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September 4, 2009

Mr. Louis L. Roquet, Chair of the Board of Directors
Mrs. Valerie Creighton, President and CEO
Mr. Stéphane Cardin, Vice-President, Policy & Stakeholder Relations
Canadian Television Fund
50 Wellington Street E, 4th Floor
Toronto ON, M5E 1C8

Re: September 4, 2009 CMF Industry Consultations

Dear Mr. Roquet, Mrs. Creighton and Mr. Cardin,

Since the CRTC's New Media hearings in 1999, the Canadian broadcasting and audio-visual industries have been anticipating the inevitable convergence of television and new media. Although the CRTC's New Media hearings of 2009 maintained its exemption on new media, the Department of Canadian Heritage chose to adapt to the changing media environment by consolidating the Canadian Television Fund and the Canadian New Media Fund into the Canada Media Fund (CMF).

Under the CMF, content will be developed on multiple platforms promising new and interactive projects that will engage Canadians. Moreover, innovators experimenting with platforms and means of expression will have a chance to be recognized for the risks they take as they create and disseminate content in innovative ways. This is indeed an exciting time for creators and all Canadians.

With the arrival of CMF exists the opportunity to address media production holistically and assess strengths and weaknesses in the existing system. In some cases, improvements will only be possible by increasing available funds to redress the current omissions. In addition there will be much pressure to have the fund *be all things to all people*, clearly an untenable position with the existing funds. Therefore, it is DOC's hope that the CMF's envelope be increased in the near future.

DOC views this as a turning point for the audiovisual production industry. Although the production cultures of the television and the interactive industries have yet to blend - and it remains to be seen to what degree they will - the combination of the two holds the promise to yield impressive and outstanding results.

However, before moving ahead with such new relationships between the two industries, issues concerning the current reality of documentary production need to be addressed as they have long been neglected from a policy perspective. This submission addresses these issues and recommends solutions and strategies to consider when developing the new CMF guidelines as a core aspect of the Canadian media environment in the traditional audio-visual sector.

DOC sees the creation of the CMF as an opportunity to redress current systemic weaknesses with the aim of establishing a structure that will benefit from increased strength and stability.

We look forward to working with the CMF board of directors and staff to further refine details about how to structure the new guidelines.

Respectfully submitted,

Tina Hahn, Co-chair

John Christou, Co-chair

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Executive Summary

The overarching principle governing the CMF should be to foster a healthy, vibrant and competitive business sector where stakeholders have reasonably equitable bargaining power. If it is appropriate to reward good performance, the converse is also equally true and consequences should exist for poor conduct.

Although DOC's submission is heavily weighed on matters pertaining directly to documentary production, it is our belief that documentarians and the public have much to gain from the opportunities afforded by CMF.

Convergent and Experimental Stream allocations

DOC proposes:

- 84% for the convergent stream of the allotted $346 million dollars;
- 16% for the experimental stream receive of the allotted $346 million dollars;
- the creation of a $7M Theatrical and Educational Documentary Program to help promote theatrical documentaries, non-broadcast educational and institutional documentaries, allocating $5M and $2M respectively to each strand.

DOC recommends changes to the special incentives including:

- Decreased versioning;
- Increases to the regional productive incentive, the program for French language production outside of Quebec, the development program, and the aboriginal language program;
- Allocating 1.01 % of the CMF fixed allocation budget for gaming in the experimental stream.

Convergent Content

All new platform components should meet three basic criteria:

- the new platform component must enhance the user's experience;
- the new platform component must be interactive;
- the new platform component must have original content (new material).

DOC proposes a minimum license fee per platform for all broadcast projects that would:
a) cover additional platform expenses in the budget;
b) add, in addition, at least 15% to the OTA license fee;
c) have a limited term for web projects;
d) include an equitable share of revenue, the model remaining to be determined, but that should be part of the guidelines.

It is essential that the new platforms have sufficient budgets and not cause undue strain on the producers.

VOD and Eligible Entities

All new eligible entities should be judged on the following criteria:

- prior Canadian content commitments / future plans to support Canadian independent production;
- regional production commitments;
- promotion of Canadian content / future plans to promote Canadian content;
- intangible benefits resulting from the programming (public value);
- what the entity can offer that others do not that could include specific genre commitments, and different kinds of linguistic productions such as third language and aboriginal language productions;
- agreed upon terms of trade guidelines with independent producers;
- have the finances to support a licence fee;
- be Canadian owned and controlled;

New methodologies of analyzing audience numbers and demographics for VOD, and other entities will need to be developed.

DOC advises that the CMF hold entities from corporate groups on a higher level of scrutiny than others, especially when two entities of the same corporate group pay licence fees for the same production.

Audience Success and Return on Investment

DOC recommends that the CMF expand its analysis of audiences to take into account new audience viewing habits, international sales, educational and institutional audiences, and new platforms. Furthermore, we propose that the current quantitative and financial model for measuring return on investment should be widened to consider more intangible and qualitative aspects of media production.

Marketing and Promotion

DOC suggests documentarians be able to recoup the marketing and promotion costs available to producers of other genres as well as other costs such as:

- Webmaster / website costs
- Creation of streaming / download files

- Publicist
- DVD duplication
- Press and web advertising
- Marketing staff
- Advertising materials / design
- Festival costs

DOC supports the creation of an independent promotion and marketing fund, as long as marketing and promotion costs are not required for all applications.

DOC would also like to change current guidelines that give the broadcasters too much control over marketing and promotion, and exploitation rights.

Funding Allocations by Genre

DOC believes that genre allocations be protected and that documentary be given genre-specific rules pertaining to the way in which development, financing, production, distribution and marketing occur and put forward suggested guidelines to that effect.

We recommend that all the genres be given a fixed allocation of the BPE envelopes as we do not consider it to be wise to allow the envelope holders to have control over the allocations of the eligible genres.

Given documentary's declining share within the overall CTF budget, we put forward recommendations to stop the erosion of the genre's financing.

DOC suggests the following framework for funding allocations:

- Documentary 33.69% of the BPE allocations
- Drama 45.04% of the BPE allocations
- Children's 15.96% of the BPE allocations
- VAPA 5.32% of the BPE allocations

In regards to the total fund, the breakdown would be:

- Documentary 27.43% of the total fund
- Drama 36.67% of the total fund
- Children's 12.99% of the total fund
- VAPA 4.33% of the total fund

Documentary Production

In order to prevent slippage of the documentary definition, DOC proposes a more stringent interpretation of the definition and rejects the proposal for a special envelope for reality and lifestyle programming. DOC is further concerned about the entry of documentary broadcaster affiliate and in-house producers to CMF.

In addition in this section, we go beyond the scope contained in the Briefing Notes to address many outstanding issues faced by documentary producers with the CTF.

DOC recommends a higher ratio of broadcast license to CMF funding and that it be set at 1.5 instead of 1.25:1 for all docs.

DOC proposes modifying the current CTF POV guidelines:

1. to reflect the present conditions of documentary production;
2. reserve 15% of the entire documentary BPE for POVs;
3. have one arbiter judging if a doc meets POV criteria or not;
4. consulting further with DOC to draft the POV guidelines.

While establishing CMF regulations, many guidelines pertaining to documentaries need to be revised to better reflect the genres' distinct production realities including producers' ability to adequately invest in the development stage of production.

Guidelines regulating what are recoupable costs for personnel and equipment need to be adapted to reflect the genre's business practices.

DOC wants the BPE system modified so that the broadcasters' performance is taken into account at the time of allocation.

Canadian Elements

Because of the genre's unique production aspects, DOC proposes genre specific Canadian Elements. The CAVCO points required for documentary would be based on the production team and not its location and subject matter evaluated for its relevance and interest to the Canadian public. CAVCO points required:

- 2 points for Director
- 2 points for Writer (if there is one)
- 1 point for Editor
- 1 point for Composer (if there is one)

Third Language Production

DOC proposes that $1M be allocated to third language production divided evenly between both streams where a dominant portion of the fund should be independent.

In-house Production

DOC provides an extensive review of all the terms of trade related issues with broadcasters.

DOC believes that no more than 1% of BPE should be allocated. Of that amount 65% should be restricted to production of Variety and Performing Arts (VAPA), with the remainder devoted to the other genres.

DOC is of the opinion that the current definitions for in-house and affiliate production companies are sufficient and appropriate.

Audience Success and First Run Original Programming

DOC would like to see the following modifications made to the definition of "prime time":

- that prime-time be defined as taking place between Sunday and Thursday, which are the most popular viewing days;
- that prime-time be defined as between 8pm and 11pm for the Sunday to Thursday slot;
- that the programs be evenly spread throughout the year, with no more than 25% of programming aired during the months of June, July and August.

DOC believes that re-runs should receive a weighting of factor of 1, while first run and original programming would receive the weighting factor of 2, allowing for multiplication.

English Regional Production

Consideration should be given to have Vancouver and Montreal be recognized as Regions and have regional incentives apply.

The regional incentive licence credits of a BPE should be reinvested into the regions based on the guidelines of the Production Incentive Pilot Program wherein the regions having experienced the largest drops would receive the highest percentage of the BPEs regional incentive licence credits. Additional credit would be given to broadcasters who consistently invest in a region and who commission new and original programming.

These incentives would be complemented by a system encouraging regional investment in underrepresented genres and we put forward a multiplying credit system to that effect.

We suggest increasing the Production Incentive Pilot Program from $10 to $14 million.

Finally, eligibility for regional status should be solely based on the ownership of the production company when applying to the experimental and convergent streams.

In conclusion, DOC is confident that the current changes are ushering a time when Canada's broadcast and entertainment industry can be global competitors in the digital age while fostering a healthy media industry at home.

This is why it is imperative the sector thoughtfully consider policies to be implemented in a manner that does not jeopardize existing players and builds on our strengths while fostering the development of strong connections between new stakeholders. Although many of our recommendations are documentary specific, we believe that broad and flexible guidelines will best serve innovation and competition across the field.

Introduction

1. The DOCUMENTARY ORGANIZATION OF CANADA / L'ASSOCIATION DES DOCUMENTARISTES DU CANADA (DOC) is the collective voice of independent documentary filmmakers across Canada. DOC is a national non-profit arts service association representing over 800 directors, producers and craftspeople working in the documentary community, from all provinces and regions of our nation. DOC advocates on behalf of its members to foster an environment conducive to documentary production and strives to strengthen the sector within the broader film production industry.

2. The creation of the Canada Media Fund presents a rare opportunity to reorganize and rethink the use of this unique combination of public and private funding. DOC would like to add our collective voice to the individual voices you will be hearing across the country over the next months as the consultative process continues.

3. As documentary producers it has been our experience over the last several years in working with the CTF that, although the documentary genre was intended to be protected by CTF regulations, the reality has been quite the opposite. In particular, the production of POV and one-off documentaries has significantly declined as conditions of production have become more onerous. POV documentary is, for many, the epitome of the genre and to witness its current decline is distressing as it represents a loss of critical voice within our democratic discourse.

4. We see the establishment of the CMF as an opportunity to create a separate and protected portion of the fund with its own guidelines and regulations, which take into consideration the particular needs of documentary production - which are distinct from those of other genres. It has been our members' experience that CTF rules were created with drama as a model and documentary productions have had to struggle to find the right fit within that mold. While documentary-specific rules have been introduced over the years, they have not fully matched the realities of documentary production. DOC welcomes this opportunity to establish new guidelines, which better suit documentaries.

5. Based on our research, we provide an analysis of trends within the CTF and make recommendations for doc-specific allocations and regulations. As well, we address changes in regulations we think are necessary should the present BPE system remain in place.

6. *Background and CTF Trend Analysis*
   Since the mid-1990s documentary production has steadily increased by an annual rate of about 11%, yet documentary's share of CTF funding has shrunk. In 2001-2002, before the introduction of the BPEs, docs accounted for 23% of the Fund. In 2008, according to the CTF Stakeholders Report, doc producers received 18% of the fund yet are created 39% of all CTF-funded programming hours.

7. During the same time period, drama accessed 56% of the fund to produce 22% of all CTF programming hours. The CTF Stakeholders Report notes that the inequity between drama and documentary is evidence of the high cost of creating drama. DOC acknowledges that as a general rule documentaries are less expensive to produce than drama, but there are other significant factors contributing to this widening gap. Since the inception of the BPEs, the average one-off and POV budget has been reduced by 30-45%. This is due to a combination of several factors that include lower license fees matched at a ratio of 1.25 or 1.5 by CTF, as opposed to the previous combination of higher license fees plus Telefilm production investment of up to 49% of budget; and the demise of several provincial and educational funding programs which supported doc production.

8. *The Long Tail Distribution Model*
In the past, the CTF designed its policies with drama in mind and emphasis was placed on securing audiences through first run, prime time broadcasts and near term repeats. Although the need remains for promotion and prime time screenings, the advent of the Internet and alternative platforms for disseminating programs requires a re-examination of basic principles of measuring audience success. The Long Tail model offers a new way to analyze distribution; moreover, it exposes flaws in conventional ROI and Audience Measurement criteria.

9. But the Long Tail model can also provide guidance to policy makers, investors and producers seeking to maximize many kinds of returns on documentaries. By applying this model we can differentiate the particular needs and distribution patterns of documentaries, and propose policy changes that better serve the genre. Appendix A discusses the Long Tail model and its implications for documentary production.

10. The importance of this model for documentary distribution should not be underestimated. The re-evaluation and recalibration of measures of success for a convergent world offers an opportunity to reconsider current models.

Briefing Notes Responses

1. Program Allocations – Convergent and Experimental Streams

1.1 In Briefing Note 1, the stakeholders were called upon to suggest the appropriate allocations for the convergent and experimental streams. In light of the historical data of the CTF and the CNMF, DOC proposes that the convergent stream receive 84% and the experimental stream receive 16% of the allotted 346 million dollars. Please refer to the attached document for a more comprehensive breakdown of DOC's proposed funding allocations.

1.2 Furthermore, the CTF asked stakeholders whether or not there should be a minimum percentage of the convergent content set aside for non-television programming. Not only does DOC support such a minimum percentage, we also propose the creation of two funds that would provide a framework for how the allocation for non-television programming could support the needs of the documentary community following the cancellation of the Canadian Independent Film and Video Fund. The first is the Theatrical Documentary Program, which would support long form documentaries and the second is the Educational Documentary Program, which would finance documentaries for institutional and educational purposes.

Proposal for a Theatrical Documentary and Educational Program

1.3 *Theatrical Documentary Program*
Theatrical Documentaries build public and commercial awareness and add perceived value to the genre. It is rare for newspapers and TV guides when covering documentary releases invariably to lead to press and public awareness that no advertising dollars could ever hope to achieve. Thus, DOC proposes that the CMF set aside 2% of the total fund (in 2009 $s this would be $7 M) for the creation of theatrical and educational funds in the following manner: 70% (or $5M in 2010) for theatrical features, and 30% (or $2M in 2010) for educational documentaries.

1.4 Currently the only funding venue supporting theatrical docs is a pilot project within Telefilm that has had moderate success. Feature docs are usually financed as a hybrid of broadcast and non-broadcast lengths, and already require both broadcaster and CTF financing. Distributors have not yet become full partners in documentary scenarios, despite box office interest. Old models continue to be pursued, although there is a demonstrated market interest for theatrical documentaries as attested by this year's Hot Docs Festival, which was attended by 122,000 people in Toronto and boasted revenues of $1,561,919.[1] This is an 43% increase in attendance from 2008 (85,000 people).

1.5 DOC submits that the market could support, on an annual basis, a total envelope of $3.5 million for English Canada. Depending on the allocations, this amount could support between 8-10 projects at the development stage, and 4-6 at the production stage. It is our hope that, once a successful base is established, more documentaries can be sustained in the future.

1.6 In the French language market, DOC National and DOC Quebec have consulted and met with industry leaders, and we submit that the market could support approximately 4 projects in development, and 3-4 in production, for a total envelope of $1.5 million. Again, it is our hope that once a successful base is established, and the success of box office growth is evidenced, the number of documentaries can grow.

[1] Public and private revenue figures, currently un-audited.

1.7 Based on experience, our assumption is that one cannot produce quality feature documentary for less than $500,000, and that budgets can range up to 2 million. Therefore, based on an average budget of $1.3 million, potential financing scenarios would include CMF involvement of approx $450K to $600K - approximately 40%.

Figure 1: Theatrical Documentary Program Example

English Language	Budget	Contribution	#	Total $	%
Development	100,000	64,000	10	640,000	64%
Production	800,000	392,000	2	784,000	49%
Production	1,100,000	495,000	2	990,000	45%
Production	1,300,000	494,000	1	494,000	38%
Production	1,600,000	560,000	1	560,000	35%
Subtotal English			16	3,468,000	
French Language					
Development	100,000	65,000	4	260,000	65%
Production	900,000	441,000	2	882,000	49%
Production	1,300,000	390,000	1	390,000	30%
Subtotal French				1532000	
Total			7	5,000,000	

Educational Documentary Program

1.8 With the recent cancellation of the Canadian Independent Film and Video Fund (CIFVF), Canada has lost an essential component for funding documentaries not conceived for broadcast. Currently, no funding sources, outside of the NFB, exist to support the production of non-broadcast documentaries.

Productions previously screened by students in elementary, secondary and university classrooms and broadcast by the educational broadcasters were generously supported by the CIFVF. With a tiny budget of $1.5M they funded 648 productions over the course of their existence, providing jobs for those documentary producers dedicated to education. The CIFVF's $17M contribution kick-started $125M in total production. Canada is in dire need of a funding source for non-broadcast docs tailored for classroom use. Teachers need discussion-starters, docs of 10-20 minutes, and docs of 30-40 minutes, which complement their curriculum. Today, instead of turning to Canadian producers, school boards and university libraries are turning to USA and European-made programs to fill the gap in current materials. If $2M of the documentary allocation of the CMF is sequestered for this use, DOC believes the potential impact, both economic and cultural, will be immense.

1.9 Finally, the theatrical/educational allocation should be separate from the broadcaster envelopes and placed in the fixed allocations and this money should not be accessible to broadcasters for their in-house productions.

Special Incentives

1.10 DOC favours their continued financing, but would like to see the following changes made to the allocations:

- Decrease versioning assistance as reports indicate that this was an undersubscribed allocation
- increase the regional productive incentive, the French language outside of Quebec program, the development program, and the aboriginal language program to address their historical over-subscription
- allocate 1.01 % of the CMF fixed allocation budget for gaming in the experimental stream

1.11 Furthermore, in order to facilitate greater innovation and participation in the experimental stream, DOC recommends that the special initiatives also have allocations for the experimental stream.

1.12 Please refer to the attached document for the exact breakdown of the allocations for the special incentives.

2. Convergent Content

2.1 In preparation for the CMF consultations, DOC conducted a survey of its membership to probe members' views and concerns about the proposed changes to CTF when it becomes the CMF. In particular, the survey gathered opinions about the implementation of mandatory new platform components.

One of the most predominant views was that not all documentary productions warrant a new-media component. Furthermore, the membership was concerned about how they could finance a new platform component in the face of budgetary constraints and minimal or non-existent commitment by broadcasters towards financing of content requiring ongoing updates. However, if the terms were defined, the budgets appropriate, and the guidelines fair, many members looked forward to expanding the reach of their projects to wider and new audiences.

2.2 Although many of our members were concerned when it was announced that all television productions will have to have a new platform component to qualify for funding, DOC and its members are ready to adapt and innovate, but such change must be gradual and realistic for the industry. In order to do so, DOC proposes that the new platform component's guidelines be broad and flexible so that they can accommodate the changes in industry and expression.

2.3 Drawing on the principles of the Bell Broadcast and New Media Fund, the Quebecor Fund, the Canadian New Media Fund, and the Digital Media Pilot Program, DOC proposes three basic criteria that all new platform components should fulfill:

- the new platform component must enhance the user's experience
- the new platform component must be interactive
- the new platform component must have original content (new material)

2.4 DOC considers such criteria to be sufficient to meeting the mandate of the CMF for several reasons:

- First: they do not specify in what form the new platform component should be. The Quebecor Fund requires the use of high-speed Internet, and sometimes interactive television. Such restrictions can stifle innovation because they do no allow for the incorporation of different kinds of new media. By making the criteria relatively technologically neutral, the new platform component can adapt as new forms emerge and propel innovation.

- Second: the terminology is open and flexible so that the idiosyncrasies of the platforms and of the genres can be taken into consideration when judging the eligibility of the new platform component. Viewers have different expectations of different genres and interact with new media forms based on the medium itself. To impose strict definitions on what enhances the audience's experience and what is interactive would constrain certain genres from meeting their requirements, or render certain applications on new platforms unusable.

