

Canadian Content in a Digital World

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Canadian Heritage Minister Mélanie Joly surprised culture and Internet watchers last spring by announcing plans for a comprehensive review of Canadian content policies in a digital world. The modernization of Cancon regulation offers the opportunity to rethink longstanding policies by prioritizing global markets, consumer choice, competition, and the benefits of an expanded creative class that includes both commercial and non-commercial participants.

This submission, which is based on several earlier public posts and columns, focuses on two areas. First, it engages in a detailed discussion of potential sources of funding to support Canadian content production. The discussion includes some contextual analysis of current support levels and a full review of new tax models and support programs.

Second, it shifts the discussion away from funding toward legislative and policy changes that would enhance Canadian content in a digital world. This includes discussion of the CRTC, CBC, digitization, open access, and cultural foreign investment restrictions.

Part One: Public Funding of Canadian Content

The big issue throughout this consultation has been how to pay for an ambitious culture agenda.¹ Minister Joly has emphasized the benefits of expanding exports, which she hopes will bring foreign dollars and more foreign investment in the sector.² Joly's emphasis on the potential benefits of a more confident, outward looking approach to Cancon is entirely consistent with a more innovative strategy that views the Internet as an opportunity, not a threat. With global companies such as Netflix investing heavily in Canadian productions and providing an international platform for Canadian content, focusing on how to better compete in a global marketplace is the right strategy.

Notwithstanding the benefits of a stronger global presence, many of the established cultural groups have voiced opposition to measures designed to attract greater foreign participation if it risks reducing the guaranteed Canadian role in productions. For example, the CRTC's decision to loosen some Cancon rules has elicited ongoing anger, despite the fact that the change would likely make productions with foreign entities more attractive, thereby enlarging the overall size of the industry in Canada.³ With similar opposition to market-based reforms designed to reduce dependence on the current system (pick-and-pay television channels, gradual

¹ Canadian Content in a Digital World Consultations, *Government of Canada*,

² Michael Geist, "Behind the Scenes of the Digital CanCon Consultation: No Netflix Regs, CRTC Review or Copyright Overhaul" (16 September 2016), *Michael Geist* (blog), online: <<http://www.michaelgeist.ca/2016/09/>>

³ Jessica Wong, "Does loosening CanCon rules hobble Canadian TV creators?", *CBC News* (22 September 2016), online: <<http://www.cbc.ca/news/entertainment/cancon-crtc-tv-creators-1.3772919>>.

reduction of simultaneous substitution), there is little reason to believe that Joly can count on support for expanded exports to pay the bills.⁴

The broad range of funding possibilities fall into three categories: (1) increased revenues that are typically allocated toward “general revenues” (ie. go to the Department of Finance) but which could be earmarked for cultural funding; (2) new tax or levy plans that would be used to support the cultