

# Overhauling **Canada's** Copyright Act: Defending **Creators'** Rights & Establishing a Sustainable Future for **Canada's** Media and Cultural Industries

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## Overview

- There is a crisis facing journalism and the media in Canada. Aside from the risk of job losses, and the loss of future job prospects, the industry being undermined is not being “disrupted” or “creatively destroyed”, it is being undermined and will not be replaced
- A free, open and independent media is not simply a matter of business or employment: it is an essential part to living in a free and democratic society, both at the local and the national level.
- The Internet and tech companies are contributing to this decline in ways that are critical to understand: the success of tech companies at the expense of “old media” is not simply a question of new technologies being more efficient. Very often, the new technologies and companies using it have stripped creators and owners of intellectual property as well as the capacity to exert their property rights.
- Some of this exploitation of property rights is due to outright piracy in violation of copyright of existing laws, and some of it is due to the exploitation of loopholes in copyright law.
- The companies involved tend to dominate their markets to such an extent that they are virtual monopolies, which means they are in a position to extract rents and/or unfairly bargain with rights holders
- All of this is contributing to growing inequality, as tech companies are able to extract excess profits at the expense of rights holders.
- We are dealing with market failure and distortions due to monopoly power and a failure to enforce intellectual property rights. In an atmosphere of market failure, it is impossible for the market to rebalance itself without new legislation and regulation.

## 1. The Internet and Inequality

The Internet has been called “the Greatest Legal Facilitator of Inequality in Human History”<sup>1</sup> The World Bank also reported that the Internet is generating inequality.<sup>2</sup> Jaron Lanier, a former Internet evangelist contrasted Kodak with Instagram as example of how the Internet companies are destroying good jobs and failing to create new ones. Kodak once employed 140,000 people with middle-class jobs, while Instagram, which only employed 13 people, was purchased by Facebook for \$1-billion.

“The new news is that Internet-based companies may well be the businesses of the future, but they create opportunities for only a select few. Google has a little over 54,000 employees and generated revenues of around \$50 billion in sales or about \$1.0 million per employee. The numbers are similar for Facebook. Amazon is running at a \$70 billion revenue rate and had around 110,000 employees or a little over \$600 thousand in sales per employee. In the U.S., each non-farm worker adds a little over \$120,000 to the domestic output.”

It is critical to understand that the inequality generated by tech companies is not simply additive: that it is, it is not just creating and concentrating new wealth, they are also making other people poorer. Of course, some new technologies are being created that replace old ones in ways that are useful and an improvement, in a process of “creative destruction.” Digital cameras and storage replace film. The distribution of digital information over the internet is bound to replace the physical distribution of many media.

The reason for the tech industry’s massive concentrations of wealth is not simply a question of market dominance, or skill in innovation. It takes relatively few people to run the servers and write the algorithms that make Facebook and Google work. But these companies depend enormously on huge numbers of underpaid workers for their profits. Tech companies are, in some cases, enriching themselves at the expense of other entrepreneurs, innovators and the public, by bending or breaking rules in order to shift risks and costs away from themselves and onto suppliers, creators, workers and governments. It is not creative destruction: it is destruction without creativity.

There are multiple reasons for this, all of which should be addressed:

- Monopoly Rents due to Network Effects : The extraction of monopoly rents due to market dominance. The internet is less like an “information superhighway” and more like an old fashioned railroad: it has network effects that lead to natural monopolies and oligopolies which allow them to compete unfairly.
- Little or No Enforcement of Intellectual Property Rights There is widespread abuse and failure to enforce intellectual property rights, which is driving a market failure for news media and cultural industries. It is critical to understand that the problem is not limited to piracy or criminal activity: it includes the exploitation of intellectual property by legal, for-profit companies, ranging from piracy to royalties that are a fraction of a penny for thousands of

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<sup>1</sup> <http://www.theatlantic.com/business/archive/2014/01/the-internet-is-the-greatest-legal-facilitator-of-inequality-in-human-history/283422/>

<sup>2</sup> <http://www.fastcompany.com/3055498/fast-feed/the-internet-is-increasing-inequality-says-the-world-bank>

streams. This has contributed to billions of dollars in losses in the music and media industries.

