Reinventing the Cultural Tool Kit: Canadian Content on New Media

A Presentation to the
CFTPA "Prime Time in Ottawa" Conference
Westin Hotel
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Broadcasting on the Internet

I have been asked by the CFTPA to suggest what the CRTC can do to ensure a Canadian presence in new media broadcasting.[2] The purpose of this presentation is to stimulate discussion at a panel on new media at the CFTPA "Prime Time in Ottawa" conference.

The term "new media" embraces both the Internet and mobile platforms, although I will focus most of my attention on the Internet, and on audiovisual rather than purely audio programming. And here we must start with a fundamental question, namely, how much of the traffic on the Internet today is in fact broadcasting?

If you look at the definition of "broadcasting" in our *Broadcasting Act*, you can exclude some broad categories of traffic right away.[3] Text and still images fall outside the definition, for example. Traffic not going to the public is also excluded, so that gets rid of most e-mails and VoIP, as well as most business to business traffic.

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[2] I have had occasion to look at this issue in a preliminary way at an invitational session on new media convened by the CRTC last October. See Peter S. Grant, "National Content on New Media," Presentation to the CRTC Invitational Session on New Media, October 1, 2007, available under "Publications" on the website: http://www.mccarthy.ca. My presentation today draws on much of that analysis but takes it some steps further.

[3] For a discussion of what constitutes "broadcasting", see *New Media*, Broadcasting Public Notice CRTC 1999-84, at para. 35-46.

Interactive material where the consumer interacts with the content is probably not "broadcasting" so games on the Internet would be excluded. So what are you left with? Basically, the key activity included in the definition of "broadcasting" would be the streaming or downloading of music or video to the public through an Internet application, including websites such as Amazon, digital Internet-connected applications such as iTunes, and peer-to-peer networks such as BitTorrent.

Some people may question the inclusion of "on-demand" applications within the definition of "broadcasting." They might argue that "broadcasting" only occurs when the same program is sent simultaneously to many members of the public, not just to one at a time on demand. In that regard, they would be following the European approach, which distinguishes between "linear" (scheduled streaming) and "non-linear" (on demand) traffic on the Internet, although obligations are imposed on both types of traffic. But that is not the Canadian definition. In fact, Parliament considered the exclusion of "programs transmitted on demand" from the definition of "broadcasting" in the run-up to the 1991 *Broadcasting Act*, but in the end declined to put this exclusion in the statute.[4] Since then, the CRTC has exercised jurisdiction over video-on-demand, and has licensed a number of video-on-demand services.[5]

So how much of the traffic on the Internet would constitute broadcasting using the Canadian definition? This is not an easy matter to discover because it requires deep packet analysis within proprietary networks.

I have looked at two recent studies. One study was done by Ellacoya Networks, looking at 1 million broadband users in North America. A breakdown is presented in Table 1 and you'll see that 51% of the traffic turned out to be broadcasting.

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[4] Bill C-136 was tabled for first reading on June 23, 1988, and would have excluded programs transmitted on demand from the definition of "broadcasting." However, Bill C-136 died on the order paper. When its successor, Bill C-40, was tabled for first reading on October 12, 1989, the exclusion was no longer in the bill. Bill C-40 was eventually enacted as the new *Broadcasting Act* on February 1, 1991.

[5] See *Introductory Statement to Decisions CRTC 2000-733 to 2000-738; Licensing of new Video-on-Demand and Pay-Per-View Services*, Public Notice CRTC 2000-172, December 14, 2000.

Table 1

Ellacoya Estimate of North American Broadband Traffic

Category of Traffic	*Per Cent of Total Traffic*	*Sub-Category*	*Per Cent of Traffic Category*	*Broadcast Traffic As Per Cent of Total Traffic*
HTTP	46	Text and Images	45	
		Streaming Video	36	17
		Streaming Audio	5	2
		Other	14	
P2P	37	Video	70	26
		Audio	8	3
		Software/Other	22	
Newsgroups	9			
Non-HTTP Video streaming	3			3
Gaming	2			
VoiP	3			
TOTAL	100			51

Source: Ellacoya Networks, Study of 1 million broadband users in North America, 2007; breakdown of P2P traffic is based on study by ipoque of 100,000 households in Germany, 2006.

