Response to the Final Report of the Broadcasting and Telecommunications Legislative Review Panel

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Internet Society
Canada Chapter

General Introductory Comments

The final report of the Broadcasting and Telecommunications Legislation Review Panel (the Panel) is fundamentally flawed. Its central thrust—to regulate Internet content and service providers through both the *Broadcasting* and *Telecommunications* acts—is inapt as well as unconstitutional. The two acts are properly narrowly focused to deal with the exceptional character of the broadcasting sector on the one hand and the challenges of the telecommunications sector on the other.

Telecommunications

Telecommunications is an important industry in terms of size, but it is primarily due to its impacts on the broader economy and society more generally that it demands a specific regulatory regime. In brief, the economic characteristics of telecommunications infrastructure concentrates market power in the hands of carriers, which have demonstrated time and again a propensity to abuse this power to the detriment of business and individual consumers who rely on crucial communication services. This has led governments to assign the power to regulate the industry to a separate regulatory body. The alternative to sector-specific regulation would be to have the competition authorities oversee the exercise of economic power by the telecommunications carriers. Clearly, this was not considered sufficient. For over a century, a succession of Canadian governments have delegated responsibility for regulating telecommunications carriers to a separate specialized regulatory body. It has never been felt that competition law was sufficient to abate the potential impact of the economic power of carriers.

The Panel, in its final report, has entirely deviated from the purposes of telecommunications regulation. It has instead proposed using the instrument of the CRTC to regulate entities that are not telecommunications carriers (for instance Google and Skype) whose potential to exercise economic power falls squarely within the mandate of the Commissioner of Competition. To provide a telecommunications service is not the same as being a facilities-based telecommunications carrier. The former are subject to market forces that ordinarily constrain their capacity to exercise market power. The proper oversight of such players is within the scope of ordinary competition regulation. It is the carriers that, by virtue of their control of transmission facilities, must be subject to specialized sectoral regulation.

By shifting the focus of regulation away from facilities-based market power, the Panel's recommendations with respect to Internet service providers entirely miss the target. As a result, while important telecommunications regulatory issues are not sufficiently addressed by the final report, the Panel recommended that the CRTC be drawn into areas of regulation for which it has no special expertise and which exceeds the legislative powers of Parliament.

Broadcasting

There is a similar misdirection in the Panel's recommendations respecting broadcasting.

A grand regulatory bargain shapes the relationship between the regulator and the regulated. Broadcasters help achieve important policy and regulatory goals (Canadian content, contributions to production funds, local news, etc.) in return for which they enjoy protection from competition in the form of market entry restraints, genre protection and—most importantly for television broadcasters—simultaneous substitution that protects the advertising revenues received by Canadian broadcasters airing popular US programs.

The Panel would have the CRTC regulate not merely all Canadian broadcasters, but every person or entity that posts audio-visual material to the Internet. In principle, the Panel makes no distinction between the posting user generated content—such as the ubiquitous cute kitten videos and the streaming of feature films. Yes, there are some refinements—the CRTC is to set a revenue threshold for the most intrusive measures, and the posters of cat videos may enjoy an exemption—but the CRTC will always have the authority to alter who is regulated or exempted and by what means. In short, expression by means of video would always be subject to government licensing in principle, and the Panel clearly desires much of it to be captured. This, in our view, is a bridge too far in a modern democratic society.

In contrast to the protected world of Canadian broadcasting, the world of Internet content is marked by sharp competition for subscribers (e.g. Netflix vs. Amazon Prime) and for advertising dollars (YouTube vs. Facebook). There is no protection the regulator can offer Internet content providers. There is no bargain to be had in exchange for the intrusive and costly regulation the Panel would have the CRTC impose.

Just as in the case of telecommunications, the Panel's recommendations exceed the legislative authority of Parliament. Even if Internet content falls within the legislative definition of broadcasting—which is very broad—not all providers of Internet content fall within the legal basis of broadcasting regulation, which is confined to Parliament's power to legislate with respect to inter-provincial undertakings. Because Internet content providers do not themselves transmit signals over inter-provincial or international boundaries (that is done by the common carriers who carry Internet traffic), such providers are not subject to federal regulatory legislation.

In short, we believe the principal recommendations of the Panel are without merit and lack a basis in the Canadian constitution. As to the recommendations to extend broadcasting-like regulation over 'printed' material (alpha-numeric) sent across the Internet, through a registration regime, they are unconstitutional, impractical, absurd, and dangerous.

What Follows

In the following portion of this analysis, ISCC follows the sequence adopted by the Panel in its final report. We provide general introductory remarks to provide a broader context for

the responses to the individual recommendations made by the Panel. Thereafter, we have set out the text of each recommendation (*in italic font)* followed by our concurrence or disagreement **(in bold)** and then by a brief explicatory text to explain, as necessary, the position we have adopted.

1. Renewing the institutional framework

ISCC Introductory Comments

The Panel failed to look at the workload that would ensue and skills sets needed to effectively carry out the mandates given to the CRTC to regulate telecommunications and broadcasting under its present mandate or under the Panel's recommended expansion of the CRTC's jurisdiction.

The worlds of telecommunications and broadcasting have diverged rather than converged over the years. The thinking that brought broadcasting and telecommunications regulation under one roof in the 1970s is now thoroughly outmoded. It resulted from a conflation of broadcasting with telecommunications. In modern parlance, broadcasting is simply an application carried over telecommunications channels. Simply put, broadcasting regulation is concerned with the nature of *content*; telecommunications regulation continues to be concerned with matters of *carriage* and the market power that arises from the ownership or control of transmission facilities. In Internet terminology, telecommunications is all about the physical, transport, and logical layers of the Internet.

The two regulatory spheres are distinct and require very different skill sets from their regulators. Broadcasting regulation requires a knowledge of Canadian production, the structure of the radio, television, cable and specialty programing markets, advertising markets, and popular tastes for various musical genres. In contrast, telecommunications regulation requires some foundation in communications technology, accounting, economics, competition policy, law, or related fields.

Many past CRTC commissioners have observed that there is never sufficient focus on telecommunications: broadcasting regulation constantly directs a converged regulator's attention to issues within the minutely regulated system of content at the expense of vast, foundational, infrastructure related issues. In contrast to the Panel, ISCC recommends that the CRTC be split into a telecommunications regulator and a broadcasting regulator, with each attracting candidates whose qualifications are appropriate to their respective mandates. This will be more extensively discussed below.

The Panel likewise failed to address the issue of the proper division of regulatory responsibility between the Minister of ISED and the CRTC respecting spectrum management. The *Telecommunications Policy Review Panel Report* (2006) made a number of

recommendations that have not yet been addressed. but which could be a useful starting point for changes to the institutional framework. Such changes would reflect the increasing importance of wireless communications to the Canadian economy; wireless services now account for about half the revenue of Canadian telecommunications carriers. ISCC believes that some functions regarding spectrum management would benefit from improved public input and independent decision making. The design and conduct of auctions, the establishment of terms and condition of license and their enforcement, and the levying of administrative and monetary penalties are some examples. We believe that these are functions that would be better conducted in a tribunal setting.

A further issue arises with respect to the mandate of the CRTC. By an amendment to the *Telecommunications Act* in 2005, the CRTC was given authority to enforce provisions relating to telemarketing and a Do Not Call list. In 2010, the CRTC was given responsibility for enforcing the anti-spam provisions of Canada's Anti-Spam Legislation (CASL). ISCC considers that it is inappropriate to have a regulatory agency saddled with a law enforcement function. We would like to see responsibility for the enforcement of the Do Not Call and CASL provisions transferred to a genuine law enforcement agency or to a beefed-up consumer protection branch of a federal department. Law enforcement functions beyond the regulation of telecommunications carriers are not compatible with the regulatory function. They divert resources and attention from the core functions of telecommunications regulation.

In short, there were major—even glaring—institutional issues that the Panel failed to grapple with and that are critical to the success of any desired legislative outcome.
The one major and novel institutional proposal made by the Panel is the creation of a Public Interest Committee of the CRTC. This proposal should be rejected as undermining the hearing processes of the CRTC and violating procedural fairness and the principles of natural justice.

The lack of focus on spectrum management issues was a glaring omission, and one that the Government must address in any forthcoming modification of telecommunications legislation.

ISCC Response to Specific Recommendations of the Panel

1. *We recommend that to better reflect the expanded role and responsibilities of the communications regulator and the broader scope of communications legislation, terminology be modernized as follows:*
    1) *The name of the Canadian Radio-television and Telecommunications Commission be changed to the Canadian Communications Commission, and the title of the Act governing the CRTC be changed to the Canadian Communications Commission Act.*

2) *The title of the Broadcasting Act be changed to the Media Communications Act.*
3) *The title of the Telecommunications Act be changed to the Electronic Communications Act.*

ISCC disagrees.
The suggested name changes reflect the unwise and unjustifiable extension of the CRTC's jurisdiction into areas that are outside the need for regulation or outside any imaginable skill set possessed by the CRTC. We believe that the CRTC should be divided into telecommunications and broadcasting commissions. It is imperative that the current titles of *Broadcasting Act* and *Telecommunications Act* should be retained.

2. *We recommend that to provide the CRTC with flexible powers to monitor existing markets and to develop a stronger research and strategic foresight capability, the following amendments be made:*
    1) *The CRTC Act be amended to require the CRTC to maintain accurate market data, and conduct, commission, and publish reports and evidence-based information on key issues and trends for the benefit of all Canadians.*
    2) *The Broadcasting Act be amended to include information gathering and investigatory powers similar to those set out at sections 37-39 and 70-71 of the Telecommunications Act.*

ISCC agrees.
However, the powers of the CRTC should not extend into areas that are not within the current jurisdiction of the CRTC under the *Broadcasting* and *Telecommunications* acts.

3. *We recommend that to ensure an open and transparent appointment process for Commissioners, section 3 of the CRTC Act be amended to require that qualified candidates be selected from applicants through an open call, guided by published, merit-based criteria.*

ISCC agrees.
It is critical that commissioners be appointed who have qualifications and expertise that enable them to properly carry out their functions, and that the process of appointment be as transparent as possible. To this end, it is important to recognize the very different skill sets required for those who regulate telecommunications from those who are to regulate broadcasting.

4. *1) We recommend that sections 3, 5, 6, and 10.1 of the CRTC Act be amended to reduce the maximum number of Commissioners to a Chair, a Vice-Chair, and up to seven additional Commissioners, each appointed for a single term of up to seven years.*

2) For the term of their appointment, Commissioners should reside in the National Capital Region or within a prescribed distance thereof.

