



# **New Media? Same Challenges.**

*Canadian broadcasting in new media,*

Broadcasting Public Notice CRTC (Notice of Consultation and Hearing) 2008-11  
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Remarks  
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1. Merci Mme la Secrétaire, bonjour mesdames et messieurs les Conseillers.
2. Mon nom est Alain Pineau et je suis le directeur général de la Conférence canadienne des arts. La CCA est la plus ancienne et la plus vaste organisation parapluie du secteur des arts et de la culture au pays: depuis de 60 ans, la CCA travaille à la promotion de notre culture nationale dans tous les secteurs d'activité. Nous sommes apparus devant le Conseil à plusieurs reprises dans le passé, essentiellement parce que c'est dans la Loi sur la Radiodiffusion que l'on trouve la formulation la plus complète de politique culturelle jamais adoptée par le Parlement canadien.
3. Nous avons maintes fois au cours des dernières années exprimé notre point de vue sur la question des nouveaux médias et nous sommes heureux d'avoir l'occasion d'en discuter à nouveau dans le cadre de ces audiences.
4. Mes remarques d'aujourd'hui seront relativement brèves: elles seront axées essentiellement sur le fait que nous croyons fermement qu'il est temps d'appliquer à cette nouvelle plate-forme de distribution la réglementation appropriée qui assurera que, comme les autres qui les ont précédés, les nouveaux médias contribueront pleinement à la poursuite des objectifs sociaux et culturels contenu dans la Loi sur la radiodiffusion dont vous êtes les gardiens.
5. The old maxim that says, 'those who forget the past are doomed to repeat it', seems very germane today. The New Media issues that the CRTC has studied since its 1995 'information highway' report, are really the same issues that we've heard about the 'old' media for decades.
6. We think we can and should learn from the past. We go back to the three key principles that conservative Prime Minister RB Bennett set out seventy-five years ago, in even more challenging economic times, to introduce this country's first Broadcast Act.
7. He said (and I quote)

First of all, this country must be assured of complete control of broadcasting from Canadian sources, free from foreign interference or influence. Without such control, (...) broadcasting can never become a great agency for communication of matters of national concern and for the diffusion of national thought and ideals, (...)

Secondly, (...) It does not seem right that in Canada the towns should be preferred to the countryside or the prosperous communities to those less fortunate...

[And thirdly, he said that] .... The use of the air, or the air itself, (...) is a natural resource over which we have complete jurisdiction .... [and which ] the crown holds ... in trust for all the people. ...

*(House of Commons Debates (18 May 1932) at 3035-3036 (Right Hon. R.B. Bennett))*

8. You and your predecessors have tackled the challenges of radio, television, tape recorders, cable, VCRs, wireless cable, “deathstars”, and DVDs guided by these principles. And at each step of the way, new technology has raised the same questions: is this broadcasting? Should it be regulated and how? How does it contribute to the cultural objectives of the Broadcasting Act?
9. Answering these questions was not always evident at first. In the early 1960s, for instance, it was not clear why cable, which was then defined as a “collection of TV receivers joined together to a common receiving antenna” (end of quote), should be defined as broadcasters.
10. But cable became part of our broadcasting system because these systems were receiving and transmitting broadcasting content to their subscribers; because the systems could, to some extent, control the content they transmitted; and because their rapid growth was affecting local TV stations. It was determined that systems that distribute broadcast programming should contribute to the *Broadcasting Act’s* cultural and social objectives.
11. Keeping an eye on the philosophical foundations of our broadcasting system, I’d like to turn briefly to the second of the assumptions and issues listed in Schedule 2 of your Notice to Appear.
12. We were particularly struck by the Commission’s assumption that the New Media broadcasting environment is not characterized by scarcity, but by abundance and (quote) “essentially unlimited shelf-space” (end quote). Frankly, we don’t quite know what to make of this assumption.
13. We expect the Commission to be dealing with the limitations on New Media shelf space in the upcoming telecom traffic management hearing this June. Actually, we had asked that these two hearings be combined, because we agree that there is an important relationship between shelf space and content and the accessibility to Canadian content in particular. The problem we see is this: if gate keepers can restrict online accessibility to New Media broadcasting content in the name of traffic management, the assumption of abundance becomes invalid. But we will address that issue fully in the traffic management hearing and focus here on the other issues immediately at hand.
14. La CCA croit fermement qu’il est essentiel de faire appel à la réglementation pour assurer que les objectifs établis par le Parlement canadien sont activement poursuivis, parce que le marché n’a pas le bien public comme objectif. Compte tenu de la convergence des technologies et le fait indéniable qu’un nombre croissant de Canadiens utilisent l’internet et la distribution sans fil pour avoir accès à un contenu culturel qui a traditionnellement été défini comme de la radiodiffusion, nous croyons que vous avez non seulement l’autorité nécessaire mais le devoir d’adopter le genre de réglementation nécessaire pour assurer que la volonté du Parlement soit respectée.
15. À ce chapitre, il est intéressant de noter que si vous avez le pouvoir d’exempter, c’est que vous avez également par conséquence celui de réglementer. Il est tout aussi intéressant de noter que personne ne vous a contesté le pouvoir d’exempter mais qu’on vous conteste celui de réglementer. Ou est l’erreur?

