



July 11, 2008

Mr. Robert A. Morin
Secretary General
CRTC
Ottawa, ON
K1A 0N2

Online: <http://support.crtc.gc.ca>

Dear Mr. Morin,

**Re: Broadcasting Notice of Public Hearing CRTC 2008-44
Call for comments on the scope of a future proceeding
on Canadian broadcasting in new media**

1. This is the submission of the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) in the matter of Public Notice CRTC 2008-44, the call for comments on the scope of a future proceeding on Canadian broadcasting in new media.
2. ACTRA is pleased to have this opportunity to participate in this process and will bring to it the particular perspective of English-language performers. We believe it is essential to ensure:
 - i) That Canadian creative resources are predominantly used on the public airwaves and in other public spaces; and
 - ii) That there is a reasonable supply of high-quality English-language programming choices, and most particularly drama and scripted comedy programs and series, in every medium.
3. ACTRA and its predecessor organizations have represented the interests of professional performers working in the English-language media in every region of Canada for more than 60 years. ACTRA bargains collectively on behalf of 21,000 performers. In addition, ACTRA represents the interests of thousands of singers and musicians through the work of the ACTRA Performers' Rights Society Sound Recording Division which collects and distributes royalties from the public performance of musical recordings.
4. ACTRA members have a vital stake in Canada's cultural future. ACTRA members benefit professionally when work opportunities increase. ACTRA members also believe passionately that Canada needs a strong Canadian presence wherever entertainment and information services are created and however these are provided to Canadians. We believe in the creativity of Canadians; in our capability to tell and

Alliance of Canadian Cinema, Television and Radio Artists

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perform our own stories.

Overview

5. ACTRA participates in the CRTC processes not only in the interests of our membership, but for cultural reasons, to ensure that Canadians have access to high-quality Canadian choices in every genre and every format. This requires regulations and policies and the history of our broadcasting system demonstrates this need.
6. ACTRA welcomes the future proceeding as it has been almost 10 years since the Commission decided in 1999 to exempt new media distributors from licensing requirements even when they are providing material that falls under the definition of a “program” in the *Broadcasting Act*. As the Commission has recognized, the new media landscape has changed considerably since then. As new media platforms are increasingly being used to provide broadcasting content, ACTRA asserts that it is time for the CRTC to bring the new media broadcasting environment under the regulatory umbrella so that it will make a contribution to our broadcasting system, as required by the *Broadcasting Act*.
7. Due to misconceptions in the industry about the extent of the upcoming process, ACTRA suggests that the Commission communicate clearly that the process is not reviewing the Internet as a whole, but considering Canadian broadcasting in new media – which occurs when programs are made available to consumers through computer networks or other non-traditional digital services.
8. Broadcasting in new media is a growing industry, and with that growth comes uncertainty and disputes. ACTRA members felt strongly enough about achieving fair payment for the use of their performances in new media that they took strike action for six weeks in 2007. ACTRA’s strike was successful, achieving groundbreaking rights and payment for performers’ work in new media productions including productions converted to use in new media, and productions made specifically for new media use.
9. New media rights are also front-and-centre in U.S. guild negotiations. The Writers Guild of America took strike action for three months in 2007 and 2008 to gain payment for use in new media. New media was the central issue for the American Federation of Television and Radio Artists’ (AFTRA) 2008 bargaining and is still the focus of Screen Actors Guild’s (SAG) efforts to achieve a new agreement with producers.
10. These examples illustrate that parties are willing to take a tough stand to guard their rights in new media. Despite their below-average and uncertain incomes, artists are willing to withhold their services in order to secure fair payment for use of their work in new media. All sides see new media as becoming a larger and larger part of the production and broadcasting landscape in the future.
11. New media rights are also at the centre of the Canadian Film and Television Production Association’s (CFTPA) efforts to establish Terms of Trade agreements between independent producers and broadcasters. Such agreements will provide greater certainty to an industry that relies on certainty, will ensure producers are securing fair terms for their investments, and over time, will support a strong

independent film and television sector. ACTRA supports the CFTPA's efforts to negotiate equitable terms of trade agreements with broadcasters and is encouraged by the Commission's involvement in the process by signalling to the industry that it expects the parties to reach draft or signed Terms of Trade agreements as part of the licence renewal process.