1) **ISCC disagrees.**
The CRTC should be divided into two distinct chambers: one dealing with telecommunications and one dealing with broadcasting. Each should have its own Chair and Vice Chair and no less than four other members. It is only in this way that the public can be assured that the regulators have both the specialized expertise necessary to carry out their mandate, but also the necessary focus to be able to bear down on the matters that come before them for decision.

2) **ISCC disagrees.**
The Panel has provided no rationale for this recommendation. ISCC is concerned that the Commission will lose valuable regional expertise and knowledge of local conditions. It is also concerned that it will diminish the pool of potential appointees. It is already difficult to attract mid-career candidates, as a stint at the CRTC involves leaving a promising career path and professional networks. To add a requirement to live in the National Capital Region would also disrupt spousal careers, social and familial networks, and the continuity of the education and socialization of children.

5. *We recommend that to ensure transparency, the CRTC and ISED be required to identify the classifications of those regulatory officials with whom stakeholder contacts would be required to be publicly reported.*

   ISCC agrees.

6. *We recommend that to facilitate the Governor in Council's use of power to issue policy directions to the CRTC, the following amendments be made:*
   1) *Subsections 8(1–2) of the Broadcasting Act and 10(1) of the Telecommunications Act be amended to require simple publication of the proposed direction, with a 45-day comment period, to be followed by publication of all interventions.*
   2) *Subsection 5(1.1) of the Radiocommunication Act be amended to provide that the Minister of Industry shall have regard, in regulating radiocommunication, not only for the objectives of the Canadian telecommunications policy, but also for any policy directions issued by the Governor in Council under that Act.*

   1) ISCC takes no position.
   It seems strange that the recommendation eliminates the possibility of Parliamentary oversight of directions to the CRTC. This is a major step away from the accountability framework that was created under the current legislation.

   2) ISCC agrees.

7. *We recommend that to enhance the consistency, transparency, and predictability of the process for appeals of individual CRTC decisions to the Governor in Council, the provisions for such appeals in both the Broadcasting Act and Telecommunications Act be amended to:*
    1) *synchronize their timelines by requiring that an application be filed within 60 days of a CRTC decision and that Governor in Council make a decision within 180 days of the date of said CRTC decision;*
    2) *harmonize their scope, by eliminating the power to vary a decision from section 12 of the Telecommunications Act; and*
    3) *provide that an appeal to which the Governor in Council does not respond within the allotted time is deemed to have been denied.*

    ISCC is of the following opinion with respect to the three recommendations made by the Panel:

    1) ISCC agrees.

    2) ISCC disagrees.

    ISCC believes the Governor in Council should retain the power to vary CRTC telecommunications decisions. Telecommunications is a vital sector of the Canadian economy, and decisions respecting telecommunications can have huge consequences throughout the Canadian economy. The broader perspective of Cabinet and its responsibility for overseeing broader economic considerations justifies retention of the power of variance.

    3) ISCC agrees.

8. *We recommend that to increase regulatory certainty, the timeline for the exercise of the CRTC's review and variance power be entrenched directly in the statute, by amending section 62 of the Telecommunications Act to provide that a decision to review, rescind, or vary a decision or to rehear a matter be made within 120 days of the close of the record of the proceeding.*

    ISCC agrees.

9. *We recommend that to ensure that the CRTC and the Competition Bureau are each able to share expertise:*
    1) *the Broadcasting Act and Competition Act be amended to give each agency access to confidential information filed with the other, similar to the provisions set out in the Telecommunications Act;*
    2) *the Telecommunications Act and the Broadcasting Act be amended to authorize the CRTC to require a party to produce information relevant to competition issues requested by the Commissioner of Competition in the context of an intervention pursuant to section 125 of the Competition Act;*
    3) *the agencies be encouraged to revise their Letter of Agreement to require mutual notification of all matters requiring both telecommunications or broadcasting policy and competition law expertise; and*

4) *the agencies advise the Minister of Industry on an annual basis of those matters not notified and reasons for their exclusion, so that the Minister of Industry is able to identify any remaining barriers to mutual notification and consultation.*

1), 2) ISCC agrees.
3) ISCC disagrees.
ISCC recommends that the legislation *require* mutual notification.
4) ISCC agrees.

10. *We recommend that the Ministers of Industry and Canadian Heritage inform the CRTC upon receiving notification of foreign investment in businesses providing Canadian communications services, in order that the CRTC have the ability to provide advice on any telecommunications or broadcasting policy issues.*

ISCC disagrees.
The notification requirements should be restricted to foreign investments in Canadian carriers. No possible justification exists for extending the requirement to investments in mere resellers or Internet applications such as video conferencing or email services. Additionally, there is no reason why the Minister of Canadian Heritage should be given notification of such investments.

11. *We recommend that to ensure that the CRTC and ISED have the means to align their approaches with respect to embedding the privacy principles overseen by the Office of the Privacy Commissioner within communications services, technologies, and business processes, the following amendments be made:*
    1) *The provisions in section 39 of the Telecommunications Act on information sharing with the Commissioner of Competition, and any similar provisions adopted under the Broadcasting Act, be extended to the Privacy Commissioner.*
    2) *The provisions in section 23 of the Personal Information Protection and Electronic Documents Act on consultation, agreements and arrangements, and information sharing with provincial counterparts be extended to include federal institutions whose functions and duties relate to privacy within particular industry sectors.*

ISCC agrees, and goes further.
ISCC would go further and permit the CRTC to share confidential information with **any** department or agency of the federal government whose input might be helpful in deciding any matter coming before the CRTC, provided the information be kept confidential by the receiving institution.

12. *We recommend that to promote public interest group participation in regulatory proceedings:*

1) *the Broadcasting Act be amended to provide the CRTC with explicit authority to award costs, similar to the authority granted under subsections 56(1) and 56(2) of the Telecommunications Act;*
2) *ISED establish a funding program to support participation in proceedings under the Radiocommunication Act; and*
3) *the provisions concerning cost awards in the Broadcasting Act and Telecommunications Act be amended to include appeals that flow from decisions so that public interest intervenors are not left behind on appeals.*

ISCC agrees with recommendations 1), and 3).

Recommendation 2) requires explanation.
At present there are public consultations but no public hearings under the *Radiocommunication Act*. If the recommendation is intended to permit public response to notices of consultation of ISED processes under the *Radiocommunication Act*, then ISCC is in favour of such funding. ISCC believes that consumer interests will be served by the creation of a funding program to support public interest participation, but believes this should be extended to participation before the CRTC under the *Broadcasting* and *Telecommunications* acts. Predictable advance funding would do much to ensure appropriate public interest participation rather that after-the-fact cost awards.

13. *We recommend that the Broadcasting Act and the Telecommunications Act be amended to include public interest participation funding in the operational funding requirements of the CRTC, and that this be included in the expenditure plans for Broadcasting Activity and Telecommunications Activity costs recovered under the Broadcasting License Fee Regulations and Telecommunications Fee Regulations, respectively. We further recommend that ISED's operational funding include amounts to be directed to public interest participation.*
ISCC agrees.

14. *We recommend that the CRTC convene a public consultation on establishing a transparent process for funding public interest participation regarding telecommunications or broadcasting based on the following elements:*
    1) *to ensure transparency, the CRTC would be required to report quarterly on the status of cost claims and their disposition;*
    2) *to ensure timeliness, the funding process would be subject to a three-month service standard with a six-month upper limit for the completion of cost awards. The CRTC would be required to report annually on compliance with this standard; and*
    3) *to eliminate lengthy and adversarial processes, the new process would be administered either by CRTC staff directly or delegated to an independent organization modelled along the lines of the Broadcasting Participation Fund*.

ISCC agrees.

15. *We recommend that the CRTC Act be amended to require the creation of a Public Interest Committee funded by the CRTC and composed of not more than 25 individuals with a wide range of backgrounds, skills, and experience representing the diversity of public, civic, consumer, and small business interests, and including Indigenous Peoples. The CRTC should be encouraged to meet with representatives of Indigenous Peoples and communities outside of the Committee structure. The Committee should also include, as an ex officio member, a representative of the Accessibility Advisory Committee called for in Recommendation 88.*

ISCC disagrees.
This is one of several untenable ideas in the BTLR Report. A Public Interest Committee will undermine the legitimacy CRTC hearing processes and undermine the role of intervenors in and parties to its proceedings.
ISCC believes the Public Interest Committee, as proposed, would reduce transparency and undermine the integrity of the hearing processes of the Commission. We have serious concerns respecting any appointment process, conflicts of interest, and lack of accountability. In short, it appears that the Committee would undermine the legitimacy and fairness of the CRTC decision making and violate the principles of natural justice.

2. Affordable access to advanced telecommunications networks

ISCC Introductory Comments

Telecommunications Act
While many of the individual recommendations made in respect of telecommunications are reasonable and would be positive contributions to the legislation, the overarching thrust of the Panel—the move from regulation of telecommunications carriers into the regulation of Internet applications and platforms—is an unwarranted expansion of the jurisdiction of the CRTC.

Telecommunications regulation is all about restraining the market power of common carriers that control transmission facilities that cannot be economically duplicated. Internet applications do not operate publicly accessible transmission facilities. They do not control how their signals reach their users. In short, they lack what is at the heart of telecommunications regulation: control of transmission facilities used to provide telecommunications services to the public for compensation. The Panel's proposal to confer on the CRTC the power to regulate non-carriers who merely provide services online

deviates entirely from the rationale for telecommunications regulation and must be rejected.

