



ARTS AND CULTURE IN THE CANADIAN NATIONAL STRATEGY FOR A DIGITAL SOCIETY

Prepared for the Department of Canadian Industry: Digital Economy Consultation

by the Canadian Conference of the Arts

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Introduction

The Canadian Conference of the Arts (CCA) is pleased to participate in this consultation of Industry Canada on developing a national strategy for the digital economy.

The CCA is Canada's oldest and most broadly based cultural umbrella organization. The CCA provides a national forum for the entire arts, culture and heritage community, from all disciplines and regions. The CCA's mission is to provide research, analysis and consultations on public policies affecting the arts and Canadian cultural institutions and industries. The CCA fosters informed public debate on policy issues and seeks to advance the cultural life of Canadians.

The CCA considers that the consultation underway is most important for Canadians and that the preoccupations which it raises go well beyond the economy. In conducting this consultation, the government is acknowledging that the digital sphere warrants a thoughtful conversation. Nothing could be truer. Countries like Britain have produced studies like *Digital Britain* which lay out a descriptive policy path for Britain to transition to a digital society.

We would suggest at the outset of this short brief that the scope of the reflection be broadened to include the development of a national strategy for a Canadian digital society. Conversations so far have been largely dominated by preoccupations with investments in infrastructure, bit rates and accessibility to Canadians as consumers. Though building adequate infrastructure is an important component of a digital strategy, the CCA believes that ensuring the availability of quality Canadian content on new distribution platforms is an objective which requires equal attention. A national strategy must ensure the presence of Canadian content in order for the infrastructure to bear meaning to Canadians and reflect them as a bilingual nation with increasingly diversified cultural sources. Accordingly, our comments here will not focus on pipes, cables and costs of infrastructure, but on content and its creators in the digital realm.

Why arts and culture must be part of this consultation

Millions of Canadians attend live performances and purchase books, magazines, films, new media products and sound recording materials each year. Statistics Canada estimates that household expenditures on cultural products continue to grow. The arts and cultural sector is the livelihood for over 650,000 Canadians. Collectively, with direct, indirect and induced inputs, the cultural sector contributed \$84.6 billion to the Gross Domestic Product (GDP) in 2007.¹ Many of these artistic platforms are shifting from live performance and attendance to digital exhibition and consumption.

This sector is not one of hobbies or recreational pursuits, but is at the forefront of the new digital economy which our country must embrace if it is to maintain its status in the international community. In fact, Statistics Canada has noted that culture employment grew at a much greater rate than the workforce as a whole from 1981 to 2001. During this period, the growth in cultural employment was 81% in Canada, much higher than the 32% growth in the overall labour force during the same period.²

¹ *Valuing Culture: Measuring and Understanding Canada's Creative Economy*, Conference Board of Canada, August 2008.

² *Culture Employment in a North American Context: 1981-2001*, Statistics Canada, August 2007.

Those pursuing careers in the arts and culture sector are dynamic professionals. They are characteristically better educated, boast a high level of self-employment and often work in multiple capacities, within a variety of fields. The Cultural Careers Council of Ontario claims that “artists may be models for the way we will be working in the future – independent, entrepreneurial, and more reliant on individual networks than conventional organizations.”³

Though investing in the cultural sector may seem less concrete than investing in infrastructure, software, or manufacturing, it is a sector which is proven to give strong returns on government funds. The sector continually evolves to not only stabilize its presence within Canada, but also to build robust digital audiences around the world.

The costs of creating jobs in the arts and culture sector are amongst the lowest compared to other sectors of the economy. There is a formidable return for every dollar invested in the arts and culture sector. According to the Conference Board of Canada, for every \$1 of real value-added GDP produced by Canada’s cultural industries, roughly \$1.84 is added to the overall real GDP. Even more specifically, Hill Strategies notes that the performing arts generate \$2.70 in non-governmental revenues for every \$1 invested by the government.⁴ An additional bonus to this small investment is the creative employment levels which naturally rise as a result.

