



Russell McOrmond's personal blog

Another place I'm tossing some ideas out to see what others think.

Wednesday, November 2, 2016

Defend #DigiCanCon through Modern Management of Communications Convergence

The [Canadian content in a digital world consultations](#) are underway, and the Minister of Canadian Heritage has indicated that everything is on the table.

Unfortunately there is a large group of people who have been dominating the consultation with what I would consider to be minor details of an issue that is far broader than they seem to be aware of. Their focus has been sources of funding for creating Canadian content -- both on the variety of government programs as well as the ongoing claim that stronger copyright aimed at audiences will somehow better protect the economic interest of creators. I believe discussing mandating Netflix become a contributor to the Canadian Media Fund is as helpful as rearranging deck chairs on the Titanic.

These consultation participants appear to have missed the elephant in the room, which also represents the greatest threat to the interests of creators, which is the concentration of vertically integrated communications companies. I've been writing for years how these companies see creators as pawns, and they are quite willing to [sacrifice the interests of creators](#) in order to advance their conflicting interests.

I strongly believe the origins of this problem comes down to a failure in how the Canadian government managed the convergence of communications technology.

Communications Convergence

I have been excited about convergence since I first heard of the idea in the early 1990's. The idea was that as communications technology moved digital we would be able to move to a neutral communications infrastructure rather than the purpose built analog networks of the past.

It always made me feel uncomfortable that we had one wire into our homes for two-way voice communication (telephone) and a separate wire for one-way video communication (cable TV). I considered this an unfortunate side-effect of the technology of the day, and through convergence we would be able to build a communications system that was much more like our road system. We did not build special medical roads you needed to use to get to hospitals separate from political roads you would need to get to city hall, which would also be separate from food roads used to get to get your groceries. We had one road system that was managed by individuals (their driveways) and appropriate levels of government (municipal, provincial and federal) that was agnostic to the specific source or destination. We did not allow companies in the food industry to dictate road policy which would impact our ability (slower lanes, differentiated pricing, etc) to get to a hospital (or only the food industries preferred brand), or allow any specific industry to influence other industries that were built on the neutral road infrastructure.

One or two way voice or other audio communication, one or two way audio/video communication, queued text and other data communication (email/etc), and other services would all run on top of this neutral network. We would no longer need to care about what type of traffic was being routed -- only how much of it for capacity reasons as we do for our road system.

With the connection into our homes being neutral I also assumed we would finally end the communications exception. All the other connections into our homes (water, sewer, natural gas, electricity) are managed by the public sector (most often distribution public sector, but contents private sector), while the purpose-built telephone and cable TV connections were managed by companies that thought of themselves as private sector.

While the companies representing these communications exceptions exist because of government largess (exceptions to property law for right-of way access, spectrum

About Me



Russell McOrmond

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I have a hardware/software background and primarily get paid for related skills, but my passion is public policy. Active in areas where technology, law and economics come together -- most recently focused on digital copyright, information/mental process patents, and new media/network neutrality.

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monopolies, considerable grants, and even specialized exceptions to copyright), they managed these networks for their own private gain often at the expense of wider public policy goals, the interests of other businesses in other sectors, and the interests of Canadian citizens.

Failed Government Policy

All the talk in the 90's about the "information superhighway" lulled me into a false confidence that the government saw a similar vision of managing our communications infrastructure as we do the road system. What emerged in Canada was the opposite in many ways.

Companies who previously offered telephone services now offer BDU services, and have purchased broadcasters, publishers and other media producers. The same happened with BDU companies which now offer telephone services and own media producers. While this transition was happening, the silos that exist within the CRTC made it incapable of properly regulating a "phone" company offering cable+data services or a "cable" company offering phone+data services. The CRTC had one part that dealt with broadcast companies and a different part that dealt with telecommunications companies, even though outside the agency in the real world these had converged. Regulation needed to be for activities, not companies.

These new vertically integrated companies would leverage their claimed "ownership" of the underlying network to impose specific policies on the network. These companies would privilege their brands of services over all competitors, and seek to block disruptive innovation. I have always felt that phone and BDU companies are in a conflict of interest with providing proper Internet services and have always purchased my Internet from competitors to the vertically integrated telecom/BDU companies (as much as they are allowed to exist in Canada). To do this the government still forces me to use the "last mile" into my home provided by a traditional "phone" or "cable" company, rather than being able to purchase neutral services over a municipally owned connection into my home.