Apart from the fundamental error of suggesting that telecommunications legislation be stretched to apply to Internet-based services, the Panel has made a number of very useful and commendable recommendations, as is further detailed below. ISCC however, would like to suggest that the following matters be given consideration in revising the *Telecommunications Act*:

1. The telecommunications regulatory authority should be separated from the broadcasting regulator. ISCC regards this as primordial.
2. It should be an objective of the *Telecommunications Act* to place at its heart the interests of individual and business consumers.
3. One of the objectives of the *Telecommunications Act* should be to ensure the health of the market for wholesale services. We can no longer pretend that the interests of consumers can be met through facilities-based competition—it will not happen. It is time to recognize that wholesale services are critical to a well-functioning telecommunications marketplace.
4. Given the centrality of the Internet to government, business, and private life, it should be an objective of the *Telecommunications Act* to enshrine net neutrality as an objective to guide the regulator in the exercise of its functions.
5. Section 24.1 brings a group of non-carriers within the jurisdiction of the CRTC. As that section is currently worded, it extends not only to resellers, but to any provider of a telecommunications service—such as Zoom, Skype and even Hotmail. This is clearly unneeded and unwanted. We do not have a total solution to the jurisdictional issues raised by s. 24.1, but believe it should be cast as a provision preventing resellers from accessing carrier wholesale services unless they meet CRTC conditions respecting access to emergency services and access for the disabled. The existing privacy requirements are redundant as federal and provincial privacy legislation already applies to non-common carriers.
6. The power of forbearance (s. 34) requires a complete rethinking. Despite findings of fact by the CRTC that a market is sufficiently competitive to protect the interests of users, practice has often demonstrated that carriers continue to exercise market power within forborne markets. The CRTC should be empowered to audit whether a forborne market continues to be sufficiently competitive to protect the interests of users. At the same time, users should be able to apply to the CRTC where prices for services are thought not to be just and reasonable, or where a carrier is alleged to have discriminated against one or a number of users. In effect, all forbearance orders should be conditional upon a forborne market remaining competitive.
7. S. 36 of the *Telecommunications Act* requires that the content of messages should not be controlled or their meaning or purpose altered without the consent of the CRTC. This section could be used in unexpected and harmful ways, as for instance, for website blocking. ISCC believes that the section is too broad. ISCC considers that there should be a simple prohibition on a carrier altering the meaning or

purpose of communications—full stop. The CRTC should not have the power to permit a carrier to alter the meaning or purpose of a communication.

8. Non-carrier parties before the CRTC are under a chronic disadvantage because carriers can designate broad swathes of information as confidential. The confidentiality provisions are susceptible of abuse, and what may be legitimate to defend confidential information is used as a means of escaping challenge and accountability. ISCC proposes that the Act be amended to permit experts and counsel for parties before the CRTC to be given access to confidential information so long as it is not disclosed to the party itself. The provisions of the *Canadian International Trade Tribunal Act* on this point should be borrowed as appropriate.
9. The Panel has made some useful suggestions to permit the exchange of information between the CRTC and the Commissioner of Competition. ISCC suggests that the CRTC be enabled to ask the Commissioner of Competition for his or her opinion on a matter coming before the CRTC that involves competition issues. The opinion would not be binding on the CRTC, but the request and the opinion should be on the public record, and the CRTC should, if it rejects the Commissioner's advice, be required to explain why it is not following the advice it received.
10. ISCC recommends that the CRTC be explicitly required to remove technical barriers to wholesale access to carrier networks and to ensure that wholesale services be made available when new services are introduced by a carrier.
11. ISCC perceives that the current organizational structure of Canadian carriers creates incentives for carriers to favour their own sales and marketing arms to the detriment of their wholesale customers and ultimately to the detriment of business and individual consumers. The CRTC should be given the explicit power to order the structural separation of carrier business to separate network operations from carrier's the retail sales and marketing arms where the CRTC concludes that this would be a reasonable way of protecting consumers from carrier internal self-dealing.

Radiocommunication Act

ISCC regrets the scant attention paid by the Panel to the *Radiocommunication Act*. Essentially, the Panel has made the same error of policy as the crafters of the 1989 legislation: it failed to understand that spectrum licenses involve a series of particular policy and legal issues that require special legislative guidance. While the recommendations made with respect to radiocommunications by the Panel are good, they do not go far enough to ensure that revised legislation will support good spectrum management so as to attain the objectives of the *Telecommunication Act*.

1. The *Radiocommunication Act*, at least those provisions respecting spectrum management, should be merged into the *Telecommunications Act*. This, in itself, would force an examination of the machinery of government issues that the Panel has so lamentably neglected.

2. The *Radiocommunication Act* should be amended to deal with matters such as spectrum management and planning.
3. There needs to be an effective division of labour between the Minister of ISED and the CRTC with respect to spectrum management. There are some areas where the Minister may be better positioned to exercise powers—others where the CRTC is more appropriate.
4. For instance, ISCC believes that high level spectrum planning should be reserved to the Minister.
5. Matters such as the sale, tendering, or auctioning of spectrum licenses, setting the terms and conditions of spectrum licenses, and ensuring compliance with the terms of license should be assigned to the CRTC.
6. The Panel acknowledges the need for the divisibility and the trading of spectrum frequencies, but does not make recommendations for systems to support market friendly tendencies—such as public registries to underpin any effective market for spectrum frequencies. A publicly searchable registry is essential to the operation of an open market in spectrum.
7. ISCC recommends that the CRTC be given power to deal with fallow spectrum: it should be an objective of spectrum management legislation to ensure that fallow spectrum is brought into use. Spectrum hoarding must be suppressed and the spectrum that is freed opened to productive use.
8. The penalties created under the Act must distinguish between those related to the violation of a license for a radio device and those which are appropriate for the violation of a term or condition of a spectrum license.

ISCC Response to Specific Recommendations of the Panel

16. *We recommend that the definitions in the Telecommunications Act be amended to replace "telecommunications service" with "electronic communications service," which means a service provided by means of telecommunications facilities and, without limitation, includes:*
    1) *the provision in whole or in part of telecommunications facilities and any related equipment by sale, lease, or otherwise;*
    2) *connectivity service, a service whose principal feature is the conveyance of intelligence by means of telecommunications facilities; and*
    3) *interpersonal communications service, a service that enables direct interpersonal and interactive exchange of information via telecommunications facilities between a finite number of persons. The persons initiating or participating in the communication determine its recipients.*

ISCC disagrees.
ISCC is opposed to this unnecessary and unconstitutional expansion of the jurisdiction of the CRTC. ISCC does not see the need for, nor the desirability of, the CRTC exercising regulatory authority over the operations and practices of telecommunications resellers, teleconferencing service providers, and email service providers—and the hundreds or potentially thousands of other persons or entities who may be captured by the proposed expansion of the definition.

The *Telecommunications Act* was designed for the regulation of entities exercising market power by virtue of their owning or controlling transmission facilities that are not, in practice, replicable. The proposal moves the CRTC squarely away from telecommunications issues and puts it into the invidious position of regulating markets that are entirely outside its expertise.

ISCC believes the proposal is faulty on both policy and legal grounds, and ignores the fact that telecommunications regulatory power is based on the Federal government's jurisdiction over interprovincial undertakings. The proposal would extend jurisdiction into matters that are outside federal jurisdiction.

17. *We recommend eliminating the terms "telecommunications common carrier," "Canadian carrier," and "telecommunications service provider" from the Telecommunications Act, with consequential amendments to refer to providers of defined functions and activities.*

ISCC disagrees.
First, only the few facilities-based common carriers possess the market power that justifies regulatory intrusion into the relations between carriers and their customers.

Second, the exercise of federal regulatory authority is based on Parliament's jurisdiction over inter-provincial and international undertakings. The Panel's recommendation, while seemingly about terminology, is laying the groundwork for a vast and unwarranted expansion of the CRTC's authority over entities that are irrelevant to attaining the objectives of Canadian telecommunications policy.

As to terminology, the *Telecommunications Act* uses "Canadian carrier", a term that no longer serves a useful purpose. The term had relevance when the act was first drafted. At that time, a licensing scheme was an important feature of the proposed legislation. That scheme was abandoned in the course of Parliamentary study.

Additionally, when the Act was adopted, it was not yet clear that the federal regulator had jurisdiction over small regional carriers having operations purely within a single province. The clarifications provided in *Telephone Government* eliminated the need to distinguish the large carriers from the regional carriers. The term also made sense in a time when the act required that all common carriers be Canadian-owned and controlled. The act has now been amended such that only

carriers having a market share of at least 10% of the market must be Canadian owned and controlled. Only three carriers—Bell, Rogers, and Telus—meet that standard. Hence, there is no ongoing need for this specialized terminology. ISCC recommends that the simple term "telecommunications common carrier" should replace "Canadian carrier" throughout the act.

The Panel would extend the *Telecommunications Ac*t to persons and entities that merely provide their services using the transmission facilities of the common carriers. For instance, the proposed new definition would technically capture banks and law firms that provide customers and clients the ability to message or email within their private platforms. Likewise, it would capture providers of services such as building security that run over carrier networks. We do not believe that capturing mere clients of telecommunications carriers is good policy, nor is it justifiable under the constitution.

The Panel has cited privacy considerations, among others, for the radical expansion of CRTC jurisdiction. In fact, these concerns now fall within the purview of the Privacy Commissioner under PIPEDA and under the provisions of provincial legislation where provinces have privacy legislation. There is no gap that needs to be filled by the CRTC.

18. *We recommend the following amendments to the Telecommunications Act to regularize a class-based approach to electronic communications regulation:*
    1) *Amend paragraph 32(a) to broaden the CRTC's power to establish classes of service and service providers for purposes of the whole Act, not just the Act's Part III.*
    2) *Consolidate sections 9, 24 and 24.1 to establish the CRTC's authority to establish class-based exemptions or conditions of service — like emergency services or privacy obligations — in a single provision that does not depend on the status of competition in a market but does require that the conditions be applied to a clearly defined class.*
19. **ISCC disagrees.**
    The amendment is intended to support the regulation of telecommunications service providers beyond the scope of telecommunications common carriers—a proposition ISCC rejects.
20. **ISCC agrees.**
    ISCC recommends the repeal of section 24.1 because it is directed at telecommunications service providers who lack market power. The section needs to be reworked to ensure that resellers provide access to emergency services and accessibility for the disabled, while at the same time ensuring that resellers and other telecommunications service providers are not needlessly drawn into the substantive regulatory provisions of the *Telecommunications Act*. As with so much else in the Panel's report, the merger of ss. 24.1 with s. 9 and 24 misdirects regulatory

energy into areas where telecommunications regulation is both unwarranted and constitutionally *ultra vires* Parliament.

19. *We recommend that the Telecommunications Act be amended to establish explicit jurisdiction over all persons and entities providing, or offering to provide, electronic communications services in Canada, even if they do not have a place of business in Canada.*
    ISCC disagrees.
    This expansion of the scope and application of the *Telecommunications Act* as unwarranted overreach that is unconstitutional and in violation of Canada's trade commitments. It will unquestionably be challenged successfully in the courts.

20. *We recommend that international telecommunications services licensing be replaced by CRTC-administered registration.*
    ISCC takes no position.