A second study was recently published by Cisco, aggregating the numbers and forecasts from ten different sources.[6] The traffic numbers for North America in 2007 are shown in Table 2. Their result, adjusted slightly to break out peer-to-peer traffic into its constituent content types, was that 47.2% of the traffic was broadcasting, i.e. music or video streaming or downloads. Interestingly, according to Cisco, the percentage attributable to music or video is much higher in other countries, particularly Asia.

[6] See Cisco Systems Inc., *Global IP Traffic Forecast and Methodology, 2006-2011*. The document may be accessed at http://www.cisco.com/application/pdf/en/us/guest/netsol/ns537/c654/cdccont_0900 aecd806a81aa.pdf. Their study is probably best described as a meta-analysis, as it is based on "trusted analyst forecasts ... from Kagan, Ovum, Informa, IDC, Gartner, ABI, AMI, Screendigest, Parks Associates, and Pyramid."

Table 2

Cisco Estimate of North American Internet Traffic, 2007

Category of Traffic	*Terabits/ Month*	*Per Cent*	*Per Cent Broadcast*	*Broadcast Traffic As Per Cent of Total Traffic*
Web, e-mail, file transfer	192,654	38.1	0.0	0.0
P2P	144,402	28.5	68.0	19.4
Gaming	17,367	3.4	0.0	0.0
Video Communications	4,118	0.8	0.0	0.0
VoIP	6,974	1.4	0.0	0.0
Internet Video to PC	92,959	18.4	100.0	18.4
Internet Video to TV	47,384	9.4	100.0	9.4
Total	505,859	100.0		47.2

Source: Cisco Systems Inc.

So let's work with a 50% ratio.

Canadian Content on the Internet

How much of the broadcast content on the Internet is Canadian? That's much harder to establish.

In its report on the impact of technology to the Governor in Council, tabled on December 14, 2006, the CRTC divided audio-visual content on the Internet into three broad categories: [7]

- User-generated content. This tends to be inexpensively produced, largely non-commercial, lower quality content. This type of content is manifested in the success of social networking sites such as "YouTube" and "Myspace".

- Relatively inexpensive, commercial content. This includes news and sports clips, music and other information and entertainment content. Canadian content of this type abounds on Canadian television and radio today and is generally viable in Canada without significant direct subsidy.

- High quality, relatively expensive programming, such as drama and documentary. This type of content is popular on Canadian television but has

[7] CRTC, *The Future Environment Facing the Broadcasting System*, December 14, 2006, at para. 352.

generally not been produced in Canada without significant subsidy. Canadian content in this category remains largely "uneconomic".

This three-way categorization is useful, since it allows us to focus on the third category, where Canadian content production needs the most help and where the economics are the most problematic. Programming in the first two categories does not face the same economic threats and Canadian content in these categories appears to be flourishing on the Internet.

So it is this third category – "high quality, relatively expensive programming, such as drama and documentary" – that I want to focus on today.

Canadian Content Created for Traditional Media

Let me start with an obvious truth that many people forget. There is relatively little high quality expensive programming on the Internet or on mobile devices *that was created for those platforms.* Yes, you can get expensively produced films and TV series on the Internet. You can also get music videos on your cellphone. But this material was originally produced for other platforms – theatrical exhibition, or conventional, specialty or pay TV – and then made available on the Internet or in limited cases through mobile devices. Simply put, the Internet provides a useful way of aggregating expensive audiovisual content made for other media, but it does not finance that content.

Financing is important. The person who pays the piper calls the tune. So unless Internet platforms are prepared to finance high quality production, they will not control that production. The production will be owned and controlled by the studios or networks that finance it and they will be careful about how that production is distributed on the Internet to ensure that it does not cannibalize the theatrical, DVD and TV platforms that are still the main source of financing. As rightsholders begin to use the Internet to offer downloads of films and other audiovisual programs, it is noticeable that they are using the same geographic borders and time windows as they apply to conventional television. In the United States you can get downloads of "Desperate Housewives" for $1.99 an episode. But only a day after the episode has been broadcast on the ABC Network. And through geo-location controls, those downloads cannot be received on computers outside the United States.

