



## **Canadian Content in a Digital World Consultation A Response from the Documentary Organization of Canada**

November 25<sup>th</sup>, 2016

DOC applauds the initiative undertaken by the Minister and her department to pursue such an in-depth review of the broadcasting, media and cultural industries and how the new funding is to be dispersed. We welcome the desire to make overdue changes within the media ecosystem. We are particularly pleased that the Minister is willing to include in that review an overhauling of the Canadian Broadcasting Act, last updated in 1991. Much has changed in the media landscape in the past 25 years, indeed even the last year has produced significant changes.

We understand that the Minister is looking for very specific suggestions with regards to Canadian Content in a Digital World. This proposal addresses in particular the needs of the documentary sector and opens with some general comments to provide a comprehensive portrait of the current situation for our constituents. The latter section will provide more detailed comments on each of the main players or elements affecting our sector.

### About the Documentary Organization of Canada

The Documentary Organization of Canada | l'Association des documentaristes du Canada (DOC) is the voice of more than 700 independent documentary creators. It is the only organization devoted exclusively to the championing of the production and distribution of documentary across all platforms, to advocating on behalf of documentary creators and producers and to connecting and strengthening the Canadian documentary community. For more information we invite you to visit our website [www.docorg.ca](http://www.docorg.ca) | @DOCorg.

### Independent Documentary Filmmakers: A Current Portrait

Since the inception of the documentary form and until recently, Canada has enjoyed a reputation as a world leader in the genre. It is a form that is unique in its ability to share worldviews, create empathy and bring people together. As an art form documentary is also unique in how it brings together all other art forms in a way that no other does just by virtue of its creative process and the vastness of its subject matter. As the Minister is aware, Canadian documentaries have won awards such as Emmys and Oscars which recognize the creativity and relevance of the Canadian perspective. Additionally documentaries allow for public discourse on subjects that are critical to Canadians.

The broadcast system currently is in a state of flux and the creators of the content for this system are left with growing challenges. The fragmentation of the television audience onto

various other viewing platforms has had a tremendous impact on the independent documentary sector. In an effort to regain or maintain their audiences and to retain advertising revenues, the private Canadian broadcasters in particular have eliminated the vast majority of documentary strands on their airwaves in favour of reality shows over the past five years or more. The one-off or feature documentary which is the most exportable and high profile form of the Canadian documentary tradition, has disappeared from the airwaves which is in stark contrast to many European countries that commission hundreds of hours of documentaries a year for eager audiences.

There is no better example of how unsustainable the current model has become for the documentary sector than the situation that has arisen with the filing for creditor protection and subsequent stays of proceedings by Super Channel. Because the channel had been the main buyer of feature-length documentary in Canadian television, in the absence of other broadcasters' interest, their filings have had a disproportionate impact on our community. The matter has been brought to the attention of the Department of Heritage and to the CMF previously but remains unresolved as of this submission. As we mentioned to Heritage staff, that one broadcaster running into difficulty could decimate part of an industry suggests that something is not working well with our current system.

DOC's demographic skews towards small production companies that are managed by one or two individuals. The vast majority do not have any administrative support and operate on whatever revenues are left from the most recent production budget. The Super Channel situation has put many of these operations in jeopardy. Some will close shop because they are unable to fill the funding gap left by the amount disclaimed by Super Channel and consequently they are unable to repay interim financing they had obtained to fund their production. Even prior to their filing, there was no room for negotiation on the timing of the draw-downs of funding, making it very much a take it or leave it scenario.

There are other developments over recent years which have seriously eroded the small independent producer's ability to function in the current environment. The increasingly consolidated media industry in Canada where three conglomerates own the majority of television properties has also had a major negative impact on our constituents: 1) a broadcaster can now pick up a production and spread its licence over several of its ancillary channels, eliminating the "second window" which used to be a critical piece of the funding puzzle, 2) the trend is for these large broadcast entities to deal with the larger production companies with whom they have a well established relationship, 3) the primary broadcaster will expect to obtain a "bundle" of properties when they purchase the licence of a documentary, often with little or no compensation for some of the digital components and 4) when it comes to negotiations, the small independent producer has next to no bargaining power now that the Terms of Trade agreement has been eliminated as part of last year's *Let's Talk TV* ruling.

