

The Honourable Mélanie Joly, PC, MP.  
Minister of Canadian Heritage  
House of Commons  
Ottawa, Ontario  
Canada  
K1A 0A6

November 21, 2016.

**Re: “Canadian Content in a Digital World” Consultation**

Dear Mme. Minister:

Thank you for the opportunity to contribute to this public consultation. This submission is a joint effort of Making Media Public and the Communications Policy Working Group, whose members include David Skinner (Associate Professor and Chair, Department of Communication Studies, York University), Joseph F. Turcotte (PhD) and Amanda Oye (PhD Student), Margaret Reid (PhD, ABD), and Emilia Zboralska (PhD, ABD) - all students affiliated with the York & Ryerson Joint Graduate Program in Communication and Culture.

We have organized our comments in this letter along the lines of the questions that you have posed in Part 3 of your consultation paper *Focusing the Conversation*. We would welcome any future opportunities to contribute to these and similar discussions. Should you have any questions, please don't hesitate to contact us c/o David Skinner at [skinnerd@yorku.ca](mailto:skinnerd@yorku.ca).

**Principle #1: Focusing on citizens and creators**

***1.1: Enabling choice and access to content***

***How can we reflect the expectations of citizens and enable Canadians to choose the content they want to see, hear and experience?***

Two major problems in enabling Canadians to “choose the content they want” are: i) ensuring that there is a range of quality Canadian content available for them to choose from; and ii) ensuring that they know that content is available to them and that they can easily access it. From the beginning, Canadian media producers have had to fight an uphill battle as foreign, mainly American, media products have been available to Canadian distributors at a fraction of their cost of production. Consequently, Canadian television networks, film exhibitors, magazine stands, and other program distributors have long foregrounded foreign media products over their Canadian counterparts. It's not that audiences generally ‘choose’ foreign media fare over Canadian equivalents. Rather, because much more money can be made from circulating American over Canadian media, historically we have been rarely offered viable Canadian alternatives.

In the digital environment these problems are further compounded by the fact that Canadian content is not easily discoverable. Ever increasing options for viewing and engaging with media content are overwhelming the Canadian media system and rendering Canadian options increasingly difficult to find. Recent interviews with millennials illustrate that they are not averse to Canadian content but experience difficulty finding it in the on-line spaces they frequent.<sup>1</sup>

Such challenges to the Canadian media system are not new. In the early 1930's, a flood of American radio signals threatened to smother the nascent Canadian radio broadcasting system. In 1952, television signals began rolling across the border and attracting Canadian audiences. In the mid-1960's, emerging cable TV networks were set to overwhelm the adolescent Canadian system with popular American channels. And then in the 1980's, and again in the early 1990's, American satellite broadcasters launched two waves of assault on Canada's media system from the sky.

In the face of long-standing market inequities and shifting technologies, regulation has provided an important bulwark for Canadian media producers. The Broadcasting and Telecommunication Acts, content regulations, production funds, the tax system, and Crown corporations such as the CBC/Radio-Canada are a few of the legislative and regulatory tools that have been deployed to spur the development of Canadian media. And today, as a result of regulation, many sectors of the Canadian media are stronger than they have ever been.

Consequently, as we face the challenges of digitalization the Government of Canada should draw upon our strong legacy of successful regulation to ensure that there is a both wide range of Canadian content available within the media system and that Canadians have both knowledge of, and access to, that content.

### *1.2: Supporting our creators*

***How can we fairly support creators in the creation and production of content that stands out? What partnerships will be needed to achieve this? How can we help creators have successful and viable careers in a digital world?***

As detailed in this submission, there are a number of regulatory mechanisms that might be used or adapted to support Canadian creators. For instance:

Canadian Content Regulations: While such regulations have long been used to ensure that Canadian perspectives are foregrounded in both media content and distribution channels, extending those regulations to digital production and content distributors would help ensure a Canadian presence in the digital realm. For instance, making OTT distributors responsible to Canadian content regulations, and 'zero-rating'<sup>2</sup> certified Canadian content in terms of ISP data

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<sup>1</sup> Interviews conducted independently by Margaret Reid and Emilia Zboralska October-November 2016.

<sup>2</sup> See Wikipedia. "Zero-rating." Available at <https://en.wikipedia.org/wiki/Zero-rating>.

caps, would help Canadian producers overcome some of the advantages foreign producers have in the Canadian market.

Production Funds: Extending existing production funds such as the Canadian Media Fund to cover more forms of digital production and more closely support Canadian digital producers would help build Canadian digital content. Similarly, a bolder approach might be to create a new Digital Economy Fund, designed to both support digital producers and invest in publicly funded networks to improve connectivity in rural and indigenous communities.

CBC/Radio Canada: As audiences fragment across screens, and platforms, an easily discoverable, intuitive and simple-to-use, centralized virtual public space is vital. Consequently, a stronger public broadcaster with stable funding has increased importance in the digital era. Funding for CBC/Radio Canada should be increased to bring per capita levels in line with spending in other international jurisdictions with a goal of approaching the average per capita funding of other major developed countries.<sup>3</sup>

Community Broadcasting: Long sacrificed to the financial interests of broadcast distribution undertakings (BDUs), in a digital world this third “element” presents an extraordinary opportunity as a platform for creating independent on-line community media centres that can act as hubs of innovation and incubators for collaboration, experimentation, and learning across a wide range of traditional and new media content, including television programming, podcasts, web-series, and video game development.

Copyright: Having an intellectual property (IP) regime that supports Canadian artists and producers in the global context is key to international success. IP is the currency of the creative industries. However, copyright reforms should be made in the context of a broad, coherent digital and innovation policy that takes into account other areas of responsibility covered by the Ministry of Innovation, Science and Economic Development Canada. At the same time, the Ministry of Heritage should pursue any copyright reforms in the context of a broader review of the Copyright Act as mandated in paragraph 92 of the Act. Copyright reform should reflect a coherent strategy for digital content and an associated innovation policy that promotes the production and dissemination of Canadian content and digital technology services. The “Canadian Content in a Digital World” consultations should be used to inform the upcoming Copyright Act review and the Ministry should resist implementing copyright law changes until a review of the Copyright Act and other IP measures and e-Commerce measures can be taken into account.

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<sup>3</sup> See “Analysis of Government Support for Public Broadcasting and Other Culture in Canada”, Nordicity, October 2013. Available at <http://www.nordicity.com/media/20141118hruhvuqv.pdf>.

## **Principle #2: Reflecting Canadian identities and promoting sound democracy**

### **2.1: Redefine Canadian content for contemporary Canada**

*With so much online content available today and given Canada's diverse and multicultural makeup, does the concept of "Canadian content" resonate with you?*

As has been reiterated by so many studies and inquiries over the years, Canadian content is an essential element of the media system. Given the size and diversity of the country, it is the way we come to know and understand both ourselves and each one another, and our country's place in the larger world.

*What does "Canadian" mean to you? Do we need to be more flexible in how we support the production of content by Canadians?*

Canadian content is content that is *made* by Canadians. Consequently, content regulations based upon the factors of production, as are the current radio and television regulations, provide a good model for supporting the work of Canadian creators. By the same token, our content is not truly 'Canadian' unless all citizens are represented consistently, proportionately and accurately both on and behind the screen. With respect to access to funds and tax credits, generally regulation should prioritize those productions that are deemed 10/10 productions under the current system. However, currency in international markets may require some flexibility in this regard, such as the casting of internationally recognized and culturally relevant actors or the inclusion of specific production expertise. Regulation needs to be flexible enough to accommodate such instances but strong enough to foreground Canadian talent and expertise.

*In an ultra-competitive, global market, how can the private sector support the production of content made by Canadians?*

With respect to achieving success in the global marketplace, the private sector must be willing to take risks on original, Canadian content made first and foremost by Canadian creators. The private broadcasters are the most capitalized media companies in Canada, and thus are the most poised to take risks. Historically, however, the broadcasters have treated original Canadian production as a burden, rather than an opportunity. This is a mistake in the digital era, and needs to change. Some have suggested encouraging and enabling broadcasters to become studios by allowing them to produce more content in-house. While in theory this is not a bad idea, given that global competitors are transnational companies with significant reach and capital, in practice, it could be problematic to grant such power to companies that appear to have never truly been in the 'game' of original production. The government should incentivize the creation of better-capitalized firms, including those media small and medium-sized enterprises (SMEs) already working in the independent production sector. These firms should be encouraged to develop distribution capabilities in order to facilitate export and international sales. With the removal of the Canadian Media Producer's Association's (CMPA) Terms of Trade, producers

and firms are free to negotiate the terms of transactions. But firms must be invested in original intellectual property and stand to gain financially from its success if they are truly going to be competing in the world of original production.

As more content is made available to Canadian consumers over-the-top through foreign-owned services, Canadian broadcasters must realize that their business models of importing and airing foreign (American) content is quickly becoming unviable. Investment into original programming is the only way to retain control and to reap full economic benefit.

With the recent shutdown of Showmi, Bell's Crave TV stands as only major Canadian competitor to Netflix. A recent study by the Toronto Solutions Research Group (SRG) released earlier this year indicated that Shomi and Crave TV combined have roughly one-seventh the number of Canadian subscribers as Netflix. Netflix' success in drawing subscribers has been in large part due to their investment in original programming. It is not enough to be a hub for re-watchable content. In this regard, Netflix has had the advantage of having partnerships with existing production studios to create their new content, and this is a model that could be emulated here in Canada.

From this perspective, perhaps the best way for services like Crave TV to compete with Netflix, would be to; i) buy the rights to new and original Canadian television productions; and ii) foster partnerships with Canadian production studios (including SME's) to synergize production and distribution of Canadian content.

The government might also consider prioritizing Canadian-made original production by reducing the tax credits made available to service productions. If it is to compete globally, the Canadian media economy must transition from being a branch plant system.

While diversity is our best resource in this country, our media industry still suffers from underrepresentation of the designated groups (e.g. visible minorities, persons with disabilities and Aboriginals). This situation must change—not only in terms of content, but also, in production. Our media is not 'Canadian' until all groups are represented according to their labour market availability. The private sector must be encouraged to hire individuals from the designated groups. The government might consider allocating funding and tax credits according to representation levels of diversity in the creative team. Change has been slow to occur and recent research indicates that inadequate representation levels have continued into the scripted digital-first industry.<sup>4</sup>

Government might also consider instituting a mentorship requirement for those productions drawing on government funds. These mentorships would be designed to bring people from the designated groups into the Canadian production community, strengthening both skills, and

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<sup>4</sup> See Women in View. "Women in View on Screen October 2015 Report" available at <http://womeninview.ca/wp-content/uploads/2016/01/Women-In-View-On-Screen-2015.pdf>

enhancing social capital, which is a chief industry currency. These requirements could also be extended to service productions drawing on tax credits. Any one of the various government cultural agencies or institutions involved in production could act as the facilitators of these relationships.

### ***What is the role of Canada's national cultural institutions, such as CBC/Radio-Canada and the National Film Board?***

As mandate-driven public institutions, the CBC/Radio Canada and the National Film Board have been able to provide opportunities for creators and content that private, profit driven organizations have not. Working from this position, they have both been innovators in terms of exploring and developing new forms of content, and have helped to build media markets.<sup>5</sup> Over the years, the CBC/Radio Canada in particular has contributed immensely to the development of Canada's media system in this regard. Ensuring that both these organizations are well funded and have a free hand in the digital environment will go a long way to ensuring Canadian content in a digital world.

The role of the public broadcaster has increased importance in the digital era. As audiences fragment across screens, and platforms, an easily discoverable, intuitive and simple-to-use, centralized virtual public space is vital. A stronger, better-capitalized CBC/Radio Canada with stable funding and predictability could become a bigger and more courageous player in the content space. The CBC/Radio Canada should also be encouraged to develop a vigorous online platform. The BBC's iplayer is an excellent example of what is possible. In recent interviews, some millennials noted that the CBC/Radio Canada's online experience is subpar, in that their website often freezes, or suffers from fatal errors, discouraging viewing and engagement.<sup>6</sup>

### ***2.2: Strengthen the availability of quality information and news in local markets***

#### ***What models can we build to support the creation of and access to local information and news in a global context?***

In order to have a vibrant democracy, Canadians require access to news and information that helps them make sense of their lives as both local and global citizens. Media organizations are laying off journalists and other content producers at alarming rates and precarious and freelance work in the industry is skyrocketing. These job losses have had particular impact at the local level where private media content and outlets are increasingly scarce.

Community media centres present an innovative solution to this problem.<sup>7</sup> As stated in the 1991 Broadcasting Act, community broadcasting is one of the three central elements of Canada's

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<sup>5</sup> Brooks DeCillia & Patrick McCurdy. *Viewing the CBC as a Public Good*. Available at: <http://policyoptions.irpp.org/magazines/november-2016/viewing-the-cbc-as-a-public-good/>

<sup>6</sup> Emilia Zboralska. "Buffer Festival Interviews," October 2016

<sup>7</sup> See CACTUS. "A New Vision for Community TV available at: <http://cactus.independentmedia.ca/node/401>

broadcasting system. The inclusion of community media in the Act indicates the longstanding commitment of both Parliament and the CRTC to ensure that there are a diversity of broadcast forms represented in the structure of the Canadian broadcasting system.

Community media can play a vital role in helping communities express and circulate local and regional information through contributing to a range of program categories including: soft news and current affairs that profile community circumstances, histories, activities and members; documentaries; children's programs; reality programs; talk-shows, and even local drama.

In a digital world, independent on-line community media centres present an extraordinary opportunity to create hubs of innovation that provide community members access to both the training and equipment necessary to create content that is meaningful and has genuine impact. Not only could such centres serve as an effective way of providing locally reflective community-originated programming, but also as a means of developing new and diverse emerging talent. Here, they might act as incubators for collaboration, experimentation, and learning across a wide range of traditional and new media content, including television programming, podcasts, web-series, and video game development. An online portal might be used as a common point of distribution for all the community content produced across the country. Such a portal would at least partially address the issue of discoverability in the online space since such content is now atomized across the individual community channel websites.

However, in a recent decision (2016-224) the CRTC redirected almost the entire budget for community television back to private media companies. Ostensibly, the purpose behind this decision is to help private broadcasters and broadcast distribution undertakings re-fund local news. But given the track records of these organizations, there is little reason to believe that they will provide the kinds of programming and services that a properly funded independent community media sector would.<sup>8</sup>

The federal government should direct the CRTC to reconsider Broadcasting Regulatory Policy CRTC 2016-224. Community media need to be given an opportunity to meet the promise of their mandate in Canada.

### **Principle #3: Catalyzing economic and social innovation**

***3.1: Positioning Canada as a culture and digital content leader Canadians make great content; how can we build our exceptional cultural industries and support the growth of new creative enterprises as part of Canada's innovation agenda? What tools do the government and the private sector already have at their disposal? What new tools could we consider?***

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<sup>8</sup> See CACTUS. "CACTUS. "Request to CRTC to Reconsider 2016-224 (New Local and Community TV Policy)" available at: <http://cactus.independentmedia.ca/http%3A/%252Fcactus.independentmedia.ca/files/cactus/Request+by+CACTUS+to+CRTC+to+Reconsider+2016-224.pdf>

Given our relatively small population and large geography, in the media industries Canadians are almost always competing with people and organizations with much greater economies of scale. Hence we are almost always at a financial disadvantage to foreign producers, whether in terms of developing production budgets or competing for audiences in both home markets and abroad. Historically, the federal government has employed a number of regulatory tools to help counter these advantages. These include production funds, content regulations, and industry/technology specific measures such as simultaneous program substitution. As evidenced by this country's vibrant media industries, these interventions have enjoyed a high degree of success.

In meeting with the challenges of the digital world, these tried and true tools should be expanded to support Canadian creativity in the digital realm. For instance, a new production fund, or an expansion of the Canadian Media Fund, to support a broad range of digital content including web series and community media would help animate content development. Extending Canadian content requirements to all organizations offering broadcast content to Canadians – including OTT services -- would provide new opportunities for the distribution of Canadian media products. 'Zero rating' certified Canadian content such that it would be exempt from data caps would help increase distribution of Canadian programs. And developing new revenue streams – such as a diverting the GST collected by ISPs and other telecommunications providers—to feed new or existing production funds would help Canadian digital producers meet the challenges they face. To ensure our media companies are on equal footing, Netflix and similar digital services should also be required to collect GST.

A bold approach to expanding support in the digital environment might be to create a new Digital Economy Fund. Dedicated to furthering the aims of a larger digital strategy, among other things this fund might be designed to both support digital producers and invest in publicly funded networks to improve connectivity in rural and indigenous communities. As above, revenue to feed the fund might come from the GST collected by ISP's, other Canadian telecommunications providers, and foreign OTT services. While it might require a change in legislation, ISP's might also be required to make direct contributions to the fund, with the proviso that they don't pass the cost of the contribution on to customers. Similarly, while it would have to be carefully designed so as to not disadvantage low-income communities, a broad tax on telecommunication services in general might also be considered for this purpose.

The government should also consider investing more heavily in creative digital-first firms, by providing resources such as seed funding, and physical space and infrastructure at affordable rates. And, on a more general note, we believe that it is important for any measures stemming from these consultations to be implemented in a technologically neutral fashion, so as not to foreclose on the possibility of new, emerging technologies or trends as well as the possibility of continuous updating of legislation and regulation.

### ***How do we incent more risk-taking from creators and cultural entrepreneurs?***

Creators and cultural entrepreneurs can be incentivized to take risks by ensuring that a healthy social welfare framework exists to support them in extended periods between income generation. Cultural workers are often contractors and enjoy no social protections, including no health and dental benefits, and are often ineligible to receive even basic Employment Insurance due to antiquated hourly requirements. Employment Insurance needs to be upgraded to meet with the exigencies of today's working conditions. The federal government might also consider a basic income framework along the lines of what is currently being investigated by the Government of Ontario, and a number of countries outside of Canada's borders. Talent development should also be a priority, with separate programs and funds aimed at this purpose. Tomorrow's leaders must be given a chance to experiment, fail and then succeed. Ensuring that Canada provides a competitive and robust media labour market will help alleviate some of the brain drain of our most talented creators.

But it is not solely the government's responsibility to develop future leaders. The private sector must have a hand in this as well. The federal government should incentivize risk-taking amongst the large media corporations both in relation to the character and quantity of content that is commissioned. For content that is explicitly commercial in its aims, the government might consider stepping in as an interim financier, or structuring its support so that a larger portion of it exists as a recoupable investment rather than a grant.

Launching a creative firm is also a difficult venture, and seed and gap funding are difficult to find. Banks are not apt to provide loans or support to creative enterprises, due to the level of risk, even in cases in which the principals are highly skilled and have a history of success. Perhaps there is a role for government here to guarantee loans, or invest directly in creative enterprises. This could encourage the building of stronger, better capitalized firms. The government might also provide other resources including physical spaces, such as co-working spaces, and access to resources at affordable rates.

### ***3.2: Leveraging Canada's national cultural institutions***

#### ***How do we ensure that our national cultural institutions, such as the CBC/Radio-Canada and the National Film Board, are a source of creativity and ingenuity for the creative sector more broadly?***

As noted, the key way to ensure that the CBC/Radio-Canada and the National Film Board continue to be sources of creativity and ingenuity is to ensure that they are well funded. In order to allow them to plan effectively, base funding should also be ensured for five years in the case of the NFB and the length of the license term for the CBC/Radio Canada.

Components of these institutions might also be reimagined so that they are better cemented into a 'pipeline' of innovation. They could be encouraged to develop innovative, publicly accessible

zones much like the recent YouTube space built in Toronto. These hubs could be access points to mentorships, skills training, studio space and creation tools. Institutions could incorporate these zones into a 'lean startup approach' wherein projects developed within these spaces could be treated as minimum viable products made for consumer testing and experimentation. Although the Toronto YouTube space is a great zone for innovation and creativity, YouTube is first and foremost a private corporation, and we dangerously treat both it, and parent company Google, as though they are public utilities. They are not. For instance, only creators with 10,000 or greater subscribers are welcome in the YouTube space. This leaves out many voices from the margins, who for varying reasons, including a lack of access to equipment, skills and economic resources, have not been able to achieve this milestone.

### ***3.3: Promoting Canadian content globally***

#### ***What is needed to best equip Canadian creators and cultural industries to thrive in a global market and exploit the country's competitive advantages?***

Our competitive advantage is our diversity of both people and landscape. Because of Canada's vast geography, travel between the provinces is financially restrictive. This limits Canadian production across the provinces, thereby limiting storytelling. The government should work to lower barriers to travel across Canada, so that creators' stories are limited only by their imaginations and not restrictions related to travel. Showcasing the distinct beauty of the Canadian landscape will also help establish our media brand.

Secondly, our mosaic of cultures allows us to connect to audiences across the world, making our content truly competitive. The business case for diversity cannot be ignored. We must ensure participation in our media system both on and behind the screen through any number of the initiatives mentioned above, including both required mentorship for productions accessing public funding, and the linking of funding and tax credit allocation to representation in key creative teams. This has already happened for women, in the case of Telefilm, for example. The government should consider extending the scope of such a requirement to all public funding sources, and ensure that other categories of individuals from the designated groups are encompassed by the requirements.

