



30 April 2010

Robert Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

Re. Broadcasting Notice of Consultation CRTC 2010-97: Call for comments on the reporting requirements for new media broadcasting undertakings (the Consultation Document)

1. Canwest Television Limited Partnership (Canwest) is pleased to submit the following Phase I comments in response to the above-noted Consultation.

General Positions

2. Canwest supports the Commission's efforts to monitor broadcasting activities on new media platforms. As we stated in response to BNPH CRTC 2008-11:

In particular, we support the maintenance of the existing New Media Exemption Order and the Mobile Broadcasting Exemption Order, but believe that the Commission can play an important role by *monitoring* the competitive impact on the traditional, regulated broadcasting system by those new media providers operating outside of the system.¹

A traditional reporting structure would require entirely new workflow and associated resources

3. We submit, however, that the manner by which the Commission intends to monitor broadcasting activities on new media platforms must not require incremental resources at any material level. The Commission itself has acknowledged in paragraph 5 of the Consultation Document that "Reporting requirements should not impose an undue burden on new media broadcasting undertakings" – a statement consistent with the Regulatory Policy set out in subsection 5(2)(g) of the *Broadcasting Act*.

¹ Submitted by Canwest on 5 December 2008.
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4. Canwest is concerned that overlaying a traditional broadcasting reporting framework on new media operations would require the development and implementation of a completely new and different workflow – and it is our understanding that we are not alone in this respect. Online is simply “programmed” much differently. At present, we do not track what is made available or posted on new media platforms, or the originating nationality of the content. We do not classify content into existing “television-style” programming genres, or the length of time a clip or program is made available online. There is no distinct “points system” content analysis.
5. The primary objective of new media is to drive traffic to a given website or webpage (and associated advertising, where appropriate) – sometimes with the use of audio-visual material, but sometimes not -- and engage the audience in ways not appropriate or even possible using traditional media.
6. It is a more free-flowing approach to content-provision, with no set schedules for “put up” or “take down”; and new media typically offers a blend of textual and (sometimes) audio-visual elements sourced from any number of places -- including, of course, the audience itself via user-generated content and/or the imagination and (re)creation of content that we may make available. In such an environment, there is clearly no easy parsing of professionally-produced broadcasting elements, or, indeed of revenue attribution. Audio-visual content changes so rapidly in this space, and is sourced from so many professional and (often) unprofessional content providers on an unscheduled and unplanned basis, that tracking availability or “exhibition” would become an incredibly complex exercise.
7. There is a reason that television/radio and new media do not share common audience metrics. While they may share certain audio-visual elements, the platforms themselves operate in entirely different ways, each addressing and reflecting different needs, evolutions, and associated workflows. Imposing identical or even similar reporting requirements as those applied to traditional media is bound to fail and/or create such a burden on specific companies as to outweigh any potential benefit that the reporting is designed to elicit. Moreover, the imposition of expensive new tracking mechanisms, requiring new capital and human resources, would inevitably place a small subset of participants at an immediate competitive disadvantage to the hordes of unregulated foreign and domestic new media content providers that operate or otherwise distribute audio-visual material in Canada today.

Such reporting would only provide an incomplete, fractional picture with no ability to extrapolate

8. Finally, we are concerned that the imposition of artificial annual reporting requirements would provide the Commission with a distorted and limited perspective on activities in this space. In paragraph 25 of Broadcasting Order CRTC 2009-660 (the New Media Exemption Order), the Commission made specific reference to the “need to collect data that is relevant and meaningful to the Commission.” But by excluding some of the most popular broadcasting new media destinations from reporting obligations, and focusing only on professionally-produced broadcasting content sourced principally from licensed broadcasting licences (and those with appropriate legal rights), the Commission would only see a small fraction of the overall data and impact trends. Such data could not be extrapolated in any meaningful way – and by extension, the actual impact of new media platforms on traditional media would also be severely distorted and understated.