- Wage Theft: still another is the underpayment, and exploitation of wide range of workers.
  - At the low end of the scale, Amazon's "Mechanical Turk" service is a job board that allows for "microtasks" of piecework to independent contractors. The board allows wages that amount to less than \$1 an hour. 80% of the workers live in the U.S., but it also operates in Canada.
  - Many functions online that we assumed may be automated or are being performed by an algorithm or artificial intelligence are actually being performed by human beings - low wage contractors without benefits. Some may live in developed countries, but workers in the Philippines are paid \$312 to \$500 a month to sort through thousands of images of torture, child pornography, dismembered bodies, and other illegal images for companies like Google and Facebook<sup>3</sup>.
  - "Professional" news outlets like the Huffington Post are based on a business model of hiring a handful of reporters to cover centres of power, and filling the rest of the content from wire copy or unpaid "bloggers". The company was sold for \$350-million.
  - Apple, Google, Disney and other companies were all charged with "wage theft" due to a secret agreement between those companies to not hire each others' employees. The result was an estimated loss of \$9-billion in wages for engineers and other "white collar workers"
- Tax Avoidance: Google, Apple, and many other tech companies "book" revenue in tax havens where they may have few or no employees. Only some companies declare what they would have paid if they were not holding money offshore. Apple would have paid \$36-billion on \$111-billion held offshore, Microsoft X in taxes on \$76.4-billion held offshore, Google X in taxes on \$39-billion held offshore. Amazon seldom pays in any taxes, because it had almost never made a profit - but it's strategy of plowing all of its profits back into the company can be seen as a means of tax avoidance.

These are all forms of market failure: and can only be addressed through government intervention.

The business "advantages" not only allow these companies to generate excess profits, it means they can also engage in predatory pricing: because they are not paying the full costs of running their business - not paying full wages, or full royalties, or full taxes, it effectively gives these companies an unfair advantage over "brick and mortar" companies that do.

In a recent interview, Gary Reback, who was one of the lead lawyers who prosecuted Microsoft for anti-trust practices, "In a modern IT economy, we have network effects at a very strong level. We've always had some network effects—for the telegraph, the telephone—but network effects are really pervasive in the software industry and, since at least 1986, economists have been pointing out that that is fertile ground for predation...Companies that understand how those markets work, that get a lead in those markets and then use predatory conduct to suppress their competitors, they can stay in control for a very long time, perhaps indefinitely."<sup>4</sup>

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<sup>3</sup> <http://www.wired.com/2014/10/content-moderation/>

<sup>4</sup> <https://promarket.org/argue-government-can-buy-government-qa-gary-reback/>

The result is greater inequality, lost wages for workers, lost royalties for creators, lost profits for competitors, and lost government revenue for every level of government in Canada.

Addressing the unfairness of the current copyright regime is not a question for artists and journalists to “find a new business model,” because they are operating in an environment of market failure: monopoly rents, and non-enforcement of intellectual property rights, tax avoidance. It is impossible to develop a sustainable business model that will function in such an environment. “[T]he most fundamental characteristic of a market is that it exists in a regime of property rights that are legally protected and enforced by both government and private individuals. Absent these enforceable property rights, a black market may flourish.”<sup>5</sup>

This is a market failure that can only be remedied through intervention by government and a modernization of intellectual property laws. However, a well-planned and executed intervention should result in better competition, a market that is much more fair, and set a path for equitable growth in the future.

### Re-linking Risk & Reward: Intellectual Property Rights and Innovation

The challenge facing creators is not new. Journalists, musicians, artists and research scientists all have something in common: It has always been easier and cheaper to make a copy of something than to come up with something original. What is new is the scale of the infringement and piracy, and that some of the companies who are benefiting from infringement are so dominant in their markets that rights holders cannot negotiate a fair price for the use of their property.

The digital era was changed by development of technology that can make perfect, inexpensive copies and a freewheeling attitude towards intellectual property, accompanied by an economic paradigm that does not recognize the value of “work” or workers (it treats them as overhead to be minimized).

In addition, intellectual property rights are often treated as a form of “protectionism” or an “artificial monopoly”. This argument, however, ignores that rights to real property are also dependent on the legal protections of the common law and constitutions: they are derived from human legal and political agreements, not from nature.

Innovation, and risk-taking is costly. Coming up with ideas, like talk, is relatively cheap. Being able to take an idea to a functioning concept, making and marketing it is extremely resource- and time-intensive, and, moreover, is likely to fail, because that is the nature of innovation.

