



**Submission to the  
House of Commons Standing Committee on Canadian Heritage  
In the Matter of  
“Emerging and digital media: opportunities and challenges”**

**31 May 2010**

**Stephen Waddell, National Executive Director  
ACTRA National  
625 Church Street, Suite 300  
Toronto, ON  
M4Y 2G1**

## INTRODUCTION

On behalf of our 21,000 members, ACTRA welcomes the opportunity to participate in the Standing Committee on Canadian Heritage's study of "Emerging and digital media: opportunities and challenges." We bring the particular perspective of professional performers working in the English-language recorded media in Canada. Our members, who live and work in every corner of the country, bring Canadian stories to life in film, television, sound recordings, radio and digital media. We also represent ACTRA Recording Artists Collecting Society which distributes neighbouring rights and private copying monies to musicians. In addition we have a mandate from American Federation of Musicians (AFM) Canada to speak on behalf of their 17,000 members.

Culture is a serious business that plays a critical role in the economic health of our country. Canada's cultural industries contribute more than \$85 billion – constituting 7.4 per cent of Canada's real gross domestic product (GDP) – and more than 1.1 million jobs to our economy.<sup>1</sup> In 2007/08, the film and TV industry represented \$5.2 billion in production, generating 131,600 jobs – that's 51,700 full-time jobs directly in production, and a further 79,900 spin-off full-time jobs in other industries in the Canadian economy.<sup>2</sup> Inevitably, these numbers will continue to rise as we move further into the digital world. However, in order to seize on the opportunities of a creative economy and compete in an increasingly digital and borderless world, we need your leadership.

The digital revolution is about more than economics, it is about our society and our culture. Digital technology is transforming how we communicate with one another and how we share our experiences. Social media is creating new communities and having a profound impact on our cultural, social and political lives. There is no doubt that digital media is nothing short of a socio-cultural revolution. While the potential is limitless, we must take steps to ensure that all Canadians have the opportunity to share in these new opportunities and that Canadian culture has a pride of place in the new digital world.

Technology has changed the way Canadians engage with media, but what hasn't changed is that content is king. In fact, demand for content has never been higher. Canada has some of the most diverse, educated, and creative minds in the world. We have the skilled workers who can deliver some of the best communications technology in the world. That said, we need leadership from the federal government in developing a national digital strategy that ensures we don't fall behind when it comes to producing content. For too long we've struggled to get space on our TV prime time schedules and in our own movie theatres. Now, when there is no end to screens and paths to distribution we worry that we won't have the space or the content to fill that space. Simply put, in an increasingly border-less world we must focus on how Canadians will be able to continue to create and enjoy Canadian content.

Canada needs a national digital media strategy that combines several key ingredients:

- 1) strict limits on foreign ownership
- 2) increased investment in content creation
- 3) a modern regulatory framework that ensures shelf-space for Canadian content
- 4) new copyright laws that gives audiences access to content while ensuring creators get paid

---

<sup>1</sup> Conference Board of Canada, *Valuing Culture: Measuring and Understanding Canada's Creative Economy*, August 28, 2008

<sup>2</sup> CFTPA. *The Guide 2009*, February 2009

## FOREIGN OWNERSHIP RESTRICTIONS TODAY

How do we ensure in an increasing border-less world that we are able to continue to create and enjoy Canadian content? First, make sure that Canadian-owned communication companies are able to prosper. That means maintaining the current restrictions on foreign ownership of telecoms and broadcasters.

When it comes to the question of foreign ownership in telecommunications, ACTRA has an easy and simple solution: the government should do nothing. Do not weaken the rules. Controlling our own communications systems is an essential and longstanding principle of Canadian cultural and communications policies.

Section 7(a) of the *Telecommunications Act* clearly states the legislation's objective is "to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions." Furthermore, the *Act* states, "A Canadian carrier is eligible to operate as a telecommunications common carrier if it is a Canadian-owned and controlled corporation incorporated or continued under the laws of Canada or a province."

Currently, corporations operating as telecommunications carriers must meet the following requirements:

- At least 80% of its board of directors must be Canadian individuals.
- Canadians must own at least 80% of its voting shares.
- The corporation must not be otherwise controlled in fact by non-Canadians.
- At least two-thirds of the voting shares of a carrier's parent company must also be held by Canadians.