21. *We recommend that instead of restrictions on acting as a "Canadian carrier", section 16 of the Telecommunications Act refer to restrictions on owning or operating a terrestrial transmission facility used to provide an electronic communications service.*
    ISCC disagrees.
    While ISCC recommends deletion of the term "Canadian carrier," the term telecommunications common carrier should be retained. ISCC proposes that the ownership and control provision be restricted to those now covered by the ownership requirement—those telecommunications common carriers having more than 10% of the Canadian telecommunications market.

22. *We recommend that the CRTC have explicit responsibility for the administration of databases related to the functioning and location of telecommunications networks. Such databases would clarify who operates which facilities in which locations; help facilitate interoperation and deployment of new network facilities; and clarify connectivity gaps in rural and remote communities.*
    ISCC agrees.
    These databases normally concern addressing systems, which are at the heart of the logical layer of communications. They can be used effectively by some to limit the competitive capacity of others. The CRTC should ensure that these databases are administered in a competitively neutral manner.

23. *1) We recommend that the Telecommunications Act be amended to require market participants, in classes specified by the CRTC, to register and provide such information as the CRTC may specify, including beneficial ownership information.*

2) We further recommend that the CRTC maintain a public registry of such information that the CRTC has not found to be confidential.

1) **ISCC disagrees.**

This is an overreach. The CRTC can now gather all the information it requires. There is no justification for a further extension of its powers in this regard, and the registration requirements are apt only to lead to further regulatory mission creep. There is no justification for requiring beneficial ownership information of entities who are not Canadian carriers.

2) **ISCC disagrees.**

The ownership of publicly traded companies can be fairly easily obtained. The share structure of closely held companies (including major players such as Rogers and Shaw) are held in strict confidentiality, thus the registry would not disclose more than is known at present, and presents a mere pretense of transparency.

24. *We recommend that the policy objectives of the Telecommunications Act be amended to reflect that all Canadians, including those with disabilities, should have timely, affordable, barrier-free access to the advanced telecommunications necessary to fully participate in Canadian society and the global economy.*

    ISCC agrees.

25. *We recommend that the Telecommunications Act be amended to enable the CRTC to draw from an expanded range of market participants — all providers of electronic communications services — in designating required contributors to funds to ensure access to advanced telecommunications.*

    ISCC disagrees.

    Forcing contributions from users of the networks of common carriers would require consumers of telecommunications to make multiple contributions (contribution stacking) to the expansion of broadband service coverage. This merely increases telecommunications costs without adding new contributors (who are always the business and individual consumers of telecommunications services). In essence, the Panel is merely envisaging a system of double taxation that will raise costs to the users of telecommunications services**.**

26. *We recommend that the federal government engage with Indigenous Peoples and communities on how broadband expansion should be implemented in Indigenous communities and other related issues, such as Indigenous ownership of broadband networks.*

    ISCC agrees.

27. *We recommend that the Telecommunications Act be amended to require the Minister of Industry to submit an annual report to Parliament on the status of broadband deployment, including in rural and remote communities and with respect to Indigenous Peoples and communities.*

ISCC takes no position.
However, ISCC does note that the factual material could probably be acquired by seeking the relevant information in the preparation of the annual Communications Monitoring Report.

28. *We recommend that the telecommunications policy objectives of the Telecommunications Act include the following as an objective:*
    - *To foster a competitive market for the provision of electronic communications services primarily through reliance on market forces and, where required, through efficient and effective regulation.*

ISCC agrees.
However, the objective should be restricted to telecommunications services and counterbalanced with an objective that places consumer interests at the heart of telecommunications policy objectives.

29. *We recommend that the Telecommunications Act be amended to explicitly require the CRTC to monitor and assess the state of competition in key electronic communications markets — including the market shares of non-Canadian participants — to ensure that rates are just and reasonable*.

ISCC disagrees.
We oppose mandating the CRTC with regulation beyond common carriers. The rationale for the focus on foreign-owned participants in markets such as teleconferencing and email services is mistaken. No good can come of this proposal.

This is clearly a matter for the Competition Bureau which has the expertise to deal with the assessment of the state of competition in relevant markets (and for determining what are the relevant markets).

30. *We recommend that the forbearance provisions be amended as follows:*
    1) *The CRTC should not be permitted to forbear from the consolidated section 24/24.1 recommended above.*
    2) *The CRTC should not be permitted to forbear from its affirmative obligation to ensure the justness and reasonableness of the rates that prevail in the market.*
    3) *The CRTC should not be permitted to forbear from subsection 27(2) of the Act. The CRTC should have ongoing responsibility to address complaints of unjust discrimination or undue preference.*
    4) *Eliminate the discretionary authority of the CRTC in subsection 34(1) of the Act to forbear from regulation in a market.*
    5) *Allow the CRTC broader discretion as to when to employ regulatory tools, such as pre-approval of working agreements and of limitation of liability clauses, from which it has not forborne.*

6) *Continue to require forbearance where the market is sufficiently competitive to protect the interests of users under subsection 34(2). The CRTC must, as a condition of forbearance from retail rate regulation, either mandate supply of related wholesale inputs or explain why it is unnecessary or inappropriate to do so.*

ISCC responds to the specific proposals as follows:

1) **ISCC disagrees.**
The projected expansion to non-common carriers (section 24.1) as unnecessary and unjustifiable on grounds of economic policy, as resellers cannot exercise market power.
2) **ISCC agrees in part.**
This recommendation calls into question the whole concept of forbearance. If the CRTC can march in, despite having found as a fact that a market is sufficiently competitive to protect the interests of users, then the forbearance orders have little practical effect. ISCC acknowledges that there are too many instances where forborne markets have behaved in a notably uncompetitive manner—e.g. where retail rates charged by carriers were less than the wholesale rates charged to resellers. Clearly, the criteria for granting a forbearance order needs to be reexamined, as does the monitoring of forborne markets. We do not believe the Panel has gone far enough in recommending the adjustments that are necessary to the forbearance regime. In effect, a forbearance order must be conditional upon the actual performance of the forborne market.
3) **ISCC disagrees in part.**
ISCC has the same reservations as with paragraph 1) respecting the extension of subsection 27(2) to non-carriers.
At the same time, it is clear that a finding that conditions in a market justifies forbearance is no guarantee that discrimination or undue preference cannot occur. In effect, it must be acknowledged that there have been failures in forborne markets—that carriers have within those markets exercised market power. In reality, forbearance seems to have been kinder to carriers than to their users. A specialized telecommunications regulator as recommended by ISCC might have the capacity and should have the obligation to undertake audits to ensure that forborne markets are functioning competitively.
4) **ISCC takes no position on the discretionary power of the CRTC to forbear.**
5) **ISCC agrees.**
6) **ISCC agrees.**

31. *We recommend that the CRTC's authority over tariffing be consolidated, specifying that tariffs (to be renamed "reference offers") must set out not only rates but also, at a minimum:*
    1) *required terms and conditions;*
    2) *details of associated operational processes; and*
    3) *service supply and quality conditions.*

    ISCC agrees.

32. *We recommend that the CRTC be authorized to issue an interconnection order regarding any electronic communications service.*

    ISCC disagrees.

    The expansion of powers of interconnection beyond what is necessary to ensure the effective national inter-operability of telecommunications networks is without any rationale. No justification exists to require resellers to interconnect their systems. It is unclear why or how teleconferencing services or email providers can be expected to interconnect. When pushed beyond common carriers, this recommendation is bizarre.

33. *We recommend that direct access to numbering resources be broadened to all existing and prospective electronic communications service providers that are within the jurisdiction of the Telecommunications Act.*

    ISCC agrees.

    The scope of the authority should include all addressing and numbering systems of whatever description. Many addressing schemes are not primarily numerical.

34. *We recommend that to promote efficient network deployment, the Telecommunications Act be amended to require those providing electronic communications service to the public to grant access to their support structures at fair and reasonable rates and on a non-exclusive basis to persons who own or operate transmission facilities used to provide connectivity services to the public.*

    ISCC agrees.

35. *We recommend that sections 43 through 46 of the Telecommunications Act, which establish tools to support network deployment, replace references to specific entities (i.e. Canadian carriers, distribution undertakings) with persons who own or operate transmission facilities used to provide connectivity services to the public and prohibit any exclusive arrangement for the use of passive infrastructure*.

    ISCC agrees.

36. *The locations at which facilities must now be installed to pursue network deployment have broadened. We recommend that subject to any exclusions the CRTC may determine:*

1) *the CRTC's authority over passive infrastructure should clearly include access to all public property capable of supporting such facilities, such as street furniture;*
2) *the scope of access should include radiocommunication facilities and the telecommunications facilities necessary to operate them;*
3) *the scope of access should also include non-discriminatory access to the support structures of provincially regulated utilities;*
4) *the Telecommunications Act should be amended to authorize the CRTC to mandate access to inside and in-building wire, support structures, and rooftops within and on multi-dwelling unit buildings and be available to all providers of an electronic communications service; and*
5) *the Minister of Industry should assign operational oversight of the radiocommunication and broadcasting antenna siting process to the CRTC, including managing the interaction with municipalities and land-use authorities.*

ISCC agrees.

37. *We recommend that the Telecommunications Act be amended to require the CRTC to consult with the relevant municipality or other public authority prior to exercising its discretion to grant permission to construct telecommunications facilities. We further recommend that the Act be amended to empower the CRTC to review and vary the terms and conditions of access to the support structures of provincially regulated utilities, to ensure non-discriminatory arrangements.*

    ISCC agrees in part.
    ISCC considers that this measure should also permit the CRTC to require that the applicant carrier have adequately consulted with the relevant authority rather than require that the CRTC directly consult with each authority with which a carrier may come into conflict. This would mirror the current practices of ISED with respect to tower siting.

38. *We recommend that to more effectively resolve disputes relating to mandatory antenna tower and site sharing, the Minister delegate the resolution of disputes relating to these or other conditions of license to the CRTC. We further recommend that the Minister should, in existing conditions of license, direct disputes to the CRTC rather than to commercial arbitration.*
    ISCC agrees.

39. *We recommend that the CRTC assume sole jurisdiction to mandate and establish terms and conditions of access to wholesale wireless services.*
    ISCC agrees.