12. ACTRA has jurisdiction in new media and our collective agreements already include provisions covering performances for use in new media productions. ACTRA's agreements that contain new media provisions include the Independent Production Agreement (IPA), the National Commercial Agreement (NCA), the CBC Agreement and the National Film Board (NFB) Agreement. Producers are contracting professional performers in new media productions in increasing numbers. Productions include conventional productions converted for new media use as well as 'made-for' new media productions. ACTRA has also negotiated collective agreements with a number of Canadian video game publishers and developers covering the engagement of professional performers for voice work in video games.
13. The NCA has included new media provisions since 1999. As an indication of the growth in use of professional performers in new media productions, in just three years, the number of NCA commercials using professional performers made specifically for new media grew more than five times between 2004 and 2007.
14. Under the current IPA, which covers film and television production, conversion of a conventional production for use in new media is contemplated and included as part of the contracting of the performer at the time of production. Basically, every conventional production is also being used in some form on various digital platforms.
15. In addition, performers are being contracted for production of separate content for use in new media, often related to a conventional production, for example *Corner Gas* mobisodes, or behind-the-scenes clips for *Degrassi: The Next Generation*.
16. Since the latest new media provisions came into force under the IPA in February, 2007, more than half of the dramatic productions made specifically for new media use (as opposed to converted to new media use) have been ancillary content related to conventional broadcast productions. Examples include content for shows such as *Degrassi: The Next Generation*, *Da Kink in My Hair*, *Instant Star* and *Corner Gas*.
17. Broadcasters are making complete conventional episodes available on their websites. Producers are also using new media content alongside conventional content in traditional formats. For example, the *Corner Gas* DVD set includes both complete episodes and new media webisodes.
18. However, despite all this activity, in the upcoming proceeding, ACTRA will argue that while there is some Canadian presence in new media, Canadian productions are increasingly marginalized in a universe of virtually unlimited choices. We will assert that both incentives and regulation are needed to support both the production and exhibition of high-quality new media broadcasting content for Canadian and global audiences.
19. ACTRA believes that Canadian new media broadcasting content requires appropriate shelf space and support for promotion and marketing. We will be looking

to the CRTC to introduce appropriate incentives and regulations to achieve this outcome in order to be sure that Canadian choices are part of the new media broadcasting equation for Canadians.

20. ACTRA will also make the case for new funding for new media broadcasting. The Commission has recognized the importance of funding productions for new media broadcasting, and directed a portion of the revised tangible benefits from the BCE Inc.-Teachers' Private Capital transaction in its Broadcasting Decision 2008-69. The Commission's public notice 2008-58, proposing amendments to the Certified Independent Production Funds policy to allow funds to support new media projects also recognizes the need for resources to support new media. However, ACTRA is already on record supporting new funds for new media, and is concerned that in both of these cases, the measures the Commission has taken are diverting, and thus reducing, the funds that would otherwise be directed at conventional television productions.
21. ACTRA will propose that one new source of funds for new media productions could be found through a levy on the revenue of Internet service providers (ISPs), analogous to the Broadcasting Distribution Undertaking (BDU) contributions. Such a levy would recognize that ISPs are now part of the Canadian broadcasting system, distributing new media content in new ways to Canadians.
22. ACTRA supports the proposal in the attached submission by lawyer Peter Grant, *Reinventing the Cultural Tool Kit: Canadian Content on New Media*, for an ISP levy at 2.5% of revenues. Mr. Grant calculates that 50% of ISP traffic is broadcasting-related, and thus such an ISP levy would equate to the 5% of revenues which BDUs currently contribute to the Canadian Television Fund and independent production funds.
23. In addition, ACTRA will argue that as the transmission of content by wireless carriers falls within the definition of broadcasting, mobile broadcasting services must be considered as part of the proceeding and such carriers must make contributions to the broadcasting system as required by the *Broadcasting Act*.
24. Internationally, France has just taken steps towards instituting a 0.9% tax on the revenues of Internet companies, as well as phone and commercial broadcasting companies, as a source of revenue related to public broadcasting. On June 25, 2008, French President Nicolas Sarkozy announced plans to institute the tax to replace funding that will be lost when public television removes commercials from its prime time schedule in January, 2009.
25. New sources of funding are definitely required for new media productions. Canadian digital media expert Sam Punnett highlights this need by contrasting how much investment companies are making in the sector compared to the funding currently allocated to new media productions in Canada. Videogame maker Electronic Arts spent \$1.145 billion USD on research and development in 2007. This contrasts with around \$30 million in funding available for Canadian new media productions. In the space of a week-and-a-half, EA has spent more on R&D than Canada's yearly new media funding. EA spends about one-third of their operating dollars on R&D for content.