Our current system is very much predicated on a broadcaster-trigger funding model. However, even where a producer is successful in obtaining one of the few licences available in this country for their documentary production, they are taking all the financial risk. Documentary broadcast licenses range from 10-30% of the total budget. Producers must then find the rest of the money to make full budget. This is done by seeking International pre-sales from other funders, tax credits, private investment (rare) or crowd funding. Even once financing is in place, the producer will not receive their tax credits until 12 months, in some cases 18 months or more after the

production has been completed, due to a backlog at CAVCO. This obliges the producer to interim finance, at no small cost, the considerable portion of their production and post-production budget. The producer is always the last to get paid. To be clear – we are an industrious and creative group and are not presenting this as anything other than an illustration of the hoops created by the current system.

Due to the increasing difficulty of obtaining a television licence in order to trigger CMF funding and tax credits, more independent documentary filmmakers are using an alternative funding model to put together their budgets. These are in most cases very low budgets and not a sustainable model in the long term. Crowdfunding campaigns can raise amounts that vary from extremely small to relatively substantial but in order to be effective require a considerable investment of time and money in order to be run by experienced personnel who will follow and update the campaign on a daily basis. Arts council grants are another avenue that some filmmakers, generally emerging talents with smaller and often non-broadcast productions, are using and there have been some limited but fruitful efforts made in the philanthropic sector.

Once a documentary production has been completed in this broadcaster controlled environment discoverability and marketing become the next challenge. There are few sources of funding for distribution and marketing, all funding agencies cap promotional budgets, and there is no allocation to tackle new and innovative approaches to marketing a film. The result -- the market reach of a typical documentary is nowhere near its potential. Although there are exceptions, in many cases where the producer or director has worked in partnership with an institution or a distributor, their input and implication in the marketing and distribution is considered peripheral.

Should producers take the initiative to become involved in the marketing and distribution of their film, funding to allay these costs is difficult, if not impossible, to obtain. This of course depends on whether or not the content creator has been able to hang on to the rights that allow for distribution worldwide on multiple platforms. Canadian broadcasters are currently demanding many rights that prevent the creator from benefiting from distribution and limiting revenue to producer fees in the budget. In recent contracts including those from the CBC, broadcasters are demanding the retransmission fees which traditionally have been a small source of income for producers. This needs addressing along with the regulatory cap on producer fees for documentary producers. Over the years, the Federal Tax Credit meant to capitalize independent production companies and to allow development of the next project has instead, become part of production financing, further eroding the Producer's position.

Perhaps the biggest hurdle facing the small independent producer in Canada, given the current system is being able to secure adequate pre-development or development financing. It allows content creators to flesh out initial concepts to a stage where they are ready to be pitched and can often take months or years. With the market place becoming increasingly competitive, both nationally and internationally, it is also vital to be able to present some kind of preliminary footage or trailer for the proposed documentary film. All of this requires financing to achieve.

#### Canadian Documentary for a Digital World: A New Framework

There are many talented and creative documentary filmmakers spread across the Canadian panorama: DOC alone has a membership of over 720 independent documentary filmmakers. They are the lifeblood of a new, innovative, creative media industry. Why? Because no other

film genre allows for such a wide range of artistic expression, visual exploration and in depth analysis of a subject matter. Working with extremely tight budgets and under sometimes brutal conditions, re-focusing ideas when conditions or people change and exploring genre bending forms makes these creators a primary driving force of innovation. So how can a new and innovative system best support these content creators?

What is needed is a system that puts the creators and culture first. A system that values, respects and supports the important contribution that the creator – and their cultural expression – makes to the media landscape. Furthermore, what is needed is a system that reflects the different sensibilities of the different populations across this country – one that is built on the bedrock of inclusion and diversity.

There are a number of key ways that DOC would suggest this can be achieved:

1. Much as currently exists in the publishing industry, we recommend there be two different types of funding available to content creators: operational and project-driven;
2. Project funding would be released to the content creator, rather than being channeled through a system controlled by the broadcasters, that would put the onus on the content creator to provide some kind of trigger, market plan or distribution agreement to demonstrate a serious level of engagement;
3. The allowable triggers would be very flexible and would include sales on all platforms, sales to foreign as well as Canadian broadcasters, support from Canadian independent funds, philanthropic funding and any other alternate funding yet to be known in the new digital environment;
4. A funding system that is transparent and available to all content creators across the country, and equally so to those based outside the major commercial centers;
5. A media ecosystem that has greater respect and consideration for all content creators – that acknowledges there are different sensibilities and different appetites for media content and consumption habits across this country; what is of importance to viewers in downtown Ottawa or Toronto may or may not resonate with media consumers in a small community in BC.
6. The recognition that Canadian content can be universal; that in the new digital environment the market is becoming increasingly hyper-local and global at the same time;
7. We strongly recommend that there be one centralized portal system for all government agencies with much-simplified filing and reporting expectations to alleviate the current tremendous administrative burden on production companies. The goal is to eliminate the current prolonged wait times for processing files and to avoid the contradictory decisions that sometimes arise between government agencies;

8. We recommend that in assessing success of documentary, audience numbers should be balanced with other factors such as festival screenings, awards, the long-tail effect of a particular subject and foreign sales;
9. More robust support for each of the stages of production – pre-development, development, production and marketing – that would consider them as interconnected rather than separate;
10. Special funding available to those producers based outside the major commercial centers that would cover travel and accommodation expenses to help facilitate their meeting with necessary partners and stakeholders;
11. A simpler tax credit system that would be activated early on in the production stage to avoid the onerous bank charges and legal fees that the producer must currently finance – for example, some provincial agencies make allowances for a drawdown once post production begins and a current cost report is submitted;
12. Where international co-productions are concerned, a much more simplified and timely process that would encourage foreign partnerships rather than disincentivize them as is currently the situation.

#### New Funding Sources

The independent documentary community has already recognized that a more entrepreneurial approach to funding their projects is required. In this regard there are two particular initiatives that have incited a lot of interest in our community but which require government support to move onto the next level.

The first of these is the need to change legislation around philanthropic funding for documentary. In part due to the broadcast-trigger funding system, Canada lags far behind other countries such as the United Kingdom, the United States and Australia with regards to philanthropic funding for documentary. With their often shared common ideological goals, there can be no more logical partnership than that between the documentary and philanthropic sectors.

However, current legislation makes it complicated at best, next to impossible at worst, for a filmmaker to receive funding for their film from a philanthropic donor. In addition, any philanthropic or donor money in a financial structure that includes tax credits will exert a downward pressure on the final allowable tax credit. To provide more detailed information on the issues relating to philanthropic funding for documentaries, we are attaching a copy of DOC's research report issued in 2015 on this topic: *Philanthropic Funding for Documentaries in Canada: Towards an Industry-wide Strategy*. This can also be found on our website at [www.docorg.ca](http://www.docorg.ca).

Secondly, Canadian independent documentary filmmakers have not had the same opportunities to hone their entrepreneurial skills as their peers in the above-mentioned jurisdictions. Currently established as a common practice in these jurisdictions, “impact producing” is a very comprehensive way of grouping together and honing the many tasks that enter into the process of the making and marketing of a successful documentary. It is a burgeoning field of skill development that upon closer scrutiny is incredibly rich in all of its possible permutations. Its

development also comes at a propitious time when finding ways to make Canadian content stand out in the global digital environment has never been more essential.

Attached or on our website you will find the research report DOC commissioned this year entitled *Charting a Course for Impact Producing in Canada: Trends, Best Practices and Future Directions*. The study is accompanied by a toolkit that provides resources and tools for creating and measuring impact. We particularly direct your attention to the five recommendations the report makes on how we can grow the impact producing space in Canada. It is our belief that meaningful support from various parties within the system for developing the practice of impact producing in Canada will vastly strengthen the entrepreneurial capabilities of our constituents.

Lastly DOC would like to address the Minister's question regarding the possibility of bringing new money into the media funding system by imposing a tax on the internet service providers. While we understand her concern about the impact it might have on the citizen users of such services, in our opinion it is a tax that a) need not be onerous to reap substantial benefits to the media industry, b) is warranted since it is supplying a new service to the user, c) is not unlike the tax imposed when cable was introduced and d) could be introduced incrementally in order to mitigate the initial impact.

How and through what agencies the dispersion of the money raised through this new tax would take place is one that requires careful consideration. DOC suggests that front of mind when it comes to this decision-making process, should be new ways to support the creators of media content in this country.