But the contribution made by Canadian artists and creators goes beyond economic factors. Our cultural expressions contribute to our identity as a nation and to our reputation on the international stage. Culture provides support to our foreign policy and trade objectives. Additionally, the increasing diversity of our population offers a unique opportunity for Canada to leverage this precious natural resource to make a unique impression in the world.

Content needs to be a centerpiece of a national digital economy strategy. It is critical to get beyond discussions of pipeline and digital literacy. This is why the CCA affirms that it is of utmost importance that the federal government develops a long-term vision for a digital strategy that recognizes the place Canada’s arts and culture sector occupies in Canadian society and in the Canadian economy.

Digital economy and the arts

The arrival of digital technologies has changed the way artists produce, how institutions relate to their audiences and how Canadians use cultural products. The digital economy changes modes of production, transforms business models and alters patterns of consumption of cultural products.

The CCA’s fundamental approach to a national strategy on digital economy is based on the belief that no infrastructure, wires, cables or corporations will be enough to sustain a robust digital economy if content creators are not included in this strategy. Canada’s digital economy relies on the expertise of its creative workers. Their content creation must be encouraged by a national strategy, protected by regulations and distributed on as many digital platforms as possible.

³ *Enriching our Work in Culture: Professional Development in Ontario’s Cultural Sector*, Cultural Careers Council Ontario, March 2008.

⁴ *Finances of Performing Arts Organizations*, Hill Strategies, November 2008.

The arts and culture sector embraces the new possibilities created by digital technologies. Many individual artists have incorporated digital technology to produce performance art and otherwise meld technology with traditional artistic tools. Experimentation with the use of the new technologies is increasing amongst individual artists.

It is important to note that many cultural industries already work digitally: film, television, music, new media and publishing in particular have all embraced new technologies and explored new business models. Their future successes depend not only on their flexibility and inventiveness, but also on the support the government can provide through all of the instruments at its disposal, be it investments in production, regulation, taxation or training.

Beyond the use of digital technology in arts creation lays the impact of broadband Internet and wireless in its promotion and distribution. Individual artists and companies as well as galleries and museums are able to demonstrate the artists' creations through digital platforms. Some of the more innovative artists and institutions are reaching a much larger audience more quickly and more efficiently than before. The Internet offers new ways to engage audiences, promote the arts and process orders.

The CCA supports the continued commitment to artistic creation on digital and traditional platforms such as the Canada Media Fund. However, investment and funding towards digital content must not replace traditional forms of music recording, visual art, theatre productions and other traditional platforms for display and distribution.

There are four main issues that the CCA believes should be considered in forming a strategy for a digital economy:

- Foreign ownership
- Intellectual property
- Canadian communities
- Training for creators

Foreign Ownership

In order to form a prosperous digital economy, Canada must retain ownership of its technology and digital content.

For the past several decades, the operating principle in Canadian cultural policy has been that Canadian ownership and effective control of our cultural industries will ensure more Canadian content is made available to Canadians. This is the case because it is easier to regulate Canadian owned companies than foreign owned ones. Moreover, Canadians are more likely than non-Canadians to tell our own stories and to present our own view of the world based on our own values.

Over the past two decades, Canada has allowed a growing concentration of ownership in our cultural industries in the name of making them stronger and better equipped to compete in a global environment. We now have huge Canadian conglomerates with interests in telecommunications, broadcasting, specialty services, newspapers and magazines, publishing, music and book distribution. Given this concentration of ownership and the convergence of technologies, opening up foreign ownership and control of our

telecommunications can only lead to tremendous pressures to enable a similar model in cable and broadcasting. Coupled with the potential impact of trade negotiations, this could result in severe consequences for Canadian cultural sovereignty.