26. Internet advertising revenues continue to grow in Canada. The Interactive Advertising Bureau of Canada (IAB) projects online ad revenues for 2008 to increase by 25% over the year before, to an estimated \$1.5 billion. Some of these ad revenue dollars are earned by conventional broadcasters or BDUs from their websites, revenue that is not part of regulated revenue. While growth in this sector has the potential to affect revenue from conventional broadcasting, it also has the potential to contribute to the overall revenues of the broadcasting system. Internet advertising revenues from broadcaster websites should be included as part of regulated revenues for the purposes of calculating contributions to the system.
27. In ACTRA's view, the Commission has the authority to impose a wide range of regulations on Canadian broadcasting in new media under the *Broadcasting Act* and the *Telecommunications Act* and it is time to do so. All elements of the broadcasting system are required to make contributions and a framework of new funding is needed to support the development, promotion and exhibition of high-quality Canadian new media broadcasting content for Canadian audiences.
28. ACTRA is concerned that as broadcasting in new media grows, it will be harder to ensure that high-quality Canadian new media broadcasting content is part of the landscape. Allowing the sector to further develop without ensuring Canadian content is included will not only exclude such content in the long run, but may jeopardize the traditional broadcasting framework, and by extension the Canadian broadcasting system.

Scope of new media broadcasting

29. ACTRA finds the Commission's questions considering the scope of new media broadcasting to be appropriate.
30. ACTRA submits that the fourth question proposed in the scope section, "How should new media broadcasting be defined?" is too open-ended and could dominate the proceedings. ACTRA recognizes the difficulties in defining what new media broadcasting might include, but suggests the Commission may want to consider, as it has done in recent proceedings, focusing the discussion by suggesting a proposed definition in advance to which parties can respond. Already, large corporations with mobile services are arguing against any content regulation or regulated contributions to new media production funds. ACTRA takes the position that mobile broadcasting services should be included in the definition of new media broadcasting.
31. As the Commission tackles defining new media broadcasting, it should consider a broad definition that will encompass new forms of production and distribution of programming content as they arise.
32. In addition to the scope questions suggested, ACTRA submits that the Commission should consider the impact that a two-tiered system of regulation will have on conventional broadcasting. While broadcasters and Broadcast Distribution Undertakings (BDUs) are regulated, the new media arms of many of these same companies are unrestricted. Broadcasters and BDUs must not continue to be able to exploit a two-tiered system where they escape regulation in new media broadcasting. In addition, without regulation on new media broadcasting, Canada will fall behind in being able to develop and support Canadian content in new media broadcasting.

Incentives and regulatory measures

33. Canadian content needs regulatory and funding support in conventional broadcasting, and as well in new media broadcasting. The questions the Commission is considering in this section appear to be oversimplified. All of the questions suggested, such as the first question, “Are new or enhanced support mechanisms required for the development and production of Canadian new media broadcasting content?,” can be answered in ACTRA’s view, with a simple “yes.” It is the subsequent question that’s important, “If so, in what form?” The discussion of what form supports should take, how to ensure all elements are contributing to the creation and presentation of Canadian programming, what measures can be taken to enhance the promotion and visibility of Canadian new media broadcasting, and how to benchmark and measure our success in new media broadcasting are the questions that deserve the greatest time and attention in the upcoming process.
34. ACTRA reiterates that new funding must be found to support Canadian new media broadcasting content. Our conventional broadcasting system generates scarce resources for conventional Canadian productions. Yet it is more and more common for productions to have associated websites, new media versions of the productions and ancillary content for use in new media. Canadian audiences expect such content, but it must not divert or dilute the scarce resources available for conventional broadcasting. Spreading already scarce resources too thinly will jeopardize both the quality and the quantity of all content available, be it conventional programming, or new media broadcasting content.

Barriers to access

35. ACTRA agrees with the Commission’s proposed questions concerning access to Canadian new media broadcasting content, however, as in the previous section, the questions are oversimplified. The Commission should be considering what tools it has at its disposal to remove barriers to access to Canadian new media broadcasting, including broadcasting on mobile devices.

Other broadcasting policy objectives

36. In addition to the broadcasting policy objectives covering cultural, economic, social and technological issues, ACTRA urges the Commission to consider how to ensure there is a diversity of voices in the Canadian new media broadcasting landscape.
37. In Broadcasting Public Notice 2008-4, Diversity of Voices, the Commission considers that “the concept of ‘diversity’ in the Canadian broadcasting system should be approached at three distinct levels: diversity of elements, plurality of editorial voices within the private element, and diversity of programming.” We submit that this approach should also be applied to broadcasting in new media and it is appropriate in the upcoming hearing to highlight this issue for review.

Conclusion

38. ACTRA welcomes the upcoming Commission process on broadcasting in new media. The Commission has the jurisdiction, and it is time the Commission lifted its 1999 new media exemption order. The CRTC should use its authority to support the growth of broadcasting in new media with appropriate regulatory measures, as well as incentives, to ensure Canadian new media broadcasting content is produced,

available and promoted to Canadian and global audiences.

39. ACTRA thanks the Commission for the opportunity to provide input into the scope of the issues and questions to be discussed as part of the future proceeding on broadcasting in new media.

Thank you

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Stephen Waddell
National Executive Director
ACTRA

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