- Third: the guidelines do not provide exclusive examples, but they are non-exhaustive. If certain examples of new platform products were used as the example, such a policy would stifle competition and also innovation. As mentioned above, the convergent stream imposes a new platform requirement on television program producers who may not have much familiarity with developing multiplatform projects. To expect all producers to commission projects similar to the convergent projects in the Briefing Notes would result in a drastic drop in applications for funding. Transition for such producers should be gradual and fair. Moreover, should future platforms and future forms of interactive presentation be disqualified by exclusive examples, this could hinder new forms of expression.

- Fourth: certain program genres have multiple kinds of formats. For instance, documentaries, variety and performing arts can be one-offs, mini-series, or series. With broad and flexible guidelines, the producers of these kinds of formats will be able to make appropriate decisions in regards to the financing and degree of interactivity of the new platform components that accompany their productions. In addition, by not including exhaustive examples, the new platform components will be suitable to the format of the program rather than an add-on expense.

2.5 However, the three guiding criteria are not sufficient to explain how the new platform component of a convergent stream program would be financed. DOC proposes that there should be a minimum license fee per platform for all broadcast projects that would:

a) cover additional platform expenses in the budget,
b) and add, in addition, at least 15% to the OTA license fee
c) have a limited term for web projects
d) include an equitable share of revenue (DOC does not yet have an idea of what such a model would look like, but in principle believes that this should be part of the guidelines)

2.6 Furthermore, the licences for the new platform component and the television component must be separated, with different terms (much shorter for digital platforms), and require no term of exclusivity. Nor should it be the case that a broadcaster should trigger any licence fee for a new platform component. DOC recognizes that with the inclusion of the interactive media industry in the CMF that new partnerships will emerge; ones where the broadcaster need not have to participate. Given that other linear broadcasting forms exist, besides television, and more may emerge, we do not want to stifle their entry into the Canadian media environment through needless exclusivity.

2.7 As for the minimum budget of a new platform component discussed in the Briefing Notes, DOC argues that no minimum budget be imposed for any component. Producers must be permitted to determine for themselves what additional costs are applicable for the different platform needs and budget accordingly. The imposition of a minimum budget would result in producers allocating more time and labour on something additional to the original production, rather than devoting their time towards their primary content. By not setting a minimum budget, there would be more competition and a gradual integration of producers into the new media environment.

3. Video on Demand

3.1 In the absence of an agreement on terms of trade in the industry, documentary producers, much like our colleagues in other genres, have had an uneasy relationship with VOD channels. As part of licence fee agreements with broadcasters, documentary producers are often asked to sign-off VOD rights without any extra compensation. Furthermore, documentarians are unable to penetrate the VOD market because of the present CRTC regulations regarding shelf-space on VOD channels. In the past, and again in our last submission to the CRTC, we have stressed the need for a new broadcast category for Feature-length Documentary (currently termed category 2c), which would be eligible for inclusion in the VOD shelf-space. As a result, DOC is not sure whether opening up VOD services, as an eligible entity for a BPE would be advantageous.

3.2 However, if the CRTC did create a Feature-length Documentary Category, and the terms of trade agreement allow for documentary producers to access VODs as separate windows, DOC would be quite enthusiastic about the prospect of a new platform for feature length one-offs and documentary series. The decline in the commissioning of POV and one-offs could be partially remedied by allowing for VODs to be considered a television platform in the convergent content stream.

3.3 In order for VODs to fully benefit the documentary industry, a number of considerations must be explored. First of all, the distinction between BDUs that have SVOD and TVOD is quickly becoming blurred and useless. Most BDUs offer SVOD services as part of the channel packages; TVOD is always included. There remains only one distributor that offers solely TVOD (Bell Vu VOD). Furthermore, many of the VOD services operated by the cable companies include VOD programming that is purchased from broadcasters that already have BPE envelopes. The BPE holders that have their programming available on VOD undertakings include: Family, HBO, Much, MTV, Mpix, Movie Central, Superchannel, The Movie Network, Teletoon, and Treehouse. Finally, broadcasters own many VOD services: Rogers and Quebecor operate VOD channels. Clearly, what constitutes a VOD service offered by a BDU is not straightforward.

3.4 Meanwhile, the combination of ownership, offerings, and kinds of VOD services impact on the eventual terms of trade agreement. Independent producers would like to have multiple windows for distribution of their programming, but only in conditions where they are fairly compensated. DOC has already expressed its support for the CFTPA's proposed terms of trade agreement. Within this agreement, broadcasters would pay the producers for VOD and streaming Internet rights as different windows for distribution. If any VODs are allotted BPEs, we would like the CMF to maintain the safeguards present in the BPE guidelines that protect producers from broadcasters claiming additional rights without compensation. Moreover, such protection should be extended to streaming Internet and VOD if they were to be considered television platforms. Clear lines need to be drawn in order to accommodate the needs of the independent producers, the broadcasters, and the viewing habits and choices of the Canadian public.

VOD Services and BPEs

3.5 Although DOC does not support the current BPE system, DOC supports giving VOD services BPEs in order to commission Canadian programming. However, no system exists for judging which VOD services should be given a BPE, nor have any VOD services actually allocated revenues towards program licensing. With the modifications to the CMF, and the CRTC, VOD services may become a regular window for Canadian content, and all VOD services should be allowed to participate. However, those with prior commitments to Canadian content should be allotted a larger envelope. DOC supports having all the possible VOD services present a case indicating why they should be recipients of BPEs. A portion of the CMF's funding comes from the public and the new BPE envelopes should be given to those VOD services who wish to serve the best interests of the public.

3.6 DOC proposes that VOD services be judged on the following criteria:

- Prior Canadian content commitments/ future plans to support Canadian independent production
- Regional production commitments
- Promotion of Canadian content/ future plans to promote Canadian content
- Intangible benefits resulting from the programming
- What their VOD service can offer that others do not (this could include specific genre commitments, and different kinds of linguistic productions such as third language and aboriginal language productions)
- Fair terms of trade guidelines with the independent producers
- have the finances to support a licence fee
- Canadian owned and operated

3.7 Once a VOD service has given of a BPE, it will be evaluated by the current BPE system guidelines, with the appropriate modifications to audience success for non-linear programming. However, if any of the BPEs stray from their commitments in their applications, they could be denied an allocation the following year, or suffer penalties in the form of reductions to their allocations.

VOD services and Audience Success

3.8 The revenues of VOD services have been growing exponentially since their introduction into the Canadian broadcasting system. There is no doubt that VOD services are successful with Canadian audiences. However, unlike linear channels, VOD services do not have a metric for analyzing its audiences' demographics. DOC anticipates that in the future there will be new systems to evaluate VOD services by demographics. In the meantime, we would like to remind the CMF about the distinctive challenge that VOD offers the Canadian media environment: a new way of judging audience success based on non-linear programming. DOC recommends approaching this challenge through the logic of the Long Tail Distribution Model combined with the current system evaluating audience success. Similar to online new media components, VOD services offerings cannot be judged by the first run, but their continual access.

3.9 DOC supports the use of the set-top boxes in order to judge how many times a program is being viewed. Because VOD services allow for user input, the interface of the VOD programming selectors could be easily modified for selected people (BBM-Nielson participants) to enter in how many people are watching at a time, or to fill in a demographic profile. DOC has faith that the research methodologies for audience demographics will develop alongside the need for that information.

New Models and New Relationships

3.10 Unlike conventional broadcasters, VOD services have different revenue streams. Although they want to have the ability to have advertiser based revenue streams, for the most part, VOD services generate the majority of their revenue through subscription. In order to provide the appropriate amount of compensation, independent producers should be able to share in the revenues that come from their programming. One of the criteria for a VOD service to be judged worthy for a BPE is that it should have an industry endorsed terms of trade policy enclosed in its application.

3.12 In addition, the allotment of BPEs for VOD services also creates new relationships between the broadcasters and the BDUs. VOD services have already engaged in contracts with broadcasters to carry VOD channels of the programming commissioned by broadcasters. Such examples include: HBO Canada, Much, and Superchannel. However, if both a BDU and a broadcaster are paying a licence fee to a producer, this should be considered to be similar as to when two broadcasters contribute. Moreover, this practice has been in existence for a number of years as independent producers have been negotiating contracts with BDUs and broadcasters through funds such as the Bell Broadcast and New Media Fund, and the Quebecor Fund.

3.13 DOC is concerned that the BDUs and Broadcasters may join together to leverage gains during terms of trade negotiations. Given the historic animosity of the BDUs and Broadcasters, DOC fears increased hostility through competition in acquiring programming rights. Nevertheless, we would support the CFTPA in any terms of trade negotiations between independent producers and BDUs, or the independent producers and the BDUs as well as the broadcasters. What is essential is that independent producers be compensated for their productions. DOC expects all the mechanisms that protect producers from broadcasters claiming additional rights that were not part of the negotiations be extended to any agreement with a BDU.

4. Audience Success and Return on Investment

4.1 DOC is pleased that the CMF has opened up discussion regarding the impact of audience success, and return on investment as part of the fund's future operation. For quite some time, documentary producers have been pushing for a new framework that would take into consideration the intangible benefits accrued by documentaries. Using only monetary information about a project to quantify success would be a grave miscalculation of the value of broadcast or non-broadcast productions. It is DOC's position that documentaries' success should be measured both with quantitative and qualitative metrics.

4.2 On the issue of quantitative success, DOC would like to caution that audience numbers, and generally all information gathered both by the CRTC and broadcasters concerning documentary audiences, is clouded by the aggregation of information into category 2-5. Consequently, any calculations about the audience success of documentary programming are not accurate. Although audience shares of documentary viewing from BBM Nielson we are known, the CRTC or the broadcasters do not disclose the information regarding documentary expenditures. As a result, understanding the correlation of expenditure and viewership to develop policy is impossible.

4.3 As PVRs, VOD, and streaming television over websites grow in popularity, the cumulative audience for a documentary may be larger than what BBM Nielson can capture. CMF recognizes that new methodologies to determine audience success for the new platforms will need to be developed and DOC fully supports the development of such methodologies. It is our belief that they will reveal that a documentary's audience success goes beyond the BBM Nielson ratings.

4.4 Furthermore, documentaries continue to be internationally successful as attested by the rise of international co-productions, and growth in audience numbers. Moreover, if the Long Tail Distribution Model were applied to documentaries, especially in regards to international sales, it would reveal that documentaries have become increasingly popular purchases. However, CTF's current methodology for judging audience success is national. DOC recommends that the CMF develop a methodology that attempts to factor in the international audience of the productions when trying to measure audience success and return on investment.

