



Via Online Portal

November 25, 2016

Hon. Mélanie Joly, PC, MP
Minister of Canadian Heritage
House of Commons
Ottawa, ON
K1A 0A6

Dear Minister:

**Re: Department of Canadian Heritage Public Consultation
Canadian Content in a Digital World**

1. The Canadian Association of Broadcasters (CAB) CEO Radio Council (the CAB Radio Council) is pleased to provide this submission in response to your department's public consultation on Canadian Content in a Digital World
2. The Radio Council was formed in June of 2012 to represent the interests of English- and French-language private radio broadcasters across Canada. It represents more than 500 AM and FM radio stations across Canada, in major, medium and smaller markets, offering French, English and ethnic services.
3. We trust our comments are a useful addition to the public record of this important consultation.

Yours truly,

Ian Lurie, Chair
CAB CEO Radio Council

Encl.



Department of Canadian Heritage
Public Consultation

Canadian Content in a Digital World

Submission of the
Canadian Association of Broadcasters
CEO Radio Council

November 25, 2016

**CAB CEO Radio Council Submission
Department of Canadian Heritage Public Consultation
Canadian Content in a Digital World**

A. Introduction

1. The Canadian Association of Broadcasters CEO Radio Council (CAB Radio Council) is pleased to provide these comments to the Department of Canadian Heritage in its policy review, Canadian Content in a Digital World.
2. The Radio Council was formed in June of 2012 to represent the interests of English- and French-language private radio broadcasters across Canada. The Radio Council represents more than 500 AM and FM radio stations across Canada, in major, medium and smaller markets, offering French, English and ethnic services. Radio Council members include CEOs (or equivalent radio heads) of Canada's largest radio broadcast groups, as well as the majority of small and medium sized private operators in Canada.

B. Radio's Value Proposition

3. Radio is ever present in Canadians lives, but almost a forgotten medium when it comes to public policy. In many ways, radio is, in fact, all but taken for granted.
4. That's unfortunate, because Canadian radio is a huge success story – we are a major contributor to Canadian Culture (through our support of Canadian music) and of vital importance in communities across Canada (from day to day traffic and weather to public alerting).
5. Radio's value proposition to Canadians stems from three key characteristics. It is local. It is audio-based. And it is ubiquitous.
6. These key characteristics manifest themselves in the numerous ways that radio makes a difference in Canadians' lives, including:
 - The pivotal role of radio in times of emergency, as most recently epitomized by the Fort McMurray wildfires. This goes well beyond radio's rebroadcast of centralized automated emergency alerts; in times of flood, hurricane, fire and hazardous spills, on-the-ground radio personnel make an incalculable difference;
 - When communities suffer a loss of electrical power, radio is the only real method of mass communication. Radio's ubiquity is absolute. It is free, it is available on multiple types of devices, over the air, and through wireless and television distribution;

- Radio plays a key role in the provision of local news, information, and community connection for non-profits. For example, 20% of Canadians use radio as their primary source of local news¹ (just behind print), and 80% of Canadians receive at least some news from radio;
 - Radio is a key method for local businesses to market what they do. These advertisers are the core of local economies.
 - Radio provides a window for local music development and promotion of Canadian talent.
7. The Department's Pre-Consultation Phase revealed that Canadians highly value Canadian local news and information content. 88 percent of public respondents expressed the view that it was important to have access to local content in their community.
 8. Radio is a big part of that provision of local content in communities across Canada. While local TV directly serves on the order of 45 local Canadian markets with distinctly local programming, and daily newspapers serve 80 local Canadian markets, private radio serves close to 400 local Canadian markets with relevant, reflective local content – over the air and online.²
 9. Of the three traditional local media, local radio is the most entrenched in local communities across Canada, the most ubiquitous, and to date has been the least affected by new digital media.
 10. The reasons for this relate both to the nature of local radio, and the nature of competition provided by digital media.
 11. Unlike in the US, Canadian radio remains highly local, with resources on the ground in the communities we serve: local studios, strong local connections, local personalities, local news and information programming. That local nature extends to radio's revenue base – 70% of which, on average, comes from local retail rather than national advertisers.
 12. This value proposition of radio has not been replicated by digital media.