Obtaining and clearing on-line exhibition rights for foreign and domestic content continues to be a problem for both broadcasters and producers, and rights management will be a constant challenge as the technology evolves. This is an issue not only in North America but in Europe, where the European Commission recently launched a focused public consultation called "Creative Content Online" to address a number of challenges, including the lack of availability of creative content for online distribution and lack of active licensing of rights on new platforms.[8]

We *are* beginning to see some high quality programming material created expressly for the Internet or for mobile devices. But none of it is full length episodes of the kind seen on TV. Instead you have so-called "webisodes" or "mobisodes" – short audiovisual pieces that can be distributed on YouTube or on cellphones.

Of course, some material created for traditional TV is already in a short form — the best example would be music videos. But there are also programs where you can use brief excerpts on the Internet. A good example would be the sight gags on "Just for Laughs". These short little clips are perfect for use on cellphones or on the Internet and rights have already been sold across Europe where the fact that they don't require translation is an advantage.

But again, almost all of this is material that was already there. It was originally created for traditional media, and that's how it was financed.

This leads me to my first observation. Namely, that if you want to support national content on new media, start by supporting national content on the traditional media, because that content will later be made available on the Internet. In other words, to the extent that your broadcasting policies expand the choices, range and varieties of expression in traditional media, that pluralism will carry through to the Internet. In that sense, the Internet can serve as a "force multiplier" for policies that support national content in other media.

Canadian Content Created Expressly for the Internet

But what about material created just for the Internet? Is there an opportunity here for high quality national content? In this area, the best Canadian example is the program, *Degrassi: The Next Generation*, which runs on CTV in Canada and on *The N* in the United States. Each regular TV episode is 22 minutes long, costs about $700,000 to make and is produced by Epitome Pictures of Toronto.

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[8] See "Commission adopts strategy for 'Creative Content Online,'" January 3, 2008, available on the European Commission website at http://ec.europa.eu/avpolicy.

In addition to those regular episodes, the producers of *Degrassi* have made about 50 webisodes in the last two years. These are little audiovisual dramas, fully scripted, featuring all the key actors, and specially commissioned music, but lasting only 3 minutes. These are shot more cheaply than the regular episodes – for example, they tend to use more close-ups – but they still cost about $25,000 each to make.

The makers of *Degrassi* have also made about 50 "behind the scenes" clips. They have a videographer follow the actors around on the set while the main episodes are being produced, showing bloopers and other funny incidents during rehearsal, makeup preparation, and the like. Each of these clips is cut to 3 minutes in length. These cost about $3,000 to make.

Then you have a category of programming called "after the show." Here *Degrassi* has its actors and creators sit down for 8 to 12 minutes and talk about how they came to create this episode. A little feature like that typically costs about $8,000 to produce.

The *Degrassi* examples are ones where the on-line content, while created specifically for the Internet, relate specifically to traditional TV shows and hopefully increase interest in those programs. But it is also true that on-line audiovisual material need not be related to TV shows on the traditional media at all. While broadcasters are understandably interested in commissioning or producing Internet content that promotes their existing programs or TV channels, there is a growing interest in Internet content that breaks out of the mold and has a life of its own.

An example of this may be found in *Têtes à claques*, a French-language humour website created in 2006, which is now one of the most popular websites in Quebec.[9] The content consists of a number of 2-minute animated short videos, using claymation figures. Created by Michel Beaudet after some of his early clips had achieved popularity on YouTube, over one million of his short videos are now watched per day on the website. A DVD of the first 45 clips was made available for sale in Christmas 2007. The production cost of these videos is clearly much lower than the *Degrassi* content, since no actors or music clearances are involved and the creation is the work of a single person.

What these examples demonstrate is that there is a wide range of on-line audiovisual content and a wide range of potential cost. Even at the low end, however,

[9] See www.tetesaclaques.tv. The title of the website loosely translates as "a face you want to slap."

there will be a significant cost involved if the material is to be of high quality and if the creators are to be paid on a basis that reflects their time and effort and the popularity of their work. In the case of *Degrassi*, the $25,000 cost of a 3 minute webisode is clearly a lot less expensive than the $700,000 that it takes to produce a full half-hour episode. But to do 10 three-minute webisodes costs Epitome Pictures about $250,000. How does it finance this?