Innovators and creators, whether in the arts or science, have often gone through years of specialized training, to acquire expertise. They take creative and financial risks in order to create their intellectual property - working for long periods in order to create something of value where no value existed before. They have to absorb the costs of the dead ends and failures that are an inevitable part of risk taking.

Pirates and counterfeiters, on the other hand, simply make copies of the end-product of all that risk-taking, and sell it as their own.

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<sup>5</sup> <http://www.semaphore-music.com/2MTP/gratis/CastleMitchellWhatsWrongwithISPMusicLicensing.pdf>

The need for intellectual property rights, copyright and patent protections is to help ensure that the innovators, creators and risk-takers who create new intellectual property can reap the rewards from that risk. It is also because further risk-taking and innovation and creative work needs resources to be sustained.

This “labour theory of value” has fallen to the wayside, but the creation of new intellectual property and innovation is essential both for the economy and the advancement of society. It also offers individuals who have no property of their own to reap the rewards of their own risk-taking and talents, as well as sharing the benefits of their innovation with the world.

Copyright laws and royalties need to be updated to conform to the new reality. In some cases, some mechanical royalties for music, set at 2 cents or 5 cents, have barely been raised in over a century. If they had risen with inflation, songwriters would be paid 45 cents per song in royalties.

It is not simply due the decentralized nature of piracy, but an unwillingness on the part of governments and law enforcement to address the issue, especially by legitimate companies. Many companies have been able to enforce various types of filters to exclude adult content, copyrighted music and videos. The failure to deal with piracy and abuse of counterfeit is not impossible: it is a failure of will.

It is worth noting that the same digital technology that makes it possible to make perfect (or near-perfect) copies also makes it possible to see and trace exactly who has been making and trading the copies.

### The Crisis for News Media

A crisis has been unfolding in Canada’s media and journalism industry. There have been a series of cutbacks, consolidations in print, TV and radio, especially in journalism. The PostMedia chain is combining newsrooms across Canada. Local TV and Radio News are also facing serious cutbacks. In 2013, a PwC report predicted that newspaper revenues would drop from \$2.7-billion in 2008 to \$1.7-billion in 2017.

It might sound like hyperbole, but the risk of losing strong, independent and free press is a threat to our democracy and living in an open society. The role that a free press plays in a democracy is like water: it is essential and there is no substitute for it. The press play a critical role in informing the public and holding the powerful to account - politicians, governments, corporations and the justice system.

This is especially true at the local and regional level. David Simon, a former journalist at the Baltimore Sun and the creator of the television news show The Wire testified before Congress that the lack of local reporters risks creating “a golden age of corruption” because of a lack of oversight. Public officials will be able to act with impunity because their supposedly public activities are taking place in secret. This is a genuine threat to democracy: Winston Churchill emphasized that accountability is essential to democracy.

It is worth noting that more people are consuming more media than ever before - including stories produced by newspapers. Canadians get most of their news through social media. The problem is that the creators of that content aren’t getting paid for it.

It's true that the rise of digital media is to blame for the threat to newspapers, TV and radio, but it's important to understand just why.

### Collapse of Classified Revenue

For years, classified ads were a critical source of revenue for newspapers. A single paper in a medium sized town could pull in millions a year. Then Craigslist, a free service with only 30 people running servers killed off the classifieds, as did its Ebay/Amazon competitor, kijiji. It devastated the newspaper industry.

While there is no putting the classified genie back in the bottle, but the other reason is that big tech makes big money taking other people's work for little or nothing, slapping their ads on it, and distributing it to their users.

Since then, a huge amount of ad revenue has shifted to the web through Google and Facebook. Both services are "free" to anyone who uses them, because, as a saying goes "if something is free on the Internet, it is because the product is you."

Companies like Facebook, Google, Youtube, and the Huffington Post, streaming services and Internet Service Providers, who either profit directly from using others' intellectual property and paying little or nothing for it, or enabling users to do so. Virtually the entire ecosystem of the internet benefits in one way or another from this use of unpaid content: It is watched on hardware and devices made by Apple, Samsung, Dell, and more, on Microsoft and Apple's operating systems, stored on servers owned by Facebook, Google and Amazon, and transmitted over systems owned by Internet service providers and telecommunications companies.