C. The Internet's Impact on Radio & Other Local Media

13. Canadians continue to listen to over 16 hours of radio per week. This is only one and a half hours less than it was five years ago.³

¹ *nlogic Thinktv OmniVu Survey, December 2015, National A 18+ (Thinktv was formerly known as the TV Bureau of Canada).*

² 2016 CRTC Monitoring Report and public sources. As at 2015 there were 816 private radio stations in Canada.

³ 2016 CRTC Monitoring Report, Table 4.1.10. 2011 to 2015. Diary measurement, 2+.

14. Unlike print and local TV, private radio has not seen major declines in overall advertising, despite today's far more competitive local media landscape, including new advertising inventory on new advertising players such as Facebook and CBC⁴. Radio has been a more resilient medium.
15. That said, while relatively steady, radio has now recorded two years of revenue decline, for a total reduction of -1.24% from 2013 to 2015, on annual revenues of \$1.6 billion. Expectations are that revenue declines will continue and potentially accelerate. Indeed preliminary numbers suggest a potential 1% revenue decline from 2015 to 2016.
16. Thus, while there is no pressing or immediate need for government intervention to "save" local radio, we cannot afford to ignore it. In that regard, it is vital that:
 - Government policies designed to support other Canadian media do not inadvertently hurt Canadian radio; and
 - Radio is not held back in competing with digital media.
17. Digital media adds much to the everyday lives of Canadians. Discovery, connections, convenience, disaggregation, lower prices. So much of this is positive, and all achieved through innovation and a minimum of government intervention.
18. Nevertheless, as Government has recognized, minimal intervention does not mean *laissez faire*. From copyright to privacy to child protection, Government has stepped in where it is in the public interest.
19. It is in this same way that Government policy needs to now recognize the important common attributes and values of Canadian media in Canadian democratic society that risk being lost. This includes, first and foremost, the fact that the internet does not favour professional local content, and while it has not replaced it, the internet is having an overall strong negative impact. There is much evidence of this:
 - The business models of the major online players are based on the dissemination of third party content. They redistribute traditional media content, including local news and information, with little compensation,

⁴ CBC's authorization for advertising on Radio 2 and Ici Musique expired on August 31, 2016. CBC is becoming a significant Canadian media player in online advertising.

adding little new original content themselves.⁵ The net effect is a displacement of revenue without a commensurate investment in or replacement of local content.

- The vast majority of legitimate local news and information content on the internet originates from traditional media⁶. Radio, TV and print have all invested heavily in digital platforms, providing access for Canadians via online and mobile platforms.
- As noted in the Consultation Paper “Online platforms have ramped up the 24-hour news cycle and the latest breaking developments are quickly made available over the Internet and social media. While this can foster awareness and debate, it can also encourage the dissemination of inaccurate information. [P]ersonalization and social media filtering can prevent us from coming into contact with information that challenges our current beliefs or hearing opinions with which we disagree.”
- The CRTC concluded in its recent review of local and community TV that online news services do not yet have the news-gathering resources and expertise to replace traditional local news sources⁷

D. Support for Radio and Other Local Media

20. Canadians who participated in the Department’s pre-consultation clearly felt that local media and local news and information is important. 72.5% of public respondents and 56.3% of stakeholder respondents felt that they would like to see more local and regional news. Support levels for information about local and regional community and cultural events and information about local and regional public affairs were similarly high.
21. If, as a society, we agree that local media and local news and information is important, public policy will have to adapt to ensure it survives.
22. If, as the consultation paper suggests, “a new model must incentivize viable business models that support the production of news information and local content that is credible and reliable”, that new model must include support of

⁵ There are exceptions. Huffington Post. Rabble etc. But the vast majority of the Internet’s advertising revenues go to conglomerates such as Facebook and Google, that produce little content themselves, but connect people to content through search, storage and social media.