To make matters worse, the CRTC was allowed to create and administrate funding programs. While companies using public right-of-way for wired and public spectrum for wireless should always have been taxed for that privilege, the CRTC was the wrong agency to then be distributing these funds. This created the environment for regulatory capture where the CRTC saw those it was funding as its stakeholders, rather than the public being stakeholders where some of those it was funding are the very entities the CRTC needs to more strongly be regulating.

Many creators have fallen into what can only be described as a form of Stockholm Syndrome, believing that what is good for the incumbent broadcasters and their owners is good for them. I believe this is the source of the suggestion that the mandate of the CRTC should be further expanded to include taxing non-broadcast entities like Netflix to feed money into the Canadian Media Fund. While this expansion would help the owners of the incumbent broadcasters in their anti-competitive efforts to block non-vertically integrated companies from flourishing in Canada, it is to the detriment of independent creators whose ability to create is further manipulated by incumbent broadcasters/BDUs. Better for creators would be stable and accountable funding directly from government that is targeted at creators (and not intermediaries), and the removal of the conflict of interest created when the CRTC is involved in any funding programs.

We now have an open debate about whether we should be abolishing or reforming the CRTC. Unfortunately, without common ground on what should replace the CRTC I worry that a regulatory vacuum will be created which will make the existing policy failings leading to excessive special economic interest control over Canada's communications infrastructure even worse.

(See [CRTC transcript from 2009](#) when I was a witness on what I consider to be the same same area of policy. At that time they called it the "value for signal" consultation.)

Consultation questions

Whether I am reading the 3 questions in the "have your say" section of the consultation website, or reading the "pillars of the approach" from the consultation paper, I feel much is dependent on a more modern management of communications convergence. While the [Canadian Media Concentration Research \(CMCR\) project](#) discusses some of the impacts of media concentration in Canada, I believe policy makers should at least in the short term focus closely at some of the root causes rather than being overly distracted by the effects.

I disagree with those who suggest media concentration is no longer relevant in the age of the Internet, a perspective that appears to presume convergence happened the way I believed it would in the early 1990's rather than how it actually occurred in Canada. We need to recognize this open competitive marketplace that is in the control of individual

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After complaining about questions government didn't author, FVC insists own unclear questions be added? [disq.us/p/1e26bri](#)
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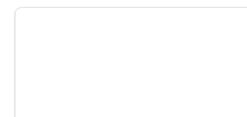
Content Creators harmed when #Netflix claimed to be a "broadcaster" (by "creator" associations) [mcormond.blogspot.ca/2016/11/netfli... #digicancon](#)

20h



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"I wish we had been told that the Supergirl part of the crossover was minimised" [disq.us/p/1e1q3zq](#)
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Why 'Supergirl' Didn'...
Executive producer, A...
[geekfeed.com](#)

citizens as a goal to achieve, not a reflection of the current state of affairs.

22h

Media concentration is not an effect of a free market, but an effect of failed government policy which has continuously manipulated the market to favor incumbents. These failed policies must be corrected in order to support creators, respect citizens, create cultural systems where creators and citizens thrive, and promote a strong democracy.