The best illustration of the negative impacts of foreign ownership and control of a cultural industry is to be found in the film industry. Film distribution policy does not distinguish the distribution rights for the Canadian market from North American rights for most of the largest distributors. As a consequence, foreign film distributors maintain a lock on the majority of the film distribution activity in Canada. Foreign films (i.e. U.S. movies) occupy over 98% of screen time in English Canada. This situation is somewhat better in the Québec film industry; however, the current case of the movie *Le concert* illustrates perfectly how French films in Québec are still subject to a US market which dictates the release, promotion and distribution of French films, in which Quebecers and Canadians have invested and for which there is no American financing. This and several other examples demonstrate how foreign controlled cultural industries can successfully shut Canadian cultural goods and services out of the market with impunity as the result of ineffective policy and loss of effective control.

Like the Chair of the CRTC, Konrad von Finckenstein, the CCA believes that it is virtually impossible to change foreign ownership rules in telecom and isolate broadcasting from the consequences of doing so. Some of Canada's largest corporations operate in all of these fields. Because of the precedent created with Globalive, those companies are already applying tremendous pressure on policymakers to "level the playing field" with their competitors and obtain access to foreign investment on the same terms. How will it be possible to deny one protagonist access to foreign investments granted to its main competitor? Where can we draw a clear line between the tangled interests of BCE, Rogers, CTVglobemedia, Shaw, Telus or Québecor?

Canada currently permits foreign investment in Canadian broadcasting and telecommunications services; it simply prohibits foreign nationals from controlling these services. There is no conclusive evidence that a lack of foreign investment has hurt either industry.

The main reason why the CCA does not believe it will be possible to enforce Canadian laws and regulations on foreign controlled companies has to do with Canada's international trade agreements. The CCA is very concerned about the implications of NAFTA, and specifically Chapter 11, which provides foreign investors with a right to sue the Canadian government and seek compensation for government actions. Investors could sue the government for the decisions of regulatory agencies like the CRTC, if they believe the decisions violate their rights under NAFTA.

1. Firstly, in relation to NAFTA, the CCA would point out that the *cultural exemption* is limited in scope to the cultural industries that existed at the time NAFTA was created. Importantly, this does not include the new media sector, such as interactive television, computer games, etc.
2. Secondly, Chapter 11 rights could potentially come into play in two ways in this matter. If the rules in telecommunications are changed, a foreign company that decides to invest in a Canadian cable company or broadcaster could structure a

deal in a way that mirrors the new telecom rules. If the CRTC were to prevent them from proceeding, they could launch a Chapter 11 challenge on the basis that they are being treated unfairly in relation to a direct competitor operating in the same marketplace.

3. Finally, if foreign companies are permitted or force entry into Canada's broadcasting system, existing rules and regulations relating to the production and distribution of Canadian content productions may be sustainable, since the foreign company is entering the market where those rules exist. But if the CRTC or the government were to try and update the rules to reflect a new environment, the foreign company may have a cause of action under Chapter 11.

This is why the CCA is concerned that the current fast-track negotiations with the European Union include an iron-clad cultural exemption clause and avoid the granting of any clause similar to NAFTA's Chapter 11.

The CCA continues to believe that some regulatory requirements to contribute to the production of Canadian programs should apply to all distribution platforms. Such regulation, if adopted, may be unsustainable with respect to foreign owned and controlled companies. This scenario is not improbable. A domino effect within Canada's tightly knit telecommunications and broadcasting sector could knock down any pretence of cultural policy in the audiovisual sector.

Of course, there are other reasons to maintain the current restrictions on ownership, particularly with regards to potential threats to Canadian sovereignty. It is worth noting that most of our major trading partners (including the EU and the U.S.) also maintain foreign ownership limits, particularly in broadcasting, which is deemed to be a sector of vital national interest.

Protecting Canada's Intellectual Property

The development of a meaningful digital strategy must occur in tandem with new copyright policy. Canada's decision makers must recognize the importance of our creators' intellectual property and develop a digital landscape which fosters creation, expression, dissemination and protection. Our creators want to share their stories on the largest possible platform – and that includes the digital realm. However, creators must do so in the safety of knowing that they will be paid for the use of their products, whether solely online, or in the transfer of their product to other exported media outlets.