⁶ While online sources, such as Facebook and Twitter, are increasing as primary sources for news, most of that news still comes from traditional media sources. Traditional news sources rank highly on all news search engines, in particular. A disturbing trend in non-traditional news is the amount of it that is “fake”. As at 2014, Canadian traditional news media retained close to 70% Canadian market share over foreign news media (traditional and internet). *Media and Internet Concentration in Canada Report 1984-2014*, Table 2. <http://www.cmcrcp.org/media-and-internet-concentration-in-canada-report-1984-2014/>. See also <http://www.journalism.org/2015/07/14/news-habits-on-facebook-and-twitter/> & <http://www.vox.com/new-money/2016/11/16/13637310/facebook-fake-news-explained>

⁷ <http://www.crtc.gc.ca/eng/archive/2016/2016-224.htm#fnb11>

Canadian local media – media that operate today, both in their traditional form, and as essential digital players.

23. In the case of radio, while to date we have not seen the same level of impact from the internet, evidence suggests that radio will be increasingly negatively affected. As the internet evolves into more of a mobile medium, as cars become increasingly connected and at some point “driverless⁸, it is only reasonable to assume that similar magnitudes of impacts that have touched print and TV (at earlier stages of the internet’s evolution) will hit radio.
24. Canadian radio, collectively and individually, has already done much to remain competitive and relevant to Canadians. Initiatives include:
 - a strong internet presence on online and mobile platforms. This typically includes but goes well beyond online streaming of the radio station – news, information bulletins, local concerts community events etc
 - implementation of emergency alerting
 - new generation radio apps, such as Radio Player and iHeart Radio⁹, which combine convenient aggregation of stations with music purchase and other info
 - selective major market rollout of HD Radio (pursuant to permissive experimental CRTC regime)
25. Public policy must now too start to adapt. If we wait for a crisis in radio before developing appropriate policy, we will have waited too long.
26. We believe there are five key principles that must guide new public policy to support Canadian local radio.
27. First, the *Broadcasting Act* should continue to largely govern the relationship between radio and Canadians, and (to some extent) radio and other media. We are not asking for that to disappear. Nor do we believe that its core objectives – Canadian ownership, priority for Canadian, support for local, regional and Canadian content – have lost relevance.

⁸ Predictions for the commercial rollout of driverless cars vary between 2020 and 2030. The potential negative impact on radio stems from the assumed erosion of “drive time” revenues from drivers switching to non-audio sources of entertainment, information and other activity. See, for example, <http://thefederalist.com/2014/07/16/17-ways-driverless-cars-could-change-america/>, * <http://www.cbc.ca/news/canada/toronto/programs/metromorning/toronto-driverless-cars-1.3581476>

⁹ iHeart Radio was launched in Canada by Bell Media in October, 2016. Radio player currently operates in Europe and is expected to be launched in Canada by other Canadian radio operators in 2017. See <http://www.iheartradio.ca/home>, <http://radioplayer.ca/>

28. Second, public policy should recognize that radio's ability to reach Canadians, both day-to-day and in times of emergency is unparalleled, irreplaceable, and at now risk. Unfortunately, simple, inexpensive radio receivers are harder to come by, mobile phones often have radio tuners that are not enabled, threatening the ubiquity of the medium and its ability to provide news and information that is in the public interest, whether or not power is down, whether or not the internet suffers an outage.
29. Third, public policy cannot continue to provide a more advantageous operating environment for foreign companies than for domestic companies operating in Canada. Providing foreign media with unfettered access to Canadian distribution platforms and Canadian advertising revenues, without at least the quid quo pro of Canadian jobs and Canadian content, is a recipe for the end of local Canadian media.
30. Fourth, old school perspectives on competitive markets and appropriate obligations that have held Canadian radio back have to adapt to the direct presence of foreign media players. The competitive imbalance between radio and digital media, in copyright, in regulatory burden, in ownership restrictions, in advertising will have to change to allow radio to compete.
31. And fifth, new public policies cannot give a competitive advantage to one Canadian local media segment over another. New policies, new support mechanisms, should ideally support all Canadian local media, or at least, not support one sector to the detriment of another.
32. As the independent body authorized under the *Broadcasting Act* to supervise and regulate radio, the CRTC has responsibility for much of the specific policy affecting Radio that the CAB Radio Council submits needs to evolve.
33. The CRTC does not, however, have jurisdiction to develop broad policy over local media, nor does it have jurisdiction to deal with such matters as tax and copyright policy.
34. Accordingly, we divide our submissions on specific policy issues in these two categories below.