40. *We recommend that the Radiocommunication Act be updated to ensure that all types of apparatus, systems, or any other thing that affect safe, secure, reliable, and interference-free radiocommunication in Canada are included in the Act's scope. We further recommend that the definitions in section 2 and the prohibitions in section 4 be reviewed as a whole to ensure that the following are included:*
    1) *apparatus that is intended for or capable of being used for radiocommunication;*
    2) *apparatus that unintentionally emit electromagnetic waves or frequencies for purposes other than radiocommunication;*
    3) *apparatus that intentionally emit electromagnetic waves or frequencies for purposes other than radiocommunication; and*
    4) *apparatus or any other system or thing that can block, interfere with, distort, or alter radiocommunication.*

    ISCC agrees.

41. *We recommend that to facilitate the shared use of radio spectrum, the Radiocommunication Act be amended to empower the Minister of Industry to:*
    1) *establish mechanisms to facilitate trading or leasing of licenses;*
    2) *administer databases or information, administrative, or operational systems that govern the use of radio spectrum under one or more classes of licenses or license exemptions; and*
    3) *delegate such administrative powers to any person.*

    ISCC agrees.

42. *We recommend that the Radiocommunication Act be amended to empower the Minister of Industry to establish conditions for the use of specific models of radio apparatus that have been exempted from licensing requirements in order to enable ongoing spectrum management between diffuse users of advanced technologies outside the licensed system. We further recommend that to reduce the regulatory burden associated with the introduction of new wireless technologies, the Act be amended to provide the Minister of Industry rather than the Governor in Council with the power to exempt models of radio apparatus from licensing requirements.*

    ISCC agrees.
    However, ISCC believes that legislation should require that there be a public consultation process.

43. *We recommend that the Minister of Industry be given responsibility for ensuring that communications devices and their operating systems respect security requirements, protect users' privacy, and incorporate accessibility features. Equipment standards established under the Telecommunications Act and the Radiocommunication Act should be revised to reflect those considerations.*

ISCC agrees.
However, ISCC believes legislation should require that there be a public consultation process.

44. *We recommend the following amendments in order to update the communications equipment certification system:*
    1) *amend the prohibition in 69.2 of the Telecommunications Act to include the manufacture of telecommunications apparatus;*
    2) *expand the prohibitions in both the Telecommunications Act and the Radiocommunication Act to include "persons facilitating the importation, distribution, offer for sale, and sale of devices in Canada";*
    3) *amend the provisions that currently empower the Minister and the Governor in Council to establish technical requirements and technical standards in relation to communications equipment, to include the power to establish standards in relation to the operating systems and software that run the devices; and*
    4) *align the Minister of Industry's powers in relation to radio apparatus, interference-causing equipment, and radio-sensitive equipment in order to authorize the creation of a registry system for equipment regulated under the Radiocommunication Act similar to that currently found under the Telecommunications Act.*

    ISCC agrees.

45. *We recommend that to ensure the trust and safety of users of electronic communications services, the policy objectives of the Telecommunications Act be amended to include the promotion of the security and reliability of telecommunications networks and electronic communications services.*
    ISCC agrees.

46. *Canada should not wait to establish security baselines that enhance trust in telecommunications markets. We recommend that the CRTC initiate a proceeding to update the Security Best Practices for Canadian Telecommunications Service Providers issued by the Canadian Security Telecommunications Advisory Committee and to determine to which classes of service providers these practices should apply.*
    ISCC agrees.

47. *We encourage the federal government and its lead agencies on national security and public safety to consider whether additional powers may be required on a coordinated or sector-specific basis to ensure that relevant electronic communications services and facilities remain safe and secure. In this review, the federal government should consider whether to replicate certain powers granted under the Radiocommunication Act in the Telecommunications Act.*
    ISCC agrees.

48. *We recommend that to safeguard continued access to an open Internet, which is fundamental to net neutrality:*
    1) *The policy objectives of the Telecommunications Act be amended to reflect the CRTC's duty to safeguard open Internet access in Canada. This is intended to ensure that users have the right, via their Internet access service, to access and distribute lawful information and content, use and provide applications and services, and use terminal equipment of their choice, irrespective of the location, origin, or destination of the information, content, application, or service.*
    2) *The term "Canadian carrier" in subsections 27(2) and (4) of the Telecommunications Act be deleted in favour of language allowing the CRTC to review unjust discrimination in the provision of any electronic communications service by any person.*

    1) ISCC agrees.

    2) ISCC disagrees.
    Discriminatory practices by resellers and other telecommunications services providers who are not common carriers can be dealt with through market forces, by the Commissioner of Competition, or by the consumer protection authorities of the relevant jurisdictions.

49. *We recommend that the CRTC expand its information gathering and reporting on network neutrality, including Internet traffic management practices, zero rating, and any further open Internet access provisions, including:*
    1) *To require Internet service providers to inform users of network speeds and management practices when contracting for and providing the service, and to report annually to the CRTC on network management practices and their impacts.*
    2) *To report annually, either as a stand-alone report or combined with other reporting, on practices that affect achievement of the open Internet access policy objective.*

    ISCC agrees.
    However, ISCC would limit the recommendations to ISPs that are common carriers.

50. *We recommend that the legislation governing the telecommunications sector include a provision setting out the policy objectives of the legislation in the following terms:*
    It is hereby affirmed that telecommunications perform an essential role in the maintenance of Canada's identity and sovereignty and to safeguard, enrich, and strengthen the social and economic fabric of Canada and its regions. The Canadian telecommunications policy has as its objectives:

1) *To promote timely, affordable, barrier-free access by all Canadians, including those with disabilities, to the advanced telecommunications necessary to fully participate in Canadian society and the global economy.*
2) *To foster innovation and investment in high-quality, advanced connectivity in all regions of Canada, including urban, rural, and remote areas.*
3) *To foster a competitive market for the provision of electronic communications services primarily through reliance on market forces and, where required, through efficient and effective regulation.*
4) *To promote the security and reliability of telecommunications networks and electronic communications services.*
5) *To contribute to the protection of the privacy and confidentiality of user information.*
6) *To safeguard open access to the Internet.*
7) *To promote the ownership and control of Canadian transmission facilities by Canadians.*
8) *To promote the use of Canadian telecommunications facilities for electronic communications within Canada and between Canada and points outside Canada.*

ISCC agrees with the following qualifications:
While ISCC is in general agreement with the proposed objectives, we wish to reemphasize that the *Telecommunications Act* should be restricted in its application to telecommunications common carriers. The extension to broad swaths of services that do not implicate market power is a colossal mistake.

ISCC considers that the objectives of the *Telecommunications Act* should first and foremost put at its heart the interests of individual and business consumers. This should be an explicit objective of the Act.
ISCC also considers that net neutrality should be an explicit objective guiding the CRTC in the exercise of its powers.

Objective 7) is no longer an overarching objective of Canadian telecommunications policy given the progressive relaxation of ownership requirements, such that now only those common carriers having greater than 10% of the market for telecommunications services are subject to the requirements. Foreign ownership restrictions could well be reduced further by future Parliaments.

ISCC would also observe with respect to objective 8) that, since the adoption of the *Telecommunications Act*, an ever-greater proportion of Canada to Canada traffic flows through foreign transmission facilities. The CRTC has never acted to give life to this objective. It should be eliminated as outdated. It is time to recognize that this is not a fundamental or important objective of Canadian telecommunications policy.

3. Creation, production, and discoverability of Canadian content

ISCC Introductory Comments

The main and overarching failing of the Panel is to have confused content production issues with broadcasting issues. As a result, the Panel has redefined the purpose of broadcasting as serving the interests of the producers of content rather than affirming that producers are there to serve the interests of the broadcasters—who need content to attract audiences. This leads to the further and catastrophic error of hijacking online content providers to serve the interests of a specific production community (producers of certified Canadian content) rather than serving the audiences who subscribe to or otherwise view online content.

It is through this grim logic that the Panel proposes to regulate (through terms and condition of registration as opposed to licensing) online content providers in order to both finance Canadian production and, at a second level, require that foreign streaming services comply with Canadian catalogue and findability requirements. Realizing that no foreign court would recognize the legitimacy of such regulatory impositions, the Panel seeks to give the CRTC the authority to impose extraordinarily high monetary penalties to extort compliance.

Let it be clearly understood: none of this has to do with broadcasting regulation. It is all about financing certified Canadian content. It has nothing to do with the content providers interaction with its audience, it has nothing to do with programing standards and quality, and it has nothing to do with standards of fairness or the abuse or manipulation of political or public opinion. The Panel's recommendations are 'all content production industry all the time'. The Panel has confused the industry of content production with culture. It compounds this error by attempting to equate foreign (and domestic) online content providers with broadcasters.

The ISCC strongly opposes the proposal to force online content providers into regulation principally, if not solely, for the purpose of providing further subsidies to the production of Canadian content. If these activities merit public support, then the government should use direct subsidies or tax incentives, as in all other fields of cultural expression. Do not bring the heavy hand of broadcasting regulation into areas where it is unnecessary and distortive.

The proposal to force foreign (largely American) online content providers to finance Canadian certified productions, none of which, (unlike Canadian broadcasters) they

can own or control, likely constitutes a breach of the provisions of the new USMCA, and so invites retaliation in economic sectors far beyond the narrow world of cultural industries.

Moreover, from a public policy perspective, the Panel's recommendations would have a distinctly inappropriate outcome. CRTC data show that Canadian private sector broadcasters spend 70% of their CanCon obligations on news and sports (which they can produce and own). They spend three times as much on foreign drama as on Canadian drama.

Few of the online services targeted by the Panel's recommendations offer news and sports, yet the Panel would burden them with CanCon obligations comparable to those of Canadian broadcasters. *So the outcome would see foreign online services outspending, and competing directly with, Canadian broadcasters on the most culturally-sensitive CanCon:* fiction and long-form documentaries (what CRTC calls "programs of national interest"). That outcome turns on its head decades of Canadian broadcasting policy intended to extract cultural CanCon from *Canadian* broadcasters, by shifting that burden to foreign entities. That outcome even calls into question the long-standing rationale for foreign investment restrictions on Canadian broadcasters.

Data from the Canadian Media Producers Association (CMPA) shows continuing and significant year-over-year growth in foreign investment in audio-visual production in Canada, including CanCon (https://cmpa.ca/profile/).

The Panel also failed to recommend changes to the rules for certification of Canadian content that would incentivize market-based investment in CanCon. Instead it tried to force online services to finance more quota-driven CanCon. The CanCon point system for production certification focuses on employment of Canadian creators and talent, and Canadian financing. "Treaty co-productions" already qualify as CanCon based on less stringent criteria than would otherwise apply.

