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*Filed Via CRTC Comments/Intervention Form*

30 April 2010

Mr. Robert A. Morin  
Secretary General  
Canadian Radio-television and Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Dear Mr. Morin:

**Re: Broadcasting Notice of Consultation CRTC 2010-97  
Call for comments on the reporting requirements for new media broadcasting undertakings**

Ontario Media Development Corporation (OMDC) is pleased to file the attached in response to the Commission's call for comments with respect to measurement and reporting requirements for new media broadcasting undertakings.

OMDC is an agency of the Ontario Ministry of Tourism and Culture that facilitates economic development opportunities for Ontario's cultural media industries. As the central catalyst for Ontario's cultural media cluster, OMDC promotes, enhances and leverages investment, jobs and original content creation through a variety of initiatives.

OMDC believes that appropriate and effective measurement of new media broadcasting undertakings, as outlined in our response, would provide information that would be of value both to OMDC and to its stakeholders and we are pleased to participate in this process.

We now proceed to the substance of our submission and comments on the questions raised by the Commission in the Public Notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Thorne-Stone". The signature is fluid and cursive, with a long horizontal stroke at the end.

Karen Thorne-Stone  
President and Chief Executive Officer  
Ontario Media Development Corporation

## **Introduction**

1. Ontario Media Development Corporation (OMDC) is pleased to file the following in response to Broadcasting Notice of Consultation CRTC 2010-97 on the reporting requirements for New Media Broadcasting Undertakings (NMBUs).
2. OMDC is an agency of the Ontario Ministry of Tourism and Culture with a mandate to build the capacity and competitiveness of Ontario's cultural media industries. Through tax credits, programs and services for the film and television, book and magazine publishing, music and interactive digital media industries, OMDC maximizes opportunities for growth and innovation in Ontario and abroad.
3. OMDC has a broad mandate with respect to serving and nurturing the creative industries in Ontario. However our focus in this response is limited to issues affecting audiovisual content and the traditional broadcasting system.
4. Traditional broadcast measurement practices have become insufficient in a rapidly evolving environment where audiences have an increasing number of viewing choices available to them. The CRTC has recognized this reality in its current Call for Comments and OMDC supports the Commission's examination of the need for measurement of new media broadcasting activities.
5. OMDC is of the view that reporting for regulatory purposes and reporting for industry planning and benefit are not at cross-purposes nor should they be mutually exclusive. As the industry moves forward, and as the Commission itself considers the need to blend telecommunications and broadcasting policy, we believe that the collection of data from all platforms (regulated and exempt) and all distributions channels (regulated and exempt) will be essential in order to understand and plan for the evolving media space.
6. Further, as Canada works to develop a National Digital Strategy, the ability to measure the impact and success of Canadian new media initiatives will be important to ensure that such a Strategy is relevant and effective over the long term. Reporting requirements for NMBUs are the first step in making this happen.

## **Executive Summary**

7. OMDC believes that the Commission should seek information on the following four areas: content availability, content consumption, content promotion and financial models. This should be applied to all types of distribution platforms, in a technologically-neutral and broadly inclusive manner.
8. Measurement should be limited to professionally-produced audiovisual content that is analogous to traditional broadcasting content, and should include both foreign and domestic content. Financial information collected should include costs, revenues and profits.
9. The Commission should look at the amount of content that is made available in the new media broadcasting environment, starting with both the number of programs made available and the total number of hours available, but moving to a more detailed measure of the number of minutes available to increase accuracy and relevancy.
10. OMDC submits that it is important to measure consumption levels for new media content but the Commission should also be aware that consumption is often affected by the prominence of content and how widely it is promoted.

11. We believe that it is appropriate to categorize new media content based on the type of programming, its origin, genre, accessibility and language. Such categorization provides useful information for broadcasters and producers in the operation of their businesses and for government and policy-makers in supporting the Canadian broadcasting system.
12. Due to the rapidly changing new media environment, we believe that annual reporting by NMBUs should be a minimum requirement but that reporting every six months would be more useful.
13. Reporting requirements should be implemented as quickly as possible. If not all measures can be implemented immediately, OMDC would support a phased-in approach to reporting.
14. OMDC submits that all affiliated NMBUs should be subject to reporting requirements. We further submit that it is not unreasonable for the Commission to ask that non-affiliated NMBUs also comply with reporting requirements in exchange for continued exemption from regulation.
15. Going forward, the Commission should continue to monitor the evolution of distribution technology and consumer viewing habits. This will ensure that the reporting requirements it implements will continue to be relevant and effective in assessing the overall state of the Canadian broadcasting system.