In the case of *Degrassi,* it was very lucky to be the number one rated program on *The N*, the U.S. network owned by Viacom. And because of that, Viacom was prepared to step up to the plate to cover a majority of the cost. The rest came from CTV and the producers. These webisodes appear on *The N* website in the U.S. and on CTV's website in Canada, both with geo-blocking to prevent viewers in the other country from accessing the program. The webisodes are there largely for promotion, but *The N* also sells ads which appear next to the webisode. Viacom is happy with the result – they typically have 2 million streams for each webisode. Any revenue – which to date has been tiny – is split 50-50 between the network and the producer.

But that leads me to my second observation. The *Degrassi* economic model teaches us a lot about cost, but it is a financing model that simply does not apply to most high quality Canadian content production for the Internet. Lacking a foreign broadcaster to cover most of the cost, high quality Canadian production for the Internet needs to be financed in Canada and except in limited circumstances the market is not large enough for Internet platforms here to support these kinds of efforts. Not at $25,000 per webisode.

This is borne out by a study by Nordicity last year, which examined to what extent Canadian broadcasters were placing content on their web sites.[10] The study showed that while Canadian broadcasters were repurposing existing content for online consumption, they were not actively creating new unique content for the audience online. For Canadian programs, the study showed that only 28% of the programs examined had online-only video content, as compared to 78% of the U.S. programs on U.S. broadcaster websites.

The Nordicity study only examined a limited sample of shows and some observers feel that a fuller study would have shown an even lower number for Canadian broadcasters. Claude Galipeau, who ran new media operations for the CBC

[10] See Nordicity Group Limited, "Study of Broadband Exhibition of Television Programming in Canada and the U.S.," A Report prepared for Bell ExpressVu, October 12, 2007; submitted by Bell Aliant and Bell Canada to the CRTC in response to BNPH 2007-10, October 19, 2007.

and then Alliance Atlantis Communications, has indicated to me that the AAC specialty channels commissioned or produced 1,000 hours a year of original Canadian content but barely 50 hours of on-line material. Even if that rises to 100 hours or more, it will be barely 10% of the output for the TV channels.

In the traditional television field, experience and recent studies demonstrate that high cost Canadian programs like drama will not be commissioned by private broadcasters in the absence of subsidies and regulatory requirements.[11] But with only limited exceptions, the same appears to be true for ancillary video content created expressly for the Internet. Except where the content is user-generated, or consists of relatively inexpensive commercial content, the business model is not there to support it.

Applying the Cultural Tool Kit to the Internet

So that begs the question, how can smaller countries support the creation of national high-quality content for the Internet?

That goes to the question of the "cultural tool kit" and what government policies can be used to support under-represented content. I have written widely on this subject and looked at policies around the world to support cultural industries and to develop a broader range of popular cultural products, without undermining freedom of expression.[12]

In that regard, I have identified six major types of measures in the cultural tool kit. The first such measure is the institution of public broadcasting. A second measure is the imposition of reasonable scheduling requirements on private broadcasters and other cultural gatekeepers. Third, we have the imposition of expenditure requirements on broadcasters and/or distributors to support the programming that is hardest to finance. Fourth, foreign ownership restrictions can support cultural diversity, since one of the effects of such restrictions is to create locally-owned companies that provide a local "green light" for the benefit of indigenous producers. Fifth, we have

[11] For a recent study of the economics of Canadian production, see Nordicity Group Limited, "Canadian Television: Why the Subsidy?" Appendix B to the CBC submission to the CRTC in response to BNPH 2007-10, January 25, 2008.
[12] Peter S. Grant and Chris Wood, *Blockbusters and Trade Wars: Popular Culture in a Globalized World* (Vancouver: Douglas & McIntyre, 2004). The book was simultaneously published in French as *Le marché des étoiles: culture populaire et mondialisation* (Montreal, Boréal, 2004). Each of the six examples in the "cultural tool kit" noted in the following paragraph is discussed in turn in chapters 8-13.

the use of competition policy measures, to support independent production and to lessen the dominance of gatekeepers. And last but not least, there is the support of the creation of underrepresented programs through subsidies or tax incentives. This is probably the most common tool in the cultural tool kit.

