Canadian Content:
Creating the Digital Economy

A submission to

Government of Canada:
A Consultation on Canada's Digital Economy

13 July 2010

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Key Theme Addressed: Canada's Digital Content

EXECUTIVE SUMMARY

ACTRA and AFM Canada are pleased to participate in the Government of Canada's consultations on building a thriving digital economy.

ACTRA is pleased to bring the particular perspective of 21,000 professional performers working in the English-language recorded media in Canada to this consultation. Our members, who live and work in every corner of the country, are pivotal in bringing Canadian stories to life in film, television, sound recordings, radio and digital media. We also represent ACTRA Recording Artists' Collecting Society (ACTRA RACS) which distributes neighbouring rights and private copying monies to musicians.

The American Federation of Musicians Canada is the leading professional organization of its kind available to Canadian musicians. Everyday AFM Canada helps thousands of musicians with any number of issues related to the recording and performing of their craft. Operating in both official languages, the organization draws on the experience and strength of more than 90,000 musicians, with over 17,000 active members in Canada alone. Proudly celebrating 31 remarkable years of service, AFM Canada is uniquely positioned to address Canadian issues, and provides vital resources for Canadian musicians, at any stage in their careers.

Performers and musicians are excited by the opportunities the expanding digital world is creating as it gets easier for Canadians and people around the globe to see and enjoy our work. We play a ital role in creating the distinctive content that Canadians want to access using digital technology we have a vital stake in the future of all Canadian media, the emergence of digital media and the new forms of distribution.

The government has a tremendous resource in Canada's content creators. We have some of the most diverse, educated, and creative minds in the world. From videogames to music, TV to experimental digital art, we have the skilled workers who can deliver some of the most innovative creative content in the world and the global appetite for that content grows every day. In particular there is a demand for high-quality, distinctive Canadian content, content no other country in the world can create. We believe that Canadian content should be supported and exploited to the fullest extent possible in the future digital economy by being given a leading role in our digital economy blueprint.

We urge the government to create a national digital economy strategy that uses the full potential of Canadian content and its creators by combining three key elements:

1) being globally competitive by encouraging investment in content;
2) giving Canadian-created content the space to compete in the global marketplace and making sure Canadian communications companies remain in Canadian hands; and
3) encouraging innovation by protecting intellectual property and giving rights-holders the legislative tools they need to succeed.

CONTEXT

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. It is turning traditional business models on their heads and encouraging innovative out-of-the-box thinking. There is no doubt that digital technology has sparked a socio-cultural revolution in media. While the potential for innovation and success are limitless, we must take steps to ensure that Canada's media and creative industries have the tools they need to be globally competitive so Canadian innovation and content can be a cultural and economic force.

We applaud the government's recognition that digital content has a central role in developing Canada's digital economic advantage. As the paper launching these consultations states: "the Canadian economy needs a strong and competitive digital media industry to be well positioned in and take a leading role in shaping the global digital economy."[1]

We could not agree more. Ensuring that Canadians have access to a healthy supply of original made-in-Canada digital content is pivotal to educating our workforce, sharing information, creative expression, and strengthening our cultural identity. These ends alone would justify making content the centrepiece of Canada's national digital strategy.

However, supporting digital Canadian content is also about economic competitiveness, innovation, and jobs – good jobs. Canada's cultural industry contributes more than $85 billion – 7.4% of Canada's real GDP – and more than 1.1 million jobs to our economy. Canada's audio-visual sector is particularly efficient at creating jobs.[2] In 2008, Canada's film and television industry generated 131,600 jobs – that's 51,700 full-time jobs directly in production and a further 79,900 spin-off full-time jobs.[3]

Given the right tools, Canada's cultural industries will continue to be an engine of the Canadian economy encouraging innovation, promoting training and skills development, improving media literacy and creating jobs.

There is no question that the digital era has had a disruptive impact on Canada's cultural sector. It has upturned traditional business models and changed consumer behaviour and expectations. Canadians want content when they want it, and where they want it, and unfortunately with Canada's current copyright legislation, too frequently they are getting used to getting it for free.

