Government of Canada,

Consultations on Canadian Content in a Digital World

Submission

by

BCE Inc.

25 November 2016

Table of Contents

Page

1.0 INTRODUCTION

1. Canada has a long and successful history of developing high quality video content and music, notwithstanding its size and proximity to the world's largest producer and exporter of cultural products. Through a system of public funding and private sector support, television programs like *Orphan Black*, for which its star Tatiana Maslany recently won an Emmy Award, and musicians such as the Weeknd and Drake have been able to succeed not just at home but internationally as well. However, the entertainment industry – not just in Canada, but globally – is undergoing a rapid transformation largely brought on by developments in technology. The Internet has eliminated geographic borders and fueled the growth of unregulated, over-the-top (OTT) competitors to traditional media players.

2. Earlier this year, the Minister of Canadian Heritage initiated a discussion on how to strengthen the creation, discovery and export of Canadian in this digital world. In September, the Government released a consultation paper that focused the review around the following pillars:

- Enabling choice and access to content (Pillar 1.1);
- Supporting Canadian creators (1.2);
- Redefining Canadian content for contemporary Canada (1.3);
- Strengthening the availability of quality information and news in local markets (1.4);
- Positioning Canada as a culture and digital content leader (1.5);
- Leveraging Canada's national cultural institutions (1.6); and
- Promoting Canadian content globally (1.7).

3. We commend Minister Joly for launching this review and challenging all participants within the content creation ecosystem to work together to build upon Canada's success in creating, discovering and exporting Canadian stories. As we describe in this submission, BCE Inc. (Bell) believes that we need to take a new approach to the funding and regulation of our cultural industries; one which consolidates and centralizes funding; provides funding for new forms of distribution; and maintains support for local news and the existing networks that form the foundation of our broadcasting system; a foundation from which new forms of digital creation and delivery have originated.

4. Bell is Canada's leading communications company. Over the last decade, we have invested billions of dollars in infrastructure investments in our wireless and wireline networks, to help propel Canada's digital economy, allow Canadian creators to efficiently produce and distribute their content and generally make the cultural and economic potential of the information age a reality for Canadians.

5. Furthermore, our Bell Media division is Canada's premier multimedia company and one of the largest producers, acquirers and promoters of Canadian programming, with hundreds of millions of dollars spent annually. Bell Media operates CTV, Canada's top conventional television network, top-ranked newscasts in large, medium and small communities across the country, popular specialty and pay services, in English and French, in numerous genres and over 100 radio stations.

6. The policy changes resulting from this review have the potential to transform Canada's content and broadcasting ecosystem for decades to come and to ensure we enjoy success for the next 40 years just as we have for the past 40. Bell's proposals, which are outlined below have been designed around the "pillars" in the Consultation Paper. Given the hyper-local business model for radio broadcasting and the fact that radio stations do not "acquire and own" music in the same manner as television services license or produce programming, the majority of our comments are more focused on the television sector.

7. However, we would also note that, for the same reasons that this review is of critical importance at this juncture, now is an opportune time to take a step back and revisit the legislative framework and myriad rules that have developed over time to govern Canada's broadcasting ecosystem, which were designed for a different era altogether.

2.0 MODERNIZING THE BROADCASTING ACT MUST BE PART OF ANY REVISED FRAMEWORK

8. At present, Government subsidies and broadcasters licensed by the Canadian Radio-television and Telecommunications Commission (CRTC) pursuant to the *Broadcasting Act* (the *Act*) constitute the primary sources of support for Canadian content – both video and music.

9. Pursuant to specific Conditions of Licence and *Regulations* under the *Act*, television services are required to broadcast a certain amount of Canadian programming each week and

to devote a certain level of expenditures annually to the production and acquisition of Canadian programming. Similarly, radio stations must ensure a certain percentage of the songs broadcast are from Canadian artists and they must make financial commitments to Canadian content development.

10. While the CRTC began to recognize the changes happening to the broadcasting landscape as early as the 1990s, to date, the broadcast regulator has employed a light touch with respect to broadcasting services operating over the Internet, while heavily regulating traditional broadcasting services – from what they air to what they can charge for distribution of their services. Such an approach may have been appropriate a decade ago when Internet access speeds were slow by modern standards and Internet broadcasting was in its infancy, but today this two-tiered regulatory approach is outdated. OTT services like Netflix directly compete with traditional broadcasters for both programming and viewers and at the same time encourage users to "cut the cord" and stop subscribing to licensed broadcasting distribution undertakings (BDUs). Yet these new services have no obligation to help support Canadian content, invest in the infrastructure over which their services are delivered or, in many cases, even charge HST.