These measures have all been used around the world with varying effect to support the creation of local content on broadcast media. But can they be applied to new media, and in particular, the Internet?

The answer is a complex one. Clearly, some of the policies used in regard to the conventional media would be difficult if not impossible to apply to the Internet. For example, scheduling or exhibition requirements would be irrelevant when you have on-demand streaming or downloading. In 2005, David Graham & Associates, a highly regarded UK-based consulting firm, published a major study for the European Commission concerning the promotion, distribution and production of TV programs in Europe. [13] In that study, the following comments were made:[14]

> "Policy interventions to regulate internet content will be difficult to define and implement. For example measuring and enforcing a target for the proportion of European works in the schedule for material that is viewed on-demand over broadband networks (as opposed to a linear broadcast) is problematic because viewers choose what they want to watch. *The target of future regulatory actions for the internet may therefore need to shift from hours of program output to measures of financial inputs — for example, through an obligation to invest a proportion of turnover in European and independent works.* Positive intervention to market and promote European-made content to consumers inside and outside the EU may also be desirable." (emphasis added)

Picking up on this suggestion, in December 2007 the European Commission adopted a new *Audiovisual Media Services Directive*, which amended and renamed the *Television without Frontiers Directive*. Under the new Directive, a distinction is

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[13] See David Graham and Associates Limited, "Impact Study of Measures (Community and National) Concerning the Promotion of, Distribution and Production of TV Programmes provided for under Article 25(a) of the TV Without Frontiers Directive," Final Report for the Audiovisual, Media and Internet Unit, Directorate-General Information Society and Media, European Commission, May 24, 2005. The report is available on the European Commission website at http://ec.europa.eu/avpolicy.

[14] *Ibid*, at p.67.

made between "linear" services — whether or not on the Internet – and "non-linear" or on-demand services.

Linear programming on the Internet is subject to Article 4 of the new Directive, which states that

> "Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria."

By contrast, non-linear or "on-demand" programming on the Internet is subject to the following obligation in Article 3i of the new Directive:

> "Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, production of and access to European works. Such promotion could relate, *inter alia*, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service."

The actual measures to be applied by each member state to the website operators or Internet service providers in their jurisdiction are left to each member state to determine. It is too early to see how member states in the EU will choose to implement the Directive or if their approaches turn out to be effective. However, it is clear that the Europeans recognize the importance of ensuring that local content is available on new media.[15] It is also intriguing that the Europeans have focused their attention on the financing of local content as well as on its promotion and availability.

Can we apply some lessons from the European experience here in Canada?

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[15]See "Commission adopts strategy for 'Creative Content Online,'" January 3, 2008, noted above at note 8.

In terms of financing, of course, subsidies remain the most common policy support measure around the world for the cultural industries and they can take a variety of forms, from tax credits to independent funding agencies. In Canada we have the Canada New Media Fund, administered by Telefilm Canada, with a budget of $14.5 million per year from the Department of Canadian Heritage. It supports the creation and distribution of interactive digital cultural content products.

But of particular interest is the imposition of expenditure requirements on the private sector. Here in Canada, we already have the Bell Broadcast and New Media Fund, which is financed by a contribution of about $9 million a year from Bell ExpressVu as well as the interest from a $10 million endowment from the BCE-CTV benefits. The Bell Fund provides grants to Canadian independent producers who develop and produce TV content complemented and enhanced by interactive content designed for digital delivery.

The contribution from Bell ExpressVu forms part of the 5% expenditure requirement imposed on that company and on other broadcasting distribution undertakings (BDUs) back in 1997.[16] A major part of the 5% levy supports the Canadian Television Fund (CTF). That levy is based on the principle set forth in paragraph 3(1)(*e*) of the *Broadcasting Act*, which states that "each element of the broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming."[17] BDU support for the CTF amounted to $137 million last year. That money supplements broadcast licence fees, tax credits and other sources of funding to make it possible to produce high quality Canadian drama.

Could a similar levy apply in the Internet world? Since, as we have seen, about 50% of the traffic on the Internet may be broadcasting, it's hard not to acknowledge that the Internet is now "an element" of the Canadian broadcasting system. And when Internet service providers (ISPs) distribute broadcasting, in that sense they are acting as broadcasting distribution undertakings.

