



December 5, 2008

FILED ELECTRONICALLY

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage
Hull, Québec J8X 4B1

Dear Mr. Morin:

Re: Broadcasting Notice of Public Hearing CRTC 2008-11 – Notice of consultation and hearing to consider the issues pertaining to Canadian broadcasting in new media (the “Notice”)

Please find enclosed the submission of the Writers Guild of Canada in connection with the above-noted hearing. WGC wishes to appear at the public hearing scheduled for 17 February, 2009 to further elaborate on the points raised in this submission and to provide further detail to the Commission of its proposals contained herein.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Maureen Parker'.

Maureen Parker
Executive Director

Executive Summary

1. These comments are filed by the Writers Guild of Canada (“WGC”) in connection with the above-noted Notice of Public Hearing calling for comments on a review of the issues pertaining to broadcasting in new media. The WGC is the national association representing 2000 screenwriters working in English-language film, television, radio and digital media production in Canada.
2. As audiences around the world have evolved, so have Canadian audiences evolved. Canadians want more high quality content which they can view at their convenience on the platform of their choice. They no longer see television, the internet, radio and mobile as distinct platforms with different content. Most importantly for this proceeding, they want to be able to choose Canadian programming on those platforms¹.
3. As the Canadian broadcasting system has evolved to take advantage of new platforms so have screenwriters evolved to take advantage of new forms of storytelling. The original new media added content, as well as new media distribution, are no longer an after-thought but are being thought out and planned simultaneously with the creative and business development of the television program. As the audiences and content creators are thinking of media as truly cross-platform in content, distribution and revenue, so should Canada’s regulator. Together, all Canadian broadcasting content regardless of which platform it was first created for, should be measured against the goal of fulfilling the policy objectives set out in the Broadcasting Act. All stakeholders responsible for creating, producing, distributing and transmitting that content to Canadians must be assessed for the reasonableness of their contribution to the Canadian broadcasting system.
4. There was a time when new media in Canada was experimental and needed room to grow and develop without regulation. That time is past. We are now at the stage where the Canadian new media sector is rich and vibrant but risks being overwhelmed by the U.S. new media sector if it is not encouraged. In fact, the Commission may hear from other stakeholders that the Internet is encroaching on their traditional broadcast audiences and advertising revenues. This position is not consistent with the fact that, as we demonstrate from a review of Canadian broadcasters’ websites, they are actively pursuing the online audience and accompanying revenues. The Canadian appetite for entertainment is growing rather than shifting and will continue to do so. During recessionary periods Canadians are more likely to stay home with their multiple screens than spend their entertainment dollars outside the home. Broadcasters are taking advantage of the opportunities that this trend provides by programming for all platforms

¹ Harris-Decima poll commissioned by WGC, ACTRA, DGC and CFTPA and conducted January 2008 found that 84% of Canadians felt that the federal government should work to ensure that Canadians have Canadian content choices available to them on all media platforms.

and will continue to do so. With support Canadian new media can be an equal partner to traditional broadcasting, helping to fulfill the social policy goals of the *Broadcasting Act*.

5. As you will see from our submission and the accompanying legal opinion from McCarthy Tétrault, we assert that not only does the Commission have jurisdiction over new media broadcasting but that it also has jurisdiction over the Internet Service Providers (ISPs) and Wireless Service Providers (WSPs) who deliver new media broadcasting to Canadians. As such the Commission should expand its regulatory oversight of the Canadian broadcasting system to effectively create a regulatory framework to support Canadian new media broadcasting in a way that is complimentary to traditional broadcasting. This would entail rescinding the New Media Exemption Order and issuing instead a policy of obligations and incentives that would support and encourage a healthy Canadian new media broadcasting system. The policy would also contain clear exemptions for those areas of new media which are outside the CRTC's jurisdiction, such as non-commercial user generated content and websites and wireless content that does not support the Canadian broadcasting system either in fact or by choice.
6. The WGC makes the following proposals as part of the Commission's new media broadcasting regulatory framework:
 - There are three tiers of new media broadcasting:
 - New media broadcasting that directly supports the Canadian broadcasting system (i.e. owned, operated or affiliated with traditional broadcasters)
 - Opt-in new media broadcasting licencees who accept jurisdiction and obligations in exchange for funded programming (i.e. the benefits of jurisdiction)
 - All other new media broadcasting outside CRTC jurisdiction (for now) and subject to a continued exemption order
 - CRTC jurisdiction excludes programming not made with a commercial intent.
 - Adopt a more detailed Canadian Content certification system for new media programming that requires that the top 5 creative participants are Canadian in addition to the program being owned by Canadians, produced by a Canadian and 75% of the costs spent on Canadians. This proposal will ensure that not only is Canadian new media broadcasting Canadian-owned but that the creative is truly Canadian as it has been created by Canadian talent.
 - ISPs and WSPs should make an appropriate contribution to the creation of Canadian programming.
 - There should be incentives to encourage broadcasters to promote and feature Canadian new media programming. It is insufficient to merely fund Canadian new media programming; Canadians must also be able to find it on new media platforms.

7. Canadians want the choice to have more Canadian new media programming but based on the current status of new media broadcasting in Canada, market forces alone will not ensure that choice. As with traditional broadcasting, the social policy goals of the *Broadcasting Act* require intervention. The CRTC has the opportunity to be creative and provide for a flexible regulatory framework which will adapt to new media broadcasting as it inevitably evolves. The WGC encourages the Commission to be bold and pledges to work with the Commission to develop these general proposals into distinct policies. Canada has the opportunity to lead the world in appropriate regulation and support of domestic new media broadcasting.

Introduction

1. WGC members are the creators of Canadian stories including digital productions such as *Little Mosque on the Prairie* podcasts and webisodes, feature films like *Passchendaele*, indigenous dramatic series such as *Flashpoint* and *Robson Arms*, and children's programming such as the *Degrassi* series. The WGC is committed to building a strong and vibrant broadcasting and film industry firmly supported by a healthy independent production community.
2. WGC filed a submission in response to Broadcasting Public Notice CRTC 2008-44 (call for comments on the scope of a future proceeding on Canadian broadcasting in new media) which provided WGC's perspective on potential approaches to overseeing Canadian new media broadcasting. We identified several issues relevant to the new media environment which the Commission should address (in addition to the questions identified in Public Notice 2008-44).
3. New media broadcasting content is an important element of the Canadian audio-visual industry. As discussed in the CRTC-produced document, *Perspectives on Canadian Broadcasting in New Media* ("**Perspectives**"), "Audio and video new media broadcasting content is becoming increasingly available and the amount continues to grow as Canadians demand more from the devices and services they adopt".² As this environment continues to grow however, Canadian new media broadcasting content will have to compete alongside new media content produced throughout the world. Therefore, the WGC remains committed to ensuring the continued development of a Canadian new

² *Perspectives*, para. 84.

media industry that showcases the talents of the Canadian English-language creative community on all platforms.

4. Therefore, the WGC is keenly interested in the CRTC's call for comments on the questions posed in this Notice.
5. WGC gave careful review to the "preconditions" stated by the Commission in Broadcasting Public Notice 2008-44 which would, in the Commission's view, suggest the need to review the environment for broadcasting in new media. The Commission listed the following pre-conditions:
 - insufficient levels of Canadian content on the Internet;
 - evidence that the new media environment is having an impact on various aspects of the business model of traditional broadcasters; and
 - increased availability of high-quality video programming on the Internet.
6. In addition, the Commission highlighted developments in the environment for broadcasting in new media since the issuance of the Broadcasting Public Notice 1999-84 ("New Media Exemption Order") in 1999, including:
 - increases in national broadband connectivity;
 - increased availability of audio and video broadcasting content in new media;
 - Canada's participation in the creation and distribution of professionally produced broadcasting content in new media; and
 - evolving business models for broadcasting in new media.
7. The WGC firmly believes that the broadcasting landscape in Canada and around the world has changed substantially since 1999 and it is appropriate to now be reviewing the role of 'new media broadcasting' in supporting the Canadian broadcasting system. Each of the foregoing developments may warrant some Commission action to oversee new media, even if all of the pre-conditions identified above have not been satisfied. This is explained in more detail, below, in WGC's response to the Commission's Questions set out in the Notice of Public Hearing.

Questions

I. Defining broadcasting in new media

Q.1. Does the Commission’s interpretation of broadcasting in new media continue to be correct and are the proposed clarifications, in the paragraphs above, of this interpretation appropriate, complete and comprehensive? If not, how should the Commission’s interpretation change?

8. The WGC is pleased to note the Commission’s preliminary view that “whether or not content qualifies as “broadcasting” should not be affected by the specific mode of transmission. Rather, the definition of broadcasting should properly be neutral with respect to the means of transmission, that is, it would apply in the new media context to content that is downloaded, streamed, transmitted peer-to-peer, etc”.³ WGC’s comments in the Previous Notice embraced such a neutral approach. Therefore, the WGC supports the Commission’s current clarification of what constitutes broadcasting in new media.
9. The Commission found in the New Media Exemption Order that services which involve significant user customization do not fall within the scope of the definition of broadcasting, as these types of services do not involve the transmission of “programs” for reception by the public. The WGC submits however, that the Commission needs to clarify the meaning of “significant user customization”. As the popularization of new media continues to grow, viewers will expect greater online interactive experiences. Therefore, it is important to note that interactivity between the user and the program is not synonymous with customization.
10. In the New Media Exemption Order the Commission found that where interaction was the creation of “uniquely tailored content” or experience then the transmission to the public was not broadcasting.⁴ Where a game provides an illusion of a custom-tailored experience but in fact provides a limited number of optional paths it cannot reasonably be described as “uniquely tailored content”. For example, in the game that supported the first season of *The Border* on CBC.ca (which is no longer available online), the viewer experienced a video interrogation by characters of the show, which in turn advanced the play in the game. Regardless of how questions were answered, the result was one of either two story paths, involving fixed characters available to each and every member of the public with no variation. Therefore, there are a limited number of experiences which will be shared by all members of the audience. Hence such programs arguably fall within

³ Notice at para. 22.