Change does not have to be negative. Traditional creative mediums are now transforming and evolving in the face of both the enormous challenges and opportunities presented by the digital revolution. Technology has changed the way Canadians engage with media, but what hasn't changed is that content is king. In fact, the demand for content has never been higher. Millions of Canadians are calling their ISPs to increase their internet downloading capacity. They're snapping up Blackberries and

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[1] Improving Canada's Digital Advantage: Strategies for Sustainable prosperity, Consultation paper on a Digital Economy Strategy for Canada, Government of Canada, May 2010 p. 24.
[2] Conference Board of Canada. Valuing Culture: Measuring and Understanding Canada's Creative Economy. July 2008.
[3] CFTPA. *Fact Sheet: Statistical Indicators of Film and Television Production in Canada 2008-2009*.

standing in line-ups for iPads. Why? Because of the *content* that these innovative tools deliver to them.

With the advent of the Internet and digital media, Canada's content industries are entering a new world of limitless and unknown potential. Aside from games, the type of digital content being consumed by most Canadians consists of music and audio-visual content. While an overwhelming amount of original digital media content is user-generated and found on YouTube, there remains a considerable demand for professionally-produced high-quality content for example in the form of downloading or streaming TVs shows, webisodes etc.

We can only imagine that new forms of content will continue to evolve as technology unleashes the limitless capacity for creativity. One need only visit the NFB Screening Room online to get a glimpse of where content is heading. The Screening Room is a showcase for truly innovative creative content that takes advantage of the potential to mix traditional media with social networking allowing for an interactive and truly personal experience.

The NFB is just one example of more 'conventional' players seizing the potential of the digital revolution to build audiences and push the boundaries of creativity and innovation. Conventional TV channels are making their content available online. Business models are adapting so that consumers can legitimately buy digital Canadian music, film and TV programs from a growing number of services.

ACTRA is also adapting to the new environment. We understand the central role content will have in the digital future and are taking steps to ensure that professional performers have access to these opportunities. In 2007, we undertook the first strike in our union's history to secure the first, and arguably the best, collective bargaining agreement provisions for digital media production in the world. With each round of collective bargaining, whether for the *National Commercial Agreement*, or with the CBC, or the private broadcasters, ACTRA has negotiated new provisions for digital media production intended to encourage professional production using professional performers.

Likewise, AFM Canada has fashioned agreements with the advertising industry, the NFB and CBC/SRC that identify the potential prominence of digital distribution. AFM Canada is currently in talks with the Canadian Media Production Association (CMPA) and CTVglobemedia that particularly recognize the digital phenomenon. Furthermore, AFM Canada and CBC/SRC are re-structuring our historic accord in order to fully integrate the digital universe, its emphasis on content and the consequent adjustments to compensation for Canadian musicians.

The digital revolution is presenting Canada's sector with perhaps one of our greatest opportunities and we are adapting as well as we can given the tools we currently have. To move forward we need leadership from the federal government in developing a national digital economy strategy that empowers creators and ensures we don't fall behind. 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 tools to fill that space.

Original Canadian content is a product no other country in the world can create.

Simply put, we urge the government not to ignore the tremendous resource and opportunity it has in Canada's content creation industry.

1. ENCOURAGING INVESTMENT IN CONTENT CREATION

To secure Canada's place in the digital age to our cultural end economic benefit, the government must advance the production of Canadian digital media content with new investments in cultural assets. We also need to attract more private investment in Canada's cultural industries by providing competitive incentives.

The greatest challenge for the production of Canadian content continues to be financing. We have the talent, the creativity, and the technical skills to produce content that competes with the best in the world. Unfortunately, the one element that continues to elude us is adequate financial resources. Like many other thriving industries, Canada's audio-visual sector relies on government support to trigger private sources of investment. Federal government investments in Canada's film, television and new media industry are proven efficient and effective ways of stimulating Canada's economy, creating jobs and contributing to the development of new technologies. Equally important is the contribution that content makes to nation-building, it reflects who we are as a country, to each other and to the world.

ACTRA urges the government to commit to renewed and increased, long-term funding for the Canada Media Fund (CMF), Telefilm Canada, CBC and the NFB. These cultural institutions are the central tools that support Canada's audio-visual industry; they must be given the ability to maximize the potential of digital technology in creation, innovation, production, and distribution of compelling Canadian content.