If you wanted to impose a levy on ISPs, of course, the CRTC would have to amend its Internet exemption order. It could still exempt Internet service providers

[16]*New Regulatory Framework for Broadcasting Distribution Undertakings*, Public Notice CRTC 1997-25, March 11, 1997.

[17]*Ibid*., at para.121. In that context, I have rendered a legal opinion to the CBC that the levy on BDUs to support the CTF is a valid regulatory scheme and does not constitute an illegal tax. The opinion was filed by the CBC as Appendix C to its submission to the CRTC in proceeding BDPH 2007-10 on January 25, 2008, and is available on the CRTC website at www.crtc.gc.ca.

and websites from licensing or other regulation. But it could impose a levy on ISPs to support high quality Canadian content made expressly for the Internet.[18]

How much would the levy be? Based on the BDU precedent, you might start with 5% but presumably you would have to discount it because only 50% of the Internet traffic is broadcasting. So let's use 2.5% as the amount of the levy. Last year, the Internet service providers had residential broadband revenue of $2.912 billion.[19] So a 2.5% levy would produce $72.8 million a year.

This is not an insignificant sum. As I noted, BDUs gave about double that amount, $137 million, to the CTF last year. And it all went to support that third category the CRTC referred to — "high quality, relatively expensive programming, such as drama and documentary."

If you look at drama spending by the broadcasters last year, and I'm going to focus only on Canadian English-language drama, here is how it came out. The CBC spent $57 million, including programs like *Little Mosque on the Prairie*. Private TV broadcasters spent $40 million. Specialty TV services spent $98 million. And the pay TV licensees spent $40 million on Canadian English-language drama.

So $72 million from the ISPs to support "high quality, relatively expensive programming, such as drama and documentary" — Canadian programming made expressly for the Internet — would not be a small number.

Apart from subsidies and expenditure rules, what other measures in the cultural tool kit might be made applicable to the Internet? Certainly the public broadcaster can and should play an important role in creating and distributing Canadian content on new media. In the United Kingdom, the BBC has been a front-runner in this regard, particular in regard to on-demand services. And for its part, the CBC operates the most popular television-related website in Canada, with 4.3 million average unique

[18]ISPs might seek to avoid such a levy by arguing that in offering Internet service to their subscribers, they fall outside the *Broadcasting Act* because they are acting solely as telecom carriers, and thereby benefit from the exemption in subsection 4(4) of the *Broadcasting Act*, which states that "the Act does not apply to any telecommunications common carrier, as defined in the *Telecommunications Act*, when acting solely in that capacity." However, what this argument ignores is section 4 of the *Telecommunications Act* which states that "This Act does not apply in respect of broadcasting by a broadcasting undertaking." To the extent that ISPs act as BDUs, therefore, the better view is that the *Telecommunications Act* would not apply, and the telecom common carrier exemption in the *Broadcasting Act* would not be applicable to the ISP.

[19]See *CRTC Telecommunications Monitoring Report*, 2007, at Table 4.4.6.

visitors per month.[20] For many reasons, it makes sense to support efforts by the public broadcaster to provide access to Canadian Internet content, particularly for content that the market alone would not provide.

As for ownership rules for webcasters, those rules may be hard to apply if you want to maintain unfettered access to foreign websites, as we do. However, we do have some traction over the Internet service providers and the domestic carriers who provide the infrastructure for the Internet, since to the extent they are facilities-based providers, they are already required to be owned and controlled by Canadians.

A Regulatory Action Plan for New Media

Taking all the foregoing into account, what might be an appropriate regulatory action plan to stimulate Canadian content on new media? I see such a plan as having ten logical components.

1. First, I think the key focus should be on high quality, relatively expensive audio-visual programming, such as drama and documentaries, not on user generated content. The high quality genre – even in the form of short webisodes – is the hardest to finance and is the genre where U.S. entertainment programs would otherwise dominate the system. However, because of the nature of the medium, there is room for a much wider cast of independent producers and not just those that currently produce traditional film or TV programs.

