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Broadcasting Notice of Consultation CRTC 2017-359

Call for comments on the Governor in Council's request for a report on future programming distribution models

Preface

The Internet Society Canada Chapter (ISCC) hereby submits its comments to the above-noted proceeding. The ISCC wishes to be considered an intervener in this proceeding; we look forward to reviewing other parties' submissions, and should the opportunity arise to appear before the Commission at an oral hearing, the ISCC would be grateful to do so.

The ISCC urges the Commission not to see the issues we will face in terms of "how we tamed the challenge of satellites and cable" and how the CRTC can do it again. The issue is not to prolong the centrality of the "broadcaster", nor to see everything in terms of "broadcasting", so that the Internet is conceived as just another form of "programming distribution undertaking", or equivalent nonsense. This is not where history is going, and trying to make everything conform to existing regulatory models will not succeed in seeing what needs to be done, and can be done, achieved.

There will be plenty of problems for the CRTC to engage with in this world we have entered. Some will be new. As we will allude to below, carriers and large content aggregators will seek to monetize access to cultural products in any way they can: through bandwidth caps and overage charges, through allowing access to cultural products on as limited a basis as can be got away with. The ISCC implores you to keep looking at your iPads and Androids as you think about cultural policy. Please, do not spend the evening watching Netflix and come in to work the next day and think of your computer driven screen as a "broadcasting distribution undertaking". Keep looking towards the future, and try to be mindful of the filters, blinkers really, that the Broadcasting Act forces these phenomena to pass through.

The Internet Society, Canada Chapter responds to the CRTC's questions as follows.

Q1. How is the growth in online audio and video consumption changing the business models of program creators and distributors? What are the new models?

Let us start with the broadcaster, the original business model.

The business model of broadcasting implies that there is such a function as a broadcaster. The broadcaster held and still holds important legal privileges predicated on a licence, and that licence was originally justified on the ground that the broadcaster used an important public resource, the airwaves.

If we had to do it again, we would not invent the “broadcaster” to solve the distribution and aggregation problem. It is important not to predicate policy on the idea of prolonging this particular economic role. Increasingly Canadians will be getting our culture directly over the Internet and from other Internet aggregators rather than the broadcaster, because in a large measure we are doing so already.

It also means we do not have to devise an update of the broadcasting regime. We do not need to get rid of it, but we do not need to put all our cultural eggs into the broadcasting basket. We should not assume that we need to reinforce the regime, or spread it out to cover the Internet. It is difficult to conceive that a licensing regime of this nature could ever now be justified. The original justification for the licensing of broadcasters was “spectrum scarcity”, though some think the justification has moved beyond that particular technical and legal idea. Without entering into that debate, it is worth spending a moment to discuss spectrum.

We get the spectrum shortage because we (or the law) assume spectrum exists in a fixed quantity, and thus we have devised a fully centrally planned scheme of allocating it. We act as if computer-based radio technologies had not been invented. We regulate as if the productivity of spectrum had not been multiplied thousands- fold under modern technical conditions. We regulate as if we were still in the 1930s, as if computers and intelligent receivers have not been invented, as if discriminating machines cannot hear the signals that are intended for them. Spectrum scarcity is in a large degree an artifact of the regulatory regime that presumes its existence. The Commission should be cognizant that assumptions about spectrum regulation need updating as much as those that apply to broadcasting, even if spectrum is not within its jurisdiction.

The Internet is an alternative technical system, which, by dint of its general-purpose nature, has bypassed most of the limitations of the preceding technical systems, such as networks purpose-built for carrying broadcasting content. From its inception, the Internet was designed around the attributes of computers, in contrast to telephony and broadcasting. It has enabled people to reach resources on the Internet through an addressing system that combines a very large number of IP addresses and a very large number of domain names that allow people to find those resources,

and with search engines that efficiently locate those resources even if the name and address have been forgotten or are unknown.

The ability of **everyone** to reach and **anyone** to provide those resources: audio, video, or of any nature whatever has displaced the centrality of the broadcaster, and the distribution system that was assimilated to broadcasting, such as cable television, known to the CRTC as the broadcasting distribution undertaking, the BDU. The Internet has opened up more distribution possibilities for content creators than the traditional broadcasters ever could.