11. One of the root causes for this situation is outdated legislation. The *Act* was last updated in 1991 when the Internet didn't exist and broadcasting could still be largely restricted geographically. The Broadcasting Policy for Canada in Section 3(1) of the *Act* and the Regulatory Policy in Section 5(2) reflect a time when allocating scarce over-the-air spectrum to television and radio stations and helping to foster the growth of a nascent specialty television sector were the primary concerns. Consequently, the objectives and policies outlined in the *Act* do not reflect current market realities, especially for audiovisual content.

12. While Netflix and other foreign OTT services may acquire some Canadian programs in the future, the domestic video production industry will still remain heavily dependent on the Canadian broadcasting sector for funding and promotion. As a result, in order to ensure Canadian content can succeed in a digital world, it is essential that we have the underlying conditions necessary for a healthy domestic broadcasting industry going forward. From Bell's perspective, this involves an overhaul of the *Act*, including:

– Simplifying the objectives of the *Act* to focus on producing great Canadian content for domestic and international audiences and drive economic success and employment for Canadians;

– Reorient the regulatory framework from being based on micro-regulation of the traditional linear broadcasting ecosystem to one focused on the creation, delivery, promotion and exportability of Canadian content;
– Traditional broadcasters would continue to be subject to some degree of high-level regulation, including:
    – Requiring linear television stations to devote a percentage of their schedule (e.g., 35%) to Canadian programming and direct some portion of prior year's revenue (e.g., 20%) to expenditures on Canadian programming;
    – Requiring an appropriate exhibition requirement for Canadian music for radio stations;
    – Requiring BDU licensees to continue to contribute a percentage of revenues to a new programming superfund (described in section 3.0 below); and
    – Canadian ownership and control requirements (consistent with the *Direction to the CRTC on ineligibility of non-Canadians*);
– However, to provide the required flexibility for all stakeholders to innovate, create, compete and flourish, the CRTC would no longer involve itself in the day-to-day creative or commercial decisions of the industry.

3.0 TO SUCCEED CANADIAN CONTENT REQUIRES CONTINUED SUPPORT FROM BOTH THE PUBLIC AND PRIVATE SECTOR

13. At present, Canadian content is largely funded through a mix of private sector investment and public funding. For example, financing television programs often involves a licence fee and equity investment from a domestic broadcaster, funding from the Canadian Media Fund (CMF) and Federal and Provincial tax credits. Similarly, musical artists can access various grants and other Government financing to help supplement private investment.

14. With the traditional broadcast model under pressure, it may not be possible going forward for television services to continue to commit to licence fees at the same level or to take the same degree of investment risk. At the same time, big budget, "tent pole" programs designed to appeal to both domestic and international audiences have become more expensive to create, yet increasingly important as they help to make programming services on which they are broadcast a "must buy".

15. Consequently, while financial support from both the public and private sectors will continue to be critical, the current funding model for Canadian video content needs to evolve from being focused on "distinctly Canadian" programs owned by Canadians to a more partnership driven model that results in programming that is still fundamentally Canadian, but creates increased opportunities for investment, employment and export. Such an approach has worked well for the music industry where musicians continue to be recognized as "Canadian" and eligible for public sector support even though part of the copyright in the music they record and revenue from its sale may go to investors from outside our borders.

16. Bell believes the basic structure of such a model would involve the following:

– Continued public and private sector support through a new Canadian Programming Excellence Fund (CPEF) that would consolidate the CMF, Telefilm and BDU-supported Canadian Independent Production Funds (CIPFs) into one superfund, as well as existing tax credits;
– To encourage international partnerships and streamline regulation, any production would be eligible for funding from the CPEF and tax credits if it is "50% Canadian"; and
– To promote Canada's brand and encourage the export of Canadian content, productions accessing the CPEF would receive funding to meet promotion and international distribution obligations. For example, there could be a funding envelope available to supplement promotional budgets or to underwrite the costs for producers to translate the production.

17. We note that this approach is consistent with Pillars 1.1 (Enabling choice and access to content); 1.2 (Supporting our creators); 2.1 (Redefine Canadian content for contemporary Canada); and 3.3 (Promoting Canadian content globally) in the Consultation Paper.

4.0 STRENGTHENING THE AVAILABILITY OF QUALITY INFORMATION AND NEWS IN LOCAL MARKETS

16. Local television is a foundational element of the Canadian broadcasting system. Unlike any other, it connects, entertains and informs local viewers, and reflects the interests and concerns of local communities. In doing so, it plays a key role in our federal democracy as many Canadians look to their local television station to understand the issues within their community and how they are being addressed by all levels of government. Notwithstanding the

range of viewing options now available, local television retains its unique perspective and is often seen as the "voice" of communities across the country.