### The Business Model of the Free Web: The Product is You.

"Ad supported" or "free" internet services like Facebook or Google are based on selling users to advertisers. This has been summed up in a couple of ways: "if you are getting something for free on the internet, the product is you" and "the business model of the internet is surveillance."

Google and Facebook alike collect and store information on their users - demographic, geographic and search history - then serve up ads based on that information. For people who do not disable Google recording their history, all of their searches (and many of the websites they visit) will be added to a profile. Andrew Keen wrote that "The reality is we, the consumers, are the ones doing the manual labor; we're the ones putting up our photographs; we're sharing our stories and our personal data. In Silicon Valley, venture capitalists refer to ordinary citizens as "data factories." So, to put it bluntly, in the Internet economy, we're the product. It's exploitative."<sup>6</sup>

While this has raised some privacy concerns from some quarters, government surveillance tends to be a greater concern, in part because of public revelations about warrantless wiretapping and surveillance. The huge data profiles on individuals held by private companies are less remarked upon and less known.

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<sup>6</sup> <http://www.saturdayeveningpost.com/2015/07/27/health-and-family/tech/internet-failed-us.html>

However, while content by individuals is of interest to advertisers, users are interested in more than just the non-commercial, and personal content provided by other users.

As such, Google, Facebook and Youtube in particular have placed themselves as middle men between content creators and content users, and are profiting by serving up access to intellectual property they do not own. Some of this content is personal and therefore has limited or no commercial use, but much of it is commercial. Google, Facebook, Youtube, Reddit, Tumblr and many other sites act as repositories or gateways to content that others create, and which the companies themselves have often not paid for.

There is a difference here between Apple's iTunes or App store, both of which are "stores" that pay royalties or a share of a sale to the a developer or the shared owners of the intellectual property. Most other ad-revenue supported platforms are providing "free" access to content and may be paying no or minuscule royalties.

In the U.S., this is in part a consequence of the Millennium Copyright act. Sites like Google and Facebook use algorithms to serve up content. This automatic curation, it is argued, means they are "aggregators" of content and not publishers of it.

This is a loophole that allows many companies to escape some extremely expensive forms of liability: it means they are deemed not liable for statements made by users (libel, defamation, etc). or for sharing information or content that is illegal or stolen (stolen images, illegal pornography) as well as for many violations of copyright.

In part for this reason, social media sites and aggregators will include headlines, an image, and a story summary.

However, there are many examples of wholesale piracy that are enabled by technologies from which major tech companies profit.

Google directs users to pirated content, and has ads on pirate sites. There are set-top boxes that run on Google's Android operating system that allow users to watch pirated content of all types, including live streaming pirated content from television and cable as it airs on another channel.

People who cancel their cable television and take only internet service, so-called "Cord-cutters" can continue to watch pirated network and cable television shows and movies without paying for them: while content creators are having their property stolen, Android set-top boxes and Internet Service Providers (ISPs) can continue to make money from it.

Youtube's business model had remained controversial, in that it contains an enormous amount of stolen content - entire films, TV series, songs, albums. "Content ID" is limited to a certain number of artists, and in many cases, creators are denied their rights to control their intellectual property.

Even when sites do allow for payment and royalties, the royalties generally are very small. If the site is paid, like iTunes, Netflix, or a streaming service, you can get the same use out of a song or movie for pennies that you would once have paid dollars for.

### MUSIC STREAMING PRICE INDEX AS OF FEB 1, 2014

Store	Per Stream	Per Song Download
Nokia	0.07411	9
Google Play	0.04573	15
Xbox Music	0.03212	22
simfy	0.01626	43
Napster	0.01578	44
MediaNet	0.01140	61
Rhapsody	0.01122	62
Muve Music	0.00875	80
Deezer	0.00754	93
Rdio	0.00692	101
<b>Spotify</b>	<b>0.00521</b>	<b>134</b>
MySpace Music	0.00094	745
Amazon Cloud	0.00012	5,862

- \* Indie Label Catalog of 1,500 Songs
- \* Sales for Calendar Years 2012-2013
- \* These Streaming Rates before Dist Fee's
- \* Per Song Download Ratio @ .70