#### The Independent Documentary Sector and Its Partners

In this final section of our proposal, DOC will address each of the main public funding institutions which intersect with our sector. It is obvious that each of these institutions is a complex entity unto themselves and this is not the place to get mired in a detailed analysis of how they function. Therefore what follows is limited to our high level comments on how we would like to see these institutions function in a newly envisioned media ecosystem.

We also feel that it is important to consider these institutions in relationship to each other, that the current silo approach is not necessarily the most efficient use of resources, nor a way that best serves the production community. One example of this has already been raised in an earlier section with our suggestion of there being one central portal system for all government agencies. While each of these institutions have their own separate government mandate, DOC submits that it makes better business sense and offers greater support to the creative community if current guidelines that prohibit co-production between the agencies be lifted.

#### **Canada Media Fund**

DOC has greatly appreciated the public expression of concern by the senior management of the CMF towards the increasingly dire situation for the documentary genre that has come about as a result of the current broadcaster driven funding model. We also acknowledge that the CMF is facing challenges of its own on many fronts that could be alleviated by some of the following measures DOC recommends:

- Uncoupling of the Canadian broadcaster trigger from CMF funding to allow for a range of possible triggers so that there is a flow of funding directly to the content creators

with strong content and a solid marketing plan whose program might be streamed, or produced for digital media, not just for the traditional broadcaster;

- A far more streamlined and simplified approach to the submission process that would alleviate the tremendous current administrative burden on both the independent producer as well as the CMF staff;
- A critical element in this new submission process would be the one centralized portal system that the CMF would share with other Canadian government funding agencies.

### **National Film Board of Canada**

The Canadian independent documentary community and the NFB share a deep and complex relationship dating back to the creation of this institution in 1939. Much has changed in the way that the NFB interfaces with its public and with the documentary community, particularly over the past ten years. In more recent years, DOC and the NFB convened an annual meeting of senior level administration in an effort to encourage a collaborative spirit between the independent documentary community and the NFB. DOC considers the NFB to be a very important player and a key partner in the documentary landscape and believes that given more funding it could better fill its mandate. However, we would make the following recommendations:

- There should be more transparency with regards to spending. DOC is puzzled by the current situation where, despite an increase in budget in fiscal 2016 and 2017, the funding allocation to production has actually decreased across the country.
- DOC would like to see a review of NFB policy with regards to artist's rights where a director is hired to helm an NFB production and the institution retains 100% of the creator's rights.
- A more flexible approach to distribution would better serve the marketing and promotion needs of co-productions with the NFB. In today's marketplace, a more innovative approach to outreach and communication and a rapid response to developments in the marketplace is needed once a film is completed. This is challenging for an institution to undertake given the level of bureaucracy that is involved.
- In the past the NFB played an important role as a training ground for new documentary filmmakers and was more involved with the local documentary community on a day-to-day basis. While the NFB are very active on the diversity front in this regard, and very present at high profile industry events, DOC submits that it would be mutually beneficial to both the NFB and the independent documentary community if there was a return to the closer community engagement of the earlier days.
- The NFB is built on a studio model that, while it works well for creating content, is not the best model for supporting the creator. Furthermore, the difficulties of working with a bureaucracy such as the NFB whose departments are often in transition, thus causing delays, is not tenable in the reality of the production world.

### **Canadian Audio-Visual Certification Office**

The Federal tax credit remains a crucial piece of the funding puzzle for the independent documentary sector. DOC would like to see updates made to the current allowances in calculating tax credits to take into account the new funding models that are emerging as the broadcast based funding system transforms. As per the suggestion that we have repeated throughout this document, DOC strongly urges that CAVCO is part of the new centralized governmental funding portal system. There are many administrative issues at this agency as it currently functions that are creating major delays for the independent documentary filmmaker

and costing them thousands of dollars out of pocket. This is not an example of supporting the creator.