17. The Consultation Paper notes that:

> Pre-consultation respondents said that content that brings a Canadian perspective on local, regional, national and international issues remains important and that they would like to see more local and regional news, information about local and regional community and cultural events and information about local and regional public affairs.

18. Local television stations remain one of the primary sources for news and information programming in local communities. The local news they produce doesn't just serve that community, but helps form the backbone of national news available across the country and the launch of companion digital sites. While sites such as Twitter are often cited as offering timely, up-to-the minute news coverage, they are not a replacement for trained, professional journalists – "boots on the ground" in communities across Canada. But local television, like the local newspaper business, is clearly in structural decline.

19. Change is needed. While the CRTC recently introduced a new regime to support local news that we welcome and support, it is a temporary fix at best.

20. We note that under Pillar 2.2 in the Consultation Paper (Stengthen the availability of quality information and news in local markets), the Government has asked what models can be built to support the creation of and access to local information and news in a global context. Bell has the following recommendations:

- At the heart of the issues facing local television is the lack of a dual revenue stream. Local television stations can only access advertising revenue unlike other types of television services and online sites that can employ a subscription revenue model. As a result, finding a new sustainable revenue stream for local television is essential if we are to solve the economic problems associated with the production and broadcast of local news programming;
- In addition and independent from the recommendation above relating to a new revenue stream for local television, the Government could also establish a tax credit system to directly support local news production much like it has for other types of programming; and

- Finally, simultaneous substitution remains an essential tool for local television stations and must be maintained for all stations for all programming. In a study filed in the CRTC's recent TV Policy Review proceeding, it was determined that simultaneous substitution continues to be worth hundreds of millions of dollars to the Canadian broadcasting industry annually. These revenues help support investment in Canadian programming of all types and the promotional opportunities in shows eligible for substitution help with promotion and discoverability. With increased competition from unregulated sources, maximizing revenues from and promotion in the most popular programs – which is only possible with simultaneous substitution given the availability of the top U.S. networks in Canada – will be increasingly important. We have already seen the negative impact that removing substitution can have on the system with its elimination for the Super Bowl. This decision will remove tens of millions of dollars from the broadcasting system and eliminate the largest promotional window of the year for Canadian programming with no apparent benefit to Canadians. Simply put, simultaneous substitution is a cornerstone element of our broadcasting system which supports local television stations and the creation and promotion of Canadian content; it should be maintained for all programs.

5.0 CREATING A LEVEL PLAYING FIELD FOR CANADIAN OWNED AND CONTROLLED OTT SERVICES

22. The emergence of Internet-delivered OTT services in the last five years has signaled a fundamental shift in the way in which Canadians consume content and has created significant challenges for the Canadian broadcasting and production sectors. Two Canadian OTT services have launched in each of the English-language (CraveTV, shomi) and French-language markets (illico, tou.tv), however, one has already announced it intends to cease operations. As it is clear that OTT services will become more, as opposed to less, prevalent in the future, it is critical that we have a policy framework that supports the development of Canadian services alongside foreign ones. To this end, Bell recommends the following:

- Dedicate a portion of the new CPEF to stimulate original productions commissioned by Canadian owned and controlled OTT services;
- Consider tax credits for Canadian private investment in the OTT space and to offset the structural disadvantages faced by Canadian OTT services; and

- Levy sales tax on foreign OTT services or remove the obligation to charge sales tax for Canadian owned and controlled OTT services to allow for competitive parity.

6.0 PROTECTING THE RIGHTS OF CREATORS

23. One of the greatest challenges for creators and distributors of content in the digital age is the ease with which it can be appropriated, copied and disseminated. Web sites hosted in so-called "copyright havens" and file sharing services make it very difficult to restrict piracy. Even when the infringer can be located and brought before the Courts, the process is time consuming and expensive.

24. Consistent with Pillar 1.2 (Supporting our creators), Bell believes that for Canadian creators to be appropriately compensated for their works and for Canadian content to succeed going forward, we must be able to protect it effectively. Consequently, we support the following:

- Implementing mechanisms to allow for expeditious and effective relief against online infringement; and
- Greater involvement from Government and law enforcement agencies in enforcement actions.

7.0 CONCLUSION

25. Canadian creators have a legacy of producing high quality content that is enjoyed both domestically and abroad. However, the advent of the Internet is fundamentally changing the way in which Canadians consume content. While this creates challenges for Canadian content creators and those that distribute that content, it also creates opportunities.

26. We must also recognize that we are in a transitional phase and that the traditional broadcasting sector will continue to play a significant role in supporting Canadian content for years to come. Consequently, we cannot forget about the present while planning for the future. However, with the right public policy approach, investment from both the public and private sector and the right legal protections, Bell is confident that Canadian content can thrive in a global marketplace.

*** End of Document ***