



Writers Guild of Canada Submission to the Government of Canada's Consultation on a Digital Economy Strategy for Canada July 9, 2010

Introduction

The Writers Guild of Canada ("WGC") represents over 2000 screenwriters working in film, television, radio and digital media. WGC members are the creators of Canadian stories including indigenous dramatic series such as *Flashpoint*, acclaimed movies of the week such as *Mayerthorpe*, internationally successful children's programming such as the *Degrassi* series and digital productions such as the *My Pal Satan* web series.

The WGC welcomes the opportunity to be part of the government's public consultation on a Digital Economy Strategy for Canada. WGC members are on the forefront of creating content for new digital platforms and taking advantage of new business models and distribution methods both for digital content and traditional content. We are grateful for the opportunity to share with you our thoughts on both an overall digital strategy for Canada and the very specific needs of Canadian content in this digital world.

The Big Picture

Recommendation #1 – The Government of Canada should develop a strategy for a National Digital Society

As representatives of content creators, the WGC has been urging the government to consider the needs of both Canadian content creators and audiences when developing a national digital strategy. In prior years the focus of government and many other sectors in the digital economy seemed to be on infrastructure, e-commerce and skills training to the exclusion of content. This focus could be seen through both the invitation list and the topic list for the forum hosted by Industry Canada on June 22, 2009 and called Canada's Digital Economy: Moving Forward. The themes of the discussion for the day were to be:

- promoting business innovation using ICTs;
- building a digital infrastructure of the future;
- ensuring a stronger, safer online marketplace;
- moving forward.

The WGC and its colleagues in the content creation sector were concerned that discussions around bringing Canada into the digital future seemed to have no place for content. Content is a primary driver of broadband adoption and increasing use of digital platforms by consumers. More and more Canadians want to download music, watch videos and play online games. We met several times with staff at Industry Canada to argue this point. We took the initiative to

attend the Canada 3.0 Forum in Stratford May 10-11, 2010 which previously had focused on industry, government and academia. However, we did not find it to be a productive conference or one that gave appropriate consideration to the role of content in the digital society. The topics, including those within the Creating Stream, did not reflect the leading role that audio-visual content plays in the digital world. There were no opportunities for the delegates to network with those from other sectors and exchange ideas. The panel discussions were not structured to foster the development of any consensus over next steps. We were pleased to hear that Minister Clement's call for public consultation on Canada's Digital Economy, which was announced at Canada 3.0, included a section on content. However, we still feel that the consultation is not taking a broad enough perspective on Canada's future and the role that content will play in that future.

As the Standing Senate Committee on Transport and Communications stated in its recent report "Plan for a Digital Canada"¹, the government should be developing a strategy for a 'digital society' rather than merely a digital economy. This shift in thinking moves away from the singular goal of moving our economy into the future and takes a more holistic view of the challenge. The Senate Committee quotes a presentation of Media Awareness Network, which itself had borrowed from the United Kingdom's Digital Britain report, to identify the components of a Digital Society. "The first stage focuses on infrastructure and access; the second stage on education and basic digital literacy; and the third stage on allowing citizens to take full advantage of digital tools and content, both that of the private sector and of government . . . In order to transform a country into a working digital society progress must be made in concert at all three stages."²

The WGC strongly agrees with the Senate Committee that this is the perspective that the government should be taking. Coming up with a digital strategy is not merely about being competitive in the international marketplace but more importantly about each Canadian's way of life and how it can be improved through digital technology. A better life can mean online access to government services wherever Canadians live, the ability to train for careers within the knowledge economy, access to health services for those in remote regions and being able to find entertaining Canadian content on multiple digital platforms.

It is this last aspect of a Canadian digital society that the WGC will focus on with our thoughts and recommendations. We are fully aware that there must be a plan for all three stages and as well other aspects of the third stage which must be addressed. As the representatives of Canadian screenwriters we feel qualified to only talk about what the government should be doing to ensure that Canadians have sufficient quantity and quality of professionally produced Canadian content to choose from on whatever platform they select.