### **Information Necessary for Understanding the New Media Broadcasting Environment**

*Q1. What information should the Commission collect to better understand the new media broadcasting industry in Canada? What are the appropriate metrics for measuring such information?*

16. In order to better understand the new media broadcast environment, the Commission should seek information on the following four areas: content availability, content consumption, content promotion and financial models. This information will assist the Commission and the industry in understanding the impact that new media broadcasting is having on the traditional broadcast environment, as well as the extent to which Canadians are able to take advantage of the opportunities made available by the new media environment.
17. OMDC believes that measurement and reporting requirements should include all screen types – including mobile and wireless devices. We further believe that a technologically-neutral and broadly inclusive approach to measurement is needed. Requirements that are broadly inclusive rather than narrowly specific will automatically encompass new forms of distribution as they emerge.
18. We agree with the Commission that measurement should be limited to professionally-produced audiovisual content. Content that is predominantly user-generated, or represents consumer modifications to professional content (e.g. mash-ups, derivative works, etc.) should not be measured. Further, we suggest that independent content creators who are in no way affiliated with a licensed undertaking and who are engaging in self-distribution of their content should be exempt from reporting on such distribution.
19. The scope of what is collected should also reflect the Commission's purview – that is, the Canadian broadcasting system. More specifically, the domain to which measurement is applied should reflect the Commission's specific mandate with respect to content that is analogous to traditional broadcasting content. The Commission should not measure transmission of audio or audiovisual content where the content is ancillary to a primary focus that is on newspaper, magazine and book publishing as these are beyond the scope of the Commission's mandate.

20. Measurement should also include both foreign and domestic content, considering both point-of-origin and destination. This consideration will provide information both on what Canadian audiences are consuming and how Canadian content is faring internationally. To the extent that measurement can be made more detailed, it would be beneficial to also know the principal production province for Canadian content and the country of origin for foreign content. In that regard, while we are not suggesting that the Commission mandate standardized identifiers for content in this submission, in cases where producers have elected to participate in a program such as ISAN (International Standard Audiovisual Number), and have provided standardized registration information to broadcast undertakings (traditional broadcast undertakings and NMBUs), we encourage the Commission to consider future inclusion of any such standard identifier in detailed data collected by undertakings across all reporting domains (traditional broadcasting and new media broadcasting).
21. The financial information collected should include operating costs, revenue and profit from new media broadcasting. Further, a breakdown of revenue sources (e.g. advertising, subscription, à la carte purchases) should be considered. Only by comparing financial information from new media broadcasting and those from traditional broadcasting will the Commission – and the industry, including OMDC – be able to fully understand the new media broadcasting environment and its impact on the Canadian traditional broadcasting system as a whole. OMDC respects that detailed financial information may be confidential but submits that transparency in reporting is vital if users are to respect the credibility of the data, and be able to interpret trends effectively. Therefore, while aggregate data would be of interest, it would be preferable to receive as much detail as possible.

#### **Availability of New Media Broadcasting Content**

*Q2. What are the most appropriate metrics for monitoring the availability of new media broadcasting content?*

*Q3. What are the most relevant and feasible metrics for measuring the availability of Canadian content in new media broadcasting? In particular, address the appropriateness of using the percentage of Canadian content, either in terms of total number of hours or total number of programs, offered on new media platforms as a possible metric for monitoring availability of Canadian new media broadcasting content.*

22. We believe that one common set of requirements and metrics should be applied to all content (foreign and domestic) for any specific type of new media broadcast undertaking. The measurement of consumption, availability, prominence and financial return should be applied equally to both Canadian and foreign content for any NMBU from whom reporting would be required by the Commission.
23. Content availability metrics should include both Canadian content and foreign content in order to effectively evaluate the availability of Canadian content versus foreign content. In order to identify which new media content should be considered Canadian, the Commission should look to definitions already established by organizations such as the Canada Media Fund (CMF) and the Bell Broadcast and New Media Fund. This comparison will ensure consistency of reporting, while reducing the administrative burden on those asked to report.
24. While traditional media measurement by-the-hour is still relevant today, a trend in the online world toward variable-length programming (and often shorter durations) can distort the value of comparative metrics between content measurement in traditional media and content measurement in new media. Therefore the number of programs and the total hours of programming are both necessary to fully understand what is available.