The principle of majority-Canadian ownership is also enshrined in the *Broadcasting Act*. Section 3(1)(a) of the *Broadcasting Act* states that "the Canadian broadcasting system shall be effectively owned and controlled by Canadians."

We must make sure that Canadian-owned communications companies can prosper. That means maintaining the current restrictions on foreign ownership of telecoms and broadcasters.

In some countries it may be conceivable to talk about telecommunications and broadcasting separately, but that is not the case in Canada. Here, convergence isn't just a buzzword it's our reality. Perhaps even more than any other country, Canada's telecommunications and broadcasting sectors are inextricably linked. Telephone companies own cable, broadcast and satellite assets; and cable companies own telecommunications, satellites and broadcasters.

Moreover, content is being delivered to Canadians through all of these channels – telecoms and Internet Service Providers (ISPs) are effectively becoming broadcasters. You cannot separate telecommunications and broadcasting. Convergence shows no signs of changing any time soon; if anything we can expect the lines to blur even further.

In a February 2010 report on Canada's communications industry, the CRTC noted that:

The spheres of telecommunications and broadcasting are rapidly evolving and converging into a single world of communication...The largest Canadian

communications companies engage in content production, broadcasting, broadcast distribution and telecommunications access. In 2008, 80% of communications revenues in Canada were generated collectively by eight communications companies that provided both broadcasting and telecommunications services.<sup>3</sup>

Our converged communications companies are too economically vital to be given away to foreign conglomerates. We've seen what happens to other industries when they are bought by foreign companies. They send their folks up here to manage things for a while and take advantage of tax breaks. Then they shut down and ship equipment and jobs overseas tossing Canadians workers aside. One need look no further than Sudbury where workers at Vale Inco's mining and processing plant – which was bought by the Brazilian conglomerate in 2006 – have been on strike for ten months, the longest in the company's century long history.<sup>4</sup>

The communications industry is no different. Foreign companies won't care about telling Canadian stories. They will ship pre-packaged mono-culture across the border leaving Canadians without a voice. It is the government's duty to strive to make our communications industries stronger; not sell them off.

The bottom line is that Canadians need to control our telecommunications and broadcasting. Convergence in these industries means foreign ownership rules for telecommunications cannot be relaxed without affecting broadcasting and in turn Canadian culture.

### **INCREASED INVESTMENT IN CONTENT CREATION**

Canadians must be able to tell our own stories and share them with each other and around the world, wherever stories are being told – on TV, on radio and on the web. In a world where people have immediate access to a limitless array of content from around the globe, it becomes even more critical to ensure that there is space for Canadian stories, and content to fill that space.

We need to encourage the production of compelling Canadian digital media content through additional new investment without reducing the funding available for production for conventional platforms. Only the allocation of new resources, both public and private, will help secure Canada's place in the digital age to the benefit of the nation's culture and economy.

The establishment of the Canadian Media Fund (CMF) is one small step in this direction by encouraging the production of content for multiple platforms. However, it does not represent any new money and will not fill the funding gap. For Canada's digital media industry to thrive it needs long-term investment through enhanced, direct government funding.

As part of any national digital media strategy it is essential to ensure that all government agencies are given both the mandate and the funding necessary to support Canadians in this new world. ACTRA urges the government to commit to renewed and increased, long-

---

<sup>3</sup> CRTC, *Navigating Convergence*, Section 3.10

<sup>4</sup> Canadian Press, *Sudbury strike becomes longest in Inco's history; little hope for resolution* by Kristine Owrap, April 6, 2010 <http://www.google.com/hostednews/canadianpress/article/ALeqM5j9ONJ-uvH5ZhZyo8TUsPLJjwfUg>

term funding for the Canadian Media Fund, Telefilm Canada, the NFB and the CBC. These cultural institutions are the central tools that support Canada's \$5.2 billion audiovisual industry.

A labour-based tax credit for original digital media production (similar to the Canadian Film or Video Production Tax Credit) would encourage a much greater degree of private investment, would help to further develop and retain Canada's highly-skilled digital media labour force, an area in which Canada is lagging behind much of the developed world. The government should set a clear mandate to review agencies' priorities and goals and find the necessary funding to advance this agenda.