Canadians have and will continue to embrace the digital tools available to them to create their own content and share it amongst their friends and neighbours both real and virtual. Provided

¹ Plan for a Digital Canada, report of the Standing Senate Committee on Transport and Communications, June 2010

² Ibid page 21.

that Canadians have affordable access to high speed broadband and digital literacy, this creative outlet will develop organically on its own. Commentators such as Jacob Glick of Google Canada Inc. have said that there is plenty of Canadian content online but they are primarily referring to user-generated content.³ To quote from an article on the future of financing content “The mistake, more a by-product of limited technology to date, is to think Content for the Web only comes from User Generated uploads, niche topics or pornography consumed in 30 second to 3 minute bites. The phenomenon of those has been more a by-product of an audience impatient with the sketchy viewing experience they are subjected to on the myriad devices they view their Content on.”⁴ Or in other words, for many people user-generated content is a substitute for what they really want – high quality professionally produced content. While Mr. Glick is likely right and there is probably enough amateur Canadian content on the web, we are concerned that Canadians are not being offered sufficient choice for professionally produced Canadian entertainment on digital platforms.

The problem is that there is insufficient funding to support the volume of professionally produced Canadian content that would offer Canadians a real choice when surfing, on their mobile phones or picking up videogames. As with Canadian television or almost any other Canadian business, digital Canadian content requires public support in order to protect and grow a domestic industry. Without such support Canadians will have no choice but to watch and interact with American digital content. While that should always be an option, the WGC feels strongly that American digital content should not be the only choice.

However, we ask that the government not look at these recommendations as being only about supporting Canadian’s interests in content but also in their ability to participate in the digital economy through content industries. While Canadian cultural policy is about supporting the development and encouraging the growth of domestic cultural industries for Canadian audiences this is only the first step. Canadian cultural entrepreneurs have proven in traditional media such as television, books and music that they can be competitive internationally and reach markets around the world. Digital platforms offer content producers easier access to international audiences than available to traditional media. Digital media entrepreneurs are poised to take advantage of the opportunities this offers. Canadian content creators are skilled story tellers ready to tell Canadian stories to the world and build the knowledge-based industries that will drive Canada’s economy into the future.

Original Digital Content

Recommendation #2 – Extend the Canadian Film or Video Production Tax Credit to linear web series.

³ Jacob Glick to the Standing Committee on Canadian Heritage, March 30, 2010, “If you were interested in watching only Canadian content, you could watch Canadian content every day all day long, 24-7, and never see the same thing twice on YouTube.”

⁴ Gerson Lehrman Group “Be Careful How Fast You Give Away Your IP”
<http://www.glggroup.com/News/Be-Careful-How-Fast-You-Give-Away-Your-IP-46432.html>

Recommendation #3 – Create an interactive digital media tax credit modelled on similar provincial tax credits.

Recommendation #4 – Adapt CAVCO point system to interactive digital media to ensure interactive tax credits benefit and develop a Canadian talent pool.

The Canadian marketplace is too small to support a strong domestic content industry. With such a small market, only government support can ensure that Canadians have the choice to watch, read and listen to Canadian entertainment. Digital media is no different than television, radio, music, books and magazines. Canadian digital entertainment must also be supported to ensure that Canadians have the choice to interact and entertain themselves with Canadian digital content. The government made a move in the right direction when it changed the Canadian Television Fund to the Canada Media Fund, requiring television to offer convergent content and for a fund to be set up for 'Experimental' standalone digital content. However as no new government money was provided to the Canada Media Fund, in essence the CMF is being asked to fund more content with the same amount of money. We urge the government to renew the CMF at the end of its fiscal March 31, 2011 and to provide it with more funding so that it can fulfill the mandate that has been given to it by the government.