David Lowery, who is a musician, songwriter, creator's rights activist and professor of business, has been an outspoken advocate for the need to address the issue of royalties. "An artist needs to generate three million plays on the two largest and most popular streaming platforms to equal just 1,125 album downloads from iTunes." The streaming service Pandora paid him "\$16.89\* for 1,159,000 plays"<sup>7</sup>

This has been portrayed as a positive for the consumer, and the tech company doing the selling, it has been terrible for creators as well as the music industry. "From 1999-2012, Canadian recorded music sales decreased by more than 50%"<sup>8</sup>

While free information advocates on the internet often attack intellectual property protections, or the "greed" of the music industry, the music industry is no different than other creative and innovative industries - TV, publishing, film, and even pharmaceuticals - that the revenue from successful ventures helps pay for the development of the next generation of innovators.

According to Graham Henderson, of Music Canada "culture represents 3% of our GDP. This amounts to a 55 billion dollar contribution to our nation's GDP each year."

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<sup>7</sup> <https://the.trichordist.com/2013/06/24/my-song-got-played-on-pandora-1-million-times-and-all-i-got-was-16-89-less-than-what-i-make-from-a-single-t-shirt-sale/>

<sup>8</sup> <http://www.news.wire.ca/news-releases/artists--music-companies-support-resound-application-for-judicial-review-of-copyright-board-tariff-8-decision-514461981.html>

In terms of piracy and royalty payments, iTunes and Apple are better than other platforms. iTunes is a “walled garden” that filters out pirated materials, and pays more per download than most other services.

However, infrastructure of “brick and mortar” stores has been undermined, but iTunes, which charges less for a single song than it would have cost 20 years ago, takes a bigger share of the price than a brick-and-mortar store would have - which paid employees, rent, utilities and property taxes in the community where the song was purchased.

Similar issues are at hand with books. The E-book market, pushed by Amazon and followed by some other types of technology has driven the cost of books down. There is a naive assumption that with exposure to a large enough global market, that an item at low enough cost will be able to sell more copies and make up in volume for what has been lost in price. This is simply not the case.

The cost of intellectual property is not related to the cost of mechanical reproduction: not with pharmaceuticals, or with works of art, engineering or science. In most creative industries, the vast majority of works will sell only a few hundred copies, a smaller number will sell thousands, and a few “megahits” selling millions. The distribution of success roughly follows a power law. The success of the stars helps support the development of new creations and innovations.

But no one can predict with certainty which of the many creative or experimental endeavours will pay off, and success, expertise and skill only comes with experience. Amazon’s e-books, some streaming services combine low royalty rates with a minimum \$100 earning threshold before a payment will be released. As a result, thousands of the smallest royalty holders are being deprived of revenue, which is kept by the companies instead.

### The Indispensable Need for Quality Journalism

Quality journalism - especially investigative journalism - costs money. The rise of “talking heads” on cable news is because opinions are cheap, and facts, especially facts on the ground, are expensive. Blogs, social media and wire stories are no replacement for reporters.

Journalism takes a lot of work, and it also involves being willing to take risks. Taking on powerful interests, in politics, business or any other arena, means that companies and journalists may have to risk getting sued. This requires either that they are backed by an organization that has the resources to either mount a defense or bear losing a lawsuit, as well as doing reporting that is so thorough and corroborated that it will stand up in court.

There is also a need for “public interest” reporting and reporting that is not simply driven by a single political or social niche. This is not simply a market question, it is a question critical to democracies, to living in an open society and being able to have a shared civil space for debate. The capacity to share and express diverse views in a way that can create a common understanding is part of the function of a free and independent press. This is not the function of government, but government certainly has a role in creating the conditions that ensuring that such a free press is viable.

When people say that the CBC, or CTV or newspapers just have to adapt to be more like Netflix, or iTunes, or Vice News it is critical to recognize the business models are different, because there is a tremendous difference between being a content creator and a content distributor, in both news and creative industries.

Frontline, on PBS is one of the world's best intensive, long-form investigative journalism programs. It loses money. Vice News **doesn't** make any money: it is subsidized by the marketing side of Vice, which is largely supported by ad campaigns for companies like the computer chip maker, Intel. Many other "new media" companies and online publications have never turned a profit: they are said to be on "VC welfare" (VC for venture capital).

It is not just traditional "business models" that are under threat. There is a far more serious consequence of all of this, which is our ability to tell Canadian stories, whether it's a TV series, a movie, the nightly news or the local newspaper.

