



April 30, 2010

FILED ELECTRONICALLY

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage
Hull, Québec J8X 4B1

Dear Mr. Morin:

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

Introduction

- 1) These comments are filed by the Writers Guild of Canada (“WGC”) in connection with the above-noted Public Notice. The WGC is the national association representing 2000 screenwriters working in English-language film, television, radio and digital media production in Canada.
- 2) WGC members are the creators of Canadian stories such as the comedy series *Little Mosque on the Prairie* and drama series *Being Erica* and *Crash and Burn*. WGC members are also professional writers engaged on digital projects such as the *Little Mosque* webisodes¹, the *Being Erica* video blogs² and the *Crash and Burn* interactive fiction game³. The WGC is committed to building a strong and vibrant broadcasting system that includes Canadian content on digital platforms.

¹ <http://www.cbc.ca/littlemosque/thorne.php>

² <http://www.cbc.ca/beingerica/blog/>

³ <http://crash-and-burn.com/autotopsy.html>

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Introduction

- 3) The WGC welcomes the opportunity to submit comments on the question of reporting requirements for new media broadcasting undertakings. We were disappointed with the Commission's decision to extend the New Media Exemption Order for a further five years⁴ as Canadian Content is currently underserved on new media broadcasting undertakings. As audiences continue to migrate to digital platforms, the need to ensure that Canadians have the choice to enjoy Canadian content on digital platforms can only increase. It is crucial that all stakeholders have a detailed picture of the digital landscape in order to assist the Commission in determining when and how to intervene into the market place to ensure that Canadians have that choice.

- 4) The WGC understands that the Commission's role in data collection is to balance the needs of stakeholders, including the Commission, to have adequate data to support policy discussions with the need of broadcasters to protect confidential business information. We also understand the concern to not impose excessive and costly data collection and reporting obligations. Accordingly, in our recommendations we propose data collection and reporting that we consider is fair and appropriate under the circumstances.

- 5) As well, the WGC would like to point out that the data that we propose the Commission collects is focused on professionally produced high quality audio-visual content. Except in the case of contextual data referred to in paragraph 7 below (i.e. what are Canadians doing online), it is right that the Commission has stated that it will concern itself with data regarding professionally produced audio-visual content rather than user-generated content. The WGC defines 'professionally produced' as content produced with the intent to generate revenues rather than produced as a hobby or as entertainment itself. Given the lower costs of production, the point at which user-generated can become professionally-produced tends to be one of intention rather the identity of the creator. Our concern is with offering Canadians an adequate choice to enjoy professionally produced audio-visual Canadian content on

⁴ Broadcasting Order CRTC 2009-660 and Broadcasting Regulatory Policy CRTC 2009-329

digital platforms and not being limited to primarily American professionally produced content. User-generated content is not an answer to the goals of the *Broadcasting Act* and appears to be developing sufficiently in the marketplace.

- 6) In Question 7 (see below), the Commission asks if all affiliated new media broadcasting undertaking should be subject to reporting requirements. It is necessary therefore to address the issue of who is an affiliated new media broadcasting undertaking prior to proposing what data should be collected by them. In paragraph 17 of the Public Notice, the Commission identifies affiliated new media broadcasting undertakings as a new media broadcasting undertaking that is affiliated with a traditional broadcasting undertaking. In paragraph 9 the Commission stated that 'to the extent that ISPs act as content providers or aggregators, measurement of those activities will be considered in the present proceeding'. It is important to understand that there are two categories of affiliated new media broadcasting undertakings which need to be covered by this proceeding. One is as the Commission has identified, those undertakings associated with traditional broadcasters, such as *ctv.ca* and *cbc.ca*. As well there now has developed new media broadcasting that is affiliated with broadcasting distribution undertakings, (eg. Rogers On Demand Online) and ISPs (eg. *Sympatico.ca*). As this is a rapidly evolving area, we recommend that the Commission define affiliated new media broadcasting undertakings broadly as those new media broadcasting undertakings affiliated with any undertaking already under the Commission's jurisdiction.

Commission's Questions

Question 1 – What information should be collected to better understand the new media broadcasting industry in Canada and what are the appropriate metrics?