⁴ New Media Exemption Order paragraph 45.

the definition of broadcasting. The WGC has applied that interpretation throughout this submission.

11. Further, in its submission to the CRTC on July 11, 2008 in response to Public Notice CRTC 2008-44 the WGC stated that the Commission should resist applying the distinction that some parties are making between “streaming” and “downloaded” content as an analogy for “traditional broadcasting” and transactional (retail activity), such that the latter would fall outside of the definition of “broadcasting” in the Act⁵. WGC noted that the phrase “for reception by the public”, which is included in the definition of “broadcasting” found in section 2 of the *Broadcasting Act* (the “Act”), should depend on the characteristics of the specific content being delivered, rather than *the manner* in which it is being received.
 12. However, it is clear to WGC that, since the Commission established the definition of new media broadcasting during the New Media Exemption Order, a slightly more nuanced approach may now be warranted. In that regard, given the proliferation of full high-quality video content through the worldwide web, many web sites offer significant quantities of video content available “on-demand”. While a given page on a content provider’s web site may not be “broadcasting” (as such page may comprise predominantly alphanumeric text and therefore be outside of the definition of “program”), nevertheless much of the broadcasting content embedded in the entire website may comprise “programs” and, therefore, be “broadcasting” under the Act.
 13. Therefore, it will be important for the Commission to provide more interpretive guidance with respect to the scope of “broadcasting” in new media given the developments over the last decade since the Commission last reviewed its approach to exempting new media. WGC is of the view that a set of “interpretative guidelines” to assist stakeholders would be useful.
- Q.2. Given that the Commission has clearly articulated that it is not concerned with user-generated broadcast content, to what type of broadcasting content in new media should the Commission pay particular attention? For example, should the Commission draw a distinction between professional versus non-professional content, or content aimed at commercial versus non-commercial use? If so, how should the terms be defined?**

⁵ Public Notice CRTC 2008-44 at para 23.

14. The Commission has stated that it does not wish to exercise jurisdiction over User Generated Content (“UGC”) on new media platforms. The question is however how to define UGC and where to draw the line. This is now a difficult question because it is so easy for anyone to create video entertainment and post it online. The quality of what used to be thought of as ‘home video’ is increasing. Professionals are creating their own content rather than waiting for a paid job.⁶ The lines have blurred to such an extent that new acronyms are popping up to describe this phenomenon. Semi-Professional User Generated content has been called “SPUG” by Heavy.com⁷, an online video channel. Heavy.com monetizes both professionally produced and ‘amateur’ video, turning that amateur video into ‘semi-professional’ video at the request of the producers through the creation of a revenue stream based on advertising.
15. In the world of television, professional is distinguished from amateur on the basis of professional engagement. For example, status as a professional screenwriter under the WGC is based on having a contract for writing services. In the digital media world it is not as simple when video can be created ‘at home’ with the intention to make money through online advertising. Many sites now exist to share videos amongst a very wide audience with advertising embedded in various ways.⁸ Videos can then be shared from site to site through various feeds, all while maintaining the advertising and collecting eyeballs along the way.
16. The WGC encourages the Commission to implement flexible policies that will remain valid in a constantly changing environment. We therefore think that it would be too simplistic or restrictive to exclude content on the basis that the creators were not engaged and paid money to create the content. New business models have emerged that encourage both professionals and amateurs to create their own content and earn revenues from its exploitation. Content should also not be excluded on the basis that the content was created or uploaded outside the Canadian broadcasting system as content is or can move fluidly in and out of the broadcasting system.
17. There are also other forms of revenue generation which need to be considered. While embedded advertising or sharing of subscription revenue are directly attributable to the

⁶ See <http://www.drhorrible.com> for an example of online video which was created by professional writers, actors, director and crew on their own time and with personal resources during the Writers Guild of America strike. Note that it is being marketed directly to the audience through the website and on iTunes.

⁷ <http://www.heavy.com/>

⁸ Sites like Revver (<http://www.revver.com>) and iThentic (<http://www.ithentic.com>) solicit ‘independently produced’ videos, add advertising to them and share the revenues with the producers. Note also <http://www.strike.tv> which was set up during the Writers Guild of America strike as a way for professional screenwriters to create and monetize their own content.

content, other models present content as ‘free’ to the consumer but are monetized through banner advertising and similar funding. In fact there is constant experimentation with ways of presenting content as ‘free’ but still finding a way for someone to make money from the experience. Broadcasters tend to control the advertising revenue from their websites but at times producers have been able to negotiate a share of those revenues which have been generated by their content (eg. banner ads on the pages containing the producer’s content). As well, broadcasters are looking at this content as a way to maintain their television audience and television ad revenue. These forms of revenue can be referred to as ‘indirect’ revenue generation.

18. A flexible approach and one which seems to better support the goals of the *Broadcasting Act*, would be to focus on the *intent* of the creators. Among the questions are: Is there a commercial goal to the creation of the content? Is the creator directly or indirectly trying to earn revenue from the exploitation of the content? Have they uploaded it to YouTube for all to watch with no thought to compensation for themselves (eg. the large number of videos of puppies chasing each other or cats falling off dressers)? Or are they trying to make money by uploading it to any of the sites which are offering a split of advertising revenues? Or is it content that has been licensed by a broadcaster (with or without an ongoing share of revenues)?
19. If the definition is limited to actual or intended revenue generation, which can be jointly referred to as ‘commercial’ content, then any of the ‘non-profit’ category of content, ie UGC, can be part of the Canadian broadcasting system without being regulated or having a right to funding. In practical terms that means that in any quota system or a system of promotion incentives, broadcasters can earn credit for commercial content but not UGC and that only the commercial content could apply for development or production funds. It would also mean that adding banner ads to a page of UGC would not make that content commercial unless that UGC was produced with a commercial intent. This seems appropriate. Casting the net wider to give access to funding and promotion to content created by amateurs that is commercial in intent lowers barriers to entry and encourages a wide diversity of programming that reflects the varied interests of Canadians. Intent can be clarified in terms of service and warranties when content is submitted.

II. The significance of broadcasting in new media and its impact on the Canadian broadcasting system

Q.3. How has broadcasting in new media and the corresponding business models evolved since the issuance of the exemption order for new media broadcasting undertakings

and mobile television broadcasting undertakings? What role can broadcasting in new media be expected to play in the future, as part of the Canadian broadcasting system?

20. There is little doubt that new media is taking on increasing significance within the broadcast industry. As discussed in *Perspectives*, since the issuance of the New Media Exemption Order “the new media broadcasting landscape has undergone significant changes. Ongoing technological advances, the availability of high-speed Internet and Canadians’ continued adoption of new media broadcasting technologies highlight the rapidly evolving new media environment”.⁹ The CRTC further articulates that “research indicates a trend among many demographics towards consumption of broadcasting everywhere and anytime and available on various platforms, including the personal computer and mobile devices”.¹⁰
21. In the CRTC’s 1999 New Media Exemption Order, the Commission noted its expectation that the exemption would buoy the growth and development of the new media industry. Indeed, as discussed in *Perspectives*, “A variety of new media broadcasting business models continue to evolve for radio and television broadcasters, content providers, and distributors. Various revenue-generating models are evolving to capture an increasing amount of advertising revenues”.¹¹ Some of these revenue-generating business models include distribution through Internet platforms and mobile phone protocols, which can provide revenue by streaming content that is supported by advertising, subscription-driven streaming and rented content that will expire over time.¹²
22. As can be gleaned from the above, since the creation of the CRTC’s 1999 New Media Exemption Order, the business of new media has grown rapidly. It is therefore vital that the Commission remain flexible in its decision to oversee various aspects of this industry. As advertisers continue to delve into the area of new media, broadcasters are increasingly adding content to their websites and packaging this material with various programs already seen on conventional platforms.
23. Recently, the popular website *YouTube* has signed deals with both *MGM* and *CBS*, which will allow viewers to watch full-length television shows and movies. This indicates that portals generally associated with UGC are increasingly becoming access points for traditional media. The current trend by broadcasters is to put an increasing amount of

⁹ *Perspectives* at para. 1.

¹⁰ *Ibid* at para 3.

¹¹ *Ibid* at para. 121.

¹² *Ibid* at para. 128.

full-length material online. So, as the line between the Internet and conventional television begins to dissolve, the CRTC must take a fluid approach to the question of new media regulation, otherwise, the Commission could find itself in the difficult position of reacting to technology, rather than adapting to it.

24. The WGC has also paid close attention to the growing trend of television broadcasters seeking to buy television and internet rights as a bundle.¹³ These activities raise issues with respect to activities of licensed broadcasters and the application of the broadcasting policy objectives under the Act. The WGC is concerned with the scenario in which broadcasters obtain exclusive licensing of content and then choose not to “use” this property within the new media spectrum. The WGC is hopeful that the ongoing Terms of Trade negotiations between the Canadian Film and Television Production Association (“CFTPA”) and various broadcasters will solve this problem by providing for reversion if rights are not used as well as other provisions that will help to protect the rights markets and revenue streams.

25. As discussed in the research paper, *Exploring the Convergence and Collision of Traditional and New Media*, submitted by Two Solitudes Consulting in response to Broadcasting Public Notice CRTC 2008-44 (“**Convergence and Collision**”): “If a broadcaster does not wish to make the content available in other ways they should not obstruct this by precluding others from having the opportunity to service these consumers...such practices also do a disservice to the content creators and others in the value chain”.¹⁴ This practice precludes independent producers from distributing their content on new media platforms and denies consumers the opportunity to enjoy the content on their own terms.