The CRTC - and Canada's government - needs to take multiple measures to encourage strong, independent journalism and a strong Canadian media industry. While the CBC has had its funding restored, this **doesn't** address the threat to the private media industry.

### The Argument for Better Royalties: "**Publisher Pays**"

#### For News Media

One of the problems facing media outlets is that fundamentally that viewers and readers are consuming content on social media platforms who **don't** pay for it, but who earn advertising revenue from it. The solutions of micropayments and subscriptions from readers have usually not worked.

However, one possible solution is to have the government pass copyright legislation that would require companies like Google, Youtube, Twitter or social media companies like Facebook, Reddit etc. pay royalties (or shared advertising revenue) to media companies when their commercial content is shared, liked, viewed.

This would essentially close a loophole that these companies have been exploiting, that they are "aggregators" and not "publishers" who cannot be held responsible for what users post on their platform.

The question may arise, "why should the companies pay for what their users' post?" The answer is in part, to close a loophole in which "no one" is accountable for piracy and copyright infringement, but also because there is a very strong argument that news stories and commercial intellectual property add to the value of those companies by enhancing the user experience.

The majority of Canadians get their news from social media. Would Youtube, Facebook, Twitter and Google be worth what they are - and be as appealing an experience for users - if they were to completely remove all news content? The answer is no: all the "free" news that gets shared is a valuable part of the user experience: Facebook has teams of engineers dedicated to tracking trending topics as well as serving up the feed. If it appeals to the user, it lets Facebook or Google sell the user to their advertisers. These companies are getting a commercial benefit from the use of intellectual property, which does not fall under the definition of fair use.

The other question is, "are these platforms actually publishers?" The answer, again, is arguably yes. Google and Facebook will both argue that since their content is delivered not by deliberate human choices, but by search algorithms collecting and serving data, they are "aggregators"

and not “publishers.” However, these algorithms are written and tweaked by the companies in order to deliver desired results.

Facebook was the subject of a controversy when it emerged that its “trending topics” was being curated to suppress content that was politically conservative, It is also trying to reduce the number of “clickbait” headlines in its newsfeed in an attempt to deliver a higher quality content experience. Google deliberately tweaks its algorithms to deliver different results: after the personal images of a number of celebrities were hacked, Google agreed to help bury the results.

It has been suggested that given their dominance, an algorithm “ombudsman” may be needed. Facebook’s manipulations of its algorithm tend to favour video over images and text, at the expense of “small” (local or regional) publishers: “the number of people seeing the average post published on a publisher’s Facebook Page has been cut in half. From January 2016 through mid-July 2016, publishers’ Facebook Pages have experienced a 52-percent decline in organic reach.”<sup>9</sup>

### Feasibility

It might be argued that it would be difficult for Google or Facebook to calculate or monitor sharing: but Google, Youtube and Facebook are all based on databases and on the profiles of people sharing content. There is already ample tracking data for when stories are shared, and by whom.

By having the companies pay media, and not users, this addresses the issue of revenue. Non-commercial (personal) posts would not be eligible.

The issue of click fraud (bots or paid users) sharing or clicking to drive up revenues for media outlets is, theoretically, an issue, but it might provide companies with the impetus to effectively deal with click fraud for advertisers, which is estimated to cost \$7-billion a year in the U.S.

### Making it Work

The exact amount of a media royalty fee could be negotiated or set by government following consultation with affected parties.

There is a question of how to set up a payments system recognizing and rewarding value - whether premium media content can demand a premium price.

On the one hand, a system that discriminates on the basis of perceived “taste” or separated “legitimate” journalism from tabloid (or viral) content would be extremely difficult and controversial.

However, there are a variety of ways in which “premium” content could be graded.

One obvious distinction is whether a story is original reporting or not. Many blogs and other news sites are simply cutting and pasting or referring to a story that was “broken” elsewhere. This would reward breaking news and original content and help ensure that is sustainable.

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<sup>9</sup> <http://marketingland.com/facebook-organic-reach-drop-steepens-52-publishers-pages-187253>

The other is by varying payments based on the demographics of users who view and share it. In conventional advertising, including for newspapers and television, the demographics and income of their readers or viewers mattered. When it comes to “clicks” and “views” on the internet, there is often no distinction between whether a viewer is a 12-year-old without an allowance and no purchasing power or an adult with substantial disposable income.

