

175 Bloor Street East
South Tower, Suite 501,
Toronto, Ontario M4W 3R8
Telephone (416) 314-6858
Fax (416) 314-6876

175 rue Bloor est
Édifice sud, bureau 501,
Toronto, Ontario M4W 3R8
Téléphone (416) 314-6858
Télécopieur (416) 314-6876



11 July 2008

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

Dear Mr. Morin:

**Re: Broadcasting Public Notice CRTC 2008-44
Call for comments on the scope of a future proceeding on Canadian broadcasting in new media**

Ontario Media Development Corporation (OMDC) is pleased to file the attached in connection with Broadcasting Notice of Public Hearing CRTC 2008-44 calling for comments on the scope of a future proceeding on Canadian broadcasting in new media. We look forward to participating in all phases of the proceeding.

OMDC is an agency of the Ontario Ministry of 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.

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

A handwritten signature in black ink, appearing to read "Karen Thorne-Stone".

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 Public Hearing 2008-44 calling for comments on the scope of a future proceeding on Canadian broadcasting in new media.
2. OMDC is an agency of the Ontario Ministry of 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. The government of Ontario's media tax credits, co-administered by OMDC, are an important source of financing for all kinds of content creation. In fiscal 2006-07, OMDC issued over 1,000 tax certificates valued at almost \$200 million to support content creation in Ontario's cultural media industries.
4. OMDC also invests directly in screen-based domestic content through the OMDC Film Fund and the OMDC Interactive Digital Media Fund and in the music industry through the OMDC Music Fund. In 2006-07 forty-five projects received production, development or marketing support through these programs.
5. OMDC's goal in participating in the Commission's consultation process is to promote a regulatory environment that is responsive to the business realities and needs of Ontario's cultural media industries. The traditional broadcasting and new media environments are rapidly evolving. Content production, distribution and consumption have changed significantly since the Commission's 1999 New Media Exemption Order. OMDC therefore supports the Commission in its review of the Order.
6. The outcome of any future proceeding on broadcasting in new media will play a pivotal role in shaping the evolution of not only the internet and mobile environments in Canada, but also the entire broadcasting system. OMDC is therefore suggesting that the Commission adopt a visionary approach to the upcoming new media broadcasting proceeding, one that acknowledges that the barriers between different kinds of content are being broken down and that supports the creation of high-quality Canadian content, whatever screen it is intended for.
7. A broad scope of inquiry that takes into consideration the business realities of the new media environment will help to ensure that Canada's and Ontario's creative industries continue to produce quality creative content. Given our role as supporters of the creation of this content, OMDC is pleased to have this opportunity to comment on the matters before the Commission. In preparing this submission, we have consulted with stakeholders across our sectors and will continue to do so throughout the different phases of the proceeding.

Executive Summary

8. Overall, OMDC supports the Commission's intent to hold a review of the new media broadcasting environment and agrees with the questions proposed in the Public Notice. We urge the Commission to approach the review with as broad a scope as possible, in acknowledgment of the fact that in this new environment, producers, broadcasters and distributors are all playing different and constantly changing roles in the system. This review is an opportunity for the Commission to take a leadership role in ensuring that the regulatory framework is innovative and supports Canadian media businesses.

9. When attempting to define the new media broadcasting environment, we encourage the Commission to keep in mind that the definition needs to be versatile enough to incorporate further technological developments in this area. The stakeholders in this environment will encompass the traditional broadcasting players, but could also include a variety of stakeholders who wouldn't normally fall under the scope of the *Broadcasting Act*.
10. The exploration of what constitutes new media broadcasting and the relevant stakeholders will naturally lead to an exploration of whether or not these stakeholders are, firstly, contributing to the creation and presentation of Canadian programming and, secondly, if that contribution is appropriate. An exploration of the new media business models that have evolved since the implementation of the 1999 New Media Policy will inform the answers to these questions.
11. Support for the creation and promotion of Canadian content, especially high-cost, high-value Canadian content such as drama, is important across all broadcasting platforms. Therefore the Commission should find ways to support all kinds of Canadian content, including new media content. We encourage the Commission to explore new financing measures and incentives that do not force content creators to define themselves narrowly but rather allow and encourage them to continue to operate across multiple platforms. We also suggest that the Commission should look for incentives rather than regulation wherever possible.
12. Ensuring that Canadians have access to new media broadcasting content is also an important principle of the *Broadcasting Act*. OMDC therefore agrees that the Commission should explore the issues of access to Canadian new media broadcasting content, whether over the internet or mobile devices, including issues of affordability. Access issues also apply to content creators who rely on internet and mobile service providers to get their content to Canadian audiences.

