



April 30, 2010

Mr. Robert A. Morin  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Online: <http://support.crtc.gc.ca>

Dear Mr. Morin,

**CRTC Broadcasting Notice of Public Hearing CRTC 2010-97  
Call for comments on the reporting requirements for  
new media broadcasting undertakings**

1. These are the comments of the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) on the proposed amendments to the Exemption order for new media broadcasting undertakings. They are submitted on behalf of the 21,000 members of ACTRA who work in the English-language recorded media in television, sound recordings, radio and digital media who live and work in every corner of the country. We also represent the ACTRA Recording Artists Collecting Society which distributes neighbouring rights and private copying monies to musicians.

**INTRODUCTION**

2. Technology has changed the way Canadians enjoy and engage with media. What hasn't changed is that content is king and the appetite for content has never been greater as technology allows Canadians to consume TV, film, games, and music virtually anywhere at anytime on a variety of platforms.
3. In our contribution to the Commission's 2009 review of Broadcasting in New Media (PN 2008-11), ACTRA called on the CRTC to assert its authority under the *Broadcasting Act* to impose licensing requirements and rules on those who provide programs through the Internet and mobile receiving devices, whether these are streamed, or provided on demand to the user. With broadcasting in new media is growing at such a rapid pace, we are disappointed in the Commission's decision to maintain the Exemption order for new media broadcasting undertakings as established in Broadcasting Order 2009-660.
4. ACTRA is concerned about the impact that a two-tiered system of regulation will have on Canadian broadcasting. While broadcasters and Broadcast Distribution Undertakings

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(BDUs) are regulated, the digital media arms of many of these same companies continue to be unrestricted. This opens the door to exploitation of a two-tiered system where otherwise regulated entities can escape regulation in new media broadcasting. We are also fear that without regulation and incentives to make Canadian programming content available on digital media platforms, Canada will fall behind in being able to develop and support original content in new media broadcasting.

5. We welcome the Commission's intent to require new media broadcasting undertakings to report information on their new media broadcasting activities. This is an increasingly important facet of Canada's broadcasting system and the CRTC is uniquely placed to assess how this area of broadcasting contributes to the objectives of the *Broadcasting Act*. In the absence of transparent, detailed, institutionalized reporting mechanisms for broadcasting in new media, we have only a partial snapshot of what content is available to Canadians and how successful our broadcasting system as a whole is in meeting the objectives of the *Act*.
6. In Broadcasting Order 2009-660 the CRTC provided a revised definition of a new media broadcasting undertaking (NMBU). ACTRA believes it is important for the Commission to require reporting from both types of broadcasters identified – those undertakings providing broadcasting services “delivered and accessed over the Internet” and “delivered using point to point technology and received by way of mobile devices”.
7. We also urge the Commission to require reporting from NMBUs engaged in the broadcast of audio as well as audio-visual programming. All affiliated NMBUs should be subject to reporting requirements. Non-affiliated NMBUs should be subject to reporting requirements if they are professional, commercially motivated undertakings whose new media broadcasting activities are their predominant activity. This definition could be further narrowed by applying reporting requirements to those who are recipients of public funding for new media content creation through for example, the Canadian Media Fund.
8. ACTRA appreciates the Commission's recognition that appropriate reporting requirements should balance the scope and depth of information required to monitor broadcasting in new media with the burden associated with such reporting. However, since NMBUs are able to provide comprehensive metrics to potential advertisers, providing similar information to the Commission should not impose an undue added burden.

## **THE COMMISSION'S QUESTIONS**

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?

9. ACTRA believes that where technically feasible, reporting requirements for broadcasting in new media should reflect those required of conventional media. However, we do appreciate that due to the unique nature of broadcasting in new media that there will be areas in which a different approach is required. In terms of the specific details we trust

the CRTC to exercise its expertise in a manner that is appropriate for the technology and the type of program.

10. Generally speaking, the Commission should collect and make available data that helps to better understand the role that new media is playing in our broadcasting system including the volume, type, genre, language and origin of programming being offered, the consumption of content, and well as broadcasters' expenses and profits.

11. For general data on what new media broadcasting websites Canadians visit the Commission can turn to any number of digital data collection service for rankings, numbers of visitors, demographics of visitors. For websites that can be fully accessed by those outside of Canada, it would be useful to know how many foreign visitors are enjoying Canadian new media broadcasting.

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.

12. ACTRA urges the Commission to require reporting on both the total number of hours and the total number of programs where technically feasible (for example, non-linear programming is difficult to measure by time so number of programs would be sufficient). We also believe that the number of episodes per each program would be useful in measuring the depth of content available as well as the number of views each program receives.

13. NMBUs should also be subject to financial reporting including revenues and programming expenditures. This data will be essential to curb 'gaming' as convergence increases and as the CRTC moves forward with its new group licensing model for television broadcasting.

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.