A modernized approach could adapt the current system to more readily accommodate foreign investment in CanCon intended for global as well as domestic audiences. Incentives and subsidies could be scaled-up commensurate with use of Canadian creative and other resources—including distinctly Canadian stories, literary works, characters, and themes. The outcome could actually be an improvement on the current system that too often generates certified "CanCon" so devoid of any connection to Canada that few Canadians recognize it as such. Rather than forcing investments in quota-driven CanCon, public policy should seek to incentivize investment in CanCon that Canadians and global audiences will want to watch.

The Panel’s move to regulate online content providers invites a major constitutional challenge. Broadcasting is not a head of power assigned to the federal government by the Canada Act 1867. Audio-video content is not inherently within the scope of federal

regulation. The provinces have always regulated cinemas—the original audio-video content disseminator. The seminal case concerning broadcasting, the *Radio Reference* of 1932, put broadcasting under federal regulation only because the means of its dissemination—radio waves, inherently cross inter-provincial and international boundaries. Broadcasters were thus found to be interprovincial undertakings—an exception to the general rule that the provincial powers over property and civil rights and local undertakings take precedence to federal legislative powers.

The federal jurisdiction over broadcasting was thus dependent on the technology of dissemination—radio waves. This rationale was affirmed in decisions recognizing federal legislative power over cable television. However, the bulk transport of data through the Internet does not rely on their transmission of radio waves. Online content providers do not have the means of delivering programing to the public. Their transmissions are made through telecommunications common carriers—which are inter-provincial undertakings within the federal legislative power. It is thus the view of ISCC that the federal government lacks the jurisdiction to legislate with regard to online content providers. It would appear to us that the whole schema proposed by the Panel falls on this issue. Not only is it unusual and unwise to attempt to regulate online content providers as broadcasters—it is unconstitutional for the federal Parliament to do so.

ISCC would also like to state that while its members have diverse and interesting views with respect to the Canadian Broadcasting Corporation, we do not propose to take an institutional position with respect to the recommendations of the Panel. This is not a matter within the mandate of ISCC.

ISCC Response to Specific Recommendations of the Panel

51. *We recommend that the scope of the Broadcasting Act extend beyond audio and audiovisual content to include alphanumeric news content made available to the public by means of telecommunications, collectively known as media content. We further recommend that the definition of "program" in the Act be modernized and replaced by the following:*
    1) *Media content means audio or audiovisual content or alphanumeric news content;*
    2) *Audio or audiovisual content means sounds or moving images, or a combination of sounds and moving images, interactive or not, that are intended to inform, enlighten, or entertain and are made available to the public by means of telecommunications. However, this definition does not include such transmission when made solely for performance or display in a physical public place, or images that consist predominantly of alphanumeric text and are not accompanied by sounds;*

3) *Alphanumeric news content means news about current events that predominantly consists of alphanumeric text that is made available to the public by means of telecommunications.*

ISCC disagrees.
ISCC opposes any inclusion of alpha-numeric news content within the definition of broadcasting. As worthy as Canadian news services may be of financial support, it should not be done through a distorted definition of broadcasting. No need of Canadian news operations can justify the intrusion of broadcasting powers into domestic or foreign news operations.

52. *We recommend that section 3 of the Broadcasting Act be amended to create a new declaration that:*
    1) *the Canadian media communications sector, operating primarily in the English and French languages and comprising public, private, and community elements, uses interprovincial and international undertakings and facilities and provides, through its media content, a public service essential to the maintenance and enhancement of national identity, cultural sovereignty, and Canada's democracy;*
    2) *the media communications sector serves to safeguard, enrich, and strengthen the cultural, political, social, and economic fabric of Canada.*

ISCC disagrees.
ISCC rejects the premises of this recommendation. It is based on an unwarranted expansion of broadcasting into Internet services that have nothing to do with broadcasting and where there are no underlying reasons to justify government intervention—such as with regard to news content.

Frankly, news content may well dispute public policy and should be free to do so. It has no obligation to express itself in ways that serve all or any of the purposes of either 1) or 2) News may serve purely private or particular interests. News can be many things. No single definition is sufficient. No one is so omniscient as to be able to say definitively what or what is not news.

53. *We recommend that the policy objectives currently contained in section 3 of the Broadcasting Act be modernized to reflect the changing environment and be replaced by the following:*
    1) *Canadians should have access to trusted, accurate, and reliable sources of news reflecting national, regional, and local perspectives from diverse sources and across all platforms.*
    2) *Canadians should be able to find and access a wide range of media content choices, including Canadian choices, that are affordable and reflect a diversity of voices.*

3) *Canadians should be able to access and consume media content safely and securely and be assured that their data and privacy are respected and protected.*
4) *Media content undertakings should have a responsibility for the media content they provide.*
5) *The media communications sector should:*
    a. *invest in the development, creation, and distribution of high-quality Canadian content that competes at home and abroad and reflects Canadian diversity, with each undertaking making maximum use of Canadian creative and other resources in the creation and presentation of media content, taking into account its circumstances;*
    b. *ensure the creation of and access to content by and for Indigenous Peoples, including Indigenous languages content;*
    c. *ensure the creation of and access to content by and for official language minority communities;*
    d. *meet the needs of Canadians with disabilities and ensure creation of and access to content by and for Canadians with disabilities;*
    e. *consist of Canadian-owned and -controlled companies alongside foreign companies; and*
    f. *promote the development of a strong Canadian production sector, including a robust independent production community.*

ISCC disagrees.
ISCC fundamentally disagrees with the extension of CRTC broadcasting jurisdiction to purely Internet content services.

1) ISCC disagrees.
It is wrong to propose that the CRTC has any role in policing the accuracy and trustworthiness of news content on the Internet. It is also wrong to assign to the CRTC any role over purely Internet content—whether delivered by Canadian or foreign Internet content providers. We add the caveat that there is ample precedent for the online activities of existing licensed broadcasters to be subject to CRTC regulation.
2) ISCC disagrees.
The objective is entirely skewed when extended to purely Internet content. In a universe of virtually unlimited choice, there is no need for the CRTC to be policing the content of Internet content providers. In contrast, there remains a rationale for the policing of content on licensed broadcasters—perhaps more so in the context of an abundance of programing from all over the world that compete for the attention of Canadians.
3) ISCC disagrees.
While the goal is laudable, the means are wrong. The Panel seems to suggest that the CRTC preempt the role of the federal and provincial privacy

commissioners. It also appears to suggest the application of Canadian law to entities located outside Canada. While there is much work to be done in international fora to bolster the privacy and security of information—this is not an appropriate function for a broadcasting regulator outside the parameters of the licensed broadcasting system.

4) ISCC disagrees.

The recommendation goes too far in assigning responsibility to Internet platforms. The use of "a" evades setting legal boundaries and potentially enables the CRTC to extend its reach into areas that are protected by freedom of expression and impute liability for third party content. This would be an entirely inappropriate form of regulation.

5) a. ISCC disagrees.

It is wholly inappropriate to subject unlicensed and unlicensable undertakings to contributions to the production of Canadian programing. The proposal strips the production contribution program from its context within the "regulatory bargain" that is inherent in the Canadian broadcasting system. Purely Internet players are not privileged and do not have access to simultaneous substitution, market and genre protection and other benefits that accrue to licensed broadcasters. They compete in unregulated markets. There is no rational link between the highly competitive world of Internet content provision and the to the regulated broadcasting world.

5)b. ISCC agrees.

5)c. ISCC agrees.

5)d. ISCC agrees.

5)e. ISCC disagrees.

ISCC opposes the extension of the *Broadcasting Act* to foreign entities.

5)f. ISCC agrees.

ISCC reiterates that it in no way does it agree that the CRTC should encourage the production of Canadian programing through levies imposed on domestic or foreign online content providers.

54. *We recommend that the Broadcasting Act apply to media content undertakings involved in the creation and distribution of media content. The term "media content undertaking", which would replace the term "broadcasting undertaking" in the Act, would include media curation undertakings, media aggregation undertakings, and media sharing undertakings, as follows:*
    1) *Media curation undertaking means an undertaking whose primary purpose is to provide a service for the dissemination of media content over which it exercises editorial control. In this context, editorial control means effective control over the creation or selection of media content, including through agreements with rights holders with respect to its creation or dissemination.*

2) *Media aggregation undertaking means an undertaking that, in whole or in part, provides a service that aggregates and disseminates media content provided by media curation undertakings.*
3) *Media sharing undertaking means an undertaking that, in whole or in part, provides a service that enables users to share media content for which the provider does not have editorial control but which the provider organizes or controls.*

ISCC disagrees.
ISCC is wholly opposed to this recommendation. It is aimed directly at purely Internet content services, domestic or foreign. We do not believe that the federal government should regulate in this area. We further do not believe that the federal government has the legislative power to extend the jurisdiction of the *Broadcasting Act* in this manner. ISCC believes the current jurisdiction of the *Broadcasting Act* is appropriate.

55. *We recommend that for greater certainty, the Broadcasting Act be amended to establish that the legislation applies to undertakings carried on in part within Canada, whether or not they have a place of business in Canada. This would include undertakings, persons, and entities that disseminate media content by telecommunications to Canadians or make media content available to Canadians for compensation. We further recommend that the reference to the sector as a single system that shall be owned and controlled by Canadians be removed from the Act.*
ISCC disagrees.
Canada should not attempt to impose domestic regulation on foreign online content providers, just as it does not attempt to regulate foreign over-the-air broadcasters whose signals are received within Canada. The removal of reference to Canadian ownership from the objectives of the *Broadcasting Act* demonstrates how radically outside the world of broadcasting regulation the Panel's recommendations are.

56. *We recommend that the existing licensing regime in the Broadcasting Act be accompanied by a registration regime. This would require a person carrying on a media content undertaking by means of the Internet to register unless otherwise exempt. Those carrying on a media content undertaking by means other than the Internet would continue to require a license unless otherwise exempt.*
ISCC disagrees.
The powers proposed in recommendations 55 and 56 for the future version of the CRTC as regards registration, classification, penalties and payments for media content or "printed" (alpha-numeric) expression constitute an unconstitutional, illiberal, obnoxious, and dangerous attempt to extend the state's authority over free

expression. It is an astonishing proposal and ISCC is concerned it ever saw the light of day.