25. Over the longer term, the Commission should continue to monitor whether measurement by-the-hour is appropriate and whether measurement in smaller time increments is possible. While measurement of the total number of hours will provide a familiar benchmark, and may provide the best metric in the interim, the total number of minutes of programming, combined with the number of programs available, may be more a more effective measure.
26. Provincial agencies such as OMDC, federal agencies including Telefilm Canada, entities such as the Canada Media Fund, broadcasters and content creators are all concerned with “audience success”. For this reason, the Commission should collect information related to the consumption of new media broadcasting content. This consumption data should include both downloaded and streamed content.
27. In order for content to be consumed, it must be available and discoverable. Therefore, the Commission should seek information on the number of programs available as well as the number of hours of programming available.
28. However, content is rarely both available and discoverable in equal measure. Even if a new media broadcaster were to offer a preponderance of Canadian content, if that content isn’t readily visible and accessible to Canadians, benefits may not be realized. While the concept of a “prime time” schedule has no direct correlation online, the prominence of content online is just as important. Promotion and prominence, therefore, should be considered as candidates for some form of measurement so that the Commission, content creators and funding bodies may have a better understanding of the effect promotion and prominence are having on content consumption.
29. It should be noted, however, that even in the presence of both widespread promotion and prominence of any content, if viewers don’t perceive the product to be of sufficient or interesting quality, the program will go unwatched. Quality, except primarily in anecdotal terms, is difficult to quantify.

### **The Characteristics of New Media Broadcasting**

*Q4. To understand whether broadcasting in the new media environment is serving a comprehensive range of interests and tastes, consistent with the broadcasting policy set out in the Act, to what extent is it appropriate to categorize content based on the following five characteristics for the purposes of reporting? What are the most appropriate metrics for measuring these characteristics (type, origin, genre, accessibility, language)?*

30. For the reasons outlined below, OMDC is in agreement with the Commission that it is appropriate to categorize content based on the characteristics noted in the question, namely, the type of programming (i.e., original, on-demand, clips, complete programs), its origin, genre, accessibility and language. General consumption patterns not only support program and policy development in organizations such as OMDC, they also provide useful information to support the development of effective strategies for the development of high quality content that is of interest to Canadian audiences.
31. Reporting on the genres of programming that are being produced, distributed and consumed will contribute to these content development strategies. Being able to understand what kinds of programs are being commissioned compared to the level of consumption of those same programs, or perhaps where programming gaps may exist, is integral to business planning by broadcasters, distributors and content creators.
32. Reporting on the availability of new media content by the original language would be useful in assessing how well different language markets are being served. Since new media broadcasting

provides options for audiences to develop their own translations, OMDC is interested in knowing the overall performance of content based on the initial language of production rather than knowing the language in which it may be subsequently consumed.

33. Information that denotes content origin (foreign versus Canadian and, to the degree possible and practical, province of origin) is of critical importance. In this context, it is important to consider both “broadcasting within Canada” and “broadcasting into Canada” by international players. In the past, it was possible to focus almost exclusively on broadcasting that occurred within Canada. We could manage broadcasting into Canada by regulation and protectionist policies as well as technology. Today, we need to consider the significant amount of foreign broadcasting activity that is coming into Canada by way of new alternate distribution channels. We encourage the Commission to consider new media broadcasting into Canada from beyond our borders in order to develop the most complete picture of content consumption within Canada.
34. With respect to content accessibility, we suggest that measuring the percentage of content that addresses accessibility needs (captioning and/or described video) is important to ensure that new media broadcasting content is accessible by all Canadians, as is data with respect to the actual consumption of such content.