The Need for a Review of Canadian Broadcasting in New Media

13. In general, OMDC supports the Commission's intention to hold a review of the new media broadcasting environment and agrees with the questions proposed in the Public Notice. The comments put forward in this submission deal with some additional details and issues raised by the Notice.
14. As CRTC Chairman Konrad von Finckenstein recently noted,

[T]he technologies of broadcasting and telecommunications are converging, along with the New Media that offer broadcasting via the Internet and mobile devices. The industries are converging. Regulation must follow suit, and ultimately legislation.¹

This convergence has had an impact on all players in the digital value chain, including creative content producers. To meet the demands of the digital entertainment market, Ontario's creative content companies and producers are increasingly becoming multi-platform storytellers. To succeed domestically Ontario's producers need the flexibility, agility and capacity to create high-quality content that can compete internationally. The regulatory environment in Canada needs to be equally flexible and agile in order to support this activity.

¹ Speech by Konrad von Finckenstein, Chairman, Canadian Radio-television and Telecommunications Commission, to the 2008 Broadcasting Invitational Summit, June 19, 2008.

15. When the New Media Exemption Order was issued in 1999, the broadcasting environment looked very different than it does today. The Commission's current Public Notice describes several key factors that have contributed to the development of a new world for content creators, broadcasters and audiences:

- Canada's position as a world leader in broadband connectivity;
- the increased availability of audio and video broadcasting content in various forms, such as internet television, mobisodes and podcasts;
- the accelerating pace at which professionally produced broadcasting content is being made available online;
- the fact that Canadian audiences have begun accessing broadcasting content online while traditional broadcasting consumption is experiencing little growth overall and is declining among younger audiences;
- new advertising revenue business models that are emerging in the new media broadcasting environment;
- broadcasters who are making content available online;
- new media broadcasting alternatives and business models that are evolving on a continual basis; and
- creators, aggregators and content producers who are increasingly distributing content over new media platforms.²

These all point to a new media broadcasting landscape that is completely different from what it was in 1999. It is time for a public proceeding on the new media environment to ensure that the objectives of the *Broadcasting Act* are still being met.

16. It should not be assumed, by the Commission, by stakeholders or by consumers, that such a review will automatically lead to regulation of the internet. Rather, it is an opportunity to examine the realities of the environment and acknowledge that in this environment, content travels from one screen to another, that producers, broadcasters and distributors all play different and constantly changing roles in the system, and that maintaining walls between regulated and unregulated aspects of the system is much more difficult than it once was.

17. We therefore encourage the Commission to approach the upcoming review with as broad a scope as possible. Some of the issues raised may not, strictly speaking, fall under the Commission's mandate. However, the Commission does not exist in a vacuum, and its regulatory decisions have an impact on other federal and provincial programs. We ask the Commission to take a leadership role in this area by ensuring that the regulatory framework supports innovation and enables Canada, and Ontario, to leverage our creative assets while building strong, viable media businesses.

What is the Scope of New Media Broadcasting?

18. The Commission has proposed a series of questions to assist in assessing the scope of new media broadcasting. It is our belief that the definition of new media broadcasting needs to be determined before any of the other questions can be answered. We encourage the Commission to work toward a definition that is both as clear as possible and as versatile as possible.