It is important to understand though that, as with CMF funding of television, the CMF does not fund the full amount of the budget of value-added and standalone digital content. The CMF is attempting to trigger more production through its mandate and policies but there are insufficient funds in the system for the balance of financing for all of this new production. For example, broadcasters are required to fund 10% of the budget if they are asking CMF to contribute to the financing of the value-added component. CMF will then contribute 40% of the budget. The balance of the 50% can be made up of a grant from the Bell Broadcast and New Media Fund (just over \$12 million in 2009), tax credits and/or investments in some provinces⁵. There are very few other sources of financing. The Bell Fund turns down approximately two projects for every project that it funds, which demonstrates a clear need for more financing. Standalone interactive projects can be funded up to 75% by CMF's Experimental Fund. The balance of 25% is very hard to finance however as there are few other sources of financing given that the Bell Fund only finances projects that are associated with television programs.

A labour-based tax credit has been very successful in building and supporting interactive media industries in several provinces and of course has been very successful on a federal level in the film and television industries. The WGC is therefore recommending that the federal government create an interactive media tax credit modelled on the interactive tax credits available in a number of provinces. This would be a labour-based tax credit that would encourage the use and development of Canadian interactive labour. There should be consideration of a regime where tax credits are based on specified activity over a tax year rather than on a project basis. Most interactive projects require ongoing new content after launch in order to retain their audience and as such have ongoing production periods.

⁵ British Columbia, Manitoba, Saskatchewan, Ontario, Quebec and Nova Scotia all have some form of interactive digital media tax credit

Any such interactive tax credit would have to have a Canadian Content certification system similar to that run by the Canadian Audio-Visual Certification Office (“CAVCO”) to ensure that government financing went to the benefit of and encouraged the growth of Canadian talent as well as Canadian producers. However, interactive digital media is very different in how it is produced compared to film and television. The CAVCO point system could not be adopted by an interactive digital media tax credit without revision. There is a wide variety of types of interactive digital media productions both in terms of platform (e.g. web, console game, mobile) and format (e.g. gaming, video, community). Each type uses different kinds of talent and crew in its production. For that reason, the WGC proposes that the CAVCO point system be adapted for interactive digital media to require that the top 5 highest paid creative talent on the production be Canadian, as well as the basic requirements that the production be Canadian owned and produced. Guidelines would be developed to define ‘creative talent’ to ensure both flexibility and some level of certainty, however to illustrate examples of ‘creative talent’ are interactive designer, graphic designer, animator, game designer, writer, director, usability architect and sound designer.

Linear web series are short dramas that are written, shot and produced just like regular television dramas. Each episode tends to be two to five minutes long but over a number of episodes tells a story that can be enjoyed by audiences on their computers or cell phones. Popular Canadian web series include “My Pal Satan” about what it would be like if your roommate was Satan and “Riese” a steampunk science fiction series. Web series allow creators to experiment with story and characters, build audiences and go directly to those audiences without have to sell a gatekeeper such as a broadcaster, all at more modest budgets than traditional television. More funding would mean more of these Canadian web series could be produced, helping to satisfy the demands of Canadian audiences for professionally produced high quality digital content that speaks to them and reflects their world.

These web series are not interactive and therefore do not qualify for interactive tax credits. As they do not have a theatrical exhibition or licence for a Canadian broadcaster they cannot access the Canadian Film or Video Production Tax Credit (“CFVPTC”). Web series are increasingly popular with audiences and with creators. Amending the CFVPTC to allow for hosting by a Canadian service provider or digital distribution aimed at a Canadian audience would allow web series to qualify for tax credits and would pump much needed additional financing into the system. A few other consequential amendments may also be required specifically for web series to reflect their different format. For example, budget limits would have to be reduced specifically for web series as they tend to have lower budgets than traditional film and television. The existing CAVCO point system would apply as linear web videos are produced with the same job categories as traditional film and television.

Canadian Feature Film

Recommendation #5 – The Government should take advantage of the digital technology tools to encourage Canadians to access Canadian feature films and measure success against that larger audience.