E. Government Media & Radio Policy

35. The CAB Radio Council recognizes that much of the current policy review is external to radio. The pre-occupation is with print and TV; with exports.

36. Radio's role in supporting Canadian music is an example of one of the "taken for granted" aspects of public policy. It is seen as a given. A regulatory imperative. And therefore not a benefit.
37. It should not be taken for granted. Neither from the perspective of its importance, nor its permanence.
38. There is not an export-oriented creative sector in the world that does not start from a strong domestic base. While not all Canadian music artists get their start from radio play, a majority do. Cancon levels – today a minimum of 35% – ensure that more Canadian music gets played, exposed and appreciated than would ever be the case otherwise. The benefit of that guaranteed exposure to Canadian artists is incalculable – whether or not they become global phenomena.
39. While the exposure that digital media, such as YouTube, can provide to Canadian artists is significant, it does not match what Canadian radio has done and continues to do. Canadian artists represent less than 5% of music inventory available on YouTube. They represent over 35% on Canadian radio. YouTube is a phenomenal platform for discovery and international recognition. But without Canadian radio's push domestically, Canadian music artists would get nowhere near the level of exposure they currently receive at home or abroad.
40. It doesn't stop at exhibition. Radio financial support for Canadian music artists through Canadian Content Development initiatives and significant benefits amount to on the order of \$100 million a year¹⁰. Indeed, unlike for film and TV, industry driven financial support for music vastly exceeds direct government support¹¹.
41. Despite this substantial financial and promotional support from the radio sector for artists and musicians, copyright policy in this country fails to recognize the meaningful contribution of radio. In the last 8 years, the radio sector's tariff liability has increased by 40%¹² despite the fact that the industry's use of music has not changed at all. Such increases are not reasonable or sustainable. To make matters worse, by virtue of international reciprocity obligations, the majority of these payments go to US artists who

¹⁰ CRTC 2016 Monitoring Report, Tables 4.1.19 to 4.1.23.

¹¹ Direct Canadian government support for music comes in the form of grants from the Canada Music Fund (\$1.3 Million per year) and Canada Council for the Arts (\$#s not publicly available; estimated at less than \$10 million. There are no tax credits for music.

¹² See <http://www.cb-cda.gc.ca/decisions/2016/NEW-2016-04-21-EN.pdf> and <http://www.cb-cda.gc.ca/decisions/2008/20080222-m-nr-e.pdf>. Total tariff liability in 2016 estimated at \$93.5M minus \$5.6M in fee reductions versus total tariff liability of \$64.4M in 2008.

benefit from nowhere near the number of distinct rights or quantum of tariff rates from their own radio sector.

42. Copyright reform is of critical importance to private radio broadcasters. Radio's ability to effectively compete in a global communications environment depends on having a copyright regime that will allow the sector to succeed. Radio recognizes the impacts of digital interactive technologies on the music industry because radio is an integral part of it. Multiple and layered tariffs constitute a significant impediment to radio's ability to maintain relevance to audiences. Radio is making investments to ensure a Canadian presence on the multiple digital platforms on which content is consumed. Radio is subject to complex overlapping tariffs coupled with interminable administrative proceedings which hurt the sector's ability to foster and promote the Canadian artists that this debate is supposed to be about.
43. The *Copyright Act*¹³ has a built-in mandatory review that is scheduled to take place in 2017. This review should focus on the effectiveness of Act in the context of the increasingly competitive environment facing Canadian media, and in particular radio. Government should look seriously at such matters as:
- The fact that radio stations are required to pay the same recipients (often large multinationals) multiple times for the same use of music. As an industry whose business is to connect consumers with music and entertainment, radio's ability to compete in a highly fragmented media market is significantly hampered by this unwarranted and unnecessary layering of tariffs.
 - The administration of copyright tariffs is cumbersome and fraught with problems which lead to lengthy delays and retroactive decisions. This inefficiency causes an unacceptable level of business uncertainty.
 - The reality that, at the end of the day, higher tariffs do not help Canadian artists, but do cost local jobs and compromise the competitiveness of Canadian radio.
44. More generally the CAB Radio Council encourages government to implement policy measures consistent with the principles outlined in section D, above. In particular, we suggest that the Federal Government:
- Encourage the unlocking of FM chips on mobile handsets as a matter of national safety and security;

¹³ The *Copyright Modernization Act* was passed in 2012. It included a mandatory 5-year review which is a set to take place in 2017.