² Canadian Radio-television and Telecommunications Commission, Broadcasting Public Notice CRTC 2008-44, *Notice of consultation, Call for comments on the scope of a future proceeding on Canadian broadcasting in new media*, 15 May 2008, para 18-24.

19. The proceeding that resulted in the 1999 Exemption Order set out some distinguishing features of new media that were fairly broad-based and remain relevant in today's environment. These include the use of digitization, interactivity and interconnected networks. The Commission's definition at that time went on to say that

[n]ew media can be described as encompassing, singly or in combination, and whether interactive or not, services and products that make use of video, audio, graphics and alphanumeric text; and involving, along with other, more traditional means of distribution, digital delivery over networks interconnected on a local or global scale.³

The fact that these sections of the definition have not had to be revisited since the issuance of the Exemption Order suggests that this definition is sufficiently versatile for the industry. However, the Commission may want to seek comment from stakeholders on whether this definition needs to be expanded (or refined).

20. When defining new media content, we also encourage the Commission to seek comment on the definition of how media services are delivered. We submit that this part of the definition should be platform-neutral, and should not be restricted to either the Internet or to mobile devices. Rather, the Commission should strive to come up with a definition that will allow for future technological changes in this area.
21. The Commission should also re-explore which types of content qualify as "broadcasting". If content that is downloaded for later viewing or listening is to be considered as material that has been "broadcast", how do you differentiate it from the on-line purchasing of DVDs, CDs, etc.? How is an internet download of a program different from a program ordered through a Video-on-Demand platform? How do you classify content that is accessed through subscription services for a limited period of time? The answers to these questions in the context of defining "new media broadcasting" will be helpful when attempting to assess the current new media environment.
22. We agree with the Commission's question about the relevant stakeholders in the creation and distribution of Canadian programming in the new media environment. We submit that it is likely that this will encompass a wide range of stakeholders, including some who have not traditionally fallen within the scope of the *Broadcasting Act*.
23. When looking at the stakeholders in the new media environment, it is important to recognize that very few stakeholders exist in only one category anymore. Record labels who stream concert footage and sell music on their websites are acting as broadcasters and distributors. Television broadcasters with robust websites are content creators as well as content aggregators. The large Internet Service Providers (ISPs) are also mobile and wireless service providers, broadcasting distribution undertakings (BDUs) and in some cases also television broadcasters. The Commission should seek comment on how a regulatory framework can encompass all of these elements as part of the broadcasting system in Canada.
24. This line of inquiry should also include exploration of what specific types of new media broadcasting services and content require particular attention. This will include questions about whether it is necessary to distinguish between user-generated and high-value professional content. If there is to be increased support for the creation and promotion of new media content, what types of content should

³ Canadian Radio-television and Telecommunications Commission Broadcasting Public Notice CRTC 1999-84 and Telecom Public Notice CRTC 99-14, *New Media*, 17 May 1999 at para. 14.

be eligible for that support? Professional, high-quality creative content has historically been and continues to be the most difficult type of content to finance in the traditional broadcasting world; the Commission should explore how and why that continues to be true in the new media context.

25. Once we know who and what is meant by new media broadcasting, then it will be possible to explore the fundamental question of whether or not the new media broadcasting environment is contributing sufficiently to the achievement of the broadcasting policy objectives of the *Broadcasting Act*. Since this question is so fundamental, and speaks directly to whether or not new media broadcasting should continue to be exempt from regulation, we suggest that it is necessary to ask a series of questions based on Section (3) of the *Act*, such as:

- i. Is there new media content available that reflects Canadian attitudes, opinions, ideas, values and artistic creativity? Does it display Canadian talent? Does it offer information and analysis concerning Canada and other countries from a Canadian point of view?
- ii. Does the new media broadcasting environment serve the needs and interests of Canadian citizens?
- iii. Does the programming include a significant contribution from the Canadian independent production sector?
- iv. Is a range of broadcasting services in English and in French available to all Canadians?
- v. Is the national public broadcaster meeting its obligations under the *Act* in the new media environment?
- vi. Does the programming adequately reflect the aboriginal cultures of Canada?
- vii. Is the programming adequately accessible by disabled persons?⁴

The answers to these questions will inform the Commission's thinking on whether the broadcasting policy objectives of the *Act* are being met.