Recommendation #6 – Funding of Canadian Feature Films should include funding for digital content that supports a feature film, where appropriate.

The development of a Canadian feature film industry has been an ongoing challenge. Telefilm Canada has been mandated to build the industry towards the goal of Canadian films achieving 5% of the theatrical box office. While this may have been a worthy goal when it was first developed in the “From Script to Screen: New Policy Directions for Canadian Feature Film” policy created by Heritage Canada in 2000, this goal no longer reflects the reality of how Canadians watch feature films today nor does it anticipate future developments. Fundamentally the 5% of theatrical box office assessment is not an accurate measure of how many Canadians have watched a feature film.

Hollywood distributors have a lock on theatres. Distributors require exhibitors to take a package of Hollywood movies in order to secure the big blockbuster they need to drive audiences to the theatres. This leaves little room for small Canadian movies. Even if demand justifies extending the run of a Canadian movie the exhibitor is unable to do so because the theatres are locked up by the big Hollywood movies and their schedule. Audiences instead wait to watch Canadian movies on video-on-demand or pay-tv, then buy or rent the DVD and finally watch the movie on conventional or specialty television. A recent development is the ability to download movies to own or rent through iTunes. For example, “Away From Her”, written and directed by Sarah Polley, is available for rental download for \$3.99 or download to own for \$9.99. Online Canadian DVD distributor Zip.ca has been planning a service offering legal downloads of DVDs for some time. In fact, through a partnership with the Academy of Canadian Cinema and Television, for the past several years Zip.ca has been offering Academy members the ability to stream feature films nominated for Genie Awards from a secure zip.ca/genies website.

It is clear from the above that audiences are looking for a variety of ways to access their entertainment and particularly their feature films. Feature film policy should encourage new forms of digital distribution such as iTunes and Zip.ca, which can be done by including their audience and revenue as part of the measurement (together with television and DVD sales) of success. Telefilm Canada’s funding is intended to reward those producers who have demonstrated that they can produce films that audiences want to see by giving them resources to produce more. Including digital distribution, television and DVD sales in the measurement of success will provide a more accurate representation of success than a percentage of box office ever will.

It is hoped that this change in policy would encourage producers and distributors to explore digital distribution as a way of reaching more Canadians. Telefilm currently supports alternative theatrical distribution networks through the Alternative Distribution Program. A specific program that supported digital distribution as another alternative would also be useful in expanding Canadian audiences. The cost of bandwidth is substantial and according to testimony at the CRTC Net Neutrality hearing is one of the biggest reasons that Zip.ca has not yet released a consumer download service. There are also costs associated with marketing digital distribution. A subsidy based on promoting Canadian feature films (e.g. featured on the home page of

iTunes) could encourage not only more digital distribution but a greater awareness of the availability of these titles resulting in larger audiences.

Canadian feature films are seriously underfunded. It is very difficult for Telefilm Canada to meet its goal of supporting the development of a Canadian feature film industry when its entire budget of approximately \$95 million is about the cost of the average Hollywood movie. Funding for feature films must adapt to the new digital society but only if there is additional funding for these new activities. In the same way that the Canada Media Fund (“CMF”) was revised to fund both television productions and associated rich media, ‘value-added’ digital content, the government should consider revising the Canadian Feature Film Fund to also fund, where appropriate, rich media, ‘value-added’ digital content associated with feature films. Not every feature film will lend itself to extending the experience for audiences on digital platforms but where it creatively makes sense the funding should assist filmmakers to address the needs and interests of audiences. However, Telefilm cannot be expected to do more and fund more with the same funding without it affecting the quality and number of feature films being produced.

CBC

Recommendation #7 – Provide the CBC with a clear mandate to exploit digital platforms to fulfill its legislative mandate and provide it with the necessary funding to do so.