- 7) In our perspective there are three broad categories of data regarding new media broadcasting in Canada:
- a) What are Canadians doing online?
 - b) What is available to Canadians online?
 - c) How is money flowing?

What are Canadians doing online?

- 8) The question here is about traffic patterns and usage. What websites are Canadians visiting and what are they doing there? The first element of this question

is where are Canadians going for new media broadcasting? We recommend that the Commission expand its Communications Monitoring Report to collect traffic data on websites visited by Canadians, new media broadcasting websites visited and the comparative time spent on each. Digital data collection companies can provide the Commission with data on what sites Canadians visit for online video, the unique visitors those sites have and the number of videos that are watched. They may not be able to provide nationality statistics, i.e. Canadian vs. non-Canadian video viewed on new media broadcasting websites, but this would be useful information. The previous year's Communications Monitoring Report provided a chart on Internet video viewing by Canadians by type and only included the categories 'amateur video' and 'TV Programming'⁵. This missed the category of professionally produced original new media video. This category definitely does exist (*Being Erica* video blog⁶ and *My Pal Satan*⁷ web series are two Canadian examples) and should be tracked in relation to the other forms of online video viewing. The foregoing comparative information would provide the Commission and stakeholders with context as well as a report card on how successful affiliated new media broadcasting undertakings are in garnering audience.

- 9) Once we know what Canadians are doing in general online and in viewing new media broadcasting, we need to know what they are doing on affiliated new media broadcasting undertakings. The WGC recommends that affiliated new media broadcasters report on the following elements, which taken together will measure not just traffic but engagement. It is important to understand not just the sheer volume of visitors but how successful the site has been in keeping the audience entertained.

- a) Unique visitors to their entire site

'Uniques' is the standard by which websites measure audience. Hits records only the number of times that images on the site are pulled up. For example, a text heavy site would have fewer hits than one with lots of graphics. A measurement of all visitors could make a niche site where a few visitors spend a lot of time look more popular than a general site. Unique visitors therefore give us an accurate picture of how many individual visitors came to the site.

⁵ Canadian Communications Report 2009, Figure 4.5.6, page 176

⁶ <http://www.cbc.ca/beingerica/blog/>

⁷ <http://www.mypalsatan.com>

b) Average visit length to entire site

Average visit length is another measurement of success. Do they browse and quickly leave or stay and explore the site?

c) Average length of time that new media broadcasting content is viewed

For those sites with a great deal of non-broadcast material it would be important to understand how much of the time that visitors are spending on a site is actually spent viewing the broadcast material.

d) Hours of traditional television programs viewed and number of original new media programs viewed.

See below under Question 2 for our distinction between traditional television programs available online and original new media programs. Data on activity should be consistent with the data provided on availability.

What is available to Canadians online?

e) This question is answered below in response to the Commission's Question 2.

How is money flowing?

f) This may be the most contentious and the most difficult data to collect. Currently there is no obligation by affiliated new media broadcasting undertakings to report on revenues or expenses related to their online activities. Advertisers tend to buy advertising on multiple platforms or now, with product integration, in a program that will be distributed on multiple platforms. There are no requirements for how those revenues are allocated between platforms. Broadcasters have advised that the costs of streaming and maintaining websites exceed the revenues earned from those activities but the Commission and stakeholders cannot verify these assertions.

g) It would therefore be essential to the Commission's monitoring of new media broadcasting that the affiliated new media broadcasting undertakings provide aggregated data on their service's revenues and expenses related to new media broadcasting. The data should be broken down into similar categories as with the broadcasting data reporting so that stakeholders can, for example, compare new media broadcaster spending on foreign drama streaming rights in comparison to Canadian drama streaming rights. We recommend that the

Commission issue guidelines on financial allocations in order to facilitate consistent reporting between affiliated new media broadcasters.

Question 2 – What are the most appropriate metrics for monitoring the availability of new media broadcasting content?