Canada must also make more promotional and marketing supports available to Canadian producers. This is a key way to make Canadian content stand above the digital noise.

#### ***In a global market, what conditions need to be in place to encourage foreign investment in Canada's cultural industries? How can we better brand Canadian content internationally?***

As history illustrates, foreign ownership has not proven to be a particularly positive force in the development of Canadian media. Too often foreign owners structure their Canadian operations to serve corporate interests forged in other jurisdictions and countries. In the process, Canadian perspectives, ideas, and interests are painted over or altogether left out of media products.

Despite finding ourselves in a media moment characterized by intense disruption of existing business models and policy frameworks, Canada is in a position of strength. For the first time, and readily apparent from the world stage, our cultural ethos is drastically different from that of the United States. We are increasingly recognized around the world as leaders in inclusion and diversity. Canadian musical artists are reaching the top of the world charts. At the same time, the global internet has accustomed audiences around the world to content from all over the world. Our screen industries can have as much international success as our musical acts. For too long, Canada's specificity and uniqueness has been hidden and neutralized to appeal to American interests, or to assumptions made about what the American market will take. Specificity is universal.

A shared element in the music of globally selling Canadian artists is their explicit love of their Canadian cities (Drake and 'the 6ix', for example). The Canadian government might incentivize the production of compelling, risky, provocative, original content that features Canada as the backdrop, through the creation of a separate funding stream, tax credit program or prize. The funding stream or prize could be adjudicated by a revolving group of Canadian industry leaders (including those currently residing in the US, and working on US 'hit' productions). In order for Cancon to become a positive brand with a positive association, it must first and foremost be seen. This includes both Canada's diverse peoples and its diverse landscapes. Expecting the international community to invest in the Canadian brand when it is largely invisible is reverse thinking. The Canadian media brand must become visible, unapologetic, distinct and proud. This will require a medley of the measures mentioned throughout this document.

### **Concluding Remarks**

Some people argue that it is impossible to regulate the internet and that we should surrender to the uncompromising logic of open media markets. But new technologies have long made crisis a way of life for the Canadian media system. And, with varying degrees of success, regulators have long found ways to meet those challenges.

As its many critics point out, current regulation is not perfect. Cable and satellite operators bundle channels to serve their interests rather than those of their customers. And vertical integration concentrates control over television, computer, and mobile screens into the hands of a few operators, giving them unprecedented power over both content and carriage. This has been a particular problem with BDU's control of community television. Moreover, if history is to be our guide, any regulatory solutions to the current problems facing the system will inevitably be fleeting and require adjustment in ten to twenty years.

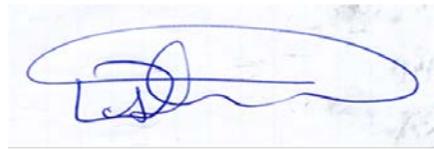
But, as generations of Canadians before us recognized, to surrender to the latest technology would be to give up seeing ourselves in our own media. In the digital arena, Canadian stories, Canadian attitudes and values, and Canadian perspectives would be overwhelmed by a calculus that puts profits ahead of the reflection of Canadian ways of life. In the process, our

understanding of the distinctive histories and circumstances of our fellow citizens and the dialogue that strengthens the fabric of the Canadian polity would be diminished.

To make foreign television distributors and similar content purveyors meet obligations similar to those undertaken by Canadian media companies would not stifle innovation or creativity as some have claimed. On the contrary, to allow these operators unbridled access to Canadian screens stifles Canadian innovation, and silences Canadian voices.

Stretched across the top half of North America, both Canada's democracy and media system are the product of social struggle and imagination. As technological pressures increasingly press on the historic rationales for media policy, to keep and nurture both will continue to require such efforts.

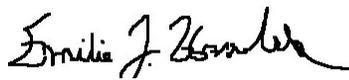
Thank you for your consideration. As noted at the outset of this letter, we would welcome any future opportunities to contribute to these and similar discussions. Should you have any questions or comments, please don't hesitate to contact us c/o David Skinner at [skinnerd@yorku.ca](mailto:skinnerd@yorku.ca).



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