2. Secondly, the CRTC should recognize that new media, especially the Internet, are now a significant part of the Canadian broadcasting system, and that ISPs and cellphone companies are now acting as BDUs. ISPs and cellphone companies are increasingly delivering broadcast content to the public and this needs to be acknowledged.

3. Third, the Commission should support and encourage involvement by the CBC in new media. A pro-active role for the public broadcaster can and should be a crucial part of any new media strategy.

4. On private sector Canadian television platforms (over-the-air television, pay television and specialty programming services), the Commission should introduce or maintain expenditure requirements as a percentage of revenue for Canadian priority programming, especially Canadian drama. The importance of this for new media

[20] October 2007 Comscore Data

arises because these programs can and will be repositioned on Internet platforms but must be financed from the traditional television platforms.

5. The Commission should include revenue on affiliated television websites as part of regulated revenue for the purpose of expenditure requirements on over-the-air television, pay and specialty services. The rationale here is that the TV companies are increasingly selling ad packages that include website ads and this revenue should be included in any expenditure calculations.

6. The CRTC should impose a levy on ISPs to support new media Canadian content. As noted above, a 2.5% levy would generate $70-80 million a year. This need not significantly affect ISP subscriber rates, given current ISP healthy profit levels.[21]

7. The lion's share of the money from any ISP levy should be earmarked to independently administered new media funds. Some would argue that such a levy could be administered by an expanded CTF, and indeed this might make sense where the online content is ancillary to traditional TV shows already being supported by the CTF. However, I think there is a strong case for a separate new media fund that would focus on innovative projects by a new cast of producers. This is not to say that the fund should support user-generated programming. To obtain funding, such producers would need to have a track record of accomplishment and a business plan. But there is room for real innovation here.

8. In addition, ISPs might be permitted to spend a small portion of the levy on Canadian content themselves if they commit to enhanced promotion and placement of Canadian sites and content. As the Europeans have recognized, promotion and placement can be key drivers for local content in new media.

9. The Commission should maintain a watching brief on cellphone audiovisual subscriptions. Audiovisual services on mobile devices are still at an early stage but may become more important. If they do, the principles similar to those applicable to video-on-demand licensees might be made applicable to them.[22]

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[21] The revenues and expenses reported by the cable BDUs for offering broadband Internet service are included in the CRTC Financial Database, Financial Summary, Broadcast Distribution, Non-Programming Services. The operating margin reported for 2006 was 70.13%.

[22] For these principles, see *Introductory Statement to Decisions CRTC 2000-733 to 2000-738; Licensing of new Video-on-Demand and Pay-Per-View Services*, Public Notice CRTC 2000-172, December 14, 2000. Among other matters, the CRTC requires VOD services to carry a minimum ratio of 1:20 Canadian to non-Canadian feature film titles (1:12 in the case of French-language

10. Finally, the Commission should support the creation of new or augmented websites by broadcasters and producers to promote Canadian content. An example of such a website in the United Kingdom is "Myfilms" which is a U.K. website created with funding from the U.K. Film Council.[23] The purpose of that website was to provide a place where U.K. moviegoers could recommend independent films to each other. In funding the site, the U.K. Film Council expressed the hope that in this way the movie business "will start to follow trends in music, with online communities championing a more diverse range of talent."[24] Given the prominence and influence of social networking sites in driving demand for audiovisual content, this kind of initiative also needs to be part of any Canadian content strategy for the Internet.

In order to implement this action plan, particularly item 6, the CRTC will need to amend its new media exemption order, originally issued in 1999.[25] A CRTC proceeding to review that exemption order is planned to commence later this year.

Given all the developments I have mentioned, this is obviously an opportune time to review the role of new media in the Canadian broadcasting system. As I have noted above, the cultural tool kit will need to be reinvented to deal with Canadian content on the Internet and with mobile platforms. But there is a real opportunity here for the Commission to make a difference.

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feature film titles), and for non-theatrical films, a ratio of 1:10 Canadian to non-Canadian. The services are also required to contribute 5% of their annual gross revenue to a Canadian production fund that is independent of the licensee.

[23] For the website, see www.myfilms.com.

[24] Adam Dawtrey, "Film Council gets friendly with Web," *Variety*, March 26-April 1, 2007, p.13.

[25] *New Media*, Broadcasting Public Notice CRTC 1999-84.