- 6) In our submission to the Notice of Public Hearing CRTC 2008-11 and our presentation at the Public Hearing on February 24, 2010, the WGC made two recommendations for setting Canadian Content levels on Canadian new media broadcasting platforms. The first minimum level was for traditional television streamed or available for download. The second was for original new media content. While the Commission is not yet prepared to regulate Canadian Content levels on new media broadcasting, our logic in proposing regulation could be useful to the Commission in identifying appropriate metrics for monitoring the content in the meantime.
- 7) The WGC proposed that traditional television available to be streamed or downloaded should be measured by time. Traditional television is a linear format that is measured on television by the length of the program. Its availability on digital platforms does not change its nature. It should still be measured by time, or as the Public Notice suggests, by hours. The percentage of available Canadian audio-visual programs can easily be determined on an hourly basis.
- 8) Original 'new media' content is a more complicated issue. Some of that content will be linear (ie webisodes such as *My Pal Satan*⁸) however other content will still be audio-visual but non-linear. An example will be a game that uses audio-visual content to move the story along (eg. Last Tango in Jadac game in www.zostv.com or Autopsy on www.crash-and-burn.com). Game and story are merging into one interactive, non-linear format that is both entertaining and a 'lean-forward' experience. Both Last Tango in Jadac and Autopsy call themselves 'interactive fictions' This kind of converged content falls within the definition of 'programs' that are 'broadcast' under the *Broadcasting Act* as there is no requirement in those definitions that programs be linear only. With added federal funding for multiplatform content under the Canada Media Fund, and increasing audience interest in new forms of storytelling, an accurate picture of what audio-visual

⁸ <http://www.mypalsatan.com>

entertainment Canadians are enjoying online must take this converged content into account. However, non-linear content has different time lengths depending on the activity of the user rather than what has been created in total. We therefore recommend that original 'new media' content, whether it is linear or non-linear, be measured by title.

Question 3 – What are the most relevant and feasible metrics for measuring the availability of Canadian content in new media broadcasting?

- 9) In the WGC's submission and presentation in CRTC Public Hearing 2008-11 mentioned above, the WGC proposed that 60% of traditional television content available online should be Canadian and 60% of titles for original 'new media' content. These levels could be easily measured by new media broadcasters. Reaching 60% would in our opinion qualify as 'predominant use' of Canadian resources and provide Canadians with a wide range of programming displaying Canadian talent⁹. Traditional Canadian television programming would be certified as Canadian under CAVCO or by the CRTC and would therefore be easily measured. The percentage of certified Canadian programming to non-Canadian programming available to Canadians could be easily and appropriately measured. However, original new media content does not have a certification system. The WGC proposed a new media certification system in our submission to CRTC 2008-11. Briefly we proposed that in addition to 75% of costs being spent in Canada the top 5 creative talent other than the producer would have to be Canadian. This would ensure that Canadian taxpayer resources went to support and develop Canadian talent. Until a new media or digital media certification system exists, original Canadian new media content could be identified based on having received funding from certified independent production funds such as the CMF or Bell Fund or if it was produced in-house by a Canadian new media broadcasting undertaking. These criteria would ensure that broadcasters were tracking professionally produced Canadian content rather than user-generated Canadian content.

⁹ Broadcasting Act s. 3(1)(d) and (f)

Question 4 – To what extent is it appropriate to categorize content for the purposes of reporting?

10) It is essential that new media broadcasting fulfill the objectives of the *Broadcasting Act* and share the obligations of traditional platforms. In order to target regulatory support to where it is needed most a detailed picture of what is available must be provided by new media broadcasters. However, we are aware that new media broadcasting is still developing and that the detailed reporting required of television broadcasters could be burdensome for new media broadcasting. Ideally all of the categories suggested in the Public Notice would be reported (i.e. type of programming, origin, genre, accessibility and language) but the Commission may feel justified in phasing in such detailed reporting over time. At a minimum however, new media broadcasters should provide the Commission with:

- a) Original vs. television content
- b) Canadian vs. non-Canadian
- c) Independent production vs. in-house or affiliated production
- d) Genre
- e) Language

11) We suggest that the content be measured consistently with our recommendation in paragraphs 7 and 8 above, ie by time for traditional television programming and by title for original new media content.

Question 5 – Should confidentiality be extended to information regarding any of the data collected?