4.5 On the issue of qualitative success we submit that the impact of Canadian docs reach far beyond our country's borders by contributing as much to the genre's intrinsic artistic value while simultaneously broadening social discourse around the world. Closer at home, from a national cultural policy perspective, documentaries, like all Canadian programming, allows the Canadian public to see itself reflected in the stories it watches. Cultural production, via documentary, shines a light on under represented sectors while educating and mobilizing civil society. These values are dear to the Canadian public and we would like to put forward the position that the intangible benefits accrued by docs are of utmost importance. In our opinion, return on investment has to be measured not only by financial success but also through the lens of the objectives stated in the Canadian Broadcasting Act.

Audiences are now far wider than the ones watching the premiere broadcast on the lead broadcasting channels. Festival screenings, community screenings, online audiences, sales to non-theatrical institutions, schools, libraries, universities and broadcasts on 2nd and 3rd windows are all instrumental in building a wide and broad audience for documentary productions. Consequently, measuring audience success and return on investment for documentary productions requires a different framework that incorporates its expanded viewing public.

Finally, we believe that intangible benefits can be expressed, or recognized, by the amount of commentary, debate and discussion docs and POV docs particularly engender. These have innumerable uses beyond their initial broadcast and, in the upcoming CMF world, beyond the second digital platform.

4.6 The current system of measuring audience success of documentaries is, in our opinion, flawed. DOC recommends developing a more inclusive system of measuring audience success that takes into account the wide range of viewers so that the full popularity of documentaries can be properly assessed. In 2004-2005, the Documentary Policy Advisory Group[2] discussed developing a framework of how to measure the economic impact and audience success of documentaries according to the unique market of documentaries.

In particular, Telefilm's *An Overview of Audiences for Canadian Documentaries* attempted to develop a way of researching the viewing habits in non-theatrical and non-television contexts. In spite of an inexact methodology to measure audiences as recognized by Telefilm at the time of the study, the data generated shows that it is possible to measure this audience sector. Indeed, Telefilm foresaw that this market would continue to grow. With the increasing availability of high-bandwidth video streaming programming in public libraries across Canada, and the growing penetration of broadband Internet access, the audience has grown significantly since 2005. DOC invites the CMF to revisit the methodology employed in this study as it attempts to fully assess documentaries' audience success.

Return on Investment

4.7 The methods of distribution employed by documentary makers are significantly different from those used by drama producers. In addition, the distribution system itself is markedly different. There are very few distributors in Canada willing to commit any significant investment to a documentary, whether it is broadcast or theatrical, nor commit the kind of skills and effort needed for adequate distribution once a doc is completed. In addition, within the documentary genre itself, experience has shown that it is even more difficult to secure distribution for a POV or one-off documentary.

As we head into the next digital decade, niche online marketing and educational marketing (which require funds just like any other methods) can best be done by doc producers themselves. But as the old adage would have it, *it takes money to make money*, and if there is no support for individuals wishing to distribute their own product, then no one, particularly the CMF, will see an ROI.

It is our opinion that the CMF must change the definition of distributor and must allow marketing costs into the production budgets of documentaries.

[2] The group consisted of the following parties: Telefilm, the NFB, Canadian Television Fund, APFTQ, CFTPA, DOC, Observatoire du documentaire, CBC, CAB, Canada Council for the Arts, Association of Provincial Funders, Canadian Heritage, OMDC, and SODEC

4.8 Currently the restrictions and caps on self-distributing serve only to reduce ROI in every way. On the chart provided in the Briefing Notes on historical ROI, we note that the steady fall of revenue appears to correspond with a tightening of the rules on self-distribution. A breakdown by genre with year-by-year information as provided below the chart might yield interesting data.

4.9 *Educational Distribution Counts*
Attention should also be given to educational sales because of the potential for substantial classroom audiences and library use. A documentary that sells several hundred copies to institutions may be viewed and discussed by tens of thousands of students each year in a context free of advertising. In addition, in the past ten years, publishers have specifically adapted broadcast documentaries for classroom presentation in collections such as the Pearson Education Canada's *Sociological Imagination*, Nelson Education's *Sociology Video Library*, and Thomson-Nelson's *Think Outside the Book* collection.

Each of these collections contains scores of shortened versions of broadcast programs. These collections are made possible by CTF's investment in the original documentaries. Although specific audience numbers are currently difficult to assess, it is clear that professors are using hundreds of documentary DVDs to galvanize classroom discussions. This kind of use is part of the "long tail" of distribution that keeps relevant programming in circulation for up to a decade. The expansion of new platforms and the ability to readily deliver programming via the Internet will increase this kind of selective and highly effective use and should be factored into any discussion of ROI for documentaries.

4.10 Recognizing the educational distribution of CTF programming is especially important in light of the cancellation of the CIFVF program, which previously supported non-broadcast programming. A number of tools developed by the CIFVF for assessing market demand for non-broadcast materials may be able to contribute to the CMF's overall development of tools to assess the ROI of documentaries beyond broadcast audience measurements.

4.11 *Favouring Success*
Every single producer and commissioning editor will tell you there is no “formula for success”. There is no way to ascertain the popularity or public interest in any particular program, film or website - sometimes it’s the completely crass, lowest-common-denominator project which garners the big audience. However, other times, it’s a so-called “boring” topic like the work of a photographer such as in *Manufactured Landscapes* or examining the inner workings of finance as in the *The Corporation* or a Powerpoint lecture on global warming as in *An Inconvenient Truth*. Given the above, the development of criteria favouring projects demonstrating potential for success does not seem appropriate when success is so unpredictable.

4.12 However, instead of prophesying success ahead of a given production, why not reward success by investing in a producer's future productions on the basis of a production's actual success? DOC proposes that the CMF establish a mechanism that would reward producers who create productions that are financially successful, receive critical acclaim, or inspire positive social change.

4.13 *Equity*
DOC would like to recommend that CMF begin equity investment at the 30% mark of funding, not 20% as is the case now, and that producers be allowed to recoup all development investment on a tier above all other investors.

4.14 *Risk*
The business model for documentaries, particularly one-off programs, is daunting and unpredictable. The continued production of this kind of programming can only be understood if cultural factors and intangible community benefits are taken into account. If risk is further ramped up, one producer remarked, “only the very rich and the very stupid will make documentaries."

5 Marketing and Promotion

5.1 CMF must adjust its publicity guidelines for what are permissible publicity costs for docs. Doc producers do not generally work with distributors and when they do, an advance is very rare. Unlike their drama counterparts, doc producers do not have access to other marketing funds. Most of the costs that used to be covered by this category are no longer admissible. Launch costs including press materials, DVDs, festival entry fees, festival publicist, posters, postcards, etc. are now deemed ineligible costs. DOC would like to see these costs reinstated as eligible costs.

5.2 Currently, documentary producers can recoup the costs of a production stills photographer and a publicist engaged “on-set” before the production is completed. This kind of publicity is more applicable to drama production and makes the criteria a difficult fit for doc producers. Generally, documentary producers travel with a minimal crew, and in general, simply can't afford a photographer or publicist. The existing criteria also do not recognize that documentary production generally work with smaller crews by virtue of the intimacy specific to docs.

5.3 Support for documentary promotion and marketing can be quite simple and allow the following eligible expenses:

- Webmaster / website costs
- Creation of streaming / download files
- Publicist
- DVD duplication
- Press and web advertising
- Marketing staff

- Advertising materials / design
- Festival costs

5.4 However, one of the constant problems for all Canadian programming is a lack of the public awareness of its existence. In order to remedy this situation, there needs to be a combined effort on behalf of the entire media industry to promote Canadian programs.

5.5 Briefing Note 5 suggests rewarding those broadcasters who market and promote CMF programming by increasing their BPE envelope. DOC supports such a measure, but would like to add that it should not simply be an incentive, but a requirement for their BPEs. Broadcasters should be required to advertise CMF programs in prime time, and, if not making demonstrable efforts to advertise outside of OTA or their webpage; they should be censured for blocking independent producers who promote their own projects as is the current practice with some broadcasters.

5.6 Furthermore, broadcasters should not be allowed to demand blackouts in markets and territories that they have not contracted. We know that some broadcasters have obtained a 1-year moratorium on all exploitation rights if the producers do not award all distribution rights to the broadcaster for no additional compensation. This should not be permissible under the new regulations nor should a broadcaster be allowed to restrict negotiations for a period of time if the parties can't reach an agreement for “other rights” domestically *and* internationally. It strikes us as odd that Canadian broadcasters would have the right to demand a holdback for the other rights in markets where they do not operate. This clause forces the producer to potentially wait 2.5 years before being able to exploit the Other Rights if the broadcaster chooses to have their first telecast on the last day of the 18 months period required by the current CTF. This clause basically turns the producer into a service producer for the broadcaster and does not allow a producer to recoup their investment or those of their partners. These broad sweeping extra-domestic demands should not be part of the new guidelines.

5.7 Finally, DOC would welcome a new component of the CMF dealing solely with marketing, promotion and distribution but would not suggest that marketing be a requirement for application. However, as with the main fund, DOC would propose the institution of genre-specific regulations.

6. Funding Allocations By Genre

6.1 DOC believes that genre allocations be protected and that documentary has separate and genre-specific rules pertaining to the way in which development, financing, production, distribution and marketing occur. As demonstrated earlier, distribution is only one among many examples of where the distinct nature of the various genres call for differentiated criteria.

6.2 *Four factors*
Please refer to section 8.

6.3 *Market determination*
As discussed above in our responses to audience success and return on investment, DOC does not support a market-driven calculation of the genre allocations due to the inaccuracies currently encountered in gathering audience data for all Canadian programming. We recommend instead that all the genres be given a fixed allocation of the BPE envelopes. Moreover, we do not consider it to be wise to allow the envelope holders to have control over the allocations of the eligible genres.

Although the broadcasters claim to be the pipeline to popular opinion, they also shape popular opinion by what they choose to fill their schedules. Furthermore, many of the broadcasters will also be allotted in-house production funding. Allowing the receivers of the envelopes to decide where to allocate the BPE envelopes will only exacerbate the pattern witnessed over the last 10 years: fewer and smaller expenditures on drama, fewer and smaller expenditures on documentaries, and interpreting definitions so that inexpensive reality programming dominate Canada's primetime schedules.

6.4 *Total Budgets and % of CTF participation*
DOC would like to point out that although documentaries presently only receive 18% of total CTF funding, the genre is responsible for over 38% of all CTF funded programming hours thereby providing much value for the investment.

6.5 Moreover, there are also never-reported costs inherent to doc budgets. There is significant unsupported and ineligible investment by producers during development which often occurs over several years prior to production that is never recouped, marketing and promotion costs paid by producers, and ongoing overheads that are also ineligible. Because of these unreported costs, we estimate that the average doc expenditures are 10-15% higher than reported. Generally, broadcasters are demanding increasingly larger amounts of the producer's tax credits to be included in production financing which consequently means that producers who cannot afford to do so are forced to absorb these costs thereby eroding their capacity to build their businesses.