Policy ideas

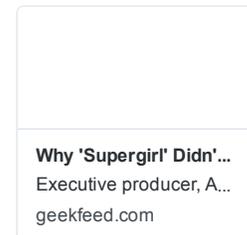
1. Much of the required modernization of policy is outside of the jurisdiction of Heritage Canada. This is an area of policy that requires coordination between multiple departments and multiple levels of government. Having Heritage recognize the benefits of a modern management of communications convergence is an important first step as Heritage policy has often been at odds with this beneficial modernization.
2. As single entities can carry out some, all, or a combination of communications activities, activities should be taxed and regulated rather than the entities as a whole. When an entity is carrying out activities which are "broadcasting" then that activity should be regulated as broadcasting. When an entity is carrying out activities which are more like offering membership to a library of multimedia content, then that activity should be regulated as such. When an entity is carrying out "retransmission" that activity should be regulated as such. When an entity is carrying out two-way voice communication that interfaces with the PSTN as managed through the ITU, then that activity should be regulated as such. (These are only examples of the higher profile activities, and should not be thought of as exhaustive)
3. For clarity, Netflix offers a service which is a paid membership to a library of multimedia content. Netflix continues to have more in common with the DVD rental system it originated as than broadcasting, and its activities should be taxed and regulated for what it actually does and not for what people (often misinformed by special interests representing BDUs) misunderstand them to be. Claiming services like Netflix are broadcasting "because video is put on a screen" is like claiming that Netflix is a video game which also puts video on the screen. Given many people use game consoles to watch Netflix, is this further proof that Netflix is a video game and should be regulated/taxed like one?
4. The definition of "broadcasting" should be clarified to include programmed streams of audio or video (where the broadcaster makes the content choices and pushes the same content stream to multiple recipients), but to not include private or public access to audio and/or video libraries (where the audience makes the content choices, and pulls contents from the library). Whether this communication happens "by radio waves or other means of telecommunication" should not be the determining factor if an activity is labeled as broadcasting or not given the underlying digital network is "by radio waves or other means of telecommunication".
5. The Canadian Content quota systems should be applied in direct proportion to the strength of the gatekeeper function of the activity being regulated. An activity which programs what is seen by Canadians, and/or at what time, especially on a technology with limited or monopolized spectrum, would be highly regulated. An activity which allows Canadians to make their own content programming choices would be minimally regulated (if at all). (See also [DigiCanCon idea](#): Return CanCon policy to being centered on Canadian audiences)
6. Government regulations, including any Canadian Content quota system should never be abused to [impose culture on Canadians](#). Regulations should be used to protect the right of individual Canadian citizens to make their own choices about what products of the cultural industries they wish to access, specifically regulating intermediaries that limit that right. Recognize that citizen choice protects creator rights ([DigiCanCon idea](#)).
7. Canadian Content quota regulations should not be narrowly applied only to specific types of activities (broadcasting), but any type of content distribution which is seen to have excessive influence over what content Canadians can access. In some cases, the placement of promotional material by retailers like Walmart should be considered for Canadian Content quotas, or the production of plays in a theater. As the regulation would no longer be specific to entities regulated by the CRTC, the Canadian Content quota system should be moved from the CRTC to an appropriate regulatory body or branch of Canadian Heritage. (Note: The quota system may be abolished entirely if untested experimental non-free trade policy such as seen within the Trans-Pacific Partnership is ratified in Canada).
8. Broadcast standards (whether government or self-enforced) should only be applied to the activity of broadcasting where content is programmed and pushed to audiences, and not to activities where audiences make their own programming choices.
9. While non-broadcast activities should not be expected to (or possibly even allowed to) edit or filter content (such as for adult themes, profanity, nudity, violence, or

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Why [#Supergirl](#) Didn't Get the Full 'Invasion' Crossover Treatment During [#DCWeek](#).
bit.ly/2gC7W7a



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Supergirl
@TheCWSupergirl

See [#Supergirl](#) team up with the rest of your favorite superheroes on [#TheFlash](#), TOMORROW at 8/7c!
[#DCWeek](#)



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[@PlaybackOnline](#) How about offering services to paying customers?
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mcormond.blogspot.ca/2016/11/notes-...#DigiCanCon

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I would rather that money went to distribution mechanism neutral content creation: [#CBC](#) via [#Netflix](#) [#GooglePlay](#) etc

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Just watched start of [#DCWeek](#) via

sex), these activities should be mandated to use robust content descriptors. The MPAA rating system should not be considered sufficient (G, PG, 14A, 18A, R, Adult), but require a system which is more specific such as being [developed for pay television](#) (indicates "Adult Content", "Adult Language", "Graphic Language" as separate descriptors). Some regulation may be required of those offering hardware/software to access these services to expose the ratings as well as offer client-side filtering controlled by individual audiences. Clear labeling of technology that doesn't offer robust parental controls should be required.