We observe that new business models are changing from transaction-based to subscription-based. This observation is supported by several recent empirical reports published by the Canadian Media Concentration Research Project. This means that, instead of buying and obtaining ownership, unlimited as to time, consumers will be restricted to gaining access for a time and under conditions. As an example, consider the move from digital download to digital streaming for audio and video (e.g., Apple Music, Amazon Prime Video, Amazon Music, Spotify, YouTube Red (US)).

Content producers can also afford to be discriminating in whom they reach. Narrowcasting is on the rise. Niche market (e.g., model railroad channel, SCUBA channel, etc.) channels are more economically viable to set up and produce, and perhaps more importantly, the advertising can be better targeted.

Q2. Content is generally monetized through advertising, subscription and/or transaction revenues. How are new business models shaping the evolution of these revenue sources?

The Internet has allowed a much more direct relationship between customers and producers of cultural content. It is amazing to watch the improvement of “television” – as it used to be known – once people started paying for it directly, rather than through advertisers. Better budgets, the ability to watch consecutive programs at times of one’s choosing, better quality writing: all these and more characterize video entertainment through the Internet. The intelligence built into computers allows for the distributors of net-based video to calculate precisely how many people are watching what programs. The accuracy of the feed-back leads to television people want to watch, and the diversity of styles of story-telling is leading us into a great age of “television”. In Canada we had record-setting levels of scripted television under development in 2016. In the United States, the peak of scripted television under development was achieved in 2015, and production continues at high levels. Clearly the Internet has stimulated rather than suppressed artistic production.

The greater use of audio and video in mobile devices means that more consumers will be affected by these new models. Because they are increasingly subscription-based, the introductory (sign-up) methods appear to the consumer as the monthly cost. Consumers do not always understand the ongoing and overall cost of subscription models, to their detriment.

This is further complicated by the failure of cellular plans for data to keep pace with the demands of these new services. Indeed, it is the interest of carriers not to keep pace – witness the CRTC’s own data on what proportion of the revenue of mobile operators derives from overage fees. Given the paucity of unlimited data plans for cellular, we fear that overage charges will be the new complaints issue. Few plans allow unlimited data combined with a tiered speed system (such as those available in Europe and China), that will still allow data without extra charge, but at reduced speeds.

The lack of unlimited data plans is further exacerbated by Apple’s recent move to require all application downloads for mobile to be managed by the device, not by a desktop computer, a move they made without their usual fanfare. Judging by the lack of publicity given to this measure, Apple clearly does not think their users will favour it. Consumers end up using more mobile data in a move which has been generated by a partner or significant supplier of the carriers.

The prospect of a symbiotic relationship of large content channels boosting data usage while their partners restrict the same is not a pleasing one, especially if the CRTC continues to oppose the existence of MVNOs or regulated access to mobile radio networks.

There is a move away from easy access to channels through distribution systems (Apple, Amazon, etc.) that are otherwise free over the air. Many television channels are available “over the air” and free to consumers to access with just a screen and a simple inexpensive antenna. These include most network stations in Canada, and for US networks for Canadians close to the border. Despite being available free over the air, when consumers access such channels through an app on such delivery systems as Apple TV or Amazon Firestick, they can typically be viewed only if consumers have a cable distribution subscription.

The potential threat of zero rating is cause for concern in the new business models. Zero rating enables carriers to distort the competitive forces that exist between applications or platforms; potentially benefitting those services chosen for special treatment, but inevitably harming those which fall outside the carriers’ favour. As with the problem of overage fees, zero rating places on full display the conflict between carriers which become involved in content, on the one hand, and the marketplace for ideas that exists on the internet, on the other.

Q3. Many new business models are global. How will the growth of a global content rights market affect business models?

Our model of broadcasting was predicated on the ability to buy separate Canadian rights for programming. Broadcasters bought the Canadian rights to popular U.S. programming, sold advertising at a profit and were "taxed" by the CRTC to contribute part of that to Canadian programming in various ways, including production by the broadcasters themselves.

