

Writers Guild of Canada

Hearing on Canadian Broadcasting in New Media

Oral Presentation to the February 17, 2009 Public Hearing

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Check against delivery

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Canadian Broadcasting in New Media
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[Maureen Parker]

Good morning, Mr. Chairman, members of the Panel, Commission staff, Ladies and Gentlemen. My name is Maureen Parker and I am the Executive Director of the Writers Guild of Canada, a national association representing 2000 professional screenwriters many of whom are on the forefront of creating content for New Media. To my [left] is Rebecca Schechter, screenwriter and our President and Jill Golick, screenwriter, interactive writer and our Vice-President. Also with us today is Kelly Lynne Ashton, Director of Policy.

We are here today to urge the Commission to rescind the New Media Exemption Order and institute a regulatory framework that supports and encourages Canadian content on new media platforms. In the Commission's own study, Professor Noam explains the need for regulation saying: "none of the societal objectives will vanish just because television signals travel over digital pipes rather than analog airwaves".¹

¹ TV or Not TV, pg. 8

We will now address some of the issues raised in the Notice of Public Hearing.

[How Do You Measure Broadcasting Content in New Media]

Before we address the problem of measurement we need to take a moment to talk about definitions, specifically the difference between ‘linear’ and ‘non-linear video’. Linear video can be streamed television programs or made-for-new-media video such as webisodes. Viewing linear video is a passive experience. One of the early online successes for linear Canadian content has been the Degrassi webisodes. These are small standalone stories that enhance the TV viewing experience. Let’s take a look. [view clip] A fan starts on the Degrassi minisite hosted by CTV and clicks on Video to access the webisodes. This takes her to the CTV player. Here you see a pre-roll ad for an American show and then the webisode plays.

[Jill Golick]

With non-linear video, on the other hand, the viewer chooses from a limited number of options to navigate through a story. This is not synonymous with customization. Let’s take a look at ZOSTV.com. [view clip] The producers of ZOS call “Last Tango in Jadac” an ‘interactive fiction experience’. It isn’t a ‘webisode’ but

scripted audio-visual entertainment. It is a very controlled experience – hardly unique or customized.

Both linear and non-linear video fall within the Commission's definition of 'program' arrived at during the New Media Exemption Order deliberations. The Commission made the appropriate choice when it excluded only unique or customized audio-visual content.

We are sure that you are all familiar with the television show "Little Mosque on the Prairie". This season it launched "Little Mosque Online". We want to show you this example because rather than traditional menu navigation it uses the characters, with scripted and filmed dialogue, to offer the viewer their content choices. Let's take a look. [view clip] Each of these video clips offers you a choice. To access podcasts, webisodes, a curling game or an archive of recipes you click on one of the actors. From the perspective of the audience, the funders and the WGC, the 'program' is not the webisodes or the podcasts but the entire "Little Mosque Online" experience. Again, the Commission's definition works because it is expansive enough to include this type of content.

Before we address measurement there is one more consideration – we need to define original new media Canadian

content to ensure that we are measuring, promoting and funding truly Canadian programs. You cannot import television regulation wholesale when dealing with new media. So, the WGC proposes a new certification system for original new media.

Recommendation #1

We recommend that Canadian certified new media projects be Canadian-owned and produced, with at least 75% of costs spent in Canada and the top 5 highest paid creative positions held by Canadians.

Now let's address measurement. Linear video on new media platforms is easier to measure than non-linear video. Broadcasters are increasingly making television programs available online because the audience wants to get caught up with their favourite shows.

From that perspective, it makes little sense to exempt new media broadcast from traditional content regulation. For audiences there is no difference. However, as new media platforms are currently exempted, Canadian broadcasters have been free to feature their U.S. programming, not their Canadian content. We would like to illustrate this point by showing you a screenshot of CTV's home page. [view image] The video player promotes the

U.S. series “Lost”. Canadian shows are available but you have to work hard to find them, just like on television.

This problem is not just on the broadcasters’ own websites. On other platforms such as iTunes and YouTube we have the same problem with the broadcasters’ branded channels. Let’s take a look at the Treehouse iTunes channel. [view image] They are only selling their U.S. programming. By failing to put their Canadian programming on iTunes, Treehouse has cut the Canadian producers and creative talent out of a potentially lucrative revenue stream.

[Rebecca Schechter]

It is time for the Commission to rescind the New Media Exemption Order that allows broadcasters to do an end run around their Canadian Content obligations. When it comes to television shows on the web the content is identical and the same producers are dealing with the same broadcasters. Only the pipeline is different.

Recommendation #2 – Television Programming

We urge the Commission to set minimum Canadian content levels for streaming and downloading of Canadian television programs by Canadian broadcasters wherever their channels are hosted. We

recommend minimum Canadian Content levels for all sites of 60%, measured by time.