### **Canadian Broadcasting Corporation**

DOC is very cognizant of the fact that the CBC remains the main programmer of documentary in this country. Without the slots provided by *The Nature of Things* and *Firsthand*, as well as their online short docs initiative, the broadcast landscape for documentary in Canada would be dark indeed. DOC also applauds their recent Diversity Development Workshop which offered fifteen outstanding emerging filmmakers of diverse cultural backgrounds a wonderful opportunity to elaborate upon their documentary projects. Particularly in light of the new funding that will be allocated to the CBC, DOC would make the following recommendations:

- That the CBC be required to engage in a Terms of Trade agreement when negotiating contracts with independent producers;
- That the CBC be mandated to engage in risk-taking, innovative Canadian production in all genres and in particular to develop strands for feature length, auteur-driven documentary on all their properties;
- That there would be a more simplified and reduced administrative side for content creators engaging in work with the corporation;
- That CBC adopts a decentralized model similar to what has been done in the UK with the BBC whereby it engages more directly with regional producers and becomes a true reflection of the broad spectrum of Canadian culture. For example, having a development officer in the regions would result in greater knowledge of the local independent production community and the creation of diverse and engaging programs that would bring Canadians together, thus enhancing the value of the national broadcaster to Canadians.

### **Telefilm Canada**

Although there is much interest and support from the institution's staff, in DOC's opinion, the current focus of Telefilm's funding programs and promotional support is skewed towards drama and genres other than documentary. Feature documentary is where Canadian independent documentary filmmakers can contribute greatly to the profile of Canadian content in a digital world. DOC believes that Telefilm can play a major role in developing this under exploited potential of our international media profile and would like to see Telefilm's feature documentary funding program expanded and made more accessible to the Canadian independent community. DOC also submits that Telefilm could and should be engaging in the marketing and promotion of feature documentary in a more meaningful way.

### **Canada Council for the Arts**

DOC applauds the Minister's decision to substantially increase the Canada Council's funding over the next four years. The Canada Council is the lifeblood of the artistic community in this country and DOC sees their new cross-disciplinary approach to streamlining and simplifying their method of funding allocation as a harbinger for public funding agencies in this country. With regards to funding documentary, DOC would encourage the Canada Council to take a similar approach to the one they presently utilize for funding the publishing industry whereby they are funding not only the individual author but also the publishing house based on their slate of books – in other words, that there would be both project funding and operational funding available to the independent documentary filmmaker.



While we understand the imperative to first and foremost support the independent artist, DOC finds that the Council has taken an unnecessarily hard line approach when it comes to the independent documentary sector. With this in mind, DOC submits the following for consideration:

- Currently, having a broadcaster attached to a documentary production automatically disqualifies the project from consideration for Council funding. As previously stated, even in the increasingly rare instance where a filmmaker has obtained a broadcast licence, they are still obliged to seek out the other 70 to 90% of the budget to finance their production, thus making them to all intents and purposes a legitimately “independent” creator.
- Even in instances where the applicant has demonstrated that they have 100% creative and editorial control of their project, if they are working with either another production company than their own or with a broadcaster, their project is considered ineligible. DOC submits that for an independent documentary creator to be expected to not only direct but to also establish a production company for their project places an unrealistic burden on the filmmaker and is not supporting the creator.
- There is also inconsistency in the implementation of these regulations from one application to the next.
- An increasingly high percentage of our community and especially of DOC’s membership are funding and producing their productions outside of the broadcast-trigger funding model and are for all intents and purposes artisanal productions. DOC submits that this reality is not receiving adequate consideration at the Council’s policy and decision-making level.
- DOC contends that the Council could and should be a much more viable funding avenue for the independent documentary sector.

#### Final Remarks

DOC would like to thank the Minister and her Department for offering this opportunity to assist in building a new and innovative Canadian media production environment in a digital world. We hope that the ideas contained herein might be of service and we would gladly provide additional information if it can be useful. We also offer our services and knowledge in any manner that would be constructive to helping the Ministry receive its objectives.

In closing, DOC would like to respond to a question the Minister had put forward at the Montreal meeting with L’Observatoire du documentaire we attended on November 18<sup>th</sup>. You asked if we felt that there was a role for the Canadian government to play in promoting Canadian content in a digital world. DOC believes that the Canadian government can play a vital role in promoting the value and excellence of Canadian content in the global digital ecosystem. Never before has Canadian content been so appreciated both here at home as well as in countries all over the world. Never has there been a more propitious moment to promote the Canadian brand far and wide throughout the world.

It is clear that the current undertaking of the Department of Heritage is a massive and potentially far-reaching one. It is one that will unfold in the midst of unstoppable changes that are reshaping the media landscape throughout the world. For that reason, DOC joins other organizations in recommending that there be a long-term industry-government advisory group to help monitor and facilitate these ongoing changes and to ensure a coherent national strategy.