas, and we must all win together.

b) Relaxing restrictions on Canadian media ownership

19. The financial resources of Canadian media companies are absolutely dwarfed by their foreign online competitors. In an increasingly global communications system we are witnessing a land grab for scale among media companies in the United States. Canadian media companies are now competing directly with massive Internet-based companies like Netflix, Facebook and Google, and global media behemoths like Fox-Disney, and possibly CBS-Viacom, for the rights to foreign and domestic content, and for Canadian viewers and subscribers. Getting larger is inevitable as a matter of pure survival for media companies in this environment.

¹³ Innovation, Science and Economic Development Canada, Broadcasting and Telecommunications Legislative Review: Terms of Reference, page 10.

20. Without the ability to consolidate their domestic market positions, Canada's remaining large media companies will be unable to compete against global Internet behemoths. Two regulatory policies prevent us from building that scale:

- The Commission's *Diversity of Voices* policy discourages competitive operating structures through various restrictions on: (1) ownership of local television stations (policy generally permits one party to own or control only one station per market); (2) ownership of radio stations in major markets (policy generally limits one party to own or control only two FM and two AM stations in major markets); and (3) transfer of ownership of television assets (policy generally restricts transactions that would leave one party in control of more than 45 percent of national audience share).¹⁴
- The Commission's *Tangible Benefits* policy generally requires that the acquirer in any television transaction pay what is effectively a tax of 10 percent, and in any radio transaction pay six percent of any acquisition cost in "incremental tangible benefits."¹⁵

These two policies were written during the bygone era of a closed broadcasting system, and only serve to weaken the competitive positions of Canadian media companies in today's open, global communication system. The Panel should recommend to the Government that both be eliminated through its policy direction power, like the one attached as Appendix "B".

¹⁴ Broadcasting Public Notice CRTC 2008-4 ("Diversity of Voices Policy").

¹⁵ Broadcasting Regulatory Policy CRTC 2014-459 ("Benefits Policy").

21. The Diversity of Voices policy continues to define the relevant “market” for television and radio to exclude Internet-based OTT services. ‘Diversity of voices’ should not continue to be seen through a decades-old lens. It must be reimagined in its 21st century context, with a holistic view of the global communications system. In fact, our real concern should be to ensure a continued diversity of Canadian private and public sector voices in the television system. If current trends continue unabated, the only Canadian voice remaining could very well be the public broadcasters surrounded by foreign news and Internet providers.
22. Today, benefits obligations effectively serve as a tax discouraging transactions in the broadcasting sector. Benefits do not apply to acquisitions of BDUs, non-traditional television or production assets and it is a further source of inequity with foreign streaming providers, which do not even collect HST/GST. They are out of place and out of date in a global media landscape. The Benefits Policy continues to make it more difficult to build competitive scale and should be eliminated for that reason alone. Meanwhile, the original rationale for the policy has disappeared and it actually acts as a barrier to growth by Canadian licensees who pay taxes, fees and already have a long list of regulatory obligations.
23. Relatedly, in an open communications system, there is no longer a need for restrictions on foreign ownership of Canadian media. To ensure there continues to be a ‘diversity of voices’ in the Canadian media landscape, Canadian media companies need flexibility to grow and innovate by, for example, partnering with foreign media content companies that can bring the content synergies and capital investment. There will be no effective ‘diversity of voices’ if Canada’s media companies are reduced to bit players, or are wiped off the map altogether.
24. The Government appears to have permitted foreign ownership control over our broadcasting sector when it entered into a production agreement with Netflix in 2017 as part of the Creative Canada framework. In that agreement, a foreign-owned entity was permitted to operate in Canada on certain conditions. In our view, foreign ownership pursuant to the Netflix conditions should now be deemed immediately acceptable across the entire Canadian media sector.