Canada Media Fund

The government's forward-thinking decision to merge the Canadian Television Fund with the Canada New Media Fund to create the Canada Media Fund (CMF) will encourage the distribution of Canadian programming across multiple platforms to Canadians and audiences around the world. It will also help inspire and support innovative new digital content. However, the establishment of the CMF does not fill the chronic funding gap that has plagued Canadian television production. In some ways, the new, merged Fund makes the challenges even more acute as we try to take advantage of new technology and opportunities without new resources.

The small size of the Canadian market and the high costs of producing high-quality dramatic screen-based content make support mechanisms essential. Government support of domestic television drama productions is not unique to Canada. Many countries around the world support domestic television productions through, among other vehicles, direct funding from the tax base.

Funding for conventional television content remains critical. Conventional television may prove less influential over time, but there is still no experience that matches the reach and impact of television. Consumers still want to see conventional hour-long dramatic story telling. Millions of Canadians still gather around their televisions with family and friends to share the social experience of watching 'event' television. That will not change. Conventional TV content will also continue to be the principal vehicle to deliver a mass audience to advertisers for the foreseeable future. What *is* changing is the secondary uses of that content.

Conventional broadcasters are beginning to embrace new media distribution technologies and are looking for appropriate business models, as they should. When Canadians are turning to their computer screens and portable devices they aren't just watching user-generated YouTube videos. They are consuming 'traditional' content – catching up on episodes of their favourite TV shows. Dramatic TV content is increasingly being broadcast conventionally, and then distributed online either on the broadcasters' website for free with advertising, or for sale on services such as iTunes.

Moreover, recent research shows that digital media is increasing viewership of traditional television by allowing them to catch-up on missed episodes online and creating more 'buzz' through social networking tools like Twitter. A recent Nielsen Co. study reported that the number of people watching TV while surfing online soared 35% in the fourth quarter of 2009 over the same period just three months earlier. As one digital expert, Dré Labre, creative director at advertising agency Rethink Toronto, observed:

> "I think people like to come home and sit on the couch and watch TV, and I don't think that is going to change. The business model behind TV is going to change. TVs are going to have hard drives in them, built-in PVRs [and] will evolve as a piece of hardware evolves ... but the reality is, that it still going to be the centerpiece of our couches."[4]

It is also important to note that Canadians don't just want 'any' TV, they want *Canadian* TV. In a Pollara poll 71% of Canadians said they believe it is important to have access to Canadian TV programming distinct from U.S. programs.[5]

The CMF's role in investing in television production is essential to our culture, to our industry and to the lives of Canadian performers. In 2009 alone, 476 productions and 352 development television projects were funded by the CMF, with total budgets of over $1 billion and $22 million, respectively; this resulted in the creation of over 2,400 hours of new Canadian programming. In the English market, six of the top 10 CMF-supported programs posted average minute audiences of more than one million viewers. These productions create thousands of direct and indirect jobs for Canadians of a wide-range of specialties and skills, including professional performers and musicians as these programs often feature underscored music recorded by Canadian musicians.

We welcome the CMF's expanded role in continuing to support conventional made-for-television programming as well as Canadian content and software applications for current and emerging digital platforms. However, we are concerned that without additional resources, it will struggle to meet its expanded mandate. The government's

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4 "Internet not going to kill the TV star" *Financial Post*, March 24, 2010.

[5] Pollara*. Canadians' Views On De-regulating Cable and Other TV Distributors,* Prepared for ACTRA, the Communications, Energy and Paperworkers Union of Canada, Friends of Canadian Broadcasting, Stornoway Communications, and the Writers Guild of Canada, March 2008.

$134.7 million commitment to the CMF expires in spring 2011. It is absolutely critical that this investment be renewed and expanded.

We also recommend that new sources of private revenue be found to increase the monies available to the CMF. For example, since more than 50% of the material on the Internet is 'programming' as defined in the *Broadcasting Act*, and the *Telecommunications Act* specifically states the legislation has a role to play in the social and economic fabric of Canada, there is ample reason to require Internet Service Providers (ISPs) to contribute to the production of original programming just as Broadcasting Distribution Undertakings (BDUs) already do.