Payments based on the audience - of “premium” readers could also be a factor. If members of the top 10% of the income bracket are consuming more “hard news” or “serious” opinion, they are more valuable to Facebook or Google as potential targets for advertising.

Enhanced royalties for other creators, especially in creative industries

Increasing royalties and bringing them up to date, especially for internet use, should be examined for the purpose of rewarding risk, assuring greater intellectual property rights, securing fairer incomes, especially for artists and creators.

It should be noted again that the cost of royalties and intellectual property has never been tied to the cost of mechanical production: but one of the major benefits of physical media is that, because it does cost more to produce and distribute, there tends to be a higher associated mark-up for creators.

The inverse is that the extremely low cost of digital reproduction mean the fact that people are consuming more media than ever before, the low costs result in lower payouts. E-books may sell for 99 cents or few dollars, and the cost of music has likewise been frozen or is “free”.

It may be worth exploring not just increased royalties for music, authors, filmmakers, but setting a “minimum royalty” that would ensure that creators’ property rights are respected. The nature of digital media is substantially different from physical media, because there is no physical inventory: there is no need to “remainder” digital files, or reduce the price in order to get rid of a backlog of inventory. Competition on price can be used to achieve a temporary advantage by undercutting the competition.

A “minimum royalty” would restore balance, as would ensuring that creators can exercise their rights and refuse licensing and use altogether.

Carrot & Stick: the Need for Enforcement

All of this should be accompanied by a broader effort to crack down on piracy. In many cases, Google and other search sites could play an important role in reducing piracy by removing pirate sites from search listings.

A more difficult issue is that of Android set-top boxes. While Apple TV operates “above board” from the point of providing access to legal materials, the Android boxes are dependent on piracy. The question is how best to deal with them.

They could be banned outright, which would likely prove unpopular and difficult to enforce, or an annual / monthly “license fee” could be applied.

Here again, the fact that Google has created the operating system and that ISPs can tell what is running on a home system means that users of these boxes can readily be identified. Google could likely create an update that would require registration for activation. This, along with a fee,

might act as a disincentive for some and could generate revenue that could be directed to positive use.

It would also be possible to make the Android boxes less useful by shutting down the sources of pirated content they draw from. While the internet is global, all consumption and storage is ultimately local. Pirated files are on specific sites and servers, and it is possible to find their users and owners, and charge them, just as it is possible to deny access to websites or have Google de-list them.

There are challenges in this realm, in that some free internet and free speech activists see government having the authority to block websites as being a threat to freedom of speech.

However, dealing with piracy and shutting down websites can stay within the realm of the justice system and only happens after due process in a civil or criminal trial, or finding of the court, the argument that "the government" is blocking websites is moot.

The urgency and importance of this reform

While there have been some significant efforts to deal with piracy, and intellectual property, it has tended to focus on films and music, major labels and major artists. The focus of piracy and intellectual property issues has usually been on torrent sites that are operating entirely illegally, while not recognizing the important role that unpaid use of intellectual property contributes to the success of major corporations widely seen as wholly legitimate.

The ongoing challenges for creators and journalists will continue to worsen without action on the part of Government, with the loss not just of jobs but of critical journalistic institutions which are critical to functioning in our democracy.

The current situation is not just unsustainable, it is deteriorating rapidly. The government should act to address the serious market imbalances that have arisen and ensure that an economy where the risk-taking associated with innovation, creativity and hard work are fairly compensated.

The actions required have implications across a number of ministries: Heritage, Labour, the Competition Bureau, Justice, and Science and Innovation. Other countries have been unwilling or unable to deal with the issue, but Canada has an opportunity to lead the way in securing a future for our news media and cultural industries, and making a significant contribution to more equitable growth.

In this sense, some of these solutions are themselves innovative, but they are absolutely essential if we are going to take steps towards a sustainable economy for Canada's cultural and media industries in the 21st century, as well as restoring balance to the market.

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Dougald Lamont

Lecturer, Government-Business Relations in Canada, University of Winnipeg

(Former Senior Policy Advisor to Robert-Falcon Ouellette, MP Winnipeg Centre)

dflamont@icloud.com  
318 Wentworth Street  
Winnipeg MB  
(204) 475-1045  
R3M 2V6