25. The issue of foreign ownership must be further addressed by the Panel in the context of a new Act. We elaborate on this point in greater detail below.

c) Amending the DMEO to require contributions from DMBUs

26. The Commission first released the New Media Exemption Order in 1999. It amended that order in 2012, and renamed it the Digital Media Exemption Order. At both points, digital technology had begun to disrupt the Canadian media sector, but had not yet overtaken traditional media. The Commission, thus, felt on safe ground concluding that regulating new/digital media services, “would not contribute in a material manner to the implementation of the broadcasting policy.”¹⁶

27. Reality has changed. Multi-billion dollar, and in some cases trillion dollar, foreign-based Internet OTT services operate freely in Canada. They acquire the rights to programming from Canadian producers on any terms they like. They broadcast whichever programs to Canadian residents they like. In many cases, they do not collect or pay taxes. They comply with no regulation or industry standard. Their operations are subject to no oversight from Canadian authorities.

28. Furthermore, foreign-based Internet OTT services like Netflix are not marginal players, they are dominating the industry. For example, according to Numeris diary data, as of Fall 2016, Netflix ranked number one in primetime and all day viewing among Canada’s national television services for adults in the 18-34 demographic. The viewing data is startling in that Netflix’s share is two and half times higher than any licensed Canadian broadcaster (see Appendix “C” for further detail).

¹⁶ Public Notice CRTC 1999-197, Appendix “A”, upheld in Broadcasting Order CRTC 2012-409.

29. New unregulated foreign streaming services are entering Canada at an unprecedented rate: Netflix, Amazon Prime, CBS All Access, Hayu and Dazn are already here and growing, and more are coming. Studios typically offer different windows of content to different partners based on the release date of the title. In the new world order, Netflix and other global over-the-top players are buying all windows and pressuring US studios not to grant standalone rights to broadcasters in markets like Canada. This is placing the entire notion of a discrete Canadian rights market at risk.
30. By some estimates, Google and Facebook now account for 70 to 80 percent of Canadian online advertising revenues.¹⁷ This particularly impacts conventional television and radio, which are almost entirely dependent on advertising revenue.
31. Stakeholders across the industry,¹⁸ indeed the Government itself,¹⁹ now acknowledge that foreign DMBUs must share the obligation to support the Canadian content ecosystem. This cannot wait for five or more years. To “support creation, production and discoverability of Canadian content,” it must begin now.
32. To that end, the Government should direct the Commission to amend the DMEO to acknowledge that requiring DMBUs to contribute to the Canadian content ecosystem *would* contribute in a material manner to Canadian broadcasting policy.

¹⁷ Report of the Standing Senate Committee on Transport and Communications, “The Tax Deductibility of Foreign Digital Advertising in Canada, August 2018, page 12.

¹⁸ See, for example, Broadcasting Notice of Consultation CRTC 2017-359 Phase I responses of: Entertainment One (at para 3) Friends of Canadian Broadcasting (at page 5, para d), Shaw Communications (at para 69), 'Association québécoise de la production médiatique (at para 85) Canadian Media Producers Association (at para 87) BCE Inc. (at para 153), Canadian Broadcasting Corporation (at para 5(1)), Writers Guild of Canada (at para 7), Directors Guild of Canada (at para 80); and, Rogers Communications (at para 133).

¹⁹ Innovation, Science and Economic Development Canada, Broadcasting and Telecommunications Legislative Review: Terms of Reference, page 9.

Placing all Legislative and Policy Options on the Table

33. In its Terms of Reference, the Government directed the Panel to: examine the existing legislative framework and tools,²⁰ consider specific questions and exclude certain policy options from consideration. By so doing, the Government has effectively narrowed the scope of this review.
34. The current process is a once-in-a-generation opportunity to reinvent Canadian communications legislation and policy for the digital age. As such, there should be no limitations on its scope. All policy options and legislative approaches should be on the table. The Panel should make this point clear to the Government in its Interim Report. The broad parameters of the parallel Senate Transport and Communications Committee study provide a model that the present process should emulate.²¹
35. First, the Panel should advise the Government that all legislative approaches must be on the table. Nothing should be excluded. In the Terms of Reference, the Government appears to focus on amending the existing communications statutes. Along these lines, in its call for comments, the Panel invited participants to submit, “specific areas of proposed amendments”²² to the existing statutes. The review should not be limited to amendments. It should consider all approaches.
36. Most notably, in its Interim Report, the Panel should request authority from Government to consider casting aside the current Act in its entirety. With that authority, we urge the Panel to take the initiative to draft a new Act.