6.6 *Genre Funding Allocations Breakdown*
Therefore, given the aforementioned, DOC suggests the following framework for funding allocations:

- Documentary 33.69% of the BPE allocations
- Drama 45.04% of the BPE allocations
- Children’s 15.96% of the BPE allocations
- VAPA 5.32% of the BPE allocations

6.7. In regards to the total fund, the breakdown would be:

- Documentary 27.43% of the total fund
- Drama 36.67% of the total fund
- Children's 12.99% of the total fund
- VAPA 4.33% of the total fund

6.8 Please refer to the attached spreadsheet for additional details on DOC's proposed funding allocations.

7. Documentary Production

7.1 DOC is appreciative of the opportunity provided by the CMF to evaluate the state of documentary financing and production under the CTF. In the past, DOC and CTF have engaged in the development of frameworks aimed at improving the state of the industry, namely the 2004-2005 Documentary Policy Advisory Group, and CTF's valuable contribution to Getting Real, the documentary sector's biannual economic profile. However, because DOC pre-eminently supports documentary production, our response to this Briefing Note will go beyond the questions submitted for consideration and introduce other questions DOC believes to be equally as important.

7.2 The CTF regulations in general are designed with drama production in mind. The genre-specific rules are helpful, but do not reflect the different reality of doc production. For that reason, DOC is submitting a series of recommendations aimed at assisting in establishing more appropriate guidelines for the CMF.

7.3 *Funding*
DOC recommends a higher ratio of broadcast license to CMF funding. We suggest it be set at 1.5 instead of 1.25:1 for all docs, and not just for those whose budgets exceed $400K.

7.4 *POV Documentaries*
DOC is concerned that one-offs and POV docs are receiving an ever diminishing percentage of the fund with POV receiving only 6% of the 2008 allocation. POVs are generally more expensive to produce per hour than small-format doc series which account for the majority of the CTF-supported docs. This decline is partly due to broadcaster control of their BPEs regarding 2ER and 4ER allocations, and it is also partly due to the muddled application of the definition of POV projects at CTF. In the past several years, the number of applications to the POV section has dropped significantly, and perhaps even more troubling, some projects have only been given POV status after extensive argument and appeal.

7.5 DOC recommends the alteration of some POV specific guidelines and rules. It is our opinion that if a broadcaster deems a documentary project a POV, and is willing to commit their CMF envelope to it, that should be sufficient to qualify for 4ER POV exemption status. It is an unnecessary hurdle for a producer to have to a POV project be recognized twice both by the broadcaster and by the CMF.

7.6 However, if the CMF intends to rule on whether a documentary can have 4ER POV exemption status, it is clear that the current CTF's guidelines as they pertain to POV need to be refreshed. DOC would like to offer its perspective should new POV guidelines be developed and looks forward to working with CMF staff on this so that guidelines are clear and reflect the reality of the industry.

7.7 Finally, because of the decrease of funding directed to POV projects, DOC recommends that an allocation of documentary BPE allocations be specifically targeted for POVs. We recommend the introduction of a protected fund within the doc-specific allocation of no less than 15% intended for POV projects.

7.8 *Development*

The current rule disallowing producers from investing in their own productions during development, and by extension, disallowing them the right to recoup their money just as every other investor does, is hugely detrimental to producers. The 50/50 rule for broadcast license/CTF allocation virtually precludes the possibility of an adequate development budget.

If a broadcaster gives an average of $3-5K for development (or in some unusual cases up to $10-15K), the total development budget isn't more than $6-10K (or $20-30K for larger projects), hardly sufficient funds when development can take a significant amount of time. In practice, a proper development budget for a doc, particularly a POV doc shot outside of Canada (or even in our own Canadian North), can require a budget in excess of $50-60K. The cost of shooting and editing a demo (now often required to secure production financing) can cost up to 15K alone.

By investing their own wages in development, and adding their savings into projects, producers invariably invest in their own productions, sometimes over the course of several years, while simultaneously putting overhead fees back into production. The current rule does not allow for any recouping this money and undermines a producer's ability to grow their business. In DOC's opinion, this is not an acceptable situation.

7.9 CRA Related Policies

Although beyond the scope of these consultations and falling under the CRA's purview, it is our opinion that should CMF weigh in on the following policies, that CRA might reconsider its current approach on the following:

- Executive producer, production manager (PM) and post supervisor (PS) fees must NOT be included in the PFOH cap of 20% (or 30% for budgets under 500K), even when the PM or PS are related parties. PM and PS are NOT producer positions. This is extremely important, as most doc producers perform many functions for which they must be paid. With doc budgets so low, a producer fee of perhaps $25-30K spread out over the course of the three years does not adequate compensation. The CTF is the lead on what is permissible in budgets and the CRA will follow.

- Rules governing the use of related-party equipment and a fair rental rate have completely backfired for doc producers. Current rules prohibit drama producers from abusing in-house situations cannot be applied to documentary production. The current Telefilm formula is as follows: The underappreciated cost of the asset x the CCRA allowed amortization rate x the number of days used shooting/365. For clarity's sake: if you own a $7,500 small format camera and wish to shoot the 20 shooting days of your project with it, you can only charge the production a total $92.48 for the entire shoot. However, if you had to rent this camera for 20 days, it would cost the production approximately $175/day or $3,500. The same formula applies to editing suites, transfer decks, sound equipment, etc. As a consequence of this, producers have developed creative, but absurd, ways of circumventing the regulation by selling their equipment to an unrelated third party, and renting it out for the duration of the production to only buy it back after the production is over. This situation would be laughable if it were not so completely absurd!

7.10 *Dual access to French and English language CTF*

Docs often need both French and English windows to fund a budget. In order for an original English language production to access the fund, they must have the English broadcaster commit BPE. However, if that is not available, but the French language broadcaster still wants to commit to BPE funds, producers are not allowed to apply under the French section. This situation should be addressed in new CMF guidelines.

7.11 *CTF budget analysis*

The current budget analysis is overly involved. Before being submitted to the CTF, all budgets have already been scrutinized and agreed to by the broadcaster and the producer. There is no need for the CTF to allow or disallow budget line items deemed necessary by these parties. If a production budget meets the needs of the producer and the broadcaster and falls within the budget guidelines it should be sufficient in meeting CMF's due diligence on budgetary analysis.

7.12 *Preventing Slippage of the documentary definition*

DOC is relieved to see that the CMF wishes to prevent the misapplication of the documentary definition, which is an issue of huge concern to DOC members. We consider the CTF's definition of a documentary to be adequate, but the way in which it has been interpreted when funding projects has been problematic. It is not our intention to defend a rigid definition, nor a purist's definition of what constitutes a documentary, but our members rightly object to having lifestyle and reality programming financed under the guise that are documentaries. DOC would like to stress the importance of a cautious approach when deciding which projects are to be funded in order to avoid the genre's erosion.

7.13 Other stakeholders of the television industry are, perhaps inadvertently, perhaps not, complicit in the misapplication of the documentary definition. Although broadcasters are responsible for filling out the program logs appropriately, neither the CRTC nor the CRA scrutinize these logs to see whether or not they are accurate. Moreover, the broadcasters commission programs under the guise of the documentary genre so that they can access CTF funding while in fact, these programs are patently not documentaries. Both producers and broadcasters are complicit in the creation of such programming wanting on one hand to take advantage of the popularity of reality-tv, and in the other, to have their program exhibited.

7.14 It is evident that this is a systematic problem of the Canadian broadcasting industry that cannot be fixed by fiddling with definitions. As stated above, DOC supports the present CTF definition and would like to see it become the industry standard. It is imperative that the confusion between a documentary and lifestyle or reality programming be eliminated whether it be by the refinement of a definition or a stricter application of a definition as long as the practice of having one funded under the guise of the other be stopped.

7.15 Finally, DOC recognizes that the CMF has a mandate to provide programming that Canadians want. However, in spite of reality programming's popularity, DOC does not support reality programming or lifestyle programming being allocated a specific funding envelope within the CMF.

The CTF's four genres already compete with each other for broadcasters' BPEs. If reality programming were to be introduced to the mix, with the addition of in-house productions as eligible producers, DOC fears that the already decreasing licence fees would get even smaller, and production more difficult.

7.16 *Return on Investment*
Please refer to section 4.9 above

7.17 *BPE Weightings and Factors*
DOC expressed its concerns about the BPE system when it was inaugurated in 2005 which, in our opinion, gives broadcasters too much weight in an uneven rapport. Broadcasters choose programming that is consistently popular with audiences, which usually means maintaining the status quo and not taking risks in providing critical television programs such as documentaries of a social or political nature.

Moreover, viewers choose among what is offered to them so that what is popular is as much a reflection of what's available, not necessarily what audiences want or will watch. The BPE system effectively allowed for the broadcasters to be rewarded for commissioning pseudo-documentary series and lifestyle programming, and allowed them to concentrate their regional production in areas close to major metropolitan centres.

There has been a significant drop in POV documentaries since the introduction of the BPE system. Although DOC does not want to make a one-one correlation between the policy and the decline in POVs, it is difficult not to recognize the pattern. The CMF announced that it would continue the use of the BPE system. We recognize that we cannot demand the dissolution of the system, but we urge that alterations be made so that all stakeholders benefit equitably from it. Aside from the set percentage of the documentary envelope for POVs, DOC would like the CMF to institute some standards of performance and conduct for broadcasters, similar to the additional rights safeguards of the BPE guidelines that protect producers when broadcasters claim the rights not negotiated in their contracts with the producers.

In addition, DOC has also noticed declines in regional documentary production across the country after the BPE system was brought into force. Please refer to section 13 for greater analysis of the declines of regional production.

7.18 *Essential Requirements*
DOC's position on Canadian content and Essential Requirements for productions are presented in the following section.

7.19 *In-house Documentary Production*
It is our view that in-house production of documentaries should not be allowed at all, but given the directive at the time of the fund's announcement, there does not seem to be a choice at this time. In-house and broadcaster-affiliated production does indeed have the potential to eclipse independent production, particularly if the broadcasters are successful in gaining access to tax credits, an intention some broadcasters have publicly announced. Our suggestions for financing of broadcaster affiliate and in-house production are outlined in 10.5.

8. Canadian Content

8.1 Documentary productions do not employ the same key personnel as drama. A clearly separate system allowing for fewer keys will allow producers to work within their budgets.