Principal Canwest Recommendations

9. Given the aforementioned concerns and the difficulty of proceeding on this technical issue in a paper process with two (2) formal written phases, Canwest makes the following recommendations:
 - (a) The Commission should establish and co-ordinate the activities of a New Media Reporting Working Group (NMRWG) to assess and recommend to the Commission (i) the most appropriate and necessary data required for the Commission to fulfill its mandate, and (ii) the manner by which the data would be collected and provided to the Commission, including the timing of subsequent reporting. The Commission requires a discussion venue to better understand the difficulties involved in new media reporting, the metrics used, and the size and scope of activities undertaken by the excluded parties. Particular attention should be paid to new media activities that could impact or otherwise threaten traditional linear broadcast operations.
 - (b) The composition of the NMRWG should include representatives from new media broadcasting undertakings *and* representatives from companies that would not be required to report under the proposed guidelines (e.g., YouTube; Hulu). Such representatives should have an in-depth and current understanding of new media workflows, and the various tracking mechanisms and audience metrics currently deployed in the marketplace (or likely to be employed in the future).
 - (c) Commission staff should attend and participate in the NMRWG in order to best understand reporting difficulties and to help establish a more realistic reporting structure and timeline for reporting on these platforms. This approach is consistent with the Value of Signals Working Group established by the Commission in May 2009 – and it would indicate that the Commission is willing to work with industry to achieve common objectives in the most efficient ways possible.

- (d) Subsequent to NMRWG meetings, Commission staff should draft a status report(s) for the Commission outlining the areas of consensus and contention. Draft reports should be reviewed by NMRWG participants for accuracy prior to formal submission to the Commission.
- (e) In order to provide a more holistic picture of broadcasting on new media and reduce administrative burden on certain regulated companies, reliance on publicly available third-party research regarding new media activities and impact should be encouraged and prioritized over any individual corporate reporting. NMRWG participants could identify appropriate information/data sources for the Commission. Research papers and trending analysis by comScore, the Interactive Advertising Bureau (IAB) of Canada, Convergence Consulting, and Solution Research Group are respected and available, and could well serve most of the Commission's needs – but there may well be other sources of information available that could offer worthwhile perspectives on new media activities and impact on the regulated broadcasting sectors.
- (f) Where existing or commissioned third-party research is deemed insufficient by the NMRWG but the data absolutely required for the Commission to execute its mandate, the Commission should encourage (wherever possible) the least onerous reporting approach or proxy possible that could achieve the same objectives. To this end, we especially believe that sampling techniques could be used in lieu of traditional content logging practices.

Responses to specific questions raised in the Consultation Document

- 10. As noted above, our principal recommendation is for the Commission to establish the NMRWG to discuss and recommend future reporting obligations as they relate to broadcasting on new media. However, at this early phase, we wish to respond to certain specific questions raised in the Consultation Document. For ease of reference, we have re-printed the relevant questions below.

Q1. What information should the Commission collect to better understand the new media broadcasting industry in Canada? What are the appropriate metrics for measuring such information?

- 11. We believe that most of the information and trending impact data pertinent to the decision-making at the Commission are already available in publicly available third-party sources -- although they may require a fee to access. As noted above, ComScore, IAB of Canada, Convergence Consulting, and Solution Research Group publish highly relevant studies in this field, with particular regard to audience and revenue trending; but there are other valuable resources available. The NMRWG should be tasked with preparing a list of such resources for possible use by the Commission, outlining the elements included in that research and any associated costs.

12. The appropriate metrics should be recommended by the NMRWG. Audience metrics vary widely in this space.

Q2. What are the most appropriate metrics for monitoring the availability of new media broadcasting content? In particular, address the appropriateness of using the following metrics for monitoring availability of new media broadcasting content:

- the number of audio and audio-visual programs offered by a new media broadcasting undertaking in the past year; and
- the total hours of new media broadcasting content offered by a new media broadcasting undertaking in the past year.