Telefilm Canada

Like traditional television content, the digital age brings new means of distributing and showcasing Canadian feature film content. While our feature films have struggled to get screen time in the finite space of movie theatres, digital technology brings unlimited potential for distribution. Now Canadians and audiences around the world want access to these films through alternative secondary, legal distribution channels; we need to ensure that there is quality, Canadian feature film content to meet that demand.

Government investment through Telefilm will continue to be crucial to ensure films with Canadian writers, directors, performers and crew continue to be made and seen by Canadian and international audiences. In fiscal 2008-2009, Telefilm supported 41 feature films through the Canada Feature Film Fund's (CFFF) main program: 21 in French, for a total of $27.2 million and 20 in English, for a total of $37.5 million.

Investments by Telefilm Canada make sure Canadian films get made by leveraging private sector investment at home and abroad, generating greater economic activity and stimulating job creation: each dollar invested in a Telefilm production triggers $2 in additional financing for digital media projects and $3 for feature film projects.

Canadian films must not only be made so they can be accessed through online distribution, but funds must be made available to take advantage of the increased marketing opportunities that digital and social media provide.

The CFF is up for renewal in 2011; it must be renewed and given long-term increased funding in order to continue ensuring there is Canadian feature film content available for digital distribution.

CBC

Canadian artists have a fundamental belief in the need for a strong and effective public broadcasting service, which is financed by the public but operated at arms-length from the government. The CBC has a unique mandate under the *Broadcasting Act* to showcase Canada's national identity by providing programming in English and French that reflects Canada and its regions, its multicultural and multiracial nature and contributes to the exchange of cultural expression. The CBC was created to bring radio to all Canadians; it then led the way in delivering Canadian television content. As we move into the digital era, Canada's public broadcaster must and can be the leader in bringing original, distinctive Canadian digital content to the world.

CBC.ca is already playing an impressive role in Canada's digital space. It is consistently Canada's most popular English-language news and media site with 4.8 million unique visitors per month according to Comscore with an average of approximately 750,000 weekly streams – 575,000 video and 175,000 audio. Radio-Canada.ca is the second most-visited French-language media site, drawing a monthly average of 968,000 francophone visitors.[6]

Unfortunately, the CBC's ability to meet its potential has been weakened by chronic under-funding. Per capita public funding for CBC is among the lowest funding for a public broadcaster in any industrialized country in the world; while the average is $80 per citizen, per year CBC/Radio-Canada only gets $33.

In an attempt to fill the funding gap by increasing ad revenues, the CBC's current executives have committed an increased number of programming hours to U.S. feature films and programs such as *Jeopardy* and *Wheel of Fortune.* This the wrong track. This programming strategy is contrary to the CBC's mandate to provide programming that is distinctively Canadian.

To that end we support the 2008 recommendation of the Standing Committee for Canadian Heritage that the annual allocation for the CBC be increased by $7 per Canadian to a total of $40 per Canadian to bring it into line with other industrialized nations.

We also urge the government to pursue the development of a seven-year contract between Parliament and the CBC that sets expectations and guarantees funding indexed to inflation. As part of this understanding, we urge the government to implement the Heritage Committee's recommendation that the Board of CBC be appointed free from political patronage and that the Board, not the Prime Minister, hire and fire CBC's President. Such a move would ensure the CBC both greater fiscal autonomy and responsibility.

NFB

For 70 years, the NFB has provided Canada and the world with ground breaking documentaries, animations, dramas, digital media productions and more. The NFB has crafted over 13,000 productions and received more than 5,000 awards, including 12 Oscars and more than 90 Genies.

Unfortunately, over the past 15 years, the NFB has been subject to repeated cutbacks. Despite these challenges, the NFB has proven to be an innovator in embracing new technology to bring Canadian films and digital media projects to the world.

The NFB's online Screening Room not only brings Canadian films out of the vaults and bring them to the world, it also provides a showcase for exciting innovative digital content. It has already garnered over 5 million views and widespread critical praise

[6] "*Great Successes, Greater Challenges" CBC-Radio Canada Annual Report*, 2008-09.

since its launch in 2009. The NFB's website has also been selected as the Best Online Video Portal at the Canadian New Media Awards. Recently the NFB launched an iPad application that builds on the success of its popular iPhone app which was deemed one of the best apps of 2009 by iTunes Canada and named Best Use of Content in 2009 by TheAppleBlog. Since its launch in October 2009, the NFB's iPhone app has been downloaded more than 235,000 times, with 821,000 film views, as of June 1, 2010.