²⁰ Ibid, page 8.

²¹ The Senate Standing Committee on Transport and Communications aims to “Examine how the three federal communications statutes (the Telecommunications Act, the Broadcasting Act, and the Radiocommunication Act) can be modernized to account for the evolution of the broadcasting and telecommunications sectors in the last decades.”

²² Broadcasting and Telecommunications Legislative Review Panel, *Responding to the New Environment: A Call for Comments*, September 24, 2018.

37. Originally drafted in the 1960's, and amended in 1991, the Broadcasting Act was written for another era. One in which broadcasting was synonymous with two mediums: television and radio. It remains premised on invalid, out-of-date assumptions of scarcity and a closed system. It constructs a system of obligations that no longer reflects the realities of media organizations or the habits of audiences. It enumerates a rigid regulatory process that inhibits change in an industry evolving at breathtaking speed. This review was launched in recognition of the urgent need for reform. Reform will not truly be possible if tethered to the assumptions and structures of the existing Act.
38. In a recent report, Deloitte aptly concluded, “[e]xisting regulatory structures are often slow to adapt to changing societal and economic circumstances, and regulatory agencies are generally risk averse.”²³ As the Commission recently observed in its submission to the Panel, “Today, some of our legislative powers and regulatory approaches lag behind even current technological and social realities.”²⁴ What is needed are not simply revisions to existing regulation and policy, but a new approach to regulating and policy decision-making. A regulatory and policy paradigm shift on this scale would be most effectively spurred along in new legislation.
39. In addition, it is unrealistic to expect to bring digital disrupters into the existing, out-dated system. It would prove more effective, rather, to design a completely new Act that would liberate the current participants – broadcasting license-holders and related entities – to compete domestically and internationally in the new environment. Canadian media companies require a fundamentally new policy-regulatory bargain. It will not be possible to achieve this through amendments to the current Act.

²³ Deloitte Insights, “The future of regulation: Principles for regulating emerging technologies,” p. 3.

²⁴ Canadian Radio-television and Telecommunications Commission, “Written Submission to the Legislative Review Panel,” January 10, 2019, page 1.

40. The Panel holds the unique position of advising the Government on the future of communications policy. In light of the urgent challenges faced by the media sector, and the anticipated length of the legislative and policy development process, the most constructive contribution the Panel could make would be to request authorization from the Government in its Interim Report to draft a new Act. The Panel should then prepare draft legislation in its Final Report. Rather than provide a series of recommendations, which the Government may or may not choose to implement, the Panel could accelerate the process by taking the initiative to provide new draft legislation.
41. Second, the Panel should advise the Government that all policy options must be on the table. For example, in the Terms of Reference, the Government expressed its disinterest in any proposal that would reduce Canadian ownership of broadcasting. To design a system that truly supports the, “creation, production and discoverability of Canadian content,”²⁵ the Panel must be empowered to consider *all* options. Greater foreign ownership is one such option.
42. In fact, it is an inevitable option. The global media industry is being increasingly dominated by larger and larger entities. Canadian media companies like Corus (market capitalization of \$946 million) now compete directly with foreign-based media giants like Netflix (market capitalization of \$116 billion) and Disney (market capitalization of \$162 billion) for audiences and revenues. In a small market like Canada, media companies will require access to a broader pool of capital to compete and continue making Canadian content. Competing countries like the United Kingdom,²⁶ Australia²⁷ and Germany²⁸ have all

²⁵ Broadcasting and Telecommunications Legislative Review Panel, *Responding to the New Environment: A Call for Comments*, September 24, 2018

²⁶ Foreign ownership of British media assets are subject to regulatory review but not prohibited, with limited exceptions for Channel 5 or an ITV company. British news organization, Sky News, for example, is presently owned by US-based Comcast, and British television service Channel 5 is owned by US-based Viacom.