14. Knowing the amount, source, volume and type of Canadian programs available in digital media platforms is critical to being able to measure Canada's success in ensuring that in an increasing border-less world that we are able to continue to create and enjoy Canadian content.

15. In order to ensure that Canadians can access and share our own experiences in the digital world we must be conscious of the amount of shelf-space Canadian content is being given. The best way to measure this will be to have each NMBU report on their distribution of Canadian programming by type of programming, genre, language, and level of accessibility.
16. ACTRA remains extremely concerned about the availability of underrepresented programs, in particular English-language drama. We fear that the dearth of Canadian drama on conventional TV broadcasters will carry over to new media. It is therefore crucial to understand the amount of Canadian dramatic audio-visual programming being made available by NMBUs.
17. Measuring Canadian content as a percentage is helpful in contrasting Canadian programming against foreign programming, but on its own would not provide a complete picture of the amount of content. "Fifty percent" could mean two hours out of four, or 150 hours out of 300 – two very different scenarios.
18. Additionally, requiring reporting on the number of series and episodes will help to provide a complete picture of the variety of content available. Is the NMBU carrying 50 episodes of one series or 10 episodes of one series? Again, these are two very different scenarios that speak to the variety and depth of content available to Canadians.

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? What are the most appropriate metrics for measuring these characteristics?

- type of programming (e.g. original new media content/content common to new media and conventional broadcasting, live content/on-demand content, complete program/clip);
- origin (e.g. Canadian/foreign, independent/broadcaster-affiliated/in-house production);
- genre;
- language
- accessibility (e.g. captioned and/or described)

19. ACTRA believes these characteristics suggested by the Commission are appropriate. Content in each area should be tracked according to time, number of programs and expenditures. The type and genres of programming should be further broken down to make it clear how much in each of these areas is Canadian.
  20. It would be useful to have number of views for each program to assess demand for each type of broadcasting content.
- 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?
21. ACTRA urges full transparency to the fullest extent possible. We applaud the Commission's recent efforts to bring more data to the public and urge it to bring this same approach to reporting in new media broadcasting. As a principle, NMBUs should

be required to make a case for confidentiality as opposed to having confidentiality 'assumed'.

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.

22. ACTRA believes annual reporting is a reasonable expectation while not placing an undue burden on NMBUs. Annual reporting provides regular snapshots of what is happening in the industry allowing the Commission and other industry stakeholders to note and react to trends and changes before too much time has passed. Even more than conventional broadcasting, we expect the volume and type of broadcasting in new media to change dramatically making the need for regular reporting even more urgent.

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?

23. As a rule, 'yes'. We anticipate that independent NMBUs will request exemptions to reporting requirements and trust the Commission will consider these on a case-by-case basis. However we suggest that any exemptions considered be based on the level of *detail* of the reporting and that no affiliated NMBU should be granted a full exemption from *all* reporting.

24. ACTRA would like to see *all* affiliated NMBUs as defined by the Commission. Reporting by conventional broadcasters who also provide content on the internet is critical. However, the activities of those delivering programming "using point to point technology and received by way of mobile devices" whether it be live TV, clips or radio, is equally important as this area continues to grow in popularity. Again, while the specific reporting requirements may have to be tailored to suit the technology and type or programming, this information will help contribute to a fulsome picture of the availability and consumption of content.

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?

25. ACTRA believes that non-affiliated NMBUs should be subject to reporting requirements if they are professional, commercially motivated undertakings whose new media broadcasting activities are their predominant activity. This definition could be further narrowed by applying reporting requirements to those who are recipients of public funding for new media content creation through for example, the Canadian Media Fund.

26. It may also be appropriate to define the subset as the Commission suggests, by level of revenue, unique visitors, and/or the amount of content transmitted. If the Commission

takes this approach we suggest it be an 'and/or' measurement. That is, if the NMBU exceeds the parameters for any one of the three measurements it should be subject to reporting.

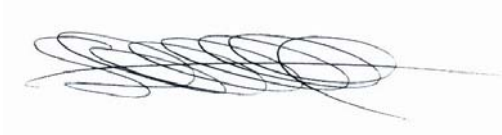
27. The Commission should also consider requiring all NMBUs to register with the Commission and ask those not meeting the requirements suggested above to report on a voluntary basis.

## **CONCLUSION**

28. ACTRA is not aware of any authoritative Canadian source of information on the overall activities of NMBUs and the availability of Canadian content in new media. There is not clear picture of how much content is being broadcast, what kind of programming, who is broadcasting it and who is consuming it. This presents a very large and quickly growing gap in our understanding of Canada's broadcasting system. We suggest that the CRTC is uniquely empowered and situated to fill this knowledge gap and urge you to facilitate reporting and distribution of findings to the fullest extent possible.

29. ACTRA appreciates the opportunity that has been provided to comment on this critically important matter.

Thank you.

A handwritten signature in black ink, appearing to read 'Stephen A. Waddell', with a long horizontal line extending to the right.

Stephen A. Waddell,  
National Executive Director

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