- Play a greater role in coordinating emergency alerting as between different levels of government, platform providers and local broadcasters;
- Examine its advertising practices, and devote a greater share of government advertising to Canadian local media generally, and radio in particular;
- Consider re-interpreting or changing provisions in the Income Tax Act that currently permit 100% tax deductibility for advertising on foreign internet media;
- Ensure that the CBC does not unfairly compete with private radio and other local Canadian media. Consideration should be given to restrictions on both internet advertising and broad interest content on CBC sites; and
- Ensure any new government support of local news and information content, be it through tax incentives or funds, includes radio local news and information content.

F. CRTC Radio Regulation

45. While in the last decade, the CRTC has conducted numerous examinations of policies affecting the TV sector, it has only conducted one limited, “targeted” policy review of the Commercial Radio Sector since 2006.
46. The Commission’s 2013 consultation was based on the premise that “[s]ince the last policy review conducted in 2006, the commercial radio sector has remained relatively stable, both financially and in terms of tuning. In light of this, the Commission is of the view that a comprehensive review is not necessary at this time, but that the sector would nevertheless benefit from an update of certain regulatory and policy elements.”¹⁴
47. This bullish attitude towards radio echoed statements in the Commission’s 2012 CRTC Monitoring Report, where under a heading labeled “Communications revenues on the rise”, the CRTC noted that “Radio revenues increased by 0.4% from \$1.61 billion to \$1.62 billion [in 2011-2012]”.
48. While there may not have been hard evidence to the contrary at the time, the view that radio was still on a growth curve in 2013 was not one held by the radio industry, and is playing out now.
49. Substantial expert evidence and views then expressed by the CAB Radio Council were to the effect that “radio’s medium to long-term future is significantly uncertain, in particular the AM sector, in French-language and in smaller radio markets”. Despite this, the Commission declined to expand its

¹⁴ A Targeted Policy Review for the Commercial Radio Sector, Broadcasting Notice of Consultation CRTC 2013-572.

2013/14 review to consider measures such as an AM to FM conversion path, Cancon levels and CCD.

50. In addition, and as described in a separate brief filed by “Le regroupement ad hoc de stations de radio privées de langue française”, a more targeted review of the regulatory framework for French-language vocal music applicable to the French-language commercial radio sector was postponed more than a year ago due to a lack of Francophone representation at the CRTC and remains unscheduled for now.
51. Today, given what would appear to have been three consecutive years of aggregate revenue decline since 2013, private radio is in need of renewed regulatory focus. Unfortunately, the CRTC’s current 3 year outlook (2016-2018) does not include any plans for a broader examination of the current radio regulatory framework¹⁵.
52. The CAB Radio Council believes that the CRTC needs to place a greater focus on radio policy matters radio policy over the 2017/18 timeframe. Government can help by encouraging the CRTC to do so¹⁶.
53. Among the issues that require CRTC attention are the following:
- (a) **The future of AM radio.** AM is a technology that dates back to the origins of Canadian radio in the 1920s. FM, a far superior but still analogue technology, launched in Canada in the 50s¹⁷. Today, AM survives as a barely adequate platform for news, information, sports and oldies music – genres that are nevertheless extremely important to listeners. AM stations are experiencing materially worse declines in audiences, revenue and profitability than FM. The AM station category experienced an 8% decline in revenues from 2011 to 2015 versus virtually no decline for radio as a whole¹⁸. A conversion path, ideally to FM, has to be found for AM.