There are also incentives that could help drive advertisers to support Canadian websites that feature Canadian content. The government could amend the *Income Tax Act* to allow advertisers tax deductions for advertising on Canadian-owned websites or services only if it gives prominence to Canadian digital media content but not on sites that do not qualify. This provision is based on the existing provisions of Section 19.1 which provide rules related to the non-deductibility of advertising on U.S. border broadcasting stations which encourage advertisers to instead advertise on Canadian broadcasters. These tax deductions exist in the magazine and newspaper industries as well and should be extended to include all media platforms.

### **SHELF SPACE FOR CANADIAN CONTENT**

If we're going to keep creating exciting content, we need to make sure Canadians can find it. We need shelf-space. Let's remember that broadcasting is broadcasting, whether it's on a TV, a laptop or a Blackberry. We must develop policies that guarantee Canadian content is produced regardless of the platform where it will be viewed. That's why ACTRA appeared before the CRTC last year to argue that digital media was just another way of broadcasting content.

Performers asked the regulator to rescind the New Media exemption order and regulate broadcasting to provide shelf space for Canadian content. ACTRA also urged the CRTC to create a new fund for Canadian content online by requiring Internet and Wireless Service Providers to make contributions to a digital media fund out of their enormous revenues.

Unfortunately the CRTC chose once again – as it did 10 years ago – to do nothing. Because the CRTC's failed to regulate broadcasting online, it is increasingly urgent for the federal government to show leadership in developing a comprehensive digital media strategy that ensures Canada doesn't fall further behind.

However, on the issue of ISP and WSP contributions to digital content, we remain hopeful. ACTRA together with several of our industry partners are parties to the federal court process that will determine whether ISP and WSP content contributions may be implemented to create a digital media production fund like the Canadian Media Fund.

There is great potential for digital media to help us share our feature films that struggle so much to get screen time in theatres, and allow all Canadians to have access to these films through alternative secondary, legal distribution channel. Because video files are so large, people are turning to peer-to-peer applications to transfer it. These applications – such as Bit Torrent – allow you to transfer huge amounts of data at a low cost. As a result, legitimate

copyright holders are also increasingly turning to this technology to distribute broadcasting content.

BitTorrent is not just a way for kids to swap illegal bootlegs. It is now the standard for delivering large files over the Internet having signed deals with legitimate distributors like 20th Century Fox, Lionsgate, Paramount, Warner Brothers, numerous record labels and videogame producers. It's turning the traditional business model on its head. P2P applications are especially appealing to small independent audiovisual content producers. It gives them direct access to a world-wide audience at a minimal cost.

As the Internet has become a major source of information and delivery vehicle for broadcasting content, we must ensure that any traffic management practices are not subjective in their treatment of content in order to ensure a healthy democratic discourse. Canadians will continue to seek more and more broadcasting content online. It is therefore imperative that the CRTC enshrine the principle of 'net neutrality' and keep the Internet free from interference by big service providers.

But by encouraging growth in digital media we must not lose site of the overwhelming dominance of traditional broadcasting – the TV – as the primary vehicle for Canadians to view audio-visual programming.

ACTRA had high-hopes for the CRTC's new rules for Canadian broadcasting – which were unveiled in March 2010. This was our federal regulator's big chance to fix its disastrous 1999 TV Policy that gutted Canadian drama and left us with a glut of reality and magazine-style shows, as well as cheap American programming which dominated Canadian prime time schedules.

ACTRA was looking for three main wins in this Policy decision in order to bring our Canadian stories back to our televisions. First, broadcasters should be required to spend a specific amount on Canadian programming. Secondly, part of that spending should be exclusively earmarked for scripted programming. And, finally, broadcasters should be required to schedule a minimum of two hours a week of Canadian drama in real prime time (from 8 to 11pm Sunday to Friday).

ACTRA welcomed the CRTC's decision to reinstate Canadian spending requirements on conventional broadcasters and to eliminate the flawed 'priority programming' category. However, overall the new policy represents a 'status quo' on spending and a reduced commitment to overall Canadian programming. Most concerning is the lack of any requirements to air Canadian drama. Therefore, ACTRA will be pressing for higher spending requirements and the imposition of exhibition requirements during the 2011 licence renewal hearings.

## **MODERN COPYRIGHT LAWS**

The final and critical piece is to find a balance between giving people around the world access to our Canadian content, and making sure creators are getting paid. We do that by modernizing our copyright laws.