Despite limited resources the NFB is a leader in producing innovative content and making it available to a Canadians and global audiences. As a proven digital innovator and Canada's premiere public film producer and distributor, the NFB deserves the necessary government support in order to continue providing unique Canadian perspectives and stories.

Tax Credits: Attracting private investment

Tax credits are an efficient and effective way to increase Canada's competitiveness and attract investment; and reward risk by encouraging producers to spend money without putting government investment upfront. Expanding and enhancing the existing tax credit menu is another critical piece to a sustainable digital economic plan.

We recommends the creation of a working group with representatives of the Department of Finance to look seriously at the potential benefits to Canada's economy if the Department increased the value of the Canadian Film or Video Production Tax Credit (CFVPTC) and the Production Services Tax Credit (PSTC). We recommend increasing the value of the CFVPTC and the PSTC, specifically, broadening the CFVPTC and PSTC eligibility criteria to include **all** costs including post-production costs, not just labour costs involved in production, as both Ontario and Quebec have done. In the alternative, we recommend a rise from 25% to 35% in the CFVPTC as recommended by the House Finance Committee's 2004 report, and a rise from 16% to 26% in the PSTC.

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.

2. SPACE FOR CANADIAN-CREATED CONTENT

In a world where access to content increasingly has no borders, and the supply is seemingly endless, how do we ensure that Canadian content stands out, that it can find an audience at home and around the world? Quite simply, Canadian content must be given shelf-space, and it must be marketed and accessible to Canadians.

As we are swamped with content from around the world, it will be come increasingly important for us to be able to share our own stories to preserve our unique cultural identity and understand what is going on in our communities.

How do we make sure there is a market and shelf-space for our stories? Through regulation and Canadian ownership of media and broadcasting.

Regulation

If we are to carve out an appropriate place for Canadian content, it is essential for the CRTC to implement appropriate regulatory and funding measures for those who are involved in broadcasting in new media, whether as programmers (broadcasters), service providers (distributors) or producers.

Whether you are watching an episode of *Flashpoint* on your TV or CTV.ca, you are enjoying a 'broadcast' and the CRTC is obligated under the *Broadcasting Act* to regulate it. That's why we appeared before the CRTC last year to argue that digital media was just another way of broadcasting content and to urge the CRTC to rescind the exemption order for broadcasting in new media.

Unfortunately in the CRTC chose once again – as it did 10 years ago – to do nothing. It is therefore increasingly urgent for the federal government to show leadership in developing a comprehensive digital media strategy that ensures Canadian content doesn't get lost.

We urge the federal government to take the lead in ensuring a marketplace for Canadian digital content by issuing and Order in Council directing the CRTC to regulate broadcasting in new media by taking the following approach:

- Those who are streaming live programs from Canada, through the Internet or to mobile receiving devices, must be licensed and subject to rules equivalent to conventional TV broadcasters.
- Those who are using new media to make programs available from Canada for viewing at a time and place chosen by the viewer must be licensed and subject to regulations equivalent to other 'on-demand' programming undertakings.
- If the CRTC is going to create space for Canadian stories in new media, there must be stories to fill that space. To that end, the CRTC must be empowered to impose a levy on Internet and Wireless Service Providers to fund digital media production, modelled on the current levy on cable companies.

We also can't let conventional broadcasters off the hook. As explained above, conventional television is still the primary creator and market for original, Canadian dramatic content. Strong regulation and incentives will still be required to ensure that private broadcasters are commissioning and airing original Canadian TV drama in prime time. If they don't, we will not only lose our conventional airwaves, but there will be scarcity of high-quality, professional Canadian content available online.

CRTC figures show that private broadcasters spent a record $846.3 million on U.S. and foreign shows in 2009 – over $100 million more than in 2008. At the same time, private broadcasters spent only $ 75.4 million on Canadian drama. This has to stop.

ACTRA had high-hopes for the CRTC's new rules for Canadian broadcasting unveiled in March 2010. This was our federal regulator's 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 tools in this *Policy* in order to bring our Canadian stories back to our televisions. First, broadcasters should be required to spend a specific amount on Canadian programming. Second, 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 11p.m. 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.