In more and more cases, Canadian broadcasters will not be able to buy Canadian rights for popular U.S. and global programming, thereby bypassing the Canadian broadcasting system. As the source of the "cross-subsidy" dwindles into a smaller and smaller pool the revenue model of Canadian broadcasters further erodes and one of the sources of Canadian programming funding dries up.

The creation of a separate market for Canadian rights, which allowed the policy of simultaneous substitution, caused advertising revenues to be retained in the pockets of Canadian broadcasters. Canadian broadcasters opted to purchase the local rights to American premium productions, and enjoyed the profits from a captive advertising market (advertisers having been denied access to US broadcasts beamed into Canada). The result has been 50 wasted years in terms of unique Canadian production.

The move from national geographic rights to world-wide rights to premium content means that Canadian production will, for the first time, be in a position to compete both in local and international markets. Producers who are interested in Canadian productions will be invested in ensuring that the productions are of a quality that will attract universal audiences, and ensure that Canadian productions meet the quality standards of the best productions in the world. For the first time, Canadian creators will be compelled to compete on equal terms with their counterparts internationally; the risks that competition on this scale present do, however, come with the correlative benefit of having access to lucrative global markets.

The growth of global content rights will unshackle Canadian creators from the restraints imposed by Canadian broadcasters who have profited on the backs of primarily US productions, and purchased Canadian productions only to satisfy CRTC-mandated content requirements. If US productions are no longer available to Canadian broadcasters, then Canadian broadcasters will, at long last, be interested in the production of quality Canadian productions that must be successful internationally in order to meet the costs of production. In short, the growth of global content rights will be the greatest corrective to the underfinanced and under distributed Canadian production sector.

The growth of global content rights will encourage non-Canadians to invest in Canadian productions of a quality that meets the standards of international audiences. Global content rights may prove to be a gift that keeps on giving.

Q4. Given Canadians' ever-increasing demand for data to stream audio and video content on fixed and mobile broadband networks, how will these networks keep pace with future capacity requirements, particularly in rural and remote areas?

The carriers will build out networks to serve their customers, as they always have. 99% of Canadians are already reached by wireless networks. It is important not to use the remaining one percent as an excuse to inhibit competition in the markets which are already served. This might occur if resale of underlying capacity were inhibited, for instance. If subsidies are needed for the

remote and hard-to-serve regions of Canada, the ISCC would have no objection to government funding such efforts.

It is vital that Canada not engage in the policy that characterized the age of telephony, where a monopoly was preserved in long distance calling on the ground that inter-company transfers of consumer surplus would subsidize certain regions and classes of calling. The same arguments have been resurrected in relation to resale of wireless capacity by the incumbent wireless carriers. It is the same old story: virtually any policy governments and regulators might devise in the public interest will, in carrier terms, “inhibit investment”. If you tax me, I will have less money for “investment” too.

Q5. Canadians currently enjoy audio and video content through a combination of traditional broadcast and Internet-based services. How will consumer behaviour evolve in the next five years? What factors will influence this evolution?

Consumer behaviour will evolve as it has been doing for the past ten years: towards the price, choice, ubiquity and convenience of Internet-based services and applications. There is no reason to believe that this migration will diminish, nor could it be stopped at any price Canadians would be ready to pay, politically or economically.

If data continues to be capped, we believe consumers will identify different uses on different devices and for different people (on their shared plans), in order to allocate what is becoming the new scarce resource – data -- in an extremely inefficient exercise.

Q6. From whom will Canadians access programming in the future? For instance, will Canadians look to traditional or online providers? Global or domestic providers? Content aggregators or multiple distributors?

The same answer to Question 5 applies here with equal strength. Put briefly, Canadians will look to Internet-based suppliers of anything and everything. The devices they hold in their hands will determine the outcomes, limited only by the data caps imposed by their carriers. Consequently, the idea of ‘domestic production’ (of what exactly?) needs clarification. If we are talking about video entertainment, it is apparent we will receive it increasingly through the Internet.

Thus, if the CRTC is asking a question about how Canadian video production will reach Canadian and foreign viewers, the answer is in one sense already obvious: through services like Netflix, CraveTV, and equivalent suppliers/aggregators.