¹⁵ The Commission’s only planned radio policy review is a targeted review of its Ethnic Radio Policy. CRTC Three-Year Plan 2016-2019. <http://www.crtc.gc.ca/eng/backgrnd/plan2016/plan2016.htm>

¹⁶ The Governor in Council could also issue a formal policy direction. We are not, however, asking for a formal direction at this time.

¹⁷ FM generally has higher fidelity (including stereo sound) and less interference than AM. While “analogue”, a good FM signal usually has equal or better sound quality than digital sources, be they CDs, internet streaming and radio, wireless phones, or digital radio. Radio broadcasters see a solid future for FM, both because of the quality of the signal, and its reliability and ubiquity.

¹⁸ CRTC Statistical Summaries. Note that the decline in AM revenue can in part be attributed to a reduction in number of AM radio stations in Canada in the 2011 to 2015 period, from 134 to 124, primarily due to stations that were able to change band from AM to FM. Stations operating in the AM band nevertheless experienced a drop in aggregate profitability from 10.3% in 2011 to 6% in 2015 (PBIT).

- (b) **Multiple Ownership Limits.** Current CRTC policy generally limits radio ownership to 2 AM and 2 FM stations in large markets, with a 3 station cap in smaller markets. This policy, which dates back to 1998, is the single biggest barrier to a conversion path for AM radio. It predates the internet, and was established when AM was still considered a decent platform which faced none of plethora of competitive alternatives it does today. Options for revision include broader exceptions for incumbent AMs converting to FM, raising the current maximum from 2 FMs to 3 FMs, and making the policy platform neutral (i.e. a max of 4 FMs regardless).
- (c) **The particular challenges of French-language radio.** AM French-language radio stations lost over 60% of their revenue from 2011 to 2015, and there have been indications of greater rates of audience decline and more revenue unpredictability in French-language AM & FM radio as a compared to the English-language sector¹⁹.
- (d) **Local Management Agreements (LMAs)** – LMAs allow unaffiliated radio operators to share resources permitting greater operating efficiencies. Current CRTC rules require LMAs to be registered and severely limit permitted use. These restrictions need to be revisited.
- (e) **Unlocking of the FM chip.** Most wireless handsets sold in Canada include an FM receiver chip that is not enabled for consumer use. This means that consumers are required to use wireless data plans if they listen to the radio on their smartphone, rather than being able to take advantage of free FM reception. More important, in times of emergency, when battery life is of concern, and wireless service outages could even occur, most Canadians are not able to use the electronic device most immediately at hand to directly access radio. The CRTC needs to encourage the unlocking of the FM chip on mobile handsets as a matter of national security.
- (f) **Cancon issues.** These include a review of legacy rules such as hit/non-hit rules in rules in certain markets and micro-regulation of music programming in Francophone markets.
- (g) **Canadian Content Development (CCD).** Issues of quantum and flexibility, as well as the appropriateness of the use of administrative monetary penalties (AMPs), should also be on the table.

G. Conclusion

54. Private radio plays a vital role in serving Canadians in 400 local communities across Canada, far more than any other traditional local media segment, and in a way that purely digital media are nowhere near matching (and are

¹⁹ CRTC Monitoring Report 2016. Diary and PPM ratings differ, but French language radio station saw a 3% drop in average weekly tuning share from 2011 to 2015, while English radio saw a reported 3% increase over the same period (PPM).

unlikely to ever match). Non-profit radio adds hundreds of other communities to radio's reach.

55. Radio's role is about supporting Canadian music and culture, providing valued local news and information content, and being a vital communicator and conduit in times of emergency. It is unparalleled.
56. Radio is the only ubiquitous, free medium. The only medium that can and does reach Canadians when knowing about their community matters most.
57. Radio is over the air, and on wireless and wireline networks. Radio is both an analogue and digital medium.
58. Our Submission contains specific recommendations for Government and the CRTC that we believe could be appropriate follow-ups to this Review. Most important, we respectfully request that Government:
 - Not overlook the vital role played by Canadian radio;
 - Ensure that policies designed to support other Canadian media also support, or at the very least, not inadvertently undermine, Canadian radio; and
 - Ensure policy and regulation does not hold back Canadian radio in competing with foreign digital media.

All of which is respectfully submitted this 25th day of November 2016.