



February 23, 2009

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

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

Dear Mr. Morin,

**Telecom Public Notice CRTC 2008-19
Review of the Internet Traffic Management
Practices of Internet Service Providers**

1. This is the submission of the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) in the matter of Telecom Public Notice CRTC 2008-19, Review of the Internet Traffic Management Practices of Internet Service Providers. ACTRA welcomes the opportunity to participate in this process on behalf of our 21,000 members and will bring to it the particular perspective of professional performers working in the English-language recorded media in Canada. ACTRA wishes to appear at the public hearings scheduled for July.
2. ACTRA members are a vital part of Canada's \$85 billion cultural industries and have a stake in a robust domestic television, film and new media production, distribution and exhibition system. ACTRA members also believe in the creativity of Canadians; in our capability to tell and perform Canadian stories and in the inherent need for Canadians to be able to see and hear ourselves in all media.
3. ACTRA urges the CRTC to enshrine the principle of 'net neutrality' and impose the obligation of respecting that principle upon all Internet Service Providers when they are operating as a telecommunications common carrier.
4. ACTRA asserts that all content transmitted through the Internet should be treated equally. This includes content which falls under the definition of "program" and "broadcast" as determined by the Commission in the broadcasting in new media hearings currently underway, and content which is outside that definition. According to studies tabled in the context of the new media review, between 55 and 70% of the traffic on the Internet is audiovisual material, which ACTRA asserts is programming as defined in the *Broadcasting Act*.

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5. It is also important to treat all Internet users equally and, for these purposes, this includes smaller Internet Service Providers which purchase wholesale services from larger ISPs.
6. The Internet is already a major communication tool for Canadians and this will only increase in the years ahead. Eighty-three percent of Canadians have a computer in the home. High-speed residential Internet access is now available to 93% of households across the country and 60% of households subscribe to a service. Indeed, Canadians are heavy users of the Internet. Earlier this year, comScore reported that Canadians spent the greatest amount of time online when compared to several other countries: the worldwide average was 26.0 hours, while Canadians spent on average 45.5 hours in January 2008.¹
7. The Internet is rapidly becoming the primary source of information, news and music, and is used increasingly to obtain other broadcasting content, such as movies and television programs. It is used for all kinds of person-to-person and business communication, including email, voice and video conferencing. The importance of the Internet will only continue to increase in the years ahead. It is vital to maintaining a healthy democratic discourse for network neutrality to be confirmed by the Commission in the current process.
8. While ACTRA understands that there may be congestion at certain times of the day, traffic throttling and traffic shaping are generally incompatible with the Telecommunications Act, particularly Section 27(2) which relates to unjust discrimination or undue preference. According to research tabled with you by the Canadian Conference of the Arts, Bell, Eastlink, Rogers, Shaw and Telus have each taken an action in response to traffic congestion that may have placed them in violation of this Section.
9. The first course of action for ISPs must be to invest in the necessary infrastructure and upgrade their network capacity to ensure they can handle the growing volume of activity, including all of the newest applications. ACTRA asserts that this is the only viable solution to the challenge in the mid-term.
10. As a temporary measure, ISPs may be required to slow down traffic in order to avoid a more serious problem on rare occasions. Where this is authorized by the Commission it should be according to the following principles:
 - a) The model of traffic management used by the ISP should be transparent.
 - b) There should be no discrimination as between wholesale and retail clients.
 - c) There should be no discrimination as between end users.
 - d) There should be no differential treatment between different applications or content.
 - e) The only exception to these principles would be the ability for ISPs to give preferential access to any emergency service authorized by public authorities.

¹ Perspectives on Canadian Broadcasting in New Media, May 2008, page 31

11. The Commission states in the Public Notice that, to the extent traffic management practices raise issues relating to broadcasting content, these will be considered in the context of the broadcasting in new media hearings now underway. However, ACTRA observes that there continues to be uncertainty about which audio and audiovisual content will fall inside and outside that definition. Thus, ACTRA wishes to raise an important concern about the potential implications of traffic throttling for broadcasting and other creative content.
12. In the diversity of voices proceedings, ACTRA noted that distribution undertakings are the gatekeepers controlling which programming services have access to Canadian audiences, and under what terms. In that process, ACTRA pointed out that vertical integration is a threat to diversity, since the distribution undertaking will ordinarily provide privileged access and more favourable terms to programming undertakings which it owns. Indeed this is an obligation it would have to its shareholders.
13. These same principles hold with respect to ISPs that own broadcasters or other content providers. ACTRA is concerned that permitting such an ISP broad latitude to determine how it will manage its traffic if there is congestion raises the serious potential that they will discriminate in favour of the content which their affiliated companies have made available. For example, Bell Canada continues to have an equity position in CTVGlobemedia and, through it, an interest in conventional and specialty broadcasters, as well as newspapers. These content providers have a significant presence on the Internet.
14. ACTRA notes that Section 36 of the Act prohibits a carrier from controlling the content carried by it for the public, unless the Commission approves otherwise. Thus the Commission must ensure that when Bell Canada, Rogers Communications and others are providing services as an ISP and dealing with issues of network congestion, they cannot provide any preferential treatment for content providers in which they have either an equity interest or other affiliation.
15. ACTRA urges the Commission to enshrine the principle of 'net neutrality'; ensuring equal access to the Internet is fundamental to the future of our broadcasting and telecommunications systems as well as democratic discourse.
16. ACTRA thanks the Commission for the opportunity to provide comment on this important issue.

Thank you



Stephen Waddell
National Executive Director
ACTRA

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