57. *We recommend that to implement the new registration regime, the Broadcasting Act be amended to provide that certain powers of the CRTC in section 9 with respect to licensing also apply to registration. This includes provisions that enable the CRTC to establish classes of registrants, to amend registrations, and impose requirements — whether through conditions of registration or through regulations — on registrants, including the payment of registration fees. This would also include imposing penalties for any failure to comply with the terms and conditions of registration.*

    ISCC disagrees.

    This proposal is but a minor proposal to underpin the unlawful move to regulate the Internet as broadcasting. It should share the fate of the overarching move to impose broadcasting regulation—to be buried in infamy.

58. *We recommend that the CRTC have the power to exempt any media content undertaking or classes of media content undertakings from registration in instances in which — by virtue of its specialized content or format, revenues, or otherwise — regulation is neither necessary nor appropriate to achieve media content policy objectives.*

    ISCC disagrees.

    As ISCC does not believe the CRTC's regulatory reach should be extended to purely Internet content providers, we oppose this recommendation. It should not have the power to regulate online content providers, nor should it have the power to exempt content providers measured against whatever notion may take root in the minds of the then-current members of the CRTC.

59. *We recommend that subsection 5(2) of the Broadcasting Act be amended to provide further policy guidance to the CRTC so that the system is regulated and supervised in a flexible manner that:*

    1) ensures that regulation is equitable, reasonable, and proportional to the objective or outcome sought;

    2) ensures that undertakings contribute in an appropriate manner to the creation, production, and discoverability of Canadian media content;

    3) promotes transparency, responsibility, and accountability in the way undertakings operate; and

    4) promotes public participation in regulatory proceedings.

    1), 3), and 4) ISCC agrees.

    2) ISCC disagrees.

    The objective should only apply to undertakings that are currently within the broadcasting jurisdiction of the CRTC and not to purely online content providers.

60. *We recommend that all media content undertakings that benefit from the Canadian media communications sector contribute to it in an equitable manner. Undertakings that carry out like activities should have like obligations, regardless of where they are located.*

    ISCC disagrees.
    The regulatory bargain underlying the broadcasting system is not based on the conduct of like activities but rather from benefitting from like privileges that carry like burdens. Internet content providers enjoy no privileges within the Canadian broadcasting system, and should not be subject to its burdens.

61. *We recommend that the Broadcasting Act be amended to ensure that the CRTC may by regulation, condition of license, or condition of registration:*
    - *impose spending requirements or levies on all media content undertakings, except those whose primary purpose is to provide a service for the dissemination of alphanumeric news content over which it exercises editorial control;*
    - *impose discoverability requirements on all media content undertakings, except those whose primary purpose is to provide a service for the dissemination of alphanumeric news content over which it exercises editorial control;*
    - *regulate economic relationships between media content undertakings and content producers, including terms of trade; and*
    - *resolve disputes between media content undertakings.*

    ISCC disagrees.
    The proposals drift far from broadcasting regulation. Their concern is not with broadcasting but with production—the supply chain of broadcasting. ISCC believes the proposals are unconstitutional, infringe on *Charter* rights, violate Canada's trade agreements, and mandate the extraterritorial application of Canadian law. In the end, they reinforce the tendency for the CRTC to become not a broadcasting regulator but a production regulator. There is no crisis in Canadian audio-visual production that requires such intervention, and there is no justification for the *Broadcasting Act* to move beyond broadcasting to purely online content providers—where market principles are working well and creating a practically infinite variety of choice for Canadian consumers. These proposals must be stopped.

62. *We recommend that in general, media curation undertakings have spending requirements rather than levies to support Canadian content. Levies should apply to media aggregation and media sharing undertakings. In circumstances in which spending requirements are inappropriate, levies should apply.*

    ISCC disagrees.
    As it has argued in its introductory comments, ISCC is totally opposed to broadcasting regulatory levies being imposed on domestic and foreign online content providers. The result distorts the market for production, and renders them

less responsive to market demand, and hence more insulated from audience demand to the detriment of the market for programing and of consumer choice.

ISCC recommends that the certification of productions as Canadian be modified to incentivize investments in distinctively Canadian productions that foreign producers can own and distribute globally.

63. *To ensure that Canadians are able to make informed choices and that Canadian content has sufficient visibility and is easy to find on the services that Canadians use, we recommend that the CRTC impose discoverability obligations on all audio or audiovisual entertainment media content undertakings, as it deems appropriate, including:*
    - *catalogue or exhibition requirements;*
    - *prominence obligations;*
    - *the obligation to offer Canadian media content choices; and*
    - *transparency requirements, notably that companies be transparent with the CRTC regarding how their algorithms operate, including audit requirements.*

ISCC disagrees.
The proposal raises issues of compelled speech that engage the freedom of expression. When applied to foreign entities it may engage rights or obligations under the laws of the jurisdiction within which the entity operates.

64. *We recommend that the CRTC use its power to collect information and obtain consumption data from online media content undertakings and publish them in aggregated form.*
ISCC disagrees.
ISCC opposes the extension of broadcasting regulation to purely online content providers—domestic or foreign.

65. *We recommend that the government establish a single public institution tasked with funding the creation, production, and discoverability of Canadian productions on all screens. This institution will combine the functions of the Canada Media Fund and Telefilm Canada.*
ISCC takes no position.

66. *We recommend that the regulatory levy that formerly went to the Canada Media Fund be redirected to the Certified Independent Production Funds, as well as to other existing or new funds or programs approved by the CRTC.*
ISCC takes no position.

67. *We recommend that where media curation undertakings include new Canadian dramas and long-form documentaries in their offerings that count toward their regulatory*

obligations, the CRTC should set an expectation that all key creative positions be occupied by Canadians on a reasonable percentage of those programs. If the expectation is not met over time, the CRTC should consider converting it to a requirement.
ISCC disagrees.

68. *We recommend that the federal government index to inflation parliamentary appropriations allocated to institutions supporting cultural media content.*
ISCC takes no position.

69. *We recommend that as a general principle, the government ensure that tax credits and funds are platform-agnostic and are accessible to all Canadian production companies, whether independent or broadcaster affiliated.*
ISCC takes no position.
ISCC suggests that the current point system for certification of Canadian productions be reviewed to encourage foreign investment in distinctively Canadian programing**.**

70. *We recommend that the federal government ensure that the labour-based tax credit for journalism organizations announced in 2018 apply to undertakings that deliver alphanumeric, audio, or audiovisual news content on all platforms.*
ISCC takes no position.

71. *We recommend that the CRTC consider that some or all of the levies on media aggregation and media sharing undertakings contribute to the production of news content. These contributions would be directed to an independent, arm's length CRTC-approved fund for the production of news, including local news on all platforms. We further recommend that the CRTC consider redirecting a greater portion of the levy currently paid by broadcasting distribution undertakings to this same fund for the production of news*.

ISCC disagrees in part.
ISCC opposes forcing purely online content providers to pay levies toward the production of Canadian new content. While ISCC recognizes the crisis in news production in Canada, the attempt to remedy the collapse in advertising revenues for news production through the *Broadcasting Act* is doomed to failure. The attempt to replicate in the Internet world the measures that have been successful in the walled garden of Canadian broadcasting is both unconstitutional and likely contrary to Canada's trade agreements.

72. *We recommend that the relationship between social media platforms that share news content and the news content creators be regulated to ensure that news producers are treated fairly where there is an imbalance in negotiating power. Consistent with the earlier Recommendation 61, the CRTC should have the specific jurisdiction to regulate*

economic relationships between media content undertakings and content producers, including terms of trade. This would include media content undertakings that make alphanumeric news content available to the public.

ISCC disagrees.
ISCC reiterates that it is opposed to the extension of CRTC jurisdiction into social media. The CRTC should have no role in adjudicating matters relating to alphanumeric content of any kind—especially news. The adjudication of disputes between news producers and social media platforms should be examined comprehensively and outside the realm of broadcasting legislation.
The copying and use of news material on social media is primarily a matter of copyright law, best exercised through collective rights. We do not believe the CRTC has the expertise or resources to exercise the proposed function.

We also note that social media platforms are not, in general, in contract with news producers for the use of their content. Thus, bargaining power is not the issue: it is one of copying and re-diffusion—matters that are uniquely the focus of copyright legislation.

73. *We recommend that to promote the discoverability of Canadian news content, the CRTC impose the following requirements, as appropriate, on media aggregation and media sharing undertakings:*
    1) *links to the websites of Canadian sources of accurate, trusted, and reliable sources of news with a view to ensuring a diversity of voices; and*
    2) *prominence rules to ensure visibility and access to such sources of news.*

ISCC disagrees.
The serious issues facing Canadian newsrooms are well known, and ISCC shares the common concern for the continued support of news operations in Canada.

However, the intrusion of broadcasting regulatory powers into foreign and domestic online services is no answer to the real needs of Canadian news sources. ISCC takes exception to any extension of CRTC powers to purely online entities. We believe that the exercise of the powers recommended by the Panel would amount to compelled speech—vulnerable to Charter challenge. It is highly inappropriate for any governmental body to determine what are "accurate, trusted, and reliable sources of news"—a matter in which the no government agency has the authority and expertise to make judgments. The CRTC is no better equipped that any other governmental agency to make such determinations.

The proposals likewise are a significant extraterritorial application of Canadian law. We believe both proposals should be rejected.

74. *We recommend that the Broadcasting Act be amended to ensure that the CRTC can — by regulation, condition of license, or condition of registration — impose codes of conduct,*

including provisions with respect to resolution mechanisms, transparency, privacy, and accessibility regarding all media content undertakings.

ISCC disagrees.
ISCC restates its opposition to the regulation by the Canadian state of news production and dissemination. This proposal is untenable in a liberal democracy and susceptible of a multitude of abuses.

75. *We recommend that the Broadcasting Act be amended to give the CRTC the power to provide partial or additional relief, to issue conditional and interim decisions, and to issue ex parte decisions where the circumstances of the case justify it.*
ISCC takes no position.

76. *We recommend that the Broadcasting Act be amended to ensure that the CRTC can — by regulation, condition of license, or condition of registration — impose reporting requirements, including with respect to financial information, consumption data, and technological processes such as algorithms, on all media content undertakings.*
ISCC disagrees.
ISCC opposes applying this recommendation to purely Internet content providers. This is merely another instance where the Panel has recommended endowing the CRTC with powers in areas where it has no expertise (algorithms) and over entities who are not broadcasters and whose activities are not within the competence of Parliament.