26. The *Act* also states in section 3(1)(e) that "each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming". This naturally leads to inquiring whether stakeholders in the new media environment are, firstly, contributing to the creation and presentation of Canadian programming and, secondly, if that contribution is appropriate. These questions are more fully explored in the next section of this submission.

27. The Commission has also invited comment on how new media business models have evolved since the 1999 New Media Policy. This is another area where the Commission has an opportunity to explore and acknowledge how the barriers between different types of content creation are eroding. In exploring the business models that have been developed, the Commission should seek information on how broadcasters, BDUs, ISPs and mobile service providers are able to maximize their advertising revenue opportunities across the various platforms that they control. They should also seek comment

⁴ We are aware that the Commission is currently undertaking a Review on accessibility issues and that this Review applies to services accessed via the internet and/or mobile devices. However, we would want to ensure that these issues are not forgotten in the context of a wider new media review.

on how this has affected their approach to acquiring or creating content. OMDC has heard from television producers that they are expected to take into account new delivery platforms and new elements such as interactivity that may need to be integrated into traditional platforms. This has an impact on their business models since the development process becomes more complex and therefore more costly.

28. Any exploration of new media business models must also take into account the experiences of the music industry. Questions that are posed to television broadcasters about synergies across platforms can equally apply to radio broadcasters.

Are Incentives or Regulatory Measures Required for the Creation and Promotion of Canadian New Media Broadcasting Content?

29. Support for the creation and promotion of Canadian content, especially high-cost, high-value Canadian content such as drama, is important across all broadcasting platforms. Traditional film and television programming will find its way on to new media platforms but only if it is well-financed to begin with. If there is a need to finance new media content, this financing should not come at the expense of the funds available for traditional broadcasting content. Rather, it is important to ensure that all producers have access to sufficient funds in order to continue to produce high-quality Canadian content across all media platforms.
30. It is unlikely that traditional regulatory measures such as exhibition requirements can be applied in the new media broadcasting environment. Therefore, support for new media content will have to come from new sources of financing and from incentives.
31. When exploring new financing measures and incentives, the Commission should be open to suggestions that do not force content creators to define themselves narrowly. Rather, they should seek input on how incentives can be developed that allow for and encourage all elements of the system to work together to ensure that Canadian content in all platforms is well-supported. For example, the Commission may want to consider seeking input on the impact of allowing Canadian broadcasters to include spending on new media content as part of their Canadian Programming Expenditure (CPE) requirements. While this would provide an incentive for broadcasters to invest in new media content, such an incentive should not come at the expense of traditional broadcasting content. We would therefore encourage the Commission to seek input into how CPE requirements could be enhanced in order to support both traditional and new media broadcasting.
32. We encourage the Commission to seek input on an ISP levy (or an ISP and mobile service provider levy) that would be introduced to support new media content creation. Questions surrounding such a levy could include whether or not it is an appropriate mechanism, whether it should be a levy on revenue or on devices, how the funds should be administered, and what types of projects would be eligible for the funds generated by such a levy.
33. We also encourage the Commission to seek input on other ways ISPs and mobile service providers can contribute to the broadcasting system. As broadcasting content is spread across a growing array of platforms, it should be acknowledged that these companies are elements of the broadcasting system and therefore have an obligation to contribute to the system.
34. Finally, we agree with the Commission's proposal to seek comment on measures that enhance the promotion and visibility of Canadian new media broadcasting. In an era when the market for Canadian content is global, and when audiences have access to content from everywhere in the world, ensuring that audiences can find Canadian content is as important as making sure that the content is

available to begin with. We suggest that the Commission should look for incentives rather than regulation wherever possible.