16. Cependant, nous ne croyons pas que le Parlement canadien ait jamais envisagé la possibilité que la poursuite des objectifs de la section 3 de la Loi sur la radiodiffusion soit la responsabilité des millions de Canadiens qui utilisent l'internet ou un téléphone cellulaire. Bien qu'ils contribuent de toute évidence à la production de contenu canadien sur les nouveaux médias, il n'est évidemment pas de notre intention de recommander que vous tentiez de réglementer YouTube! C'est la raison pour laquelle nous sommes pour le maintien de l'exemption pour tout contenu qui est produit par les utilisateurs.
17. At the same time, the CRTC should not ignore thirty or forty large legacy broadcasting groups that are reusing, recycling and repurposing their existing radio and television content to give it new life online to attract new revenues and support and complement their traditional broadcasting activities.
18. Nor should you ignore the ISPs that benefit from making broadcasting content available to their subscribers and promote this as part of their marketing tools. These are the kinds of New Media broadcasters that we think the spirit of the Broadcasting Act should make you supervise. Broadcasting is broadcasting, whatever the distribution platform: our legislators had the prescience to recognize that when they adopted in 1991 a new Broadcasting Act which is technologically neutral.
19. We therefore urge you to implement a framework for regulating undertakings that receive subscription, advertising and/or public funding from broadcast content, regardless of the transmission conduit that carries that content to audiences.
20. And just as you exempt small radio, television and distribution undertakings from regulation, you should also exempt small New Media undertakings from regulation, if their income or webcast hours falls below a minimum annual threshold – because they will not be able to contribute to our broadcasting system in the way that larger companies like CTV, Rogers, Shaw or Bell can and should contribute. What such thresholds may be, I am unfortunately not in a position to suggest, but I am sure they can be established in all fairness by you, based on factual and principled considerations.
21. The reason we don't have any specific numeric proposal, leads to the second issue I'd like to address – namely, the importance of measurement. More than a decade after the CRTC 'Information Highway' report, we still don't have a reporting system that generates annual, valid and reliable programming, audience and financial data about internet broadcasting.
22. So we very much welcomed the commitment the Commission made in its 2008 *Communications Report* to undertake annual monitoring in this area. That commitment matters because without it, neither the Commission nor Canadians will know if or when Parliament's goals are being met. Without valid and reliable data, it is easy to hide problems, or create crises. As Mr. Ivan Fecan said in this room two years ago: "if you don't measure it, you can't manage it."
23. The third and last issue I'd like to address involves money. In some ways you could see this New Media proceeding as a 'New Money' proceeding. But the basic principle is well-established. If an undertaking is set up to draw benefits

- from our broadcasting system – over the air or online – Parliament says that it should contribute to the well-being of that system.
24. CCA believes that undertakings established to benefit from the broadcasting system – on or off line – should contribute to that system. There are many ways to do this, from opening up shelf space, to proper promotion, all the way to financing. You will hear some creative proposals during this hearing relative to promotion and shelf space for Canadian content on new medias and since we will be talking about the shelf space issue primarily in the traffic management hearing, I will limit my remarks today to funding.
  25. Nous savons tous que la bonne programmation, et particulièrement dans le genre dramatique, coûte cher. À tous les deux ou trois ans au cours des sept dernières décennies, nous avons vu la publication de rapports parlementaires ou gouvernementaux qui en sont tous arrivés à cette même conclusion.
  26. La réponse aux questions que vous soulevez, à savoir s'il est nécessaire de subventionner la production de contenu canadien pour les nouveaux médias, et si oui, comment, ne peut être que OUI!
  27. Nous croyons que le modèle du Fonds canadien de télévision peut être adapter pour les nouveaux médias. Nous appuyons donc la suggestion mise de l'avant par Peter Grant. En s'appuyant sur des estimés qui situent entre 50 et 70% le contenu véhiculés par les nouveaux médias qui répond à la définition de radiodiffusion, nous croyons raisonnable que les fournisseurs de services internet et de diffusion sans fil contribuent jusqu'à 3 % de leurs revenus à un fonds pour le financement de la création de contenu canadien destiné aux nouveaux médias.
  28. This is the way to establish the level playing field traditional broadcasters are always asking for.
  29. Some have suggested that since most of the quality content material available on new medias comes from traditional broadcast undertakings, the new money should be accessible to them through the Canadian Television Fund. Others favour a totally separate fund for the creation of truly new media targetted material. Each idea has its merits and maybe the solution is somewhere half-way where a separate fund is created but is accessible to all. However, given the fact that the production of Canadian content is underfunded by the Commission's own reckoning, we suggest that administrative costs and procedures should be kept to a minimum and that existing administrative structures be called upon to manage any new fund which may be created further to this hearing.
  30. We don't think that millions of users will suddenly terminate their connections if their ISPs have to allocate a few percentage points of revenue to a New Media content fund. After all, between 1993 and 1995, when the CRTC introduced the CTF, cable company subscriptions grew by more than 290,000 subs. This doesn't mean that the CTF made subscriptions go up, it only means that there wasn't any dramatic drop in subscriptions, either.

31. To conclude, Mr. Chairman, CCA looks to the lessons of history. Eighty years ago Canadians told the 1929 Royal Commission on Radio Broadcasting that they wanted Canadian broadcasting, because without it, the minds of our youth would be moulded by foreign “ideals and opinions”.
32. Fifteen years ago, the CRTC created a programming fund supported by BDUs and taxpayers to address the same challenges. As the CRTC said at the time, “At this point, the only sure thing about the ‘brave new world’ of the multichannel universe is that few of the choices it offers will reflect Canada, our culture or our values unless we invest a great deal more money in Canadian programming” [CRTC News Release, 10 February 1994].
33. The problems remain current and you can provide some of the solutions by acting wisely and applying the correct dose of regulation and incentives to ensure that in keeping with the Broadcasting Act’s social and cultural objectives, Canadians have access to their own brand of programming, irrespective of the distribution platform they choose.
34. Thank you for your time this morning. I look forward to any questions you may have but if I cannot give your answers the thought they deserve, I would be pleased to file a reply in writing.