### **Frequency of reporting**

*Q6. Considering the dynamic nature of the new media environment, what is the appropriate frequency for reporting pursuant to the New Media Exemption Order? In particular, address the appropriateness of annual reporting, as proposed in paragraph 14.*

35. NMBU measurement should be implemented as quickly as possible. The earlier that baseline measurements can be established, the sooner trend analysis can start.
36. Due to the rapid nature of change in the media landscape, we believe that annual reporting, as suggested by the Commission in paragraph 14 of the Call for Comments, should be the minimum requirement for frequency of reporting. We suggest, though, that if reporting was done every six months, we would be far better positioned to recognize and react to change in a timely manner.
37. OMDC is aware of the administrative burden that may be placed on the Commission by the request of additional data collection and reporting. We would support the implementation of reporting requirements on a gradual basis if needed, beginning with those which are most easily accomplished.

### **Affiliated New Media Broadcasting Undertakings**

*Q7. Should all affiliated new media broadcasting undertakings be subject to reporting requirements? If not, what are the appropriate criteria and methodology for identifying those new media broadcasting undertakings affiliated with a conventional broadcasting undertaking that ought to submit data?*

*Q8. Considering the potentially large number of unaffiliated new media broadcasting undertakings, what criteria and methodology should the Commission use to define the subset of unaffiliated new media broadcasting undertakings, carried on in whole or in part in Canada, that should submit data? In particular, should the subset be defined by level of revenue, unique visitors, and/or the amount of content transmitted?*

38. We note that the Commission, in this Call for Comments, has defined affiliated NMBUs to be those that are “affiliated with a broadcasting undertaking that is not subject to the New Media Exemption Order (i.e., a conventional broadcasting undertaking)”.
39. The distinction between affiliated and non-affiliated NMBUs is important. Online activities of affiliated NMBUs are related to their regulated operations and therefore should be considered differently than the activities of unaffiliated NMBUs that have no current obligations to the system.
40. Affiliated NMBUs are already, by virtue of their role in the traditional broadcasting system, the beneficiaries of various advantages that the system confers upon participants. It is therefore reasonable to request more from these players with respect to their NMBU operations than from those who operate outside of the traditional system.
41. We believe that the broadcasting activities of licensed broadcasting undertakings in the new media space are an extension of their licensed business operations. We believe this opinion is consistent with the Commission’s view of affiliation as stated in paragraph 18 of the Call for Comments. We further note that in paragraph 18, the Commission discusses the new online content distribution portals being created by BDUs. We submit that these portals should be considered an extension of the traditional distribution system rather than as an independent alternative to that system.
42. By contrast, the operations of foreign-owned unaffiliated NMBUs are currently unregulated by virtue of the 1999 New Media Exemption Order. While their activities are subject to the jurisdiction of the Commission, under the exemption order they are enjoying the liberty to operate and compete with both affiliated and unaffiliated domestic NMBUs and with the traditional licensed broadcasting system. It is, therefore, not unreasonable for the Commission to ask for a level of compliance with Canadian reporting requirements in exchange for continued regulatory forbearance.
43. The Commission should be mindful that it is likely that, barring intervention by the Commission itself, there will be an increase in unaffiliated services (foreign and domestic) delivering professionally produced Canadian and foreign content to Canadians. If the Commission were only to measure the activities of affiliated new media broadcasting undertakings, the data would not be available to assist in identifying possible trends in consumption from those unaffiliated undertakings.
44. Third-party content aggregators add complexity to the new media broadcasting environment. These aggregators are discussed in section 3.4.1 of the Commission’s February 2010 report entitled *Navigating Convergence: Charting Canadian Communications Change and Regulatory Implications*.<sup>1</sup> These are NMBUs that are not affiliated with licensed Canadian undertakings but that carry content that is also available from licensed broadcasters. Were an unaffiliated third-party to create a Hulu-like content aggregation site in Canada, the nature of the licensing deals it made could come into consideration with regard to whether an affiliation of some type – and, consequently, reporting requirements – did in fact exist.
45. For example, if the aggregator made a licensing deal with a conventional broadcaster for a specific Canadian program that would be an extension of the licensed broadcasting business. In contrast, if the deal were to be made directly with the independent producers of the program rather than the broadcaster, there would clearly be no link to a broadcaster’s licensed operations.