²⁷ Australia requires notification and pre-approval of foreign investment in media assets at different thresholds, but does not restrict it. See, Baker McKenzie LLP, “Foreign Ownership of Media Assets - Registration Requirements,” September 20, 2018, <https://www.bakermckenzie.com/en/insight/publications/2018/09/foreign-ownership-of-media-assets>

²⁸ There are no restrictions preventing (non-EU) foreign ownership of media interests in Germany. See, Katholieke Universiteit Leuven, Jönköping International Business School, Central European University and Ernst & Young Consultancy Belgium 2009, Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-based Approach, Commission of the European Communities, pp. 258-9. http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/study/germany.pdf

recognized this fact by permitting greater foreign ownership of their media sectors. These countries have recognized that foreign ownership can lead to greater national storytelling and thus support cultural policy objectives.

43. Indeed, as mentioned, the Government appeared to recognize this fact when it entered into an agreement with Netflix in 2017 as part of the Creative Canada framework. In that agreement, a foreign-owned entity was permitted to operate in Canada on certain conditions. Foreign ownership pursuant to the Netflix conditions must be deemed acceptable across the entire Canadian media sector if Canadian media companies are to coexist with the foreign-based Internet behemoths. The Panel should be empowered to consider this, and all, policy options.

Key Principles for a New Act

44. As mentioned, in its Interim Report, the Panel should request authorization from the Government to consider drafting an entirely new Act. In its Final Report, the Panel should take the opportunity to draft a new Act.
45. As a starting principle, the new legislation should aim to promote a vibrant, internationally competitive media sector in Canada, which delivers excellent content to audiences in Canada and abroad. Healthy Canadian media companies of scale will be critical to that outcome. To that end, the new legislation should be drafted bearing in mind the following key principles, which would support Canadian media companies of scale:
 - Permit greater foreign ownership of Canadian media;
 - Ensure equitable obligations from all parties in the system;
 - Promote flexible and outcomes-based regulation and policy-making;
 - Preserve a discrete Canadian rights market; and,
 - Include tools to combat piracy.

We elaborate further on each of these key principles in the sections immediately below.

a) Permit greater foreign ownership of Canadian media

46. As mentioned, Canadian media companies are competing against massive international entities for audiences and revenues. To survive, it will be necessary for them to achieve greater scale through both domestic and foreign ownership. There remains an obstacle to foreign ownership in the current legislation. This obstacle should be removed in a new Act.

b) Rebalance the obligations of different players in the system

47. A new Act should ensure that *all* parties, which access audiences in Canada should make equitable contributions to public policy objectives consistent with their capabilities and strategies.

48. First, this should include equitable contributions from all Internet-based content platforms. As mentioned, stakeholders across the industry,²⁹ indeed the Government itself now acknowledges,³⁰ that foreign DMBUs must contribute to the system of which they are clearly now part.

49. Second, a new Act should delineate more clear roles for private, public and community media organizations, which reflect their capabilities, mandates and strategies. Along these lines, a greater proportionate share of responsibility for fulfilling public policy objectives should be shifted onto the public broadcasters. (The public broadcasters' proportionally larger responsibility for implementing the broadcasting policy for Canada be clarified within new legislation. To that end, Corus endorses the CBC's own vision for a commercial-free public broadcaster.³¹

²⁹ See, for example, Broadcasting Notice of Consultation CRTC 2017-359 Phase I responses of: Entertainment One (at para 3) Friends of Canadian Broadcasting (at page 5, para d), Shaw Communications (at para 69), 'Association québécoise de la production médiatique (at para 85) Canadian Media Producers Association (at para 87) BCE Inc. (at para 153), Canadian Broadcasting Corporation (at para 5(1)), Writers Guild of Canada (at para 7), Directors Guild of Canada (at para 80); and, Rogers Communications (at para 133).

³⁰ Innovation, Science and Economic Development Canada, Broadcasting and Telecommunications Legislative Review: Terms of Reference, page 9.

³¹ *Ibid.*

50. While public and community elements indeed carry a strong public mandate, private elements (radio and television broadcasters, distributors, online streaming services, producers, and other creators) carry larger obligations to generate profits and support livelihoods. It is reasonable to expect all parties who derive a public benefit or target Canadian audiences to contribute policy goals, but it is not reasonable to expect them to perform a public service first and foremost.

c) Promote flexible and outcomes-based regulation and policy-making

51. The current broadcasting regulatory model is based predominantly on form and prescription. It requires broadcasting licence-holders to: operate on terms that are fixed for five years; engage in renewal processes that can consume two years or longer; and bring formal applications to amend the conditions of their licences that can consume several months or longer. It requires participants to engage in lengthy and expensive, quasi-judicial public proceedings with contentious interventions. In a business evolving at breathtaking speed, this rigid framework inhibits Canadian media undertakings from adapting in sufficient time to meet the demands of audiences.