77. *We recommend that to strengthen the compliance regime for both licenses and registrations, the Broadcasting Act be amended to include provisions for Administrative Monetary Penalties, similar to the general scheme in the Telecommunications Act, with maximum thresholds set at a level high enough to create a deterrent for foreign undertakings.*
ISCC disagrees.
The Panel gives away its game. In order to force compliance with an illegal and unconstitutional imposition of Canadian regulation over foreign entities, it proposes penalties out of proportion to those required to ensure compliance by domestic broadcasters. This is regulatory extortion and should be rejected out of hand.

78. *We recommend that to address piracy, sections 9 and 10 of the Radiocommunication Act — which state that it is an offence to decode, retransmit, or operate devices, equipment, or components to receive unlawfully decrypted subscription programs — be moved to the Broadcasting Act and be expanded to include all forms of media content, whether received through satellites or the Internet.*

ISCC disagrees.
Sections 9 and 10 should be moved to the *Copyright Act*. This is not an area in which the CRTC has any institutional experience or expertise. We note again, that the Panel made no recommendation to move radio inspectors, now employed in ISED, to the CRTC.

Piracy is a serious problem, one that negatively impacts both producers and consumers of audio-visual programing. However, the matter is properly a matter of copyright, and not one of radiocommunication. The sections dealing with the theft of encrypted programing should be moved to the *Copyright Act*. We note that copyright reform should be the means to develop and implement more effective remedies for all manner and media of programing piracy.

79. *We recommend that to ensure the national public broadcaster is able to adapt to a more open, global, and competitive media communications environment, the Broadcasting Act be amended to remove the specific reference to radio and television in the mandate of CBC/Radio-Canada. This would ensure that CBC/Radio-Canada is able to provide a wide range of media content that informs, enlightens, and entertains on multiple platforms and media.*
ISCC takes no position.

80. *A. We recommend that the Broadcasting Act be amended to add the following elements to the mandate of CBC/Radio-Canada:*
    1) *reflecting local communities and audiences;*
    2) *providing national, regional, and local news;*
    3) *reflecting Canadian perspectives on international news;*
    4) *reflecting Indigenous Peoples and promoting Indigenous cultures and languages;*
    5) *showcasing Canadian content to international audiences; and*
    6) *taking creative risks.*

    B. We further recommend that the Act be amended to ensure that the national public broadcaster has the objects and powers it needs to deliver on its updated mandate.

    C. We recommend that the Broadcasting Act be amended to require the federal government to enter into funding commitments of at least 5 years with CBC/Radio-Canada, based on discussions with the Corporation on its funding needs, including those required to carry out its updated mandate and taking into account inflation and projected revenues from advertising and subscriptions. We further recommend that CBC/Radio-Canada gradually eliminate advertising on all platforms over the next five years, starting with news content.
    ISCC takes no position.

81. *We recommend that the Broadcasting Act be amended to enshrine an open, transparent, and competency-based appointment process for Governor in Council appointments of CBC/Radio-Canada's Chair, President, and Board of Directors. This amendment should also require that the appointments process ensure diversity, gender parity, and representation from Indigenous and minority groups.*
    ISCC takes no position.

82. *We recommend that the Broadcasting Act be amended to shift the CRTC's role from licensing individual services of CBC/Radio-Canada to overseeing all its content-related activities. We further recommend that the CRTC report to the Minister of Canadian Heritage annually on the status of CBC/Radio-Canada's performance of its mandate.*
    ISCC takes no position.

83. *We recommend that while awaiting the adoption of legislative amendments, the government urgently issue directives to the CRTC, requiring that it hold a hearing and issue a new exemption order to impose obligations on Internet programming undertakings that generate a certain minimum revenue in Canada.*
    ISCC disagrees.
    ISCC opposes this recommendation. The imposition of broadcasting policy on online content providers is fundamentally unsound, as the operating environment of Internet programing is wholly different from that of the regulated broadcasting sector. ISCC also believes that the current Broadcasting Act does not extend to purely Internet content services.

84. *We recommend that the federal government require foreign media content undertakings to collect and remit the GST/HST.*
    ISCC agrees.
    This is a matter of simple economic justice. Online content providers who enjoy the benefits of Canadian subscriber and advertising markets should be on an equal footing with Canadians who enjoy those benefits.

4. Improving the rights of Canadians and enhancing trust in the digital environment

ISCC Introductory Comments

ISCC in general shares the Panel's desire that the Canadian government turn its attention to the issues raised in the following recommendations. The issues of affordability, accessibility, digital literacy, Big Data, online privacy, and online fraud, abuse and creepiness are ones that are worthy of further study and policy development on an urgent basis.

Our concerns are often with the instruments proposed by the Panel. Neither the CRTC nor government departments alone can be expected to develop appropriate policies in all instances. ISCC would like to see the launch of multi-stakeholder, multi-disciplinary working groups or panels to bring together Canada's best minds—informed by international experience—to study and make recommendations for policy and legislative changes to ensure that Canadians enjoy a broad range of protections for their online activities and are able to make informed choices on matters of primary importance to them.

ISCC Response to Specific Recommendations of the Panel

86. *We recommend that the Telecommunications Act be amended to require the CRTC to study the affordability of telecommunications services periodically and, if necessary, to implement measures to improve affordability for marginalized Canadians from diverse social locations.*
ISCC agrees.

87. *We recommend that the objectives of the Telecommunications Act and the Broadcasting Act be amended to include accessibility of services covered by the respective Acts by persons with disabilities to recognize the importance of barrier-free access to communications services, and entrench accessibility above and beyond the Accessible Canada Act.*
ISCC agrees.

88. 1) *We recommend that the CRTC Act be amended to require the CRTC to create and fund participation in an Accessibility Advisory Committee to meet, at a minimum, on an annual basis, and to publish reports on these meetings.*
2) We further recommend that a delegate of the Accessibility Advisory Committee be an ex officio member of the Public Interest Committee recommended in Recommendation 15 of this Report.

1) ISCC agrees.
2) ISCC disagrees.
There should not be a Public Interest Committee, and ISCC rejects Recommendation 15.

89. *1) We recommend that the federal government, together with provincial and territorial authorities, develop a national digital literacy strategy to empower users of communications and digital services to make informed choices and conduct their online activities safely.*
2) We further recommend that the Telecommunications Act and Broadcasting Act be amended to grant the CRTC authority to examine and report on digital and media literacy.

1). ISCC agrees.
2). ISCC disagrees.
The CRTC does not have the capacity in expertise or resources to deal with the issues of digital literacy. This would constitute an unwarranted mission creep on a matter peripheral to its core regulatory functions. It also invites constitutional challenge, as education is a matter of provincial competence.

90. *We recommend that the objectives of the Telecommunications Act and the Broadcasting Act be amended to include a commitment to protecting the privacy and confidentiality of user information with respect to communications services covered by the respective Acts.* **ISCC disagrees.**
This is too vague a mandate and potentially puts the CRTC in a role independent of PIPEDA and the Privacy Commissioner. There is no evidence that the privacy needs of communications service users are different from those in unrelated economic sectors.

91. *We recommend that the Personal Information Protection and Electronic Documents Act be adapted as appropriate to ensure adequacy with emerging global standards, except for any standards that may be inconsistent with Canadians' fundamental right to freedom of expression.*
ISCC agrees.

92. *We recommend that Statistics Canada, the CRTC, the Competition Bureau, the Office of the Privacy Commissioner and other relevant regulatory authorities be charged by the federal government with examining the use of Big Data by dominant online platform providers and potential threats to privacy, competition, consumer protection, cultural sovereignty, democratic institutions, and taxation, and make recommendations on legislation that may be appropriate to address these matters.*
ISCC agrees.
The issue of Big Data is one requiring major multidisciplinary study. ISCC would recommend the creation of a special commission of inquiry to bring together not only departments of government, but university and industry players and members of the public to properly weigh the competing interests and to make recommendations to government. It would seem that, within government, the focal point could be the National Research Council, which has networks within academia and government of those who have expertise in these matters.

93. *We recommend that the Ministers of Canadian Heritage and of Industry direct the CRTC to gather information, audit, and intervene, if necessary, with regard to how services covered by the Broadcasting Act and the Telecommunications Act combine algorithms*

and artificial intelligence with Big Data, in order to respond quickly to changes in the communications services, improve transparency, and promote trust.
ISCC disagrees.

The CRTC does not possess and cannot be expected have the expertise and resources to audit and intervene in the use of algorithms or artificial intelligence in services under the purview of the CRTC. This is primarily a matter of competition policy, but one that may require a fresh examination of the legislative authority of the Commissioner of Competition. ISCC notes that it opposes the extension of the Telecommunications and Broadcasting acts beyond their current jurisdictional bounds.

94. *We recommend that the federal government introduce legislation with respect to liability of digital providers for harmful content and conduct using digital technologies, separate and apart from any responsibilities that may be imposed by communications legislation. Given that the challenges in this area are global in nature, we also encourage the federal government to continue to participate actively in international fora and activities to develop international cooperative regulatory practices on harmful content.*
ISCC agrees.
ISCC notes that a far greater study must be conducted in order to ensure that a reasoned response to these challenges are developed.

95. *We recommend that the federal government regularly review the efficiency of enforcement mechanisms for monitoring and removing illegal content and conduct found online. Given the diverse range of governing frameworks for these matters in Canada, we encourage the federal government to coordinate with provincial and territorial governments.*
ISCC agrees.

96. *We recommend that in order to better protect the interest of consumers, the Telecommunications Act and the Broadcasting Act be amended to entrench and expand the role of the Commission for Complaints for Telecom-Television Services in statute, by enabling the CRTC to:*
    - *create and approve the mandate and structure of an independent, industry-funded, communications consumer complaints office with the authority to investigate and resolve complaints from individual and small business retail customers of services covered by the respective Acts;*
    - *require the office to report publicly on its handling of complaints, periodically and no less than annually; and*
    - *take action on consumer issues identified by the office and report annually on measures taken to address those issues.*

    ISCC agrees.

97. *We recommend that the CRTC review periodically its consumer protection framework for services covered under the Telecommunications Act and the Broadcasting Act, having regard to consumer trends and habits, and systemic consumer issues identified by the independent communications consumer complaints office. We further recommend that in order to ensure consistent minimum standards with respect to consumer protection, the CRTC:*
    - *take into account any provincial and territorial consumer protection measures that may impact communications services when adopting consumer protection measures; and*
    - *provide justification in those instances in which it adopts consumer protection measures that provide for lesser protection than those in any given Canadian jurisdiction.*

    ISCC agrees.

********** End of Document **********