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<sup>1</sup> *Navigating Convergence: Charting Canadian Communications Change and Regulatory Implications*. CRTC, Policy Development and Research, February 2010.

46. In the case of third-party aggregators, then, the Commission may need to consider the nature of the content deals that are made with such aggregators in order to best address reporting requirements. In any event, we believe that any complexities that may arise with respect this reporting will not outweigh the significant advantage that this information would confer on content producers.
47. Finally, we believe that the activities of Internet Service Providers (ISPs) should be also be considered within the new media broadcast environment. We encourage the Commission to consider those activities once a definitive determination of the applicability of the *Broadcasting Act* to ISPs has been made by the Federal Court.

### **Future Reporting Considerations**

48. Applications (or “apps”) are an emerging form of content distribution for alternate platforms. Today they are most prominent on smart phones but are extending to tablet devices and may become prevalent on set-top-boxes of various types and on TV sets themselves.
49. Applications can be unrelated to broadcast content, and indeed most are. Some, however, are directly related to broadcast programming. For example, some apps provide a game that is a companion to a television program, or provide additional non-video information that is akin to what may be found on a TV program’s companion website (cast bios, episode guides and schedules, etc.). OMDC does not consider this type of app to be a candidate for measurement.
50. In other cases, apps do involve audiovisual content and are of interest. This can be content that is produced as a companion to a TV show and can include, for example, webisodes, cast interviews and behind-the-scenes footage. It can also be content that formed all or part of the original broadcast episode. When applications contain professionally produced audiovisual content, OMDC believes they should be considered for measurement.
51. It would also be of interest to know for which specific platforms or classes of devices (personal computers, smart phones, tablet PCs, etc.) content is being made available and how it is being consumed. We stated earlier that we believe that measurement should span all screens and be technology-neutral. That said, we believe that such data, when it can be broken out by platform and device, provides valuable insight into the various ways that content is being made available to Canadians and how Canadians are electing to consume content.
52. In the future, the Commission may also wish to consider the penetration and uptake levels of various alternate delivery technologies including content downloading, unicast (one-to-one) and multicast (one-to-many) streaming and automated subscription video distribution via technologies such as Really Simple Syndication (or RSS). We also encourage the Commission to remember that peer-to-peer (P2P) distribution can be a very effective way of distributing content and its history includes cases where broadcasters (including the CBC) have used it as a distribution technology for properly licensed content. While the vast majority of P2P activity does involve unlicensed and unauthorized content distribution, where it is used as a means to distribute properly licensed content on behalf of rights holders it should also be considered as a candidate for measurement.
53. Furthermore, many emerging and existing alternate distribution channels for content come with gatekeepers. The gatekeepers in these “walled garden” environments may not act in ways that are beneficial to Canadian content or supportive of the objectives of the *Broadcasting Act*. Walled gardens can include wireless carrier service offerings but also include over-the-top delivery systems that bypass conventional distributors as well as tightly controlled platforms that are coupled with tightly controlled app stores. In the short term the impact of these is likely to be minimal, but, longer

term, this type of distribution has the potential to become a significant alternative to conventional distribution methods. Failure to consider these walled garden platforms as platforms for measurement could allow them to fly under the radar and attain significant market penetration to the detriment of the existing system. We therefore suggest that the Commission continue to be mindful of changing technology and consumer habits in order to ensure any reporting requirements imposed continue to be relevant.

### **Conclusion**

54. The Commission has rightly recognized that new media broadcasting is having an impact on the overall Canadian broadcasting system. While this impact may be furthering the objectives of the *Broadcasting Act*, without adequate measurement it is impossible to assess what is actually occurring. Reporting requirements for NMBUs have therefore become necessary.
55. As a first step, OMDC believes that the implementation of high-level measurement is important and will provide valuable insight into new media broadcasting activities. Going forward, we support policies that will permit more detailed information and give all players in the broadcasting system a holistic view of a property's performance, according to both audience size and financial success, across all distribution channels. Such information will assist producers in creating content that Canadians will want to watch and encourage NMBUs to distribute and promote that content. It will also ensure that government and Commission policy and regulation continue to be relevant and effective.
56. All of which is respectfully submitted.

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