26. There is a demonstrated trend towards the consumption of broadcasting content everywhere, anytime, and on multiple platforms. As already argued by the WGC in response to Public Notice 2008-44, “the foregoing “demand side” developments, where audiences are increasingly seeking access to content on various platforms, needs to be tempered with a “supply side” analysis, to ensure that the objective of ensuring sufficient availability of high-quality original Canadian new media broadcasting content is met”.¹⁵ As the new media environment continues to grow throughout the world, various stakeholders, including broadcasters, have the opportunity to distribute new and exciting new media Canadian content, which has the potential of producing significant new

¹³ *Ibid* at para. 123.

¹⁴ *Convergence and Collision* at para. 28 and 29.

¹⁵ *Previous Notice* at para. 11.

advertising revenue opportunities. As we demonstrate in this submission, broadcasters are already starting to take advantage of these opportunities.

27. One of the key aspects in which broadcasting and new media and the corresponding business models have evolved since the Commission's exemption order was issued for new media broadcasting undertakings and mobile television broadcasting undertakings relates to the technological developments with respect to "geo-blocking" in which packets with certain IP addresses can be denied either access to or from certain servers. As we note below (see response to Question 14), technological strategies such as geo-gating and geo-blocking have been used to bring more order to the new media broadcasting sector which is beginning to replicate more traditional broadcasting markets.
28. In the research paper "TV or Not TV: Three Screens, One Regulation?" by Professor Eli M. Noam ("The Noam Study") which was commissioned by the CRTC, Noam points out that geo-blocking has been a useful commercial tool for media companies to seek segmentation in global markets in order to "price discriminate", a common strategy employed by media companies to maximize revenues from exploiting content in different markets. As Noam points out, the alternative to mandated geo-blocking is for the rights holder to create its own segmentation system by establishing its own servers all over the world and thereby setting different prices using such facilities. Paradoxically, this suggests that there is a "confluence of interest" for geo-blocking as a concept amongst established media companies, national regulators, national cultural advocates and the foreign content producers. The Commission should establish policies in new media which not only not impede but foster these developments.
29. The significance of these developments in the business models governing new media is that technological solutions exist to ensure the continued territorial integrity of broadcasting, even on "second and third TV screens" (Noam). There are multiple examples of such developments in the Canadian market. In fact, each season Canadian broadcasters take greater and greater strides into the online world. For example, Global has nine television series on-line available for full episode broadcasts. Two are Canadian drama series, *The Guard* and *Da Kink in My Hair*. It has not been long since Canadian broadcasters had no access to U.S. series on-line. They would not have been licensed to the Canadian broadcaster for fear of impacting the feed off of the U.S. website. As recently as 2007, Canadian broadcasters only made one episode at a time available for online viewing. More recently multiple episodes have been made available to audiences (e.g. all of the current *Heroes* episodes up to the last one broadcast, or all of last season's

episodes of *The Guard*). Broadcasters have learned that this is an effective way to retain audiences in an increasingly competitive environment.

30. The tools exist to not only retain audiences but grow them. CTV's player (which is used on each CTV owned website, ie Comedy, Space, Discovery etc.) allows users to share the clip or episode on social networking sites like Facebook or by sending the link to a friend in an email or embedding the link in a blog or web page. This kind of viral activity encourages user enjoyment of the content but continues to maintain the brand as users are always aware that they are watching a CTV (or Space or Comedy etc.) television show, driving them back to the broadcast platform.
31. Audiences want to do more than just watch a television show online and catch up with their missing episodes. They want to learn about the characters and the production team. They want to discuss their favourite parts in forums. They want to demonstrate their fandom with downloads of screensavers and wallpaper, ringtones and instant messaging icons. They want to play games and interact with the characters. And broadcasters are increasingly learning that if they do not create a place on the broadcaster site for them to do it – the fans will build their own fan site location.
32. Fans are clearly looking for content that will extend their experience. To some extent they will always create their own content and in the tradition of the *Star Trek* audience they have created content-rich sites with the approval of the copyright owners. It is interesting to contrast the depth of core content on the Sci-Fi channel's site in the U.S. for the Canadian *Stargate* programs with what is on the Canadian broadcaster's site on Space. SciFi has full episodes, trailers, behind the scenes videos, downloads of wallpaper and IM icons, quizzes, a production blog, image gallery and discussion forum. Space has character and talent bios, short episode descriptions, photo gallery, a couple of wallpaper downloads, a couple of trailers and a not very popular discussion forum. Currently a fan of *Stargate* looking for more content will go to the U.S. site.
33. Another new development is paid download of television programs. The main vehicle for paid downloads is iTunes. Through iTunes Canada consumers can download to any device and pay for full episodes of U.S. and Canadian television shows. Viewers can download missed episodes and keep up with a series. Old series can be given a second life. Currently on the CBC channel of iTunes viewers can chose between dramas like *Heartland* and *The Border*, comedy shows like *This Hour Has 22 Minutes* and even previously cancelled shows such as *jPod*. Viewers can buy all 3 seasons (or just the episodes they missed) of *Robson Arms*. Viewers are referred to the broadcast schedule

from the iTunes store. This opens up new revenue opportunities to broadcasters and creators.

34. Another small but growing opportunity is mobile broadcasting. Through mobile broadcasting mobile carriers such as Bell or Rogers effectively act as Broadcasting Distribution Undertakings (“BDUs”) by packaging a selection of broadcast channels which they offer to their subscribers. These channels are not video downloads but a distinct stream of broadcasting which subscribers can watch on particular handsets. As well, mobile users can access online video through their mobile browser without subscribing to a mobile broadcasting plan.
35. At the time that the Commission decided to extend the New Media Exemption Order to mobile broadcasting¹⁶ the Commission determined that the technology was limited, the audience was limited and there were plenty of Canadian services available. In fact, the Commission quoted MTS Allstream’s submission that services delivered over mobile phones “are likely to develop into distinct formats that have a high local and Canadian character”.¹⁷ The technology is no longer so limited and mobile broadcasting is slowly growing. Jupiter Research estimates 12 million users worldwide in 2007 with an estimated growth to 330 million by 2013.¹⁸
36. In terms of the number of Canadian services available, Rogers offers 24 channels in its package but only 10 of them are Canadian. Bell has a different model with a basic package of 11 channels, 8 of which are Canadian and a premium package of 9 channels, all of which are not. The options for ‘watch what you want when you want’ viewing are limited and definitely skew to American programming like *WWE mobile*, *Fox News* and a *South Park* channel. This is likely very cheap programming to broadcast with few rights payments necessary. It is not offering Canadian audiences much in the way of choice.

Q.4. Who are the relevant players in the creation and distribution of Canadian broadcasting content in the new media environment? How are they performing financially and how are they contributing to the creation and distribution of Canadian broadcasting content in new media today? What can be expected in the future?

37. The WGC focus is on the role of the writer in both original content for new media platforms and the distribution of traditional broadcasting on new media platforms. First,

¹⁶ PN CRTC 2006-47 Regulatory Framework for Mobile Broadcasting Services

¹⁷ Ibid, paragraph 44

¹⁸ TV on the Go whitepaper by Jupiter Research

under the collective agreement between the WGC and the CFTPA governing independent productions, television programs may be distributed online provided that any revenues from such exploitation flow into the global pot of gross revenues. The WGC therefore supports the CFTPA in its endeavours to obtain Terms of Trade agreements with broadcasters to secure consistent terms for exploitation of online rights and to prevent broadcasters from bundling those rights with broadcast at no additional costs. While business models are still being developed it is clear that it is possible to generate revenue from new media platforms, either from advertising or download to own. All participants in creating and distributing the content must be in a position to share in that revenue.

38. The role of the writer in original new media broadcasting content can be very different depending on the project. If the project is a webisode, such as *Degrassi minis*¹⁹, then the production is developed and produced like traditional television. The writer writes a script with the usual phases of development - in this case a 2:26 minute script. As it was intended for a small screen there are generally only a few characters (see “Queen Bee” which has two main characters, two smaller roles and a few extras) and one location. In fact, in order to accommodate the smaller screen and lower budget, screenwriters advise us that it is actually harder to write a mini than a full episodic script. A smaller than usual crew is used to shoot it.
39. However, if the content is some other form of new media content then the writer’s role will vary depending on the project. The writer’s job description and title will differ. But there will always be someone who puts pen to paper, or rather fingers to keyboard, and using words rather than images, describes what is going to happen in the audio-visual production with character, plot, action and dialogue.
40. The best way to describe how this works is through example. Visit *Little Mosque Online* on the CBC website.²⁰ The website has both ‘traditional’ and more evolving online content. Upon entering the site the home page introduces each section with short filmed introductions of each character describing their section of the site. These introductions would be scripted. The first section is ‘The Fred Tupper Show’. These are podcasts, or audio files, in the format of Fred Tupper’s radio show seen on the television series. They can be downloaded from the site on to the audience’s computer and listened to whenever and as many times as the audience wants. This is scripted material. The next section, ‘I on Mercy’, is a set of traditional webisodes in the format of community access television interview show with two characters. Also scripted material. There is a curling game

¹⁹ <http://www.ctv.ca/mini/degrassi2006/Video4.html> - note that the *Degrassi minis* were originally created for mobile download so the quality is not as good as the near broadcast quality of the full episodes in the CTV player.

²⁰ <http://www.cbc.ca/littlemosque>

using characters as players. There are minor scripted elements wrapped around the game. For example, when the game ends the character you had selected congratulates you on a job well done in a short video clip. 'Fatima's Recipes' is the final section and it has web copy (recipes and other text wrapped around the recipe). Often the web copy such as in the recipe section is written by someone other than the writer engaged for the scripted elements. The web copy is outside WGC jurisdiction and requires a different skill set.