10. Whatever the future of the CRTC, we need to remove any funding programs. This should not be done by canceling the Canadian Media Fund but by replacing with an accountable and transparent fund administered by Heritage Canada rather than the CRTC. The sources of funding should be from the use of public infrastructure (more on spectrum and right-of-way taxation later) and general revenue.
11. The target of media funds intended to support creativity should be to content creators, and not intermediaries or non-creator copyright holding entities. Public contributions should be conditional on the wide public access of the results, such that content that is intended to be tied to a specific distribution brand would be eligible for less public funding than content that will be distribution brand neutral. ([DigiCanCon idea](#): Ensure results of government subsidized creativity is available to all Canadians)
12. The "broadcast" and content creation aspects of the CBC should be separated. Public subsidies to the broadcasting arm should be focused on those geographic areas where OTA broadcasting is still a critically important way to reach Canadians. In this CBC radio is far more important than CBC television. Content created by the CBC such as scripted programming should be neutral in how it is distributed, and specific distribution brands should not be allowed to be favored.
13. If distribution of content is to be taxed it should be done fairly and consistently. It must not be based on people incorrectly believing any specific distribution is like broadcast TV.
14. If a private sector company is granted right-of-way to put wires above and below public and private property, they should be expected to compensate the public for that privilege in the form of specialized taxes and licensing fees. The same should be true of over-the-air spectrum. Currently spectrum licensing (IE: government granting and protecting a monopoly on the use of specific radio frequencies) is inappropriately hidden in general revenue, rather than being earmarked for communications related funding programs including infrastructure and media funds. Payments should not be one-time, but ongoing as the public resource (right-of-way or spectrum) is used. Spectrum which has been granted a monopoly and unused should be taxed at a higher rate than spectrum actively used to provide services to the public.
15. Private sector users of right-of-way or spectrum should be strongly regulated, including mandating competitive third party access to service agnostic (neutral) networks. The underlying digital networks should be presumed to be under common carriage policy which requires they offer services to the public without discrimination.
16. Canada should remove monopolies from more spectrum. So-called "unlicensed" spectrum which is available to be used by any vendor as long as they follow specific technical regulatory requirements provides far more opportunity for innovation. The idea that spectrum needs to be granted as a monopoly to be useful is outdated as modern technology allows for far more efficient use of "unlicensed" spectrum than monopolized spectrum. WiFi is one well known example, but we could see far more, faster, better wireless communications services if spectrum was not being monopolized.
17. All parts of government must recognize that the narrow policy areas they have traditionally been involved in (Heritage Canada's preoccupation with commercially created cultural works) is only a small part of what the network is used for. It is [simply wrong to claim that nobody would use the Internet if not for movies, TV and music](#). This is no more true than a claim it is only a replacement for letters and postcards (email, etc), only for electronic commerce, only for academic research, only for medical information, only for interacting with government services, or an infinite number of other uses a neutral network can provide. No one sector should be allowed to manipulate the underlying network to privilege their private interests, and no government department should regulate and/or tax the network as if it were only used for the narrow purposes that fall within the mandate of that department.
18. Government manipulations of the ICT sectors allegedly for the benefit of the content industry, such as legal protection for encrypted media and non-owner locks on technology (so-called "technological measures"), have a profound impact on other aspects of our society. As one small example, non-owner locks on devices make those devices [insecure from the perspective of their owners](#) and allows the third party

[#DCWeek](#) via
[@TheCWSupergirl](#) &
[@expressvpn](#). Nov 14 still
 latest episode
[@showcasetdca](#) has on
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Who are [#DCWeek's](#)
 Dominators, & why is
[INVASION](#) a significant comic
 event? Find out before
[#DCTV's](#) crossover event!
bit.ly/2gQ9b7b



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[#Arrowverse](#) 4 Night Mega
 Crossover Event - BTS with
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The cast and crew take you
 behind the scenes of the 4
 night crossover event!
[#DCWeek](#) continues on
[#TheFlash](#), tomorrow at 8/7c
 on The CW.



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Open to discussion with
[@CdnHeritage](#) about
 "Innovator's Dilemma" when

manufacturers who retain keys to remotely control devices. This has a direct implication for policy proposals such as online voting ([DigiCanCon idea](#))