Q3. What are the most relevant and feasible metrics for measuring the availability of Canadian content in new media broadcasting? In particular, address the appropriateness of using the percentage of Canadian content, either in terms of total number of hours or total number of programs, offered on new media platforms as a possible metric for monitoring availability of Canadian new media broadcasting content.

Q4. To understand whether broadcasting in the new media environment is serving a comprehensive range of interests and tastes, consistent with the broadcasting policy set out in the Act, to what extent is it appropriate to categorize content based on the following five characteristics for the purposes of reporting? [list omitted] What are the most appropriate metrics for measuring these characteristics?

13. As noted earlier, broadcasting in new media does not follow familiar tracking or reporting patterns; and overlaying a traditional broadcasting reporting framework on new media operations would require the development and implementation of a completely new and different workflow with potentially very high associated costs. The NMRWG should be tasked with addressing and recommending reporting activities.
14. That said, it is safe to conclude that new media *consumption* data is more readily accessible than *availability* data. That is, we know more about what the audience of new media consumed, than what was made available to them. While this may sound counter-intuitive from a traditional media standpoint, it is nevertheless true when we consider broadcasting activities on new media platforms.
15. Tracking by originating nationality, timed availability, and/or program classification on new media platforms does not exist in our operations, or, to our knowledge, in the operations of other industry participants. The Commission must assess the utility of such reporting against the burden involved – and there are likely less onerous reporting approaches or proxies that could achieve the same objectives. Some possible approaches could involve:

- sampling techniques v. full logging: For example, Top 30 audio-visual consumption reporting on specific stations or services (e.g., broken down by originating nationality, accessibility provisions, and perhaps classified by news/fiction/non-fiction);
- an assumption that content aired on traditional broadcasting platforms is materially mirrored in content and style when “broadcast” on new media platforms (with certain exceptions); and
- advertising/revenue breakdown by commercial type on various platforms (e.g., video advertising v. display ads v. sponsorships).

We submit that the NMRWG could root out and assess such approaches and make recommendations to the Commission.

Q5. Should confidentiality be extended to information regarding any of the data which parties propose the Commission collect in Questions 1 through 4 above? If so, to what extent should such confidentiality be extended?

16. Confidentiality should be afforded to all reporting related to broadcasting in new media – especially if it is the Commission’s intention to apply reporting obligations only on a limited subset of industry participants, while the vast remainder will be entirely free of regulation or other reporting requirements. Reporting alone will place those parties at a competitive disadvantage since it will require additional resources to install and maintain tracking and reporting mechanisms.

Q6. Considering the dynamic nature of the new media environment, what is the appropriate frequency for reporting pursuant to the New Media Exemption Order? In particular, address the appropriateness of annual reporting, as proposed in paragraph 14.

17. Reporting frequency should be recommended by the NMRWG – but as a general rule, individual corporate reports should only be submitted on an as-needed basis. We can accept that the new media environment is dynamic; but it does not follow that reports should be required on an annual basis.
18. Publicly available research regarding new media activities and impact are issued much more frequently and should form the bulk of research used by the Commission to monitor activities and impact in this space.

Q7. Should all affiliated new media broadcasting undertakings be subject to reporting requirements? If not, what are the appropriate criteria and methodology for identifying those new media broadcasting undertakings affiliated with a conventional broadcasting undertaking that ought to submit data?

Q8. Considering the potentially large number of unaffiliated new media broadcasting undertakings, what criteria and methodology should the Commission use to define the subset of unaffiliated new media broadcasting undertakings, carried on in whole or in part in Canada, that should submit data? In particular, should the subset be defined by level of revenue, unique visitors, and/or the amount of content transmitted?

19. We submit that the NMRWG would be the most appropriate venue to discuss and make recommendations regarding mandatory reporting obligations on affiliated and unaffiliated new media broadcasting undertakings. Our recommendations regarding the establishment of the NMRWG include participation by unaffiliated new media broadcasting undertakings.

As always, should the Commission require additional information concerning this matter, we would be pleased to provide it.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jon Medline".

Jon Medline
Vice-President, Regulatory Affairs
Canwest Television Limited Partnership

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