41. As with the curling game, it can be difficult to separate the scripted elements from the purely interactive or game elements. The audience does not make that distinction but sees the entire online property as an extension of the television program. The broadcaster, the producer and the funder also look at the entire property as a new media program. We encourage the CRTC to take the same approach when reviewing new media broadcasting.
42. In the development of an interactive property like *Little Mosque Online* writers from the television show or the showrunner might attend creative meetings with the interactive team to throw around ideas that would be consistent with the television series. The interactive team would include (by different possible titles) someone who oversees the production, someone who is in charge of the programming and someone who is in charge of the design. There may also be someone who is specifically a game designer or a navigation expert. They will work with the producers and writers to develop a concept that supports the television experience. They will then develop a design document which is the blue print for the production of the new media components, explains the creative and the programming required to implement it. A writer may be involved in this stage to ensure continuity between television and new media. Then, during production, the writer is engaged to write their component of the overall new media project, generally using the traditional phases of development: outline, first draft, final draft and polish.
43. The above examples illustrate how new media content creators are responding to audiences who are looking for more and richer online experiences. As the number of hours of online activity increase, broadcasters seek to keep viewers from leaving the broadcasting system entirely. It is no longer enough to just post episode descriptions, character and crew biographies and a broadcast schedule if a broadcaster wants to retain those eyeballs for their brand and for their advertisers. Rich online experiences require a greater participation from the television creative team in order to ensure that the television audience's demographic is being respected and the brand is being consistently extended.

Q.5. How are traditional Canadian broadcasting undertakings adapting to new media and what is the impact on their business models?

44. According to *Perspectives*, Canadians spent the greatest amount of time online in comparison to users in the United States, United Kingdom, and Brazil.²¹ In turn, Canadian advertisers have embraced new media platforms. In 2007, for example, total spending in Canada on online advertising surpassed \$1.2 billion.²² Therefore, it should come as little surprise that traditional Canadian broadcasting undertakings have embraced this new environment and have successfully used new media to promote their current programs and provide interactive content based on these shows.
45. For example, according to the CRTC-commissioned document, *Changing channels: alternative distribution of television content* (“**Changing Channels**”) written by Alan Sawyer of Two Solitudes Consulting, 25% of CTV’s main network primetime programming is also available for full-episode streaming on the Internet²³. These streams are being monetized through embedded advertising generally preceding the program which, unlike with PVR’s, the viewer cannot skip past. TVA, CBC, and CTV currently offer some form of live streaming – either through the practice of simulcasting their broadcast signal over the Internet or offering programs previously broadcast “on-demand”.²⁴ For example, as mentioned above, the Canadian show *Degrassi: The Next Generation* is currently available on both the Canadian and U.S. iTunes store at a purchase price of \$1.99 per episode.²⁵ As mentioned above, broadcasters are available on mobile broadcasting, a small but growing part of the Canadian broadcasting system, both through downloads to your phone but also streaming. It is clear that Canadian broadcasting undertakings are adapting well to the advent of new media.
46. The other evolving area is the development of additional content to further the broadcast experience on the new media platform. Most of this content supports specific programs but other content is completely original and supports the broadcaster directly. For example, TVO and YTV both have content related to their hosts in their kids’ blocks. YTV also has *The Big Rip* for massive multiplayer games for kids, unrelated to any TV series. TMN’s video player has the original *Sanctuary* webisodes which were converted and expanded to become the series currently playing on TMN. CBC has funded

²¹ *Perspectives* at p. 35.

²² *Interactive Advertising Bureau of Canada*

²³ “Changing Channels: alternative distribution of television content” by Alan Sawyer, Two Solitudes Consulting on file with the CRTC at <http://www.crtc.gc.ca/eng/media/rp080606.htm> at p. 25.

²⁴ *Ibid* at p. 24 and 37.

²⁵ *Ibid* at p. 42.

programming that is too 'edgy' for broadcast and instead distributes it through content aggregators such as YouTube.²⁶

47. It is clear from the above that broadcasters are experimenting with various forms of new media content and platforms. Still, while there are countless websites that contain new media content, there are few sites that consumers actually go to. Therefore, if Canadians are going to remain competitive within this sector, the Commission must create incentives or initiate regulatory measures to ensure not only a wide breadth of Canadian new media content, but new media content that is of a quality that will attract viewers to programs within the Canadian broadcasting system.

Q.6. What is the current availability of Canadian broadcasting content in new media? Are there challenges related to business models with respect to the creation and distribution of Canadian broadcasting content in new media?

48. Despite the rapid adaptation by broadcasters to the new media environment, the WGC is concerned that much of the new media broadcast content available is, "for the most part, repurposed from a form intended to be exhibited on television and radio platforms. Traditional broadcasters use new media to promote their programs, allowing viewers to "catch up" on missed episodes and providing additional information about the programs".²⁷
49. Changing Channels sets out an analysis comparing new media content on Canadian and U.S. broadcaster websites in January 2008. Of the U.S. broadcasters examined, 100% of them had online video while only 72% of the Canadian broadcasters had online.²⁸ 100% of domestic television programming was available on the U.S. broadcasters but only 72% of domestic television programming was available on the Canadian broadcaster websites. 94% of U.S. broadcaster websites had ancillary content related to their domestic programming online while only 44% of Canadian broadcaster websites had such ancillary content available. In the comparison of availability of private broadcasters' prime time full episode content online, every U.S. private broadcaster had more of their prime time line up fully available online than every Canadian broadcaster.²⁹

²⁶ See "Digital Media: CBC Turns Online Focus to Existing Brands, Playback Magazine, November 24, 2008

²⁷ *Perspectives* at para. 162.

²⁸ More than any other stat this one has probably changed. After a quick survey of Canadian broadcasters it appears that all have some sort of video player. However it still demonstrates that Canadian broadcasters are behind their U.S. peers in the online world.

²⁹ NBC, the lowest U.S. broadcaster, had only 52% of their prime time schedule online but CTV, the highest Canadian broadcaster, had 24%.

50. The foregoing comparison demonstrates two things. The first is that Canadian broadcasters are behind the U.S. broadcasters in terms of providing their television audiences with both added content online and the ability to view programming online. The second is that if Canadians cannot get the experiences that they are looking for within the Canadian broadcasting system then they may go elsewhere. Therein lies the biggest danger if there is a lack of support and development of Canadian new media broadcasting. Viewers who are interested in the additional content for shows may choose to experience the additional content on the U.S. broadcaster site (eg. a *Flashpoint* site on CBS rather than on CTV) or follow U.S. programming instead of the Canadian programming because of the added content available (e.g. *Pushing Daisies* on ABC rather than *Heartland* on CBC).
51. As noted above, the vast majority of online video is geoblocked. As mentioned above this preserves distinct territorial markets between broadcasters and advertisers. However, broadcasters cannot rely on these technological developments alone. It is imperative that they develop strong brands known for added online content as well as ‘on demand’ content in order to maintain customer loyalty and viewership.
52. At the recent Canadian Association of Broadcasters convention, Phillip Graf, Deputy Chairman of the UK’s Ofcom Board explained that the BBC’s iPlayer, which allows BBC licence fee payers (in the UK) to watch the last seven days of BBC broadcast on their PC, has had the effect of increasing the broadcast audience. The ability to get caught up on ongoing series increases the audience’s engagement in the program. It must also strengthen the BBC’s brand and keep the audience within the broadcast system even when they are online.
53. There are of course challenges to the traditional business models of both broadcasters and producers of new media broadcasting content. One of the biggest challenges for independent producers of new media broadcasting content is the desire of broadcasters to either produce in-house so that they can own all of the rights or obtain all of the rights from producers by contract. Neither option fosters a strong independent production sector.
54. An independent production sector is the best way to ensure a wide variety of high quality new media broadcasting content is available to the public, just as in television production. Some of the best, most innovative Canadian online content comes from the independent production sector funded by the Bell Broadcast and New Media Fund, Telefilm Canada’s New Media Fund and provincial agencies such as the Ontario Media Development Corporation which has both grants and tax credits for new media.

55. The New Media Exemption Order reviewed available new media funding at that time and determined that there was sufficient to meet the needs of the new media production sector. It is doubtful that such was the case at that time but clearly it is not true now. Productions which are turned down by Telefilm or Bell Fund (often only due to oversubscription) rarely find other sources of funding. There is not enough funding for all of the added content that broadcasters want to offer. The existing agencies are heavily oversubscribed, funding anywhere from 20 to 33% of applications. As the Bell Fund requires broadcaster support for a project and with its guidelines encourages broadcasters to licence or invest funds it is clear from the number of applications that broadcasters want to offer their viewers much more rich interactive added content than can be funded. With funding not only can producers produce the content that consumers are looking for, but they can also build content that can be sold around the world and on many platforms.
56. While international sales are not a goal of the *Broadcasting Act*, the Act does enumerate the objective of creating a strong independent production sector. International sales are a significant component of a healthy independent production sector. For the past ten years or more, new media producers have been experimenting with business models and in the process have developed some real successes. For example, many producers of children's content now sell components of their sites to Montreal-based Tribal Nova, which operates a subscription service for kids 3 -12 called "Kid Studio". This immersive 'channel' offers kids both broadcast video and added content such as themed games in a secure and private environment. The producers share in the subscription revenue earned by Tribal Nova. Producers also license the web content to foreign broadcasters with the television series, often priced as a separate episode.³⁰
57. As mentioned above, broadcasters are exploring new revenue opportunities with online advertising. Online advertising revenues in Canada were \$1.2 billion for 2007³¹ and are expected to continue to climb. Broadcasters are presumably earning a portion of that pie. In fact, increasingly broadcasters want to either host new media content or appear to host it with broadcaster branding so that they can exploit surrounding advertising. At the 2008 CAB convention, broadcasters were encouraged to not only exploit online advertising but to consider it as a necessary tool to keep their advertisers happy. They

³⁰ For a more detailed review of the challenges and potential for success of common distribution and revenue models for cross-platform productions please see the Bell Broadcast and New Media Fund Distribution and Revenue Report at <http://www.ipf.ca/Bell/English/publications.html>

³¹ Interactive Advertising Bureau of Canada press release dated July 3, 2008. Note that the two forms of advertising revenue most used by broadcaster websites, Display ads (ie banners) and Video ads together generated \$441 million in 2007. Search engines (ie Google.ca) were \$478 million and classifieds (ie Google AdWords) were \$305 million.

were even further encouraged to consider cross-platform advertising campaigns. An example of innovative online advertising is the recent growth of sponsored original content on the web, using the sponsored serial model of television from the 50s. CBS recently launched a web-exclusive series *Novel Adventures* sponsored by Saturn and including significant product placement in the story line not only for Saturn but for other secondary commercial opportunities such as sales of books and songs referred to in the series.³² The series is intended to enhance the brand of both CBS and Saturn and drive traffic to both brands through a viral marketing campaign for the series.