Private TV broadcasters are given every economic advantage to make profits using public airwaves, and by all means we want them to be successful and make money. However, it's not right that they can just take that money and spend it all on another country's programming. They should be creating jobs and inspiring innovation in Canada. We urge the government to send a strong signal to the CRTC and to private broadcasters that they have an obligation to contribute to Canada's digital economy by supporting Canadian dramatic content.

Canadian Control of Telecommunications & Broadcasting

Another piece to ensuring that Canada is able to seize on the economic and cultural opportunities of content creation is to make sure that Canadian-owned communication companies are able to prosper. That means maintaining the current restrictions on foreign ownership of telecommunications companies 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 long-standing principle of Canadian cultural and communications policies in the digital world.

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.”

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 bring delivered to Canadians through all of these channels – telecoms and 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.[7]

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 Canadian 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 just endured one of the longest and most acrimonious labour disputes in Canadian mining history.

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. Original Canadian content is a product no other country in the world can produce. Imposing and maintaining regulations on Canadian-owned broadcasters is already challenging. It will be infinitely more difficult to tell a foreign-

[7] CRTC, *Navigating Convergence*, Section 3.10

owned conglomerate that it must hold to Canadian regulations that give Canadian audiences access to their own programming.

Canadians share our concerns about foreign ownership of our airwaves. A recent poll, commissioned by ACTRA, Friends of Canadian Broadcasting and CEP found that 81% of Canadians feel it is important for the Canadian government to work to maintain and build a culture and identity distinct from the U.S. A clear majority of Canadians are against allowing foreign ownership in the telephone industry (55%), cable (54%) and broadcasting (57%), according to the survey.[8]

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 content creation.

3. PROTECTING INTELLECTUAL PROPERTY AND RIGHTSHOLDERS

The final critical piece is to update Canada's outdated copyright laws. As the consultation paper notes: "Innovation and creativity will grow where investments of time, energy and money are secure and fairly rewarded."[9]

We also agree wholeheartedly with the statement in the consultation paper that: "Fair and appropriate remuneration for creators is essential to the growth of digital media content in Canada."[10]

Unfortunately the government's Bill C-32 falls drastically short in this objective. On the contrary, Bill C-32's broad exceptions, mash-up provisions and legalization of format shifting without remuneration will weaken current copyright and the collective licensing mechanisms that professional creators rely on.

One of the biggest problems with the bill is that it legalizes format shifting without building on existing royalty systems so that income flows to artists. It's as though half the bill is missing – the half that respects and pays creators. Performers and other creators 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 free.

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 media develops. Despite claims to the contrary, Bill C-32 is not technologically neutral. If it was, it would have updated and extended the private copying levy to MP3 players instead of limiting the technology it applies to. The result is that the levy will cease to exist, taking millions of dollars directly out of creators' pockets – revenue artists presently rely on to innovate and create new content.

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[8] Harris/Decima: *Foreign Ownership of Canadian Broadcasting and Telephone Companies*. Friends of Canadian Broadcasting, ACTRA, Communications, Energy and Paperworks Union of Canada. April 16, 2010.
[9] Improving Canada's Digital Advantage, p.28.
[10] Ibid.

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 and producers for the use of their works.

Unless Bill C-32 is amended, it will in fact, suppress innovation. Where is the incentive to create if one is not being fairly rewarded and has no guarantee that they will have any control over the use of their creation? More to the point, a creator, whether it's an individual artist or a production company, can't commit to taking risks and innovate and create if they can't make a living doing so.

CONCLUSION

The Government of Canada has an unprecedented opportunity to take advantage of the unlimited potential to be a leader in content creation. If given the right tools, Canadians can supply the world with inspiring, innovative content that creates jobs and is a pillar of the digital economy.

First, we urge you to ensure we are globally competitive by increasing both public and private investment in content creation.

Second, give Canadian-created content the space to compete in the global marketplace through regulation and make sure control of Canadian communications companies remain in Canadian hands.

Finally, encourage innovation by protecting intellectual property and giving rights-holders the legislative tools they need to succeed.

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

Stephen Waddell
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