8.2 The 2ER/4ER rules concerning documentaries are overly complex and inappropriate for documentary. Instead of one universal system for measuring Canadian content, DOC proposes genre-specific Essential Requirements. For docs, we suggest that the core-production team is the most crucial factor, rather than the shooting location or subject matter. DOC supports the creation of Canadian content that is about Canada, however such a narrow definition of Canadian Content has become an impediment to documentary, and especially of POV productions. Our world, and our Canadian society, is more global and as such, Canadians are concerned by what's happening in the rest of the world and how it affects them here is of equal value. We propose that if the content of the production can be measured in relation to its impact on Canada and Canadians, then it should be allowed.

8.3 The location of the documentary should not be a factor for judging whether or not a production is considered Canadian. As stated above, international issues have bearing on Canadian society, and Canada is a multicultural and globalized nation.

8.4 DOC does believe that all production companies should be owned and controlled by Canadians. In the case of co-treaty productions, the proposed CAVCO points framework would be applied in the same way as the past international co-productions.

8.5 DOC proposes the following framework for documentary productions:
CAVCO points required:

- 2 points for Director
- 2 points for Writer (if there is one)
- 1 point for Editor
- 1 point for Composer (if there is one)

8.6 Because of the subject matter, location, and production conditions, DOC does not think that any other CAVCO points outside of those listed above should have a bearing on the "Canadianness" of a documentary production.

8.7 Furthermore, DOC argues that ROI should not determine the Canadian elements of a production.

8.8 Finally, the above characteristics are relevant to both streams of the CMF.

9. Third Language Programming

9.1 As Canada's population becomes ever more diverse, media products should reflect that diversity through the telling of stories in the original languages of its peoples. Through OMNI's Dramatic and Documentary Fund, documentarians have had the opportunity to tell these stories through POV documentaries. DOC would like more chances for the Canadian public and its members to have access to third-language programming through a mixture of broadcast platforms.

9.2 DOC favours support for 3rd language programming through a fixed allocation of $1M. As the attached document indicates, we propose that the sum be split evenly between convergent and experimental streams. Moreover, in order to accommodate the different production sectors, DOC suggests that a dominant portion of the 3rd Language Fund be devoted to independent production. Finally, all genres should be eligible for this fund.

10. Broadcaster-Affiliated and In-House Production

10.1 Coming on the heels of the recent requests made by conventional broadcasters to the CRTC in the course of their upcoming licence renewals DOC is concerned by the proposed increased access to the CMF for broadcaster in-house and affiliated production.

Broadcasters have requested they be allowed to reduce their commitment for Canadian Content requirements, have requested that priority programming be eliminated and have asked for the elimination of independent production requirements.

DOC is worried that if these requirements were to be eliminated there would be nothing to ensure that conventional broadcasters commission and broadcast high-quality Canadian documentaries programming, whether documentaries or other genres.

The elimination of the independent producer requirement would see the broadcasters drastically increase the amount of in-house production that would seriously jeopardize the production industry. In addition, this is of particular concern to documentary filmmakers because some networks already posses formidable in-house documentary departments.

Several broadcasters have already reduced their commitments to independently produced documentary programming, specifically: CTV has dissolved their documentary commissioning department and CBC has cancelled "The Lens"- the premiere Canadian one-off and POV strand.

10.2 Based on CRTC financial figures for conventional television, spending on independently produced programming for Categories 2-5 (which includes documentaries) has increased by only 6.19%. By comparison, affiliated production for Categories 2-5 has increased by 64.41%. In Quebec, the situation is even more dire, where spending on independently produced programming for Categories 2-5 has decreased by 35.90%, while affiliated production in the same category has increased by 62.05%.

10.3 Considering that the trends in the industry (at least in the documentary sector) point to a decrease in independent production, it is difficult for DOC and its members to support expanding access for broadcaster in-house and affiliated production to CMF. It is DOC's position that broadcasters should not be able to access CMF funds for their own in house or affiliated productions at all, nor should the affiliates be able to access tax credits.

10.4 *Terms of Trade*
DOC acknowledges that many of the items below are being discussed as part of ongoing terms of trade negotiations required by the CRTC for all broadcasters

prior to licence renewal. DOC's position is that the CMF's regulations stipulate that broadcasters meet all terms of trade requirements.

- CMF should create geo-specific Internet rights guidelines which will not allow any broadcaster to demand unlimited Internet rights (which many broadcaster are currently doing). As well, multiplatform demands shouldn't be allowed without a significant additional fee (currently only a nominal fee is being offered or worse, broadcasters expect producers to agree to those rights for no additional fee). One factor which has not been taken into account is that additional fees for Internet rights for archival material, stock shots and other third party rights usually paid by the producer may not even be covered by this amount. The fees should reflect fair market value.

- All 1st windows should reach a minimum % of budget to prevent broadcasters from denying 2nd windows completely when their investment is, in their own opinion, high enough to corner all rights. The current practice of some broadcasters disallowing second windows has created another financing gap and serves no purpose.

- It is DOC's opinion that tax credits belong to the producer to use as they see fit, and are not a financing tool to be used by broadcasters to reduce their licence fees. The CMF should ensure that it is the producer's prerogative to decide whether or not they want to include their tax credit in the financing plan and that they be free to determine what percentage they can invest. This should not be dictated by broadcasters. However, given the current practice of broadcasters exacting this gain from producers, CMF regulations should require that a broadcaster may not demand more than 50% of potential tax credits be included in production financing. However, this should not be confused with *limiting* the tax credits to 50%.

- DOC members have noted the following disturbing trend: several broadcasters contracts include a clause stipulating that if tax credits received by the producer exceed the estimate submitted at the time of financing, that the broadcaster will then reduce its license fee by the same amount. The broadcasters have negotiated the right to reduce their fees at the expense of tax credits if the production realizes any savings. This has resulted in some productions' license fees falling below CTF threshold and jeopardizing the CTF allocations. The CMF should disallow this practice as it once again undermines the ability of producers to grow their businesses.

- Response time by broadcasters: broadcasters have been using the CTF deadlines as a leverage tool in cases where a producer would like to negotiate contract terms with the broadcaster. Some broadcasters have consistently delivered the first draft of a contract less than a week before the CTF producer deadline, leaving no time to gather other financial commitments or time to negotiate. This forces producers to agree to detrimental terms or miss the CTF deadline, not always an option. CMF must require broadcasters to issue contracts and the BAF one month prior to producers' CMF deadline, at minimum.

- CTF deadlines drive broadcaster deadlines. DOC suggests that the new CMF deadlines reflect a more equitable schedule that won't result in a prolonged down-time period between the months of December and May during which projects can't complete financing.

- Distribution rights: Broadcasters have consistently demanded the rights for first negotiation and have required a blackout period of one year should the broadcaster not be successful in doing so. This hinders the producer's ability to bring in a distributor for theatrical or other dissemination. Producers are increasingly dependent on sales proceeds (licenses, home video, theatrical, educational etc) to fund the development of new projects as well as covering company overhead. Considering that broadcasters have, in some cases, demanded that as much as 100% of tax credits be incorporated into the financing scenarios, any and all additional revenue (such as distribution) can be crucial to the survival of any production company. In order to ensure the growth and strength of the independent production sector, the CMF should disallow funding for projects where broadcasters demand the right of first negotiation for distribution rights, or a one-year blackout period.

- Exclusivity terms: Broadcasters' demands have grown to include exclusive rights for the entire licence period while simultaneously increasing the length of licences (upwards of seven years) while increasing the market's scope going as far as requesting world rights. These demands limit an independent producers' ability to secure additional sources of financing. The broadcasters have explained their rationale by stating that they consider themselves the owners of the program regardless of the fact that they are a minority financier and take few risks in the creation of a project. This is a poor use of public monies since it reduces the number, size and variety of audiences who have access to the program. It is yet another factor that inhibits the ability of producers to grow their business as well as reducing the diversity of voices by slowly driving small and medium-sized companies out of the markets. In order to ensure the survival and strength of the independent production sector, the CMF should disallow financing for independently produced programs where a broadcaster is demanding exclusive rights of any kind longer than 2 years from the date of first exploitation.

- Publicity: Broadcasters should not be allowed to limit a producer's ability to publicize their own broadcast. Some broadcasters require that all publicity be approved by them, as minority partners in the program, this should not be permissible.

10.5 *Mechanisms of Incorporation*

Because DOC does not agree with the notion of in-house or affiliate access to the CMF, it is difficult to recommend any level of participation. With that in mind, DOC believes that no more than 1% of BPE at most should be allowed. Of that amount

65% should be restricted to production of Variety and Performing Arts (VAPA), with the remainder devoted to the other genres.

10.6 DOC is of the opinion that the current definitions for in-house and affiliate production companies are sufficient and appropriate.

11. Entities eligible to receive a performance envelope allocations

11.1 As stated previously, DOC finds the current BPE system problematic because, regulations issues aside, the system lacks the ability of preventing broadcasters from using the guidelines to suit their needs rather than meet the needs of all stakeholders. In CRTC financial records, the broadcasters count the allocations of CTF funding as their contributions to Canadian program expenditures but, and this bears repeating, BPEs are allocations, not grants for broadcasters' use.

Similar to the outcome of the CRTC's English Drama Program Incentive, the increased BPE allocations that the broadcasters receive from the incentives laid out in the existing performance factors for television projects have not yielded the expected results. The credits received for documentary production have gone to help commission reality programming and lifestyle programming. Combined with diminishing licence fees and broadcasters' demands that the producer's tax credits be part of the financing of a project, these conditions have led to a dysfunctional/toxic business environment.

The overarching principle governing CMF should be to foster a healthy, vibrant and competitive business sector where stakeholders have reasonably equitable bargaining power and if it is appropriate to reward broadcasters for good performance, the converse is also equally true and consequences should exist for poor conduct. In the current climate, we believe that producers suffer as broadcasters are rewarded for taking advantage of loopholes in the system.

DOC applauds the CMF for allowing other players to be considered eligible entities despite not being recognized as broadcasters by the CRTC. However, we are concerned that a race to the bottom will further reduce licence fees. For that reason DOC proposes that all entities wanting to be considered eligible for a BPE must prove to the CMF that they will contribute effectively to supporting Canadian programming. All new entities that do not have BPE envelopes should undergo an evaluation of their commitment to Canadian programming, especially those entities part of larger media conglomerates.

11.2 One of the mandates of the CMF is innovation. However, producers cannot create new content on multiple platforms without the appropriate budget. Given the vertical integration and media consolidation of Canada's media environment, the ownership of the eligible entity should also be taken into consideration in order to avoid the following situation: an independent producer signs on to have a program with a broadcaster and has a new platform component with the broadcaster's corporate group and is only issued one licence fee. The entities that are part of larger ownership structures must provide individual licence fees for each of the services by window and platform. DOC recommends that the CMF consider the eligible entities from parent corporate entities be given additional scrutiny than others.