58. Broadcasters and advertisers are exploring innovative ways of monetizing the online audience and now see online and mobile as audience and revenue generating platforms rather than a competitive platform that is ‘eating their lunch’.

Q.7. What is the extent of consumer demands in Canada for broadcasting content in new media? How is the broadcasting sector responding?

59. As part of the New Media Exemption Order the Commission accepted that there was a strong demand for Canadian new media content by accepting statistics that ‘Canadian web sites represent about 5% of all Internet web sites.’³³ As of December 4, 2008, of the top 100 sites visited by Canadians³⁴ (not including U.S. sites with .ca domain names, i.e. google.ca and msn.ca), 22 of the sites were Canadian. This is a healthy proportion when compared to Canadian viewing of the more established and better funded Canadian television programs at 48%.³⁵
60. However, of the 22 only 6 could be called ‘entertainment’ sites: CBC, NHL, Réseau des Sports, CTV, TSN and Radio-Canada. Keep in mind that the bulk of ‘top 100’ activity is reference (eg. search engines), retail (eg. banks and major retailers) or social networking (eg. Facebook, MySpace). When Canadians chose entertainment (other than YouTube which is part video and part social networking), they primarily go to Canadian sources. ESPN is the only U.S. broadcaster in the top 100 sites. It therefore follows that continued support to traditional Canadian broadcasters will ensure that their presence on new media will be the destination of choice among Canadians.
61. The next question though is to what extent do Canadian entertainment sites feature, promote or even contain Canadian content? As demonstrated by Changing Channels,

³² <http://www.cbs.com/noveladventures>

³³ Public Notice CRTC 1999-84 paragraph 68.

³⁴ As per Alexa Top 100 Sites – Canada – <http://www.alexa.com>

³⁵ Communications Monitoring Report 2008, Table 4.3.6 on page 123

72% of Canadian broadcaster websites had Canadian programming online while only 44% of them had added content.

III. Are incentives or regulatory measures necessary or desirable for the creation and promotion of Canadian broadcasting content in new media?

Q.8. How should Canadian content be defined with respect to broadcasting content in new media? Are any of the definitions that the Commission uses for other platforms, such as radio and television relevant? If so, how would they be applied?

62. The WGC is advocating a series of measures to support the funding of original Canadian content and the promotion of that content and traditional broadcast content online. These measures can only work if there is a Canadian content certification system similar to that used for broadcast television. Currently because there is no central certification office such as the Canadian Audio-Visual Certification Office (“CAVCO”), Telefilm and Bell Fund use very simple criteria to ensure that their funds go to Canadian projects. The production must be owned by a Canadian company and 75% of the costs must be spent on Canadians. While new media has been developing the simplicity of these criteria has not caused any problems. The industry is such now that Canadian productions are developing global profiles, foreign clients and partners and making foreign deals. With that international profile has come international financing and international creative and production participation.
63. Any funding or promotional advantage afforded to Canadian productions should only advance truly Canadian productions. That requires a point system analogous to the one used by CAVCO. However, we recognize that not only is new media developed and produced differently than television but also that there are many different types of new media productions. While a television program starts with the linear process beginning with a writer’s creative input and leading to a final completed production, a new media project is generated by a team who bring together the disparate elements of creative concept, design and programming to create a design document which a larger team can then use to produce the project. Traditional television roles of writer, director, composer and editor sometimes have no role or if they do it is a subsidiary role to designer, programmer, usability architect, illustrator etc.
64. The WGC therefore proposes that, in addition to the requirement for Canadian ownership and expenditure, a production is Canadian if the top 5 highest paid creative participants other than the producers (who must all be Canadian) are Canadian citizens or residents. Counting the highest paid creative participants, would ensure that the creative control is

Canadian while allowing some crew functions such as programming or illustration to be sent off-shore where it might be cheaper or more readily available.

65. The top 5 approach also allows for flexibility and allows for differences in roles depending on the project. One project might have a game designer while another might split those roles amongst a programmer, a designer and a writer underneath the direction of a creative director. Depending on the type of production the exact role of a writer would vary as described above.
 66. Consideration should be given to empowering CAVCO to conduct review and certification for new media projects along these lines. More thought would have to be put into the details of such a proposal and we suggest that the Commission hold a paper public hearing to solicit input to be able to make this a workable system.
- Q.9. Given the level of Canadian broadcasting content in new media, are measures needed to support the creation, promotion and visibility of Canadian broadcasting content in new media? If so, what measures, and how can these be accomplished within the mandate of the Commission?**
67. As noted earlier, Canada is a global leader in broadband connectivity. Yet, paradoxically, Canada lags in the creation of professionally produced new media broadcasting content. This suggests that a role for regulatory measures to fund, promote, and encourage placement of Canadian-based new media broadcast content is warranted. It is vital that Canadian-produced new media content is created and promoted at a high level that will attract users in Canada who have easy access to high quality foreign content. In order to support the creation of such content, incentives and/or regulatory measures should be a priority for this Commission. Otherwise, Canadian traffic will be directed to foreign new media content.
 68. The CRTC should ensure that any additional financing for new media production does not come at the expense of financing for television production. Television programs are still meeting the needs of the majority of Canadian audiences and act as a driver to send audiences to new media for more entertainment. Further, only the volume of television production on conventional and specialty channels can retain the talent pool necessary to have an indigenous broadcasting system. Cutting television financing to finance more new media would be counter-productive.

69. While the WGC agrees that there is a growing need to find ways to support high-quality Canadian new media productions, we are concerned with the notion of allowing existing funds within the system to be directed to new media productions without an increase in the overall funding available. New funding must be found to support Canadian new media broadcasting content. Spreading already scarce resources too thinly will jeopardize both the quality and the quantity of all content available and the talent pool to create it, be it programming for traditional media, or new media broadcasting content.
70. Further, while there is much to commend itself in the Noam study, the WGC firmly rejects Noam's conclusion that funding of content will be sufficient to ensure a healthy Canadian new media broadcasting industry which is respectful of Canadian societal goals. Funding of content does not ensure that the content is easily found or that it is not buried under substantially more non-Canadian content. A healthy Canadian broadcasting industry requires the support of a varied toolkit of regulatory obligations and incentives which are not limited to funding.
71. The WGC submits that the Commission should view any regulatory measures or incentive-based approach to the promotion of new media as a process involving three-tiers of the new media broadcasting industry.
72. The first-tier of new media content providers involves those parties that directly support the Canadian broadcasting system, under CRTC jurisdiction. For example, CTV.ca and CBC.ca already post an extensive amount of new media content on their websites. However, a large part of this content is directly related to the programming found on their conventional television broadcasts. Therefore, it should be clear that most of the new media content found on these sites is used as a promotional extension of programs aired on the CTV and CBC networks.
73. The second-tier of new media broadcasters would include those entities that would choose to opt-in to a potential "new media broadcaster" license class, which would provide benefits to licensees (for example, access to production funds or productions receiving funding) while at the same time imposing reasonable obligations such as Canadian Content quotas.
74. The third-tier of new media providers would include all other parties, which would fall outside of CRTC jurisdiction.