35. Whether or not the Commission determines that support for the creation and promotion of Canadian new media broadcasting content is necessary at the current time, benchmarking and measurement standards will become necessary in order to ensure that all elements of the broadcasting system are contributing to the objectives of the *Act*. The Commission should explore how website traffic is currently measured, how these measures are used for the purposes of advertisers, how much Canadian content is available online and how Canadian audiences are accessing this content. Some of this information is currently being collected in various ways by various organizations; the Commission may also wish to explore whether it is possible to formalize the collection of such information in a centralized location.

Are There Any Barriers to Accessing Canadian New Media Content?

36. Ensuring that there is high-quality Canadian new media broadcasting content available and that audiences know about it are the first steps in achieving the objectives of the *Broadcasting Act*. Ensuring that Canadians have access to that content is the next step. We therefore agree that the Commission should explore the issues of access to Canadian new media broadcasting content, whether over the internet or mobile devices.
37. We encourage the Commission to continue to ask ISPs to share their network management practices and to demonstrate the ongoing need for such practices. Notwithstanding the outcome of the current proceeding before the Commission on this issue, public interest in network management will continue to be high and transparency about ISP practices seems to be developing as a key issue for consumers. The Commission may want to seek input on best practices from other jurisdictions on how to balance the needs of those who provide internet and mobile services with the interests of consumers who expect to be able to continue to access services in the manner to which they have become accustomed and with the interests of content creators who are seeking to reach those consumers.
38. Affordable internet and mobile access is another key issue in ensuring access to Canadian new media broadcasting content. If high prices are keeping consumers from accessing content, then it is difficult or impossible to develop business models that will support the creation of that content. As the next generation of “smart phones” and other mobile devices are introduced to the Canadian marketplace over the next few months, it will be interesting to see how consumers react and how business models evolve in response to that reaction. We encourage the Commission to monitor these developments as they occur and as the scope of the New Media Review is determined.
39. Content creators are also concerned about access to the new media broadcasting system. While ideally in this environment creators should be able to reach their audiences more directly, in reality they may still face access issues. The Commission should seek comment from creators about dealing with ISPs, aggregators and broadcasters when it comes to making their content available online. Are they being compensated for their online and/or mobile rights? Is there a way to give content creators access to the payment systems that the larger content aggregators have in place in order to streamline their own billing systems? Is enough being done to protect intellectual property online? Are there practices that prevent creators from making their content available? And if there are obstacles for creators, how can these be addressed? Again, it should be re-iterated that the answer to these questions is not necessarily regulation of the new media environment. We encourage the Commission to seek input on other types of solutions, such as incentives or industry codes of conduct.

Other Broadcasting Policy Objectives

40. It is important that any new media regulation be in line with Section 3(1)(d)(iv) of the *Act* which states that the broadcasting system should “be readily adaptable to scientific and technological change.” Today’s new media environment is substantially different from the environment when the New Media Exemption Order was issued in 1999 and it must be assumed that things will continue to change rapidly. It is for this reason we encourage the Commission to take a broad and visionary approach to the upcoming New Media Review. Ensuring that any new policies and/or regulations are platform neutral is one way of ensuring that the system is adaptable, which will in turn ensure that it is not restricting scientific and technological change in the marketplace. This will further create a new media environment in which content creators can continue to flourish.

Conclusion

41. Overall, OMDC submits that the time has come to review the new media environment and the 1999 New Media Exemption Order. In today’s environment, broadcasters and content creators are increasingly blurring the lines between the traditionally regulated and nonregulated environments and a new regulatory environment is needed that acknowledges this reality. We encourage the Commission to take a visionary approach to the upcoming review with an eye to ensuring that Canada’s broadcasting system continues to remain relevant to Canadian audiences while at the same time providing a platform for the distribution and airing of high-quality creative Canadian content.

42. All of which is respectfully submitted.

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