The CBC is currently more active in the digital space than any of the other broadcasters. More television shows are available online, more sports is accessible through mobile and more added content is available to audiences than can be found on other broadcaster digital platforms. This is appropriate for Canada’s public broadcaster, particularly as digital platforms help CBC fulfill its legislated mandate to be available across Canada and to reflect Canada to Canadians. Digital platforms particularly help Canadians find Canadian programs that they missed on air either from this season or past seasons. But the CBC can and should do more. However, there are substantial costs to digitizing archives and paying talent for additional use rights in order to provide Canadians with access to decades of CBC programs. There are costs associated with bandwidth required for all of the current programming offered online. And there are costs associated with added content created originally for the digital platforms.

The BBC is world leader in public service broadcasting in general and specifically in the extension of public service broadcasting to digital platforms. A quick survey of the BBC demonstrates the vast resource of easily accessible information, entertainment and news that the BBC offers to its citizens on a daily basis. Most television programs have added entertainment content, there are articles and video on health, science and nature, food, music, international news and history, all pulling from the vast resources of BBC programming but supplemented with additional original content. This can be done because the BBC has a clear (and regularly reviewed) mandate and through the Television Licence Fee the necessary financing to fulfill that mandate. The WGC therefore recommends to the government that it confirm that the CBC should more fully exploit digital platforms as a tool for fulfillment of its legislated mandate and as well provide the CBC with the necessary funding to do so. The CBC

needs long term stable funding in order to provide the services that it is required to provide Canadians pursuant to the *Broadcasting Act*.

Promotion of Canadian Content

Recommendation #8 – Regulatory support or incentive to ensure that Canadian digital content is promoted to Canadian audiences.

It is not enough to just fund Canadian digital content and traditional television and film. The Canadian Feature Film Fund has programs for marketing Canadian feature films. The CRTC has exhibition requirements for Canadian television programming on Canadian broadcasters. Right now however there are no programs or requirements for either traditional content or digital content on digital platforms. The result is that there is very little Canadian content available on digital platforms and what is there is hard to find. CTV is promoting U.S. web series as part of their Dove “Go Fresh” online campaign. Of the television shows CTV is streaming, they are promoting one current Canadian series, “Hiccups” and one very old series “Littlest Hobo”. Global is promoting its hot new show “Rookie Blue” though they save their prime web real estate for promotion of Saturday Night Live clips and U.S. reality shows “Wipeout” and “Big Brother”. Both broadcasters offer more Canadian shows on their video player (though not all Canadian programs they could offer) but do little to tell viewers this.

Independently produced non-broadcast related digital content has an even harder time getting in front of Canadian audiences. There are aggregators which host high quality Canadian web content such as Lifeforce Entertainment and iThentic, as well as the uncurated hosting at YouTube where audiences can find high quality professional Canadian content as well as amateur home videos of cats playing piano. There is so much content out there that Canadian audiences can only find Canadian content by chance or through referrals from friends. It is clearly not enough to fund production. We must find a way to promote and feature digital content or Canadians will never know that Canadian entertainment is available to them. Over the years the CRTC has tried different methods to ensure that Canadian audiences are aware of the Canadian television programming that is available to them. They have set general exhibition quotas as well as specific genre exhibition quotas.

These regulatory measures cannot be carried over into the digital world without adaptation and in some cases might not work at all. Some thought needs to go into creating either regulatory measures or incentives to ensure that Canadian digital content, and particularly that Canadian digital content that has been funded in part by public monies, is promoted to Canadian audiences. The government should consider ways to incent or feature Canadian web content to ensure that Canadian audiences know what is available to them and to maximize the government’s investment in Canadian content.

Copyright

Recommendation #9 – Amend the Copyright Act to balance the new uses provided by digital technology with the rights of creators to be fairly compensated for those uses.