75. As noted in *Perspectives*, promotion is a critical element in raising awareness of the availability of Canadian new media broadcasting content. Canadian content funding is important, but promotion is critical in the borderless global environment of new media. Incentives should be created to assist in the promotion of new media programs. Canadians have a vast spectrum of new media content at their fingertips, and it is vital that Canadian-produced new media content is brought to the fore. Can Canadians find Canadian content on the broadcaster websites? Promotion and easy navigation is as key to new media content as promotion and scheduling is to broadcast. Just as with broadcast however, Canadian content is suffering from inconsistent or inadequate promotion and placement. For example: on the home page of CTV.ca the video player slides through programs featured on the player: *Fringe*, *Desperate Housewives*, *ER*, *CTV News*, *So You Think You Can Dance Canada*, and *Grey's Anatomy*. The video library actually has Canadian drama programs *Corner Gas*, *Degrassi*, *Flashpoint*, *Instant Star* and *Whistler* but the viewer needs to click on one of the featured (primarily American) shows in order to get to the video player and see the library.
76. The foregoing suggests that it is as important to ensure that Canadians know that the Canadian new media content is available as it is to produce it. CBC and CTV are popular sites because they are strong brands with significant cross-over promotion from broadcast to online. Other niche broadcasters such as YTV and Teletoon have brands that are strong within their niche markets. Broadcasters need to be incentivized to take advantage of the opportunities created by the online platform to deepen and strengthen their relationship with the audience as well as monetize that audience, as the market alone is apparently not incentive enough. Broadcasters either choose to feature the U.S. content, at the expense of the Canadian, or do not feature any content, leaving the viewer to randomly discover Canadian titles. Even the relatively small amounts of funding that come from the Bell Fund, Telefilm and provincial agencies are wasted if no one knows that the added content is there.
77. Perhaps more importantly, Canadians may be leaving the Canadian broadcasting system because simple methods to retain and engage them are not being used. For that reason, the WGC is proposing online promotion incentives for broadcasters.
78. WGC proposes that in order to incent broadcasters to promote their Canadian content online (both original new media and traditional television) there should be a clear benefit for demonstrated traffic to the Canadian Content elements. In consultation with the industry, the Commission could develop a measurement (eg. visits per month), set the current base line for each broadcaster and reward them for increases to the average monthly visits. The reward could be a relaxing of obligations on the broadcast side or of

any obligations set by the Commission in new media broadcasting with perhaps a scale depending on the volume of traffic increase. A system like this would give broadcasters flexibility in how to promote their content by focusing on the results. It would also put the broadcaster only in competition with themselves rather than trying to compete with YouTube and Facebook.

79. WGC also notes that developments in “on-demand” broadcasting on the “first screen” TV (as Noam refers to it in *TV or Not TV*) to some extent represent the “canary in the coal mine” in terms of gauging the success of programming strategies adopted by broadcasters for the creation, promotion of visibility of Canadian broadcasting content in new media. Many television industry programmers have observed that on-demand menus have effectively increased viewing of Canadian content under a framework which requires minimum ratios of Canadian titles “offered”.³⁶ The Commission’s current regulatory rules for PPV and VOD are measures which could be leveraged onto “second” and “third” screens by virtue of the Commission’s direct oversight over broadcasting undertakings that carry on “first screen activities”.
80. It is important to recognize that new media should not be seen in isolation from more conventional media. The Commission asks whether any appropriate measures can be accomplished within its mandate. We note in that regard that the Commission continues to apply leverage through existing licensees on the “first screen” with respect to their activities in new media platforms. It is critical that these various platforms are the “three screens” identified by Noam be seen as an integrated whole.
81. Moreover, industry observers have repeatedly warned that policy makers should be careful of “zero sum games where the new media drives out the old. Rather, this view is being replaced by a growing sophistication about making the channels work together effectively”.³⁷
82. WGC agrees with the approach identified by Noam that, in creating Canadian content for new screens of television, the existing broadcasting system plays an important role. Much of the television content over the two new screens is re-purposed content produced for the first screen. Noam specifically identifies VOD’s primary characteristic which is to facilitate a much longer shelf life for quality content, revenue mechanisms (pay or subscription) plus easier access to viewer markets in other countries, in particular the U.S. These measures would all help support the production of additional programs.

³⁶ See panel at CAB Convention Monday November 3, 2008, Concurrent Session, *The Demand for On-Demand.*

³⁷ *Campaigns and a Web 2.0 World*, David Carr and Brian Stelter, *New York Times*, November 3, 2008.

83. In addition to the importance of promotion in the new media environment, the WGC also supports the view that the Commission should explore various options available for additional funding for the supply of original new media content. As discussed in our response to Public Notice 2008-44, the developments in the growing demand for original new media content, needs to be tempered with a “supply side” analysis. Among the potential measures with respect to new funding that could be considered by the Commission include the following:

- measures to ensure that all elements of the broadcasting system, including ISPs, make the required contribution toward Canadian content. The WGC supports the ideas put forward by various stakeholders, as documented in *Perspectives*, which recommends the implementation of a contribution mechanism for currently exempt new media broadcasting services. The WGC further supports the position that Canadian-owned and controlled ISPs own “essential infrastructure” and “a funding mechanism based on contributions received directly from these providers is viewed by proponents as administratively easier and financially more stable than a mechanism based on funding from individual content providers and content aggregators”.³⁸
- ISPs will undoubtedly oppose the jurisdictional grounds for implementing a contribution mechanism for Canadian new media content. WGC supports the legal opinion prepared by McCarthy Tétrault and dated December 5, 2008 (attached as Appendix “B” hereto) which clearly establishes the Commission’s “authority to require ISPs that engage in broadcasting activities to assist in achieving the Act’s objectives by contributing to the creation and presentation of Canadian programming.”³⁹ Clearly ISPs are broadcasting undertakings and the Commission may wish to establish a separate category of broadcasting undertaking to be able to develop distinct rules, which could include an ISP levy.
- Canadian content quotas on new media broadcasting streaming of television content such as online media players or mobile broadcasting. These quotas would be comparable to traditional broadcast quotas (i.e. 60% Canadian content) but would not contain those requirements which are not translatable to new media (ie no prime time or local programming requirements).

³⁸ *Perspectives* at para. 189.

³⁹ *Legal Opinion*, McCarthy Tétrault LLP, “Legal Issues Relating to Proposed Contributions by Internet Service Providers and Mobile TV Broadcasting Undertakings” (2008) (the “McCarthy legal opinion”), page 1.

- When a mobile carrier effectively acts as a BDU by selecting various channels of content to offer to subscribers as part of a mobile broadcasting package they could be treated as a BDU. While not all rules would apply or should apply rules regarding a preponderance of Canadian channels and contributions to Canadian programming would be key, provided that the appropriate contribution is not already covered by virtue of the WSP's status as a new media broadcasting undertaking⁴⁰.
84. The Commission is aware of the proposal of Peter Grant of McCarthy Tétrault put forward at the CRTC Invitational Session on New Media in October of 2007 that ISPs make a contribution of 2.5% of their revenue towards original new media broadcasting. Mr. Grant arrived at that figure by assessing new media broadcasting as approximately 50% of the Internet traffic and therefore cutting in half the contribution made by BDUs towards broadcasting programs. According to Mr. Grant's calculations⁴¹ such a levy would generate \$72.8 million annually for original new media broadcasting. The WGC, working with the CFTPA and the Directors Guild of Canada, engaged Nordicity to review Mr. Grant's calculations, update them where necessary and expand the economic modelling of the proposal. The Nordicity report (which is attached as Appendix "C"), also examined what the cost per subscriber would be if the ISPs pass on the contribution to subscribers and to what extent price elasticity would impact the revenues.
85. When read together the Nordicity report and the McCarthy legal opinion make it clear that the Commission has the jurisdiction to impose a contribution to Canadian new media programming on ISPs and WSPs and that a reasonable ask (2-3% from ISPs and 0.6% from WSPs) would result in \$65-97 million from ISPs in 2009 with expected growth to \$112 - 168 million by 2013. A WSP contribution would generate \$7.75 million in 2009, increasing to \$12.61 million in 2013. If these funds are organized as a private-public partnership fund similar to the CTF they can leverage direct government contributions and licence fee or other contributions from broadcasters. These funds would generate a significant level of production and create thousands of jobs as well help to meet the social policy goals of the *Broadcasting Act*. As Canadian Internet revenues totalled \$5.669 billion and mobile wireless revenue totalled \$14.4 billion in 2007 according to the Commission's Communications Monitoring Report, our suggested contribution could be easily absorbed by ISPs and WSPs. If ISPs decided to pass on the contribution to

⁴⁰ See the McCarthy legal opinion for a discussion of CRTC's earlier determination that mobile broadcasting already was a broadcasting undertaking, though exempted.

⁴¹ If there was an average grant of \$350,000 per project (which is reasonable considering the Bell Fund's maximum grant is \$250,000 while Telefilm was investing up to \$550,000), another 208 projects would receive funding. This would have a significant impact on the entire Canadian broadcasting system.

subscribers, at the highest suggested percentage it would only result in an increase of \$1.05 per month. The WSP contribution would amount to mere pennies per month to the subscriber. As demonstrated in the Nordicity report, given the many increases that subscribers have absorbed over the years and the importance of internet and wireless to modern life, it is very unlikely that such a minimal increase would cause subscribers to give up or reduce their Internet or wireless costs. As members of the Canadian broadcasting system, under s.3(1)(e) of the *Broadcasting Act*, ISPs and WSPs have a positive undertaking to contribute to the creation and presentation of Canadian programming and our proposal is a very reasonable one that ISPs and WSPs can easily afford to make.

86. The WGC is a proponent of the view brought forward in *Convergence and Collision*, which argues that, “the Commission may wish to consider a new “new media broadcaster” license class that is offered on a voluntary opt-in basis, providing benefits to licensees (for example, access to production funds or productions receiving funding) while at the same time imposing reasonable obligations such as Canadian Content quotas. This incentive plan appears to be sensitive to the differences between “direct” regulation by the CRTC and an approach which favours appropriate incentives for Canadian broadcasting content in new media”.⁴² It further encourages new entrants into the system and fosters diversity and competition. This may solve the problem of the uneven playing field between regulated new media broadcasting and unregulated new media broadcasting (ie Joost or Heavy.com).
87. Moreover, WGC wishes to underscore that the Commission’s continued regulatory rationale is not rooted in questions of channel scarcity but rather the continued distribution of “merit” programs that are consistent with and accord with current Canadian broadcasting and audio-visual cultural policies. As Noam points out: “none of the societal objectives will vanish just because television signals travel over digital pipes rather than analog airwaves”.⁴³
88. Finally, WGC notes that in response to Public Notice CRTC 2008-44, a coalition of several ISPs have argued that the Commission does not have the requisite jurisdiction to effect measures to require ISPs to make financial contribution towards Canadian content. These legal arguments are based, to a significant degree, on the manner in which the functions and roles of ISPs are characterized. These arguments portray ISPs as carrying on the role of a “pure” telecommunications service provider. According to the McCarthy legal opinion, however, ISPs now transmit much more broadcast programming, as

⁴² *Convergence and Collision* at para. 92.