Q7. What are the characteristics of a vibrant domestic content creation and distribution market?

That people freely choose to consume it, in competition with cultural productions of other countries and cultures.

It is a matter of policy whether Canada subsidizes content creation; it is highly unlikely that Canada would cease to do so.

Q8. Will new business models support a vibrant domestic content and distribution market? If so, which ones and why? If not, what content or distribution services would be missing?

Let us divide the answer into two parts. The content market will continue to benefit from federal and provincial subsidies. This is normal practice in most parts of the world.

What is likely to diminish in importance is the “broadcasting system,” which is complicated apparatus of regulatory devising, including the forced legal assimilation of the cable television distribution system to “broadcasting”.

The ISCC envisages a continuing market in Canada for music and video content creation. It is also clear that what we call “radio” and “television” are in the process of being transferred to the Internet. People will be entertained through portable handheld devices, as well as larger, less portable systems that will be found in the home.

There will continue to radios and television sets, but their importance will decline, at first gently, then quite suddenly. They will not be missed because people will have devices of equal or greater power by which they access music and video entertainment. This is not a prediction; it is an observation.

It is not the job of the CRTC to sustain obsolescent distribution media or business models. It may be that many inside the CRTC consider that its task is to sustain the “broadcasting” industry. After all, the Broadcasting Act is filled with ringing phrases of aspiration for “a Canadian system”, owned and controlled by Canadians. The Act assumes a world that is passing out of existence. The challenge for the CRTC and for government is to engage in relevant activity, at a time of technical and business transformation.

The effort to maintain the Canadian broadcasting system, as it was envisaged in the Broadcasting Act, will be expensive, possibly dangerous for a successful an adaptive Canadian response, and

almost certainly futile. What people want is music and video entertainment, and they are indifferent whether music comes to them through radios or the portable computers we carry in our pockets. This is probably distressing to those who inhabit the world of state-supported Canadian culture.

The distribution side of the cultural equation is already here: it is the Internet. There is no reason to suppose that Canadians will lose access to Canadian culture because of the gradual elimination of the licenced middleman called the broadcaster.

Q9. What are the legislative, public policy or regulatory measures currently in place that will facilitate or hinder a vibrant domestic market? What needs to stay in place? What needs to change?

From the point of view of the creators, it is almost inevitable that Canadian production subsidies, direct and indirect, will remain for video and music. It is equally as likely that quality Canadian material will find distribution channels through the Internet. It is a market, after all, not a closed system.

Possibly there will be state support of search engines in helping Canadians to find Canadian cultural product. Possibly there will be negotiations with Netflix, Crave TV and comparable organizations. Maybe carriers will be subsidized to carry Canadian programming. The scope and nature of regulatory and expenditure would-be fixes are beyond our capacity to foresee.

It sometimes heard from the CRTC that, just as the Commission faced the challenges of the cable television and satellites, it will somehow face down the challenge of the Internet and make the universe conform to the concepts engrained in the Broadcasting Act. It is imperative that Commissioners and staff understand that the time-worn admonitions and concepts of the Broadcasting Act are obsolete. Most of what the Commission is assigned to do on the broadcasting side of its mandate is irrelevant to the course of history.

The temptation will be to believe that some kind of legal miracle will cause the Internet to be assimilated to the broadcasting system, as the cable distribution network was in 1970. This is not going to happen, for any number of political, constitutional, legal and technical reasons.

Periodically one hears proposals to assimilate the common carrier regime of telecommunications –which governs the transport of content on the Internet – to the directed, licenced, nationalist, and highly-regulated scheme of the Broadcasting Act. After all, if there is “convergence” why should the statutes not be converged? The convergence is not of legal regimes, which is a radically incoherent idea, but of everything into systems based on Internet Protocol.

Consequently, the things that need to change first are the ideas by which we govern the production and distribution of Canadian content. In many quarters they have not kept pace with the changes that the Internet has brought about.

The Internet Society, Canada Chapter, will be pleased to respond to a further opportunity to specify and expand upon these ideas in future proceedings.

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