12) The WGC suggests that the Commission determine that any data not be held confidential unless the new media broadcasters can make a compelling case for such confidentiality. As the WGC knows from experience with television data reporting, it is very hard to assist the Commission with financial modelling when the data is confidential. The Commission has agreed and opened up the television data reporting significantly in the past few years. We recommend that the Commission act consistently in its release of new media broadcasting data by restricting confidentiality accordingly. It is clear to us that the level of disaggregated television data required by the Commission has not negatively impacted the broadcasters' competitive positions.

Question 6 – What is the appropriate frequency for reporting?

13) Annual reporting is the appropriate frequency for reporting, provided that those reports track monthly activity. Stakeholders need to be able to identify trends and have the opportunity to call for an earlier review of the New Media Exemption Order should the data reveal that it is necessary. Any more frequent would be burdensome and would not provide stakeholders with sufficiently important additional information. Broadcasters plan their new media broadcasting activities on an annual basis in conjunction with their traditional broadcasting activities. Less frequent reporting would not let stakeholders and the Commission monitor developments as the Commission stated in its Decision¹⁰ amending the description of new media broadcasting undertaking by adding the following:

“The undertaking submits such information regarding the undertaking’s activities in broadcasting in new media, and such other information that is required by the Commission in order to monitor the development of broadcasting in new media, at such time and in such form, as requested by the Commission from time to time.”

Question 7 - Should all affiliated new media broadcasting undertakings be subject to reporting requirements?

14) We trust that the smaller, independent affiliated new media broadcasting undertakings will propose exemptions. In theory, subject to the exact proposals, we support the idea that detailed reporting would be burdensome for smaller affiliated new media broadcasting undertakings. However, we would prefer that the level of detail be exempted and rather than the smaller affiliated new media broadcasting undertakings being exempted from all reporting. It is important that the Commission and stakeholders have an accurate picture of the new media broadcasting landscape including which broadcasters have affiliated new media broadcasting undertakings.

¹⁰ Broadcasting Order CRTC 2009-660

Question 8 – What criteria and methodology should be used to define unaffiliated new media broadcasting undertakings who should submit data?

- 15) This is a tough question to answer. It is important for the Commission and stakeholders to have data on the activities of unaffiliated new media broadcasters to provide context for the activities of affiliated new media broadcasters. The WGC proposed in Public Hearing CRTC 2008-11 that the Commission have an 'opt-in' system for unaffiliated new media broadcasting undertakings. These undertakings would agree to be subject to regulation in return for access to incentives such as being able to trigger funding for original content. The dilemma the Commission has to struggle with is that there are not any incentives or requirements for unaffiliated new media broadcasting undertakings to provide the Commission with any data.
- 16) If unaffiliated new media broadcasting undertakings were to voluntarily supply data, we do have thoughts on what would be most helpful. We would be most interested in data provided by unaffiliated new media broadcasting undertakings owned and controlled by Canadians and operating in Canada, or in other words those undertakings that would be most likely to take advantage of our proposed opt-in system. They should be primarily new media broadcasters rather than sites which host video as a minor aspect of their online activities. They should be commercially motivated undertakings who are financially exploiting their new media broadcasting directly or indirectly.

Conclusion

- 17) None of the data being discussed in this Public Notice is available by any other means. In many cases broadcasters refuse to release the traffic data on the new media broadcasting programs they host even to the producers of the content. Funders have great difficulty obtaining consistent traffic and usage data in respect of programs they have financed. At CRTC public hearings and Parliamentary Committee meetings stakeholders on all sides of the issue claim that there is plenty or little Canadian audio-visual content available to Canadians with little evidence to support assertions. It is clear that there is a great need for comprehensive data that stakeholders and the Commission can use to identify the extent to which Canadian new media broadcasting is supporting the objectives of the *Broadcasting Act* and the extent to which targeted regulatory support is required. It is time to get reliable

statistics rather than continuing to rely on ad hoc reviews and guesses as to what is going on in the Canadian new media broadcasting world.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Maureen Parker', with a stylized, cursive script.

Maureen Parker
Executive Director

c.c.: National Council, Writers Guild of Canada
Kelly Lynne Ashton, Director of Policy, Writers Guild of Canada

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