⁴³ *TV or Not TV*, p.8.

compared to the mid-1990s when the Commission first determined that it would regulate aspects of ISP activities pursuant to the *Telecommunications Act*.⁴⁴ Internet services have now evolved from providing primarily non-programming services to a small number of Canadian households into undertakings that carry a significant amount of broadcast programs to the majority of Canadians, over broadband networks.⁴⁵ “In summary, when ISPs transmit programs by means of telecommunications for reception by the public, as they are doing today, then they fall within the definition of a “broadcasting undertaking” under the *Broadcasting Act*.”⁴⁶

89. The legal opinion filed with the coalition of ISP submissions relies primarily on the statutory categories in the *Telecommunications Act* and the *Broadcasting Act* between telecommunications and broadcast regulation, respectively. However, this characterization relies on the characterization of an ISP as playing a passive role which in turn means that they cannot be characterized as a "distribution undertaking" under the *Broadcasting Act*. WGC agrees that “broadcasting distribution undertakings” (BDUs), unlike a pure passive ISP, select and originate programming, aggregate programming services, and otherwise influence the nature of the programming or content that is transmitted or accessed over their facilities.
90. If an ISP acts as a pure “common carrier” by refraining from conduct to “control the content or influence the meaning or purpose of telecommunications carried by it for the public”⁴⁷, then it may not reasonably be characterized as a BDU subject to the Commission’s broadcasting mandate. However, to date, we have seen several instances in which Canadian ISPs have not acted solely as intermediaries but rather play an increasingly active role in managing their networks and thereby influencing the nature of the programming or content that is accessed over the Internet. This raises the entire issue of “net neutrality”. Companies representing broadband ISPs have been careful to defend certain traffic and network management practices which may or may not have the effect of “influencing or controlling content”, which is the key attribute that would take a role outside of the scope of a mere passive carrier.
91. In the Notice of Public Hearing, the Commission notes that the issue of net neutrality extends well beyond the distribution of and access to broadcasting content in new media. However, at the same time, it has expressly stated that “only access issues relevant to the

⁴⁴ McCarthy legal opinion at p. 5.

⁴⁵ *Ibid* at p. 6.

⁴⁶ *Ibid* at p. 7.

⁴⁷ As per Section 36 of the *Telecommunications Act*.

achievement of the broadcasting policy objectives of the Act will be explored during this proceeding”.

92. In view of the importance of the issue of the scope of the Commission’s mandate to introduce measures such as contribution by those playing a role in the broadcasting system, WGC requests that the Commission not let the issues of net neutrality hinder this proceeding but on the evidence available to it conclude that measures requiring ISPs to contribute financially towards the creation, promotion and visibility of Canadian broadcasting content in new media can be accomplished within the mandate of the Commission.

Q.10. What benchmarks and measures are appropriate to assess the level of Canadian broadcasting content in new media? How should these standards be applied?

93. This is a difficult question, as a no standards exist for ‘counting’ or evaluating volume of interactive content. Measuring hours of content (as in television) is an impractical method given that the length of an experience often depends on the user rather than the content being provided by the broadcaster. An expenditure requirement would not take into consideration the varying costs of different kinds of new media content and would give room to meet targets with the cheapest forms such as sem-professional user generated content. Perhaps a more subjective ‘substantially’ Canadian test should be used with guidelines to be prepared by the Commission to judge whether an appropriate amount of Canadian new media broadcasting content exists.

Q.11. Is there a specific role for local broadcasting content in new media in achieving the broadcasting policy objectives of the Act? If so, are measures required to further local participation in this environment?

94. WGC notes that to the extent that local broadcasting content encompasses primarily news and information programming, new media broadcasting content can play a role in achieving policy objectives. However, with respect to smaller local markets, in its determination on the *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* (Broadcasting Public Notice CRTC 2008-100), the Commission found that Canadians are increasingly turning to new media platforms as a source of information about their communities, their country and the world. However, the Commission noted that these platforms largely offer content that was originally produced by, or using the resources of licensed radio or television stations, or newspapers. As a consequence, encouraging high quality, professionally-produced local programming on television will also benefit those who access this content through new

media platforms. There is no need for additional resources to be allocated to local broadcasting content in new media.⁴⁸

Q.12. Does broadcasting content in new media reflect Canadian linguistic duality, multicultural nature, and special place of aboriginal peoples within society, as well as the broadcasting policy objectives of the Act? If not, are measures feasible or necessary, and how would they be applied?

95. Without a doubt, Canadian new media broadcasting content must uphold the principles of the *Broadcasting Act* which includes reflecting Canada's linguistic duality, regional differences, multicultural nature and the place of aboriginal peoples within our society. The lack of spectrum scarcity in new media means that there is unlimited 'room' for content to serve these varying needs. However, creating content to serve these goals requires funding and incentives. Currently guidelines in place with the Bell Broadcast and New Media Fund and Telefilm's Canadian New Media Fund both allocate percentages of their funds to French and English productions to ensure that an appropriate balance of projects are funded.

96. Any new media funding program which arises out of this proceeding could easily use its guidelines to increase multicultural and aboriginal content as well as support the development of regional producers of new media content. As the CTF has done, funding can be allocated between English and French and specific goals such as regional or multicultural representation can be achieved through a bonus system.

Q. 13. Is the Canadian independent production sector contributing in a significant manner in the environment for broadcasting in new media? If not, are measures feasible or necessary and how would they be applied?

97. As mentioned above, the most interesting and engaging new media broadcasting content is currently being produced by the independent production sector: *Regenesis*, *Degrassi: The Next Generation*⁴⁹, *Little Mosque on the Prairie* etc. Further, the Canadian programming which is filling broadcasters' media players is all produced by the independent production sector. While broadcasters are seeking to produce more inhouse in order to retain all revenues from the exploitation of this content, in-house production tends to be limited to text (eg. episode descriptions) and images (eg. stills from the television series). Program information as just described is referred to in the new media sector as 'brochureware', which comprises the bulk of content found on broadcaster

⁴⁸ For examples of local programming in new media see <http://www.cbc.ns> and <http://www.cp24.com/>

⁴⁹ While CTV is currently managing and building enhancements to the *Degrassi: The Next Generation* website its first three seasons of production were independently produced and financed.

websites. They promote rather than engage the audience. Broadcasters rely on independent producers' ability to raise financing so that for a relatively small licence fee they can acquire Canadian rights (and sometimes an ongoing share of worldwide revenues) to a high quality media project that will engage their audience. Producers are also showing more creativity in developing business models in this new sector, exploring new opportunities and not limiting themselves to traditional methods. However: independent producers can and should be making a more substantial contribution to the Canadian broadcasting system.

98. Should the new media independent production sector be supported in Canada? The *Broadcasting Act* requires that Canadian programming “include a significant contribution from the Canadian independent production sector”. The same arguments for maintaining this clause in the *Broadcasting Act* for television apply equally to new media. A strong independent production sector can create a greater degree of high quality diverse content than if the work was being done inhouse. Independent productions are more commercial and responsive to the audience as producers need to generate revenues from the productions in order to survive. A strong independent production sector has the diversity to maintain and encourage the Canadian new media talent pool needed for a healthy Canadian broadcasting system.

IV. Are there issues concerning access to Canadian broadcasting content in new media?

Q. 14. Are there practices that restrict or enhance the distribution of and access to Canadian broadcasting content delivered and accessed over the Internet and through mobile devices? If so, describe the practices and the nature and extent of their effect. Are measures necessary and how would they be applied?

99. As discussed earlier in this submission, access to new media broadcasting content is largely dependent on the availability of the necessary rights. As noted in *Convergence and Collision*, it is not uncommon for broadcasters to insist that producers give up new media rights as part of the TV sale – with little or no compensation offered – and then do nothing with the new media rights.⁵⁰ This practice is detrimental to the content creators, which includes writers, by closing off a potential revenue stream. In addition, this precludes independent producers from distributing their content on new media platforms and denies access to users.
100. WGC also reiterates the need for reasonable terms of trade, to ensure that the distribution of and access to Canadian broadcasting content is achieved on the “second and third TV

⁵⁰ *Convergence and Collision* at paras. 27-29.

screens”. As submitted by the WGC in the Previous Notice, “Terms of trade are needed to ensure that Canadian creators can maximize their exposure and economic potential in new media markets. This is a necessary precondition of ensuring that Canadian content is produced and made available online, to ensure its proper place within the vast supply of foreign content on new media platforms”.⁵¹

101. As noted above, the CRTC should take into account that rights holders have already begun to address the territorial challenges associated with acquiring and exhibiting content on new media screens. Technological strategies such as geo-gating and similar tools have been used to bring more order to the new media broadcasting sector which is beginning to replicate more traditional broadcasting markets.
102. Nevertheless, the WGC is concerned that some ISPs are purposely performing “traffic shaping activities” that could deny users access to various online materials, or dissuade them from traffic to certain Internet portals. In addition, ISPs have begun implementing bandwidth caps, which can make it impossible for some individuals to view certain new media programs.⁵² The issue of net neutrality is an important concept for the Commission to consider in this review. ISPs must remain net neutral and make new media content available to all Canadians.

V. Other broadcasting or public policy objectives

Q. 15. The Commission has no policy with respect to the cross-ownership of licensed broadcasting undertakings and new media broadcasting undertakings. Is such a policy necessary or appropriate? Why or why not?