52. In a sense, the fact the Panel's review has become necessary is evidence that the current regulatory and policy framework has been unable to keep pace with events in our industry. For example, the CRTC convened a comprehensive policy consultation earlier this decade (the "Let's Talk TV" hearings), which yielded significant and constructive reforms of television regulations. However, from beginning to end, that process (including subsequent implementation measures) consumed over three years. In the time it took for the changes to come into effect, the industry continued to undergo dramatic change. The current processes are not nimble enough to keep pace.

d) Preserve a discrete Canadian rights market

53. The Commission has long granted licenced television broadcasters certain regulatory privileges, such as program rights protections in the form of simultaneous substitution. We believe these protections will remain vital to the health of the Canadian media sector in the years ahead.
54. Simultaneous substitution helps protect a discrete Canadian market for programming rights, particularly for popular prime time US network programs. While the value of simultaneous substitution diminishes as viewing shift to on-demand platforms, it is still estimated to preserve approximately \$250 million in basic television revenues.³² Maintaining a discrete Canadian rights market is a fundamental policy tool underpinning the Canadian television system and must remain so. Without it, Canadian television players will not have sufficient capital to produce Canadian content (such as local news) and may be bypassed entirely by foreign content providers.³³
55. In order to preserve a discrete Canadian programming rights market, a new Act should require that these protections be maintained.

e) Include measures to combat piracy

56. As mentioned above, Canadian media companies must be permitted to fully monetize their investments in content. However, they cannot do this when that content is stolen on an industrial scale. Piracy of content online is a pervasive and growing problem worldwide and it is having a direct impact in Canada. It promises to increase in severity over time as more and more consumers become tech savvy, and a new generation becomes accustomed to pirating content.

³² Broadcasting Regulatory Policy CRTC 2015-25, para 14.

³³ A material loss of foreign programming rights represents a key potential tipping point. It is even possible to contemplate a time in the future when no virtually no popular foreign programming rights are available to Canadian buyers. What public policy must not do is accelerate that time table; whatever can be preserved of Canadian discrete rights to foreign programming are necessary to finance Canadian programming and business model evolution.

57. Corus is a member of the FairPlay Canada coalition that sought Commission approval to establish an independent agency called the Independent Piracy Review Agency (“IPRA”). The IPRA would have authority to identify websites engaged in content theft, and recommend that these websites be shut down.
58. Through FairPlay, the entire Canadian content ecosystem – broadcasters, producers, distributors, and other creators – came together to take a stand against content theft. “Supporting creation, production and discoverability of Canadian content,” is one of the key themes identified by the Panel in this process. Protecting intellectual property rights to Canadian content, increasingly threatened by piracy, is critical to this task.
59. The Commission denied the FairPlay application on jurisdictional grounds. A new Act should provide clear measures to combat piracy.

Conclusion

60. Corus appreciates the opportunity to participate in this important review. A healthy Canadian media sector, with healthy Canadian media companies of scale, remains critical to Canadian policy objectives, and they face critical challenges.
61. The most constructive role the Panel can fill in this process is to help address these challenges. It can do so by making clear to Government that immediate, non-legislative measures must be taken, and all policy and legislative options should be considered. In particular, it should request authority to draft an entirely new Act in its Interim Report, and take the initiative to draft new legislation. It should also be empowered to consider greater foreign ownership of the media sector as a policy option.
62. The existing Act was originally drafted in the 1960’s and amended in 1991. A new Act should be drafted with that sort of longevity in mind. The Panel should insist that policy and legislative options be on the table as it undertakes this once-in-a-generation work. A vibrant, internationally competitive Canadian media sector for the digital age requires nothing less.

63. We look forward to contributing further in the next stage of this review process.