For instance if a broadcaster were to commission a program in the convergent stream it could offer a licence for the first window on its VOD service, a conventional station, or specialty channel, or any of those for a second window. But it must contribute a second, or another/third licence fee for the new media component if a parent company is going to distribute on a mobile platform.

11.3 If the entities are not part of a media conglomerate, they would undergo the same evaluation of their commitment to Canadian programming as those that are part of the media conglomerate. It is essential that all entities be held to the same fair standard.

11.4 Similar to the VOD services criteria, DOC proposes that eligible entities be judged on the following criteria:

- prior Canadian content commitments/ future plans to support Canadian independent production;
- regional production commitments;
- promotion of Canadian content/ future plans to promote Canadian content;
- intangible benefits resulting from the programming (public value);
- what the entity can offer that others do not (this could include specific genre commitments, and different kinds of linguistic productions such as third language and aboriginal language productions);
- fair Terms of Trade guidelines with the independent producers;
- have the finances to support a licence fee;
- Canadian owned and controlled.

11.5 Once the CMF gives an eligible entity a BPE, it will be evaluated by the current BPE system guidelines, with the appropriate modifications for audience success for non-linear programming. However, if any of the BPEs stray from their commitments in their applications, measures or penalties should exist to restrict or deny further funding. Furthermore, all the safeguards available to producers against broadcasters claiming additional rights should be enforced against all new BPE entities.

11.6 The admissibility criteria for new entities should be flexible and technologically neutral, so that many different kinds of emerging new media entities or new kinds of television distribution can be recognized as they emerge in the future.

12. Audience success: emphasis on original, first-run

12.1 The definition of an "original" telecast should remain as the airing of the program (in case of one-offs) or each new episode of a program on the first broadcaster.

12.2 However, it is our position that "first run" designation should be kept separate from "original". Documentaries, in particular, are dependent on securing more than one broadcaster licence in order to complete their financing structure.

While DOC believes that the "original" broadcaster should be rewarded and potentially carry a greater weight as they usually contribute a greater percentage of the budget, "first run" designation should be awarded for the first airing of the program, in the case of one-offs, or each new episode of a program for any broadcaster whose licence fees form part of the financing structure.

Additional licences by broadcasters once the program has been completed should *not* count towards a "first run" status. DOC's rationale for this proposal is to have broadcasters licence a program at when licence fees are most crucial at the time of completing the financing structure.

12.3 On the definition of “prime-time”. Most broadcasters operate under conditions of licence requiring them to air programs funded by CTF at the times when most Canadian viewers are watching. DOC supports the CMF's intent of rewarding prime time programming of CMF-funded programs, and we propose further recommendations to ensure these programs be seen at the busiest times.

12.4 First, Canadian prime-time programming tends to be placed at the edges of the programming schedule in a fairly predictable pattern - relegated to slots in the schedule with a lower overall audience. According to a recent survey on priority programming trends commissioned by DOC and other partners in the creative community, the English conventional stations schedule their priority programs (Drama and Documentaries) either at the very beginning of the schedule (at 7 pm) or in the low-audience evenings at the end of the week (Fridays, and Saturdays).[3] Furthermore, broadcasters usually schedule Canadian programming during the holidays, such as the summer months and around the Christmas holidays[4], which means that Canadian programming airs when people aren't watching much television. Meanwhile, the broadcasters profit from their purchases of non-Canadian programming.

12.5 In order to ensure that CMF-funded programs are able to reach the widest possible Canadian audience DOC would like to see following modifications made to the definition of "prime time":

[3] Sarah Dearing, A Survey of Priority Programming Trends 1999-2008 CBC, CTV, Global, City, CHCH (E!), 2009

[4] Ibid.

- that prime-time be defined as taking place between Sunday and Thursday, which are the most popular viewing days;
- that prime-time be defined as between 8pm and 11pm for the Sunday to Thursday slot;
- that the programs be evenly spread throughout the year, with no more than 25% of programming aired during the months of June, July and August.

Any programs shown outside of those time should not be counted towards "prime time" in calculating BPEs. In addition, any programming above and beyond the 25% cut-off shown during the months of June, July and August should not be counted towards "prime time" programming in calculating BPEs even they are shown in the designated “prime time”.

12.6 DOC believes that children's and youth programming warrant a separate definition of prime time, as the key audience for such programming has different viewing habits.

12.7 DOC considers that offering an incentive, or bonus, towards the broadcaster's Total Hours Tuned (THT) for airing original, first run, prime time programming, would have a positive impact on Canadian programming and the dissemination of Canadian content. Programs aired outside of prime time as described above should not be counted towards calculating THT, and should respect the proposed distinct prime times for children's and youth programming. DOC believes that this would reward broadcasters who air original, first run, prime time programming and discourage the practice of airing reruns during non-prime time periods in order to increase THT scores.

12.8 Within that, DOC believes that re-runs should receive a weighting of factor 1, while first run and original programming would receive the weighting of factor 2, allowing for multiplication.[5]

12.9 DOC is cognizent of the difficulties provincial educational broadcasters face in terms of scores they receive based on the BBM data. We believe that these broadcasters are successful in reaching audiences and should be rewarded for their efforts, but the practice of comparing their BBM may be inequitable. These broadcasters operate within a defined provincial market and their BBM data should not be tallied against that of national conventional and specialty services. A fairer assessment of their audience success would take into account their defined (i.e. provincial) market.

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[5] for example: a first run program on a second window broadcaster would receive double THT bonus, while an original, first run program (i.e. first airing on first window broadcaster) would receive a double THT bonus for "first run" status and additional double bonus for "original" status, allowing for a quadruple THT bonus.

12.10 DOC believes that if, in the future, VOD services begin to contribute licence fees to eligible projects, their definition of "original" should comprise all the downloads/orders/viewings during the first 30 days of the first availability of the program on the VOD service. As stated elsewhere, these licence fees MUST form part of the financing plan to be considered eligible.

13. English Regional production

13.1 DOC supports regional production and expects to have measures implemented in the CMF towards having on-going, thriving conventional and experimental production communities across the country. Innovation and creativity, especially in new media, is untethered from what the complex infrastructure once required for broadcasting and then only available through the larger metropolitan areas. This is no longer the case.

The CTF, through the BPE and other regional incentives, attempted to foster regional production however, in spite of good intentions, the result of implementing the BPE has been detrimental to regional production.

Over the last 10 years, the industry has witnessed turbulent changes in regional financing. In Atlantic Canada, the financing of all CTF funded productions has steadily decreased going from 12.9% in 2001-2002 to 4.2% in 2008-2009.

More recently in BC, the cancellation of *Intelligence* and declines in documentary commissioning by the CBC and Global have meant that contributions in the province dropped from 21% in 2007-2008 to 6.9% in 2008-2009.

In Quebec, English language production that once represented 14.8% of the English CTF budget in 2005-2006, has not broken the 10% mark in the last 3 years.

In Alberta finally, where productions seem to be increasing, numbers reveal, at least in the case of documentaries, that they have actually declined. From 2005, the share of CTF funding for Albertan documentaries decreased from 8.9% to 6.3% in 2009. Moreover, documentary production has decreased from 86 productions in 2004 to 51 in 2009.

13.2 DOC is concerned that the recent financial turmoil and consolidation in the broadcast industry is also likely to further reduce regional production due to the tightening of budgets and reduction of staff in broadcasters' regional offices. Therefore, a more effective incentive mechanism must be put in place if the regional production of Canadian television programming is to survive.

13.3 Consideration in establishing the CMF guidelines must be given to recognize that most regional doc producers are small or medium size companies and that currently, broadcasters are raising their financing requirements to the point where only large regional production companies can qualify. We are concerned that this trend will only be exacerbated by the new media requirement.

13.4 *The Definition of Region and Regional Considerations*
DOC supports the definition of region and regional offered by the CTF. Furthermore, currently the production industry in Vancouver is in a steep decline as measured by the CTF and deserves, in our opinion, to be designated as "regional".

13.5 However, we feel the case of English Production in Montreal merits special consideration as production there has averaged about 10% of the English production funds for all CTF funded docs, while Toronto and the Ontario region has risen for the last 3 years. In regards to English production, DOC proposes that Montreal should be considered a region. It will be a considered a region for both the regional factor of the BPE system and for Production Incentive Pilot Program Incentive (PI).

13.6 *BPE Regional Factor*
The regional factor in calculating the BPE envelope is a good way of providing funding to regional productions if, and only if, the increase in the BPE envelope is refinanced to regional productions. Otherwise the regional producers find themselves work in a constantly fluctuating and unstable industry.

13.7 DOC recommends that the broadcasters be required to spend the regional production licence credit on commissioning regional productions for the next broadcast year. If the BPE allocation rewarded to the broadcasters is not spent on regional production, the funds should be placed in a CMF reserve fund that would insure that more regional productions would be financed.

13.8 However, given that broadcasters are increasingly commissioning more programs from the regions around Toronto, such as Windsor, the regional production licence credit should be reinvested based on the same principle as the PI, meaning, that the regions suffering the largest drops in funding should be the first to receive the allocations of the credit.

13.9 Based on the regions defined in the PI guidelines, the credit would be allocated to those regions having the lowest licence investment based on the percentages of: 30, 25, 20, 15, 10. This system takes into consideration the changes in the market and the historical under representation of the regions. Furthermore, it also allows for the PI to provide top-ups simultaneously generating more productions.

13.10 At the same time, in order to encourage continued financing of regional production, DOC suggests that the BPE historic access factor should complement the regional factor. Thus, whenever a broadcaster continues to commission regions over a sustained period of time, they would be awarded larger regional incentive licence credits. However, in order to make sure that new and original programming is being commissioned, there should be an incentive for broadcasters who commission new one-offs and series rather than simply renewing existing series. DOC proposes that when a broadcaster commissions new programming from a region, it should count for 2x as much as the continued support to an existing series.

13.11 *Regional Incentives by Genre*
DOC would like to see the aforementioned regional incentives complemented by allocations by genre.

13.12 DOC proposes that CMF introduce a weighting factor for underrepresented genres in the regions that would reward the broadcaster with a regional production licence credit. The lowest representative genre would count for 2x its value, the 2nd lowest 1.5x which would allow for a more equitable distribution of funds across the genres.[6]

13.13 Combining the reinvestment of regional production licence credits into the regions, with historical access benefits, and incentives for commissioning new and original programming combined with the incentives for genre, would help boost and sustain English regional production.