The WGC has provided numerous submissions to the federal government on the subject of reforming Canada's *Copyright Act* in light of the developments in digital technology. We will not repeat them all here. However, we do need to restate the WGC's position that we support widespread use of copyright works by consumers on many platforms provided that creators are fairly compensated for these uses. While we appreciate the work that the Departments of Heritage and Industry have done to try to bring Canada's *Copyright Act* up to date through Bill C-32, we do not feel that it fairly balances the needs of creators and consumers. A number of new uses have been allowed, such as backing up, format shifting and time shifting, which allow consumers to make copies of works which can be used in perpetuity without any compensation to creators for those uses. In effect, by designating these uses as 'allowed' uses without providing for balancing compensation the bill has not only cut creators off from a revenue stream based on those uses but also prevented creators from developing secondary markets that exploit those uses for compensation. Under the current *Copyright Act* creators have had the potential to negotiate compensation for those specific 'secondary' uses but that option will no longer be available.

The development of digital technology means that it is very easy for consumers to make copies of copyright works. We support that behaviour by consumers but creators deserve to earn revenue from those copies in a similar manner to other more physical copies of works such as DVDs and cassettes. While creators look to contract and collective agreements to compensate them for primary uses (e.g. television broadcast, DVD sale, iTunes download), it is the secondary uses (e.g. copying to multiple computers, backing up, storing on a PVR hard drive for repeat playback) which are growing due to digital technology and are uncompensated. Canada needs to have a copyright framework that does not cut creators off from earning revenues from those secondary uses. The WGC will be working within the legislative process to try to amend Bill C-32 where possible to reflect this perspective.

Foreign Ownership

Recommendation #10 – Maintain foreign ownership restrictions on digital platforms to ensure Canadian access.

The government has expressed an interest in loosening restrictions against foreign ownership in telecommunications. The WGC will be participating in Minister Tony Clement's call for public consultation on different methods that could be used to loosen those restrictions. We will provide a detailed submission to that consultation. The WGC is very concerned that broadcasting remains in the control of Canadians to ensure that this important expression of our voice remains Canadian. Convergence is a fact and means that it is impossible to loosen

foreign ownership restrictions in telecommunications without affecting broadcasting owned by the same converged corporations.

In developing a strategy for a Canadian digital society it is essential that ownership of Canadian digital platforms stay in Canadian hands in order to ensure that Canadians have access to the digital world at competitive prices and speeds. Increasingly Canadians are turning to the Internet and mobile platforms for their information, entertainment programming, to access services and to stay in touch. A Canadian digital society must have that access guaranteed. Further, while the government has stated its intention to not loosen foreign ownership restrictions on Canadian broadcasting enterprises, this does not take into consideration that Internet and mobile companies are increasingly carrying entertainment programming to Canadians. Foreign ownership restrictions should be technology neutral and ensure that both the delivery of Canadian programming and services and Canadians' ability to access Canadian programming and services, are protected.

Skills Training

Recommendation #11 – Support skills training and entrepreneurship programs to help existing experienced knowledge-based workers take advantage of the opportunities provided by a digital society.

The WGC has, on its own initiative, started working on its own and with partners to provide its members with additional training and assistance so that they can take advantage of the opportunities that creating digital content can provide. We have been focused on two areas: 1) skills training to allow traditional screenwriters to work on digital content projects such as webisodes, videogames, interactive narratives etc. and 2) entrepreneurship and production programs so that screenwriters can become creator/producers of their own content to directly reach audiences. Screenwriters are excited by the new creative and business challenges and opportunities that digital technology provides. The WGC would welcome any government assistance in the area of skills training and/or entrepreneurship which might be made available. WGC members are highly educated knowledge-based workers who are well placed to take advantage of the opportunities in Canada and around the world that are provided by the digital society.

Conclusion

Our vision of Canada's digital society includes easy access to a variety of high quality professionally produced Canadian entertainment programming. The WGC's recommendations are all aimed at implementing that vision. There is an abundance of Canadian and non-Canadian user-generated content on digital platforms. The government has an important role to play in ensuring that Canadians have the choice of professionally produced high quality Canadian content on digital platforms as well.