103. WGC submits that while a specific policy with respect to the cross-ownership of licensed broadcasting undertakings and new media broadcasting undertakings may not be warranted at this time, the Commission should continue to address bottlenecks and gate-keeping conduct that may arise through increased ownership consolidation. Generally, new media is characterized by the lack of bandwidth limitations and gate keeping dynamics. However, in some instances, media entities with significant control over access (e.g., cable and telco broadband ISPs) may be able to engage in significant preferential conduct vis a vis affiliated or related content even in a new media environment. Further, there is growing vertical integration between content creators, broadcasters, content aggregators, BDUs, ISPs and WSPs. Vertical integration can potentially lead to preferential access which can threaten diversity of voices. These are

⁵¹ *Previous Submission* at para. 41.

⁵² *Convergence and Collision* at para. 94.

issues that the Commission should continue to oversee and monitor in order to ensure diversity and the choice of significant original content.

Q. 16. How and to what degree does the environment for broadcasting in new media affect diversity of voices in the Canadian broadcasting system?

104. The new media environment is by definition global in nature. Content can be provided on a number of various platforms from a multitude of sources. Canadian users have access to any number of new media broadcasting programs that can be viewed on their computers, laptops, and mobile phones. Typically, the question of “diversity of voices” is raised when this Commission is considering the issue of consolidation of Canada’s private broadcasters measured by reference to the markets in which they operate.
105. However, the new media platform is borderless in nature. In consideration of the limitless freedom that Canadians are given within this broadcasting environment, the question of a lack of diverse content has been supplanted by the question of the need for promotion and funding of such content.
106. As the WGC has discussed throughout this submission, in addition to focusing on the breadth of content available in new media and increasing original Canadian new media content, the Commission must explore ways to encourage, foster and otherwise provide incentives to *promote* Canadian new media content. The user has unlimited access to an array of viewpoints and programs in the new media environment. So, the difficult issue is how to ensure that users engage with Canadian-produced new media content. This is the vital question that the CRTC must explore. Otherwise, the diversity of voices that is currently being offered in the new media spectrum will be left unheard.

Q. 17. Is there a special role for Canada’s public broadcasters in the environment for broadcasting in new media? If so, are measures required? Describe any such measures and how these can be accomplished within the mandate of the Commission.

107. This issue was addressed by the Standing Committee on Heritage when it reviewed the CBC’s mandate. In its report entitled “Defining Distinctiveness in the Changing Media Landscape” the Standing Committee reviewed the CBC’s role in new media broadcasting and as well the role taken by the BBC in similar circumstances. The BBC, the UK regulator Ofcom and the UK government share the view that digital technologies are a way of extending the mandate to all citizens and engaging the public across all platforms. The Standing Committee came to the conclusion that: digital media could assist the CBC in fulfilling its mandate to reach Canadians across the country, tell a variety of stories and

reflect the needs of the regions. It recommended that the CBC's mandate contained in the *Broadcasting Act* be amended to specifically include "digital media and emerging technologies as an integral aspect of achieving CBC/Radio Canada mandate and reaching out to Canadians". The only concern was the CBC's ability to meet an expanded mandate with the current budget. The recommendation was made that any new agreement with the CBC should include both digital media as a mandate and the ability to fund that mandate.

108. The WGC supports the perspective of the Standing Committee on the CBC's role in digital media and their recommendations. In fact, all of Canada's public broadcasters should be taking advantage of new media broadcasting in order to fulfill their mandates. The only concern is how these broadcasters can afford to fulfill these expanded mandates.
109. It is the responsibility of governments to ensure that public broadcasters are adequately funded to meet their mandates. However, should there be additional revenues for new media broadcasting content from this proceeding, guidelines could be developed which allocate a portion of funds to new media broadcasting content to be licensed by public broadcasters. These broadcasters are limited in the commercial opportunities that they can pursue because of their public service mandates. In return for prioritizing the needs of the public over the needs of the advertisers, the regulatory structure should financially support their ability to meet their mandates.

Q. 18. Is there a special role for community broadcasters in the environment for broadcasting in new media? If so, are measures required? Describe any such measures and how these can be accomplished within the mandate of the Commission.

110. As noted in the Noam paper, community programming may have the same cost and revenue characteristics shared by user generated content, namely being low budget in creation and distribution, operating in a media and techno-savvy environment, and using two major languages. This type of content does not need specific support.

VI. The appropriateness of the new media exemption orders

Q. 19. Do the exemption orders for new media broadcasting undertakings and mobile television broadcasting undertakings continue to be appropriate? Why or why not? Are measures and/or regulatory amendments required to ensure that the environment for broadcasting in new media is contributing in an appropriate

manner to the achievement of the broadcasting policy objectives of the Act? If so, describe any such measures or amendments.

111. As noted in our response to Public Notice 2008-44, the WGC supports a review of the current new media and mobile exemptions orders. Despite the rapid growth in content and business models, the new media environment has changed since the exemptions were established. As noted in the Previous Notice, “the pace at which professionally produced broadcasting content is being made available online is accelerating, but Canadian participation is lagging with the amount of high-value, professionally produced new media broadcasting content and the level of early stage investment in the new media broadcasting environment”.⁵³
112. Almost a decade ago, the CRTC examined the market structure for “new media” content and found that the circumstances that led to the need for regulation of Canadian content in traditional broadcasting did not exist in the new media environment. The WGC supports the view however, that Canadian broadcasting content, including new media content, must be examined with a view to fulfilling the broadcasting policy objectives set out in the *Act*.
113. WGC submits that the CRTC’s regulatory framework must take into account that new media platforms increasingly resemble the traditional broadcast paradigm. Further, that traditional broadcast cannot support its audience without new media platforms. Thus, the WGC submits that the Commission must recognize that overlapping public policy measures will be applicable for both new media and traditional media.
114. Without support mechanisms available to promote Canadian-produced content, it is likely that foreign content will overshadow and drown-out nationally-produced new media productions contrary to the objectives of the *Act*. As WGC noted in its response to Public Notice 2008-44, the Commission should be careful not to pre-judge the rationale for regulatory oversight over new media platforms. A coherent, consistent approach to oversight of content is needed, with the appropriate limitations, where warranted. Arguments that focus on scarcity alone as the rationale for regulation under the *Broadcasting Act* ignore a key paradox: “while the new media landscape is characterized by an abundance of capacity, it is this multitude of disparate content that renders Canadian-based content on new media platforms more difficult to find. Thus, it is vital for the CRTC to ensure proper funding, promotion and placement of Canadian new media content”.⁵⁴

⁵³ *Previous Notice*, para. 20.

⁵⁴ *Ibid* at para. 36.

115. We were pleased to see that the Commission expressly stated in the Notice of Public Hearing that it would consider arguments and solutions which call for broader policy deliberations to assess whether any problems might best be resolved in a different context, including proposals encompassing direct government subsidies and amendments to the federal *Income Tax Act* for both tax credits and positive treatment of advertising on Canadian websites. Although the Commission acknowledges that it may not be in a position to implement any of these proposals under its broadcasting mandate we encourage the CRTC to recommend certain support measures to the government. Measures will be necessary to ensure that all elements of the broadcasting system, including ISPs and including the government, make the required contribution toward Canadian content.

Q. 20. Under what conditions should the Commission revisit the appropriateness of the new media exemption order in the future?

116. When the New Media Exemption Order was initially introduced almost a decade ago, the Commission's focus was largely on the impact of new media on traditional broadcasters. Since that initial rationale was articulated, new media broadcasting content has been made available over a variety of platforms, including podcasts and audio-streaming, online video content, and interactive programming. As discussed earlier, new media business models are continuously evolving and broadcasters themselves are increasingly acquiring the means and the tools (e.g., acquiring necessary rights) to distribute new media content to Canadians.

117. Therefore, clearly broadcasters have adapted well to the expansion of new media. Going forward, the CRTC should address the impact on other stakeholders as the basis for revisiting the New Media Exemption Order. With the advent of new media, broadcasters can now bundle their traditional content with new media. However, now writers, directors, and independent producers have a key role in this environment. As discussed, the Commission must ensure that new and competently produced new media content is created.

118. As previously examined, the pace at which professionally produced broadcasting content is being made available globally is accelerating, while Canadian participation is lagging with respect to high-quality professionally produced new media content.⁵⁵ Content creators must be given the platform in which to grow the Canadian new media spectrum.

⁵⁵ *Perspectives* at P. 3.

Thus, an examination of the current exemption orders must take into account the entire value chain, which inevitably includes Canada's writers, producers and other stakeholders. Any regulatory framework which arises from this proceeding, or continuing New Media Exemption Order, should be revisited on a frequent basis as changes in the industry require it. Review of new media broadcasting should not be limited by a specific schedule without reference to changing environments.

Appendix “A”

List of websites referred to in the WGC submission on PN 2008-11

Dr. Horrible – <http://www.drhorrible.com>

Heavy – <http://www.heavy.com>

Revver - <http://www.revver.com>

Ithentic - <http://www.ithentic.com>

Strike TV - <http://www.strike.tv>

CTV – <http://www.CTV.ca>

CTV Degrassi Mini - <http://www.ctv.ca/mini/degrassi2006/Video4.html>

CBC Little Mosque - <http://www.cbc.ca/littlemosque>

Changing Channels - <http://www.crtc.gc.ca/eng/media/rp080606.htm>

Bell Broadcast and New Media Fund Distribution and Revenue Report -

<http://www.ipf.ca/Bell/English/publications.html>

Google – <http://www.Google.ca>

Novel Adventures - <http://www.cbs.com/noveladventures>

Alexa - <http://www.alexa.com>

CBC Local - <http://www.cbc.ns>

CP24 - <http://www.cp24.com/>

Appendix “B”
[McCarthy Tétrault legal opinion]

Appendix "C"

[Nordicity Report]

End of Document