13.14 *The Production Incentive Pilot Program*
The Production Incentive Pilot Program Incentive is a great program providing much needed additional financing to regional productions. It has provided a helpful top-up to many productions that otherwise could not have been completed without it. We support CMF continuing this program and would like to see the fund increased from $10M to $14M.

However, it is only a top-up fund for the productions that are commissioned by the broadcasters. The PI will only truly increase regional production if the broadcasters actually commission productions in the regions that need it most. Combined with the suggestions above, the PI will be able to distribute more funding to a wider number of producers who need it.

[6] Example: Broadcaster A has spent 100k towards eligible licences of documentaries, 500k towards eligible licences of drama, and 50k towards eligible licences of VAPA in Atlantic Canada. Documentaries and VAPA are the second least and least represented genres of the region, respectively. When CMF calculates the regional production licence credit of the broadcaster, the broadcaster would receive an additional 100k, because it has contributed towards underrepresented genres in a region.

13.15 *Convergent and Experimental Stream*

Canada has a great amount of new media production talent across the provinces. However, in some regions, only the larger enterprises have ventured into the realm of new media productions that would be suitable for the experimental stream. Because of the discrepancies between the two streams and their operations, the CMF must carefully approach how it applies the definition of regional to productions.

As an example, we submit that a documentarian films might shoot a production entirely in Nunavut, edit and master in Quebec, while having the production of the new media component done in BC. What matters for the regional definition of the convergent and/or the experimental stream is the location of the production company. Wherever the producer resides and operates his/her company is what should be considered when assessing regional criteria, regardless of the stream and of where the production is done.

Conclusion

Thank you for the opportunity to comment so extensively on what will be a crucial series of decisions for all stakeholders in the traditional and new media industries.

Appendix “A”

The "Long Tail" theory of documentary distribution exposes flaws in conventional ROI and Audience Measurement criteria.

The emergence of the Internet as a significant distributor of books (Amazon, Chapters, Indigo) and videos (Amazon, Netflix, Zip.ca) has led to a new understanding of the significance of the "Long Tail" distribution model. The model is now widely used in web marketing, but it also provides insight into the overall life cycle of documentaries. The principal of the Long Tail is simple. Its implications are profound for the proposed assessment of ROI and Audience success for documentaries. In this brief overview, the theory is summarized and its significance for CMF policy for documentaries is highlighted.

In a system where time, shelf space, and promotional resources are scarce, the best marketing strategy will be the one currently employed by most broadcasters. Promoting programming is expensive, prime time opportunities on network television are scarce, and audiences are widely dispersed. Therefore, logically, available resources are concentrated on a small number of projects to the exclusion of a large number. Furthermore series, rather than one-off programs will be favoured for reasons of efficiency. The focus is on attracting a large audience for a short period of time, before they move on to other attractions.

The theory of the Long Tail addresses a paradox that emerged when time and shelf space is plentiful and costs of promoting are minimal. When the distribution of books on the Internet is examined over time it becomes evident that while 20% of popular titles account for the largest number of sales at first, over time the other 80% of the titles may account for more than half of the overall sales.

In other words, products, like documentaries, may have less profile initially, but can collectively account for a market share that rivals audiences for a few popular titles, if the proper distribution channels are open. CMF policy can substantially affect this process. The importance of this model for documentary distribution should not be underestimated.

Implications for ROI and Measures of Success

The first thing to note is that of all the programs supported by the CTF, the most expensive series --normally drama-- will invariably receive the greatest promotion and the largest audiences. A few documentaries may also be in this lead group, if they are able to attract significant unpaid advertising in the form of reviews and articles. The balance of the documentaries could achieve the Long Tail effect through multiple repeats, second windows, VOD, educational uptake, Internet sales and other forms of distribution.

Current CTF measurements only capture the first wave of broadcasts, normally by the lead broadcaster, in the first year. By emphasizing these measurements and rewarding these broadcasts the CTF effectively discourages more rapid, repeated and dispersed broadcasts and non-broadcast distribution. Current CTF policies respect the supply-side limitations of the broadcasters and ignore the demand side needs of the consumers -- niche audiences. They are hampered or prevented from finding and viewing programs of interest, over time. Inexpensive and useful tools that would assist in distribution (such as diverse digital platforms, social media, Twitter, Facebook, etc) are limited or delayed and important niche audiences are lost, along with the ability to recoup revenue and other intangible values, because the programming remains tied up in long term exclusive contracts, and second windows and other forms of promotion and distribution are restricted by CTF-approved contracts. Even the ability of producers to promote their own productions may be proscribed by broadcasters concerned with high profile, highly branded promotion of a limited number of titles.

If the Long Tail Distribution Model is correct, perhaps half or more of the CTF's investments are not achieving their potential; innovation is stifled, and producer initiatives, revenue, and satisfaction are hindered. If the implications of this model are embraced, they would lead to a number of policy options including:

Recalibrating ROI and audience measures and rewards

- Include all broadcasts over the period of six years as measurements of success, including repeats and second windows. These accumulating audiences can be added to the overall audiences achieved by broadcasters each year.
- Recognize the limitations in BBM sampling as it affects measurements of programming with niche appeal for including specific indigenous or immigrant communities
- Reward any initial broadcasts in prime time that has the potential to reach different audiences. This would include first broadcasts by second window licensees and by any channel owned by a BDU
- Reward non-economic indicators of success such as: institutional sales resulting in non-broadcast classroom audiences
- Consult with ex-CIFVF staff on the criteria developed by them for assessing market demand
- Establish acceptable web metrics for the evaluation of interactive sites

Promoting diverse and innovate second platforms and distribution from the outset

- Require shorter exclusivity periods (or reward them) in order to more rapidly disseminate documentaries through the greatest number of outlets
- Encourage producers to promote their productions through conventional, niche, and social networking avenues (or circumscribe the ability of broadcasters to limit producers)
- Encourage timely release of the programming through other platforms, including multiple and parallel outlets, allowing, for example, both "catch up" streaming on broadcaster sites and DVD sales promptly following broadcasts (or require

broadcasters to demonstrate a reasonable level of harm to their interests if they wish to restrict particular forms of distribution.)

- Create a fund for new media distributors which rewards Long Tail distribution allow producers to fund a portion of their distribution/second platform activities through the use of tax credits (while limiting the amount of tax credits that can be required by broadcasters for the broadcast program)
- Set up a CMF fund to support second platform / distribution via producers. Once these platforms have established successful histories they may become eligible for envelopes.
- Encourage producers to enter into low cost, long-term distribution by relaxing rules on the qualifying of distributors and allowing producers to retain sufficient income from Long Tail sales (i.e. 30 to 80% of retail including sub-distributors. The scale might even be increased for successful producers)
- Support versioning to reach additional Long Tail consumers

Removing unwarranted limitations on distribution via second windows, digital platforms or sales

- Allow (or prevent broadcasters from limiting) educational and institutional promotion and distribution
- Create terms of trade that create an open market for producers seeking second platforms, ensuring that broadcasters have to compete for the rights to the second platform
- Ensure that the broadcasters do not treat this as merely "their" BPE that gives them automatic priority in securing alternate platform rights.

**** END OF DOCUMENT *****

DOC proposed allocations of CMF streams

****** total budget incl $332M CTF + $14.3M CNMF legacy
all info on 2009/10 from CTF briefing document
and 2010 published BPE allocations

	% of total fund	% of BPE	budget		convergent		experimental	2009 budget	previous % of total fund	change
******		346,300,000						332,000,000		
fixed allocations										
regional production incentive	4.04%		14,000,000	85%	11,900,000	15%	2,100,000	10,000,000	3.0%	1.03%
development	5.05%		17,500,000	85%	14,875,000	15%	2,625,000	10,000,000	3.0%	2.04%
non-broadcast documentary	2.02%		7,000,000	95%	6,650,000	5%	350,000	-	0.0%	2.02%
Aboriginal languages	1.44%		5,000,000	75%	3,750,000	25%	1,250,000	4,000,000	1.2%	0.24%
Third language	0.29%		1,000,000	50%	500,000	50%	500,000	-	0.0%	0.29%
Versioning assistance	0.29%		1,000,000	50%	500,000	50%	500,000	1,500,000	0.5%	-0.16%
french language regional dev	0.09%		300,000	75%	225,000	25%	75,000	250,000	0.1%	0.01%
digital media program/gaming	1.01%		3,500,000		-	100%	3,500,000	10,000,000	3.0%	-2.00%
French Que regional incentive	0.29%		1,000,000	80%	800,000	20%	200,000	800,000	0.2%	0.05%
	15%	**-**	**50,300,000**	**6**	**39,200,000**	**3**	**11,100,000**	**36,550,000**	**11.0%**	**3.52%**
BPE allocations								**2009/10**	**BPE allocation**	
Documentary	27.43%	33.69%	95,000,000	90%	85,500,000	10%	9,500,000	45,323,227	13.7%	13.78%
Drama	36.67%	45.04%	127,000,000	85%	107,950,000	15%	19,050,000	140,505,968	42.3%	-5.65%
Childrens	12.99%	15.96%	45,000,000	75%	33,750,000	25%	11,250,000	42,703,919	12.9%	0.13%
VAPA	4.33%	5.32%	15,000,000	85%	12,750,000	15%	2,250,000	8,538,002	2.6%	1.76%
	81.43%	**100%**	**282,000,000**		**239,950,000**		**42,050,000**	**285,200,000**	**85.9%**	**-4%**
French outside Quebec	**4.04%**		**14,000,000**	**75%**	**10,500,000**	**25%**	**3,500,000**	**10,200,000**	**3.1%**	**0.97%**
					-		-			
					-		-			
	100.00%		**346,300,000**		**289,650,000**		**56,650,000**	**331,950,000**	**100%**	
split of convergent/experimental over entire fund					**84%**		**16%**			

BPE French/English/ Educational Split

total English BPE					
English	52.6%	182,000,000	190,556,821	57.4%	-4.8%
English Educational	2.0%	7,000,000	3,443,189	1.0%	1.0%
French	23.7%	82,000,000	80,503,169	24.2%	-0.6%
French Educational	3.2%	11,000,000	10,721,183	3.2%	-0.1%
	81.43%	**282,000,000**	**285,224,362**	**85.91%**	

French/English split of entire fund

French (incl 1/3 dev)	32.7%	113,132,750
English	65.3%	226,155,000
Aboriginal	1.4%	5,000,000
Other language	0.3%	1,000,000
	99.71%	**345,287,750**