19. As the Internet is used across all sectors, and has impacted all sectors, it must not be taxed to cross-subsidize sectors impacted by it. This is counterproductive policy that will either lead to unfairness (only a tiny subset impacted receiving compensation) or would make digital services too expensive for any Canadians to afford.
20. Much of the content industry owes its success, and in many cases its very existence, to advances in information and communications technology (ICT). The ICT industry has never suggested the content industry be taxed or levied in order to compensate the ICT industry. This is as appropriate a proposal as suggesting that all or parts of the ICT sector should be taxed or levied to subsidize the content industry. While I believe the content industry has benefit more from advances in ICT than ICT has benefit from the content industry, I believe this question is counter-productive as it creates animosity between sectors which should be collaborating for the benefit of all citizens.
21. For clarity, while private sector entities using right-of-way or spectrum should be taxed for that privilege, and some of that money might be allocated to media funds, entities providing services on top of that network should not be taxed to contribute to those funds. We should not be taxing companies offering Internet routing services. While the incumbent vertically integrated companies have been deliberately blurring the lines between what is the converged neutral network and "over the top" services (including competitive ISP services), government regulation and taxation needs to be more nuanced in order to promote a competitive marketplace which includes fair taxation policy. (No ISP or Netflix tax.)
22. If a "Netflix" tax is created (and it should not), it must be conditional on results being available through Netflix. ([DigiCanCon idea](#))
23. The government must do proper analysis on the blank media levy (Canadian Private Copying regime) before contemplating any levy related to digital distribution. While some claim these levy systems increase revenues to creators, all evidence I have seen suggests this reduces revenues to creators. This question has not been properly studied by the Canadian government, and we need to be making evidence based decision making.
24. Canada should recognize the benefits of what convergence could have brought us, and create regulations and funding programs to help modernize our communications infrastructure in that direction. This should include tax and regulatory policy to minimize control over the underlying network infrastructure by favoring independent services and reducing harmful influence by specific sectors (such as traditional BDU or phone service providers).
25. Laws should be clarified such that a municipality contemplating providing communications infrastructure cannot be claimed to be in competition with private sector companies and disallowed, but actively encouraged. A model would be how electricity is managed in Ontario where generation is private sector but distribution is public sector. Municipalities should be encouraged to build communications infrastructure, including by receiving infrastructure money and not being taxed as private sector entities would. All public sector entities should be actively discouraged (legislated against?) providing services on top (Internet transit, audio and/or video services other than of government business such as council meetings, etc). The network should be neutral, allowing any entity that follows specific regulatory requirements to provide over the top services via this network. While this public sector provision of the underlying network wouldn't be taxed as the private sector would be, it should still be regulated to ensure it remains service agnostic, neutral, and follow common carriage policies.
26. All levels of government should recognize that all digital services are "over the top" of the underlying digital network. Current policy inappropriately privileges specific products from vertically integrated brands and treats services from competing brands as "over the top". The technological differences between Netflix and Bell's IPTV (FibeTV) service are minor and primarily relate to network addressing and routing. The private network routed services of the vertically integrated companies should be regulated the same as third party services operating over digital networks. (Note: While Netflix offers access to a media library, and Bell's FibeTV offers both retransmission and media library features, there are aspects of Bell's service such as its network PVR which needs to be given special attention. I'm also not convinced Bell's access to media libraries are being appropriately regulated.)
27. Canada needs to recognize that the core of the "Network Neutrality", as well as the current differential pricing debate in front of the CRTC, are effects of failed management of convergence and vertical integration. If we had truly competitive service providers which weren't able to manipulate one service area based on the special interests of another service area we wouldn't have these controversies. These

innovators dilemma when
broadcasters/BDUs allowed
to be in charge of streaming
[#DigiCanCon](#)

28 Nov

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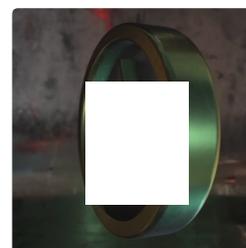
So excited about [#DCWeek](#) crossover. Watching from Canada via [@TheCWSupergirl](#) site and [@expressvpn](#)
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 **David M. Jones**
@BigRockDJ

Crossover week is here!
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It's [#DCWeek](#) As [#HeroesVsAlien](#) X-Over Begins TONIGHT On [#Supergirl!](#) Don't Miss Our Podcast X-Over On Dec 1! Promo [@BigRockDJ](#) [@MikeSchmidt09](#)



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Female characters better than Felicity, the wish list for lonely people from [#arrow](#) and icky [#olicity](#)
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I guess as this is the last hour of the consultation that my last posting towards this consultation is the one I just published.

Minister Joly wrong to want to bring tech companies "into the system".

<http://mcormond.blogspot.ca/2016/11/minister-joly-wrong-to-want-to-bring.html>

While many contributors are focused on funding, I believe a more important focus should be on modernizing the regulations so that broadcast-era policy and business models don't continue to create barriers between Canadian content creators and their audiences.

I live in Ottawa and work on Wellington St. if anyone from the department wishes to meet as has been done in the past. The Copyright Policy Branch met with me many times during the decade-long process leading to the passage of Bill C-11.