However, the length of a program is not an effective standard when measuring the volume of original new media content. The simplest method is to measure titles, excluding news, sports and content outside of the definition of program. This kind of regulation will not artificially limit the formats or lengths of content produced but will ensure that no less than 'predominant use' of Canadian resources is used in new media broadcasting.

Recommendation #3 – Original New Media Programming

We recommend minimum Canadian content levels for original new media content of 60% of available content measured by title.

In the online world, just like the traditional broadcast world, success is determined by both audience size and revenue. Because new media is exempted from regulation the broadcasters have no obligation to report on traffic or the advertising revenues earned from their sites. The Commission cannot effectively measure success or improvement if they do not have a baseline.

Recommendation #4

We urge the Commission to require detailed reporting from broadcasters regarding their new media activities.

[Impact]

Looking at impact, new media has lowered the barriers to new entrants into the broadcasting system. Just about anybody can set themselves up as a new media broadcaster. All you need is content, a hard drive and a good internet connection. At a time when the traditional broadcast system has become increasingly homogeneous due to consolidation, this has brought much needed diversity to the system.

The WGC is not advocating that the Commission extend its jurisdiction beyond the Canadian broadcasting system or to user-generated content. However we do see an advantage to allowing independent new media broadcasters to 'opt-in'.

Recommendation #5

We recommend an opt-in tier of new media broadcasters who choose to be licensed and therefore take on licensees obligations. In exchange they are in a position to trigger funding from the ISP levy or receive any promotion incentives that might exist.

[Kelly Lynne Ashton]

[Contribution]

We submit that the CRTC has the jurisdiction to impose a levy on the ISPs and the only issue is whether or not to do it. We have filed with the CRTC a legal opinion from McCarthy Tétrault, which supports our position.

S. 3(1)(e) of the Broadcasting Act says clearly that each element of the Canadian broadcasting system shall contribute appropriately to the creation of Canadian programming. The ISPs are a part of the Canadian broadcasting system not just legally but also because consumers have made them so. Audiences demand content on all media platforms. The ISPs have happily complied by upgrading their infrastructure and providing consumers with higher speeds and greater download allowances to accommodate video viewing. They have switched to graduated licensing so that consumers who want more video have to pay more. ISPs are earning greater revenues from being a part of the Canadian broadcasting system. They must contribute to it.

So how should the ISPs contribute? We believe that a levy on ISP revenues is the best approach. We commissioned a Nordicity study to examine how much such a levy would cost if it was based on a reasonable request. This study also looked at

what the levy would cost subscribers if the ISPs chose to pass it on. We have with us here today Stuart Jack from Nordicity and he will answer any questions on the methodology of the study.

A reasonable ask of 3% of certain ISP revenues would amount to \$97 million. There is a clear need for that money. The Bell Fund turns down two out of three applications for lack of funds. The CTF's \$2 million dollar new media pilot project ran dry in just six weeks. A levy would have an immediate impact on levels of Canadian content online. It would energize an entire industry, creating permanent jobs in a highly skilled sector and would provide Canadians with more choice.

For the ISPs who earned \$5.7 billion last year, 3% is peanuts. The ISPs should pay the levy directly and not pass it on to subscribers. The levy will generate more content. Consumers will need more bandwidth. Thanks to graduated licensing, rather than being an expense for the ISPs, the levy could actually generate revenue. Despite all the ISP hyperbole, a levy will not kill the Internet.

Recommendation #6

We recommend therefore that the Commission create a class of broadcasting undertaking called an “ISP New Media Broadcasting Undertaking”, for whom a

condition of licence would be a contribution to Canadian new media programming of 3% of certain revenues.

[Maureen Parker]

[Visibility and Promotion]

Although a new ISP levy is a start it is not enough. Too few Canadians know about the existing Canadian online content. Access is meaningless if it is not effective access.

Recommendation #7

We propose that 10% of the money from the new ISP levy be allocated as an incentive payable to broadcasters who promote and provide effective access to Canadian content on new media platforms.

The funds would only be given to broadcasters who have improved traffic to Canadian content online. The funds would be used for inhouse production of new media programs.

[Exemption Order]

Once again, we urge the Commission to rescind the Exemption Order and develop a regulatory framework containing the elements that we have recommended.

[Conclusion]

Even in a digital universe we look to the CRTC to ensure that Canadians can choose to watch Canadian programs. The method of delivery is irrelevant. The ISPs are looking for a legal loophole to avoid their responsibilities under the Broadcasting Act. Their future is secure. What hangs in the balance is Canadians' ability to choose Canadian Content. The time to act is now.