Frankly, it's embarrassing – and economically damaging – that Canada has failed to update our copyright laws in keeping with international norms, especially when we signed the World Intellectual Property Organization Internet treaties thirteen years ago (1997). There's

an international community out there that thinks its ok to come and set up illegal downloading sites in Canada. We need laws that make it clear this is not ok.

The conversation about copyright is frequently not a dialogue. It is often a yelling match between the makers who want locks on their IP products, and users who want free access to content. Performers and other creators want a balance. Performers want people to enjoy their work where and when they want. But performers can't afford to work for free – unless they choose to. There has to be compensation attached to format and time shifting. Convenience can't be for free.

We need a balance – a balance between the performer's right to protection and payment for use of their work, and Canadians ability to enjoy what they have legally purchased when and where they want. To achieve this balance, ACTRA has put forward key steps to reform Canadian copyright laws.

We must implement the WIPO Performances and Phonograms Treaty and WIPO Copyright Treaty. In doing so, Canadian copyright law must provide performers a full range of economic and moral rights in sound recordings. In addition, economic and moral rights for performers in audio-visual works must be established in Canadian copyright legislation and at WIPO. In fact, there is a real opportunity for the WIPO Audiovisual Performances Treaty to be passed this year; and the Canadian government can play a leading role in making that happen.

The private copying regime, which is essential to the livelihood and work of creators, needs to be updated and expanded to apply to technologies that are ordinarily used by Canadians for private copying so that creators are fairly compensated. To maintain the balance between consumers and creators, copyright law must build on existing royalty systems so that income flows to artists regardless of how digital media develop.

The problem with the current private copying levy is that it's limited to devices people hardly use anymore to copy music – blank audio cassettes, mini-discs, and CD-Rs. So this income artists rely on is vanishing. The *Copyright Act* must be updated to extend the levy to devices that people actually use today. We're not talking about a \$75 "iPod tax". We're talking about something in the range of \$2 to \$25 based on what the copyright board approved in 2004 depending on the device. This isn't a 'new' levy – it's merely modernizing something that already exists. If the government does not extend the private copying levy it's akin to taking money out of artists' pockets.

Creators are looking for changes to copyright law that would facilitate the clearing of permissions, wherever practicable, through collective societies. These rights-holder-run societies, which provide reasonable access to users and reasonable compensation to rights holders, need amendments to copyright legislation in order to be able to function effectively in the digital environment. The real challenge facing legislators is how to provide reasonable access to our cultural heritage to everyone, including artists, without undermining the copyrights that allow art making to be an economically viable profession. A collective licensing scheme similar to the private copying regime would compensate creators for the use of their works.

We need strong penalties for those who facilitate, induce and encourage copyright infringement against the will of creators who do not want to work for free. In particular, unauthorized file sharing / downloading / streaming is online theft which robs performers

and impacts employment in the creative industries. In combating copyright infringement, the government should also concentrate on copyright reforms that facilitate legal access for consumers and fair compensation for creators.

Finally, we need effective complaint-based mechanisms for rights-holders who object to their work being made available online without their authorization. But it is not the role of ISPs to determine the legality of material being transmitted through their networks.

## CONCLUSION

This Standing Committee has a great opportunity to assist the government to steer the right course in its digital media strategy. In our view, there are four key compass points.

First, make sure control of Canadian communications companies remain in Canadian hands.

Second, invest in Canadian content creators and suppliers.

Third, reserve space and provide incentives for production of Canadian content in digital media.

And finally, strengthen copyright laws to make it easy for Canadians and people around the world to enjoy our content while compensating creators and makers for use of their products.

Performers are excited by the opportunities the expanding digital world is creating. It's getting easier for Canadians and people around the globe to see and enjoy our work. ACTRA members have a vital stake in the future of all Canadian media, the emergence of digital media and the new forms of distribution. Canada's creative community is responsible for the content that Canadians want to access using digital technology. As such, we have a number of creative ideas to help the government and our industry work together to face the current challenges. We look forward to continuing this dialogue by participating in the recently-announced National Consultations on a Digital Economy Strategy.

Thank you for allowing ACTRA to participate in this important discussion.

All of which is respectfully submitted.



Stephen Waddell  
National Executive Director  
ACTRA