In June, the government tabled for first reading in the House of Commons Bill C-32, an Act to modernize the Canadian Copyright Act. The main purpose of C-32 is to make Canada compliant with the 1997 World Intellectual Property Organization (WIPO) Internet Treaties, and as such, it has been generally welcomed by the copyright holder community, especially in the video game, multi-national music and film industries.

However, the fairly unanimous reaction on the artists' and performers' side is that this bill does nothing to support Canadian creators, making private copying legal without any form of fair compensation and extending exemptions while killing the Private Copying Levy. From that perspective, the CCA agrees with nearly everything its various members and other stakeholders

have said about Bill C-32. We can only hope that the bill can be amended adequately to guarantee that creators of Canadian cultural products are properly compensated for their work and that the infrastructure everybody is so concerned with is a vehicle for Canadian intellectual property. If it is not, it is not only the artistic and cultural community that will suffer but Canadians as a whole.

A Digital Strategy must include Communities

A national digital strategy must include space for funding and returns for Canada's communities. This strategy cannot be focused around the sole economic contribution of large urban centres and the return to shareholders of Internet and wireless service providers. We must also acknowledge the importance of empowering Canadians to use the infrastructure they will end up financing. The infrastructure should not only enable Canadians to access content from abroad but also be a vehicle to express themselves and reflect their concerns and values, wherever they live. The strategy must provide tools to smaller urban centres and to our rural and Northern communities. Digital infrastructure, access to federal programs, and content creation must have a community-based focus for a holistic digital economy structure.

This is why the CCA fully supports the proposal of the Canadian Association of Community Television Users and Stations (CACTUS) currently in front of the CRTC for decision. This proposal is a well-thought out plan which could implement a key component of the national digital economy. The creation of approximately 250 multi-media community centres as proposed by CACTUS is very much in tune with the current technological and social environment Canadians live in. The training component of this proposal will benefit Canadians all over the country and contribute actively to spreading the kind of digital literacy which should be one of the core pillars of any national digital strategy at no increased costs to Canadians. This approach has been recognized by other countries as central to a coherent digital strategy, notably by the European Union and in the U.S.

At the same time, the approach proposed can contribute significantly to the diversity of voices in Canadian society, a key objective of the *Broadcasting Act* and a pressing preoccupation in an environment characterized by a high concentration of traditional media. Multi-media centres and the training programs attached to them would empower ordinary citizens, particularly the younger and older generations who are most likely to have the time and the interest to get involved in community activities. Such centres seem particularly well-suited to fulfill the democratic objectives of the *Act*. They would provide the local arts, heritage and education communities with an important grassroots tool to, amongs other things, sensitize Canadians to the importance of culture in their lives.

Training

Finally, artists and cultural workers must be able to evolve and adapt their training and employment needs given this flexible and innovative economy. With a retiring cadre of professionals in Canada's short-term future, we must invest in knowledge transfer programs, mentorships and apprenticeships in cultural industries and in the arts. Moreover, in an ever-changing technological environment, it is crucial that like other workers in the creative economy, artists keep their skills up to date (e.g. motion capture for performers and 3-D technologies for camera operators and cinematographers). Since an overwhelming number of artists are self employed, they do not qualify for a variety of existing programs. They are nonetheless an important component of the creative economy and it is important that the government

recognizes that fact by investing in various training programs so that artists can contribute fully in the new environment. A well-trained creative workforce is a resource which will never run dry. We must encourage a cohesive national strategy to train, promote and implement our digital economy.

Conclusion

Through increased training, regulation of foreign ownership, protection of intellectual property and encouragement of diverse community voices, a national strategy can foster a strong digital economy, or should we say a strong creative society.

The arts and culture sector encompasses the brains and creators behind content. An economic approach must bolster the ability of Canadians to develop new modes of interactivity, display, communication and stories. This strategy must similarly ensure that our creators are fairly compensated for their work, but at the same time, their work is made available on as many digital platforms as possible.

The approach to establishing a digital society must be broad. We must not solely examine markets and infrastructure. We must remember that there are Canadians working, reading, programming and creating digital content. Our economic and social strategy must enable the diversity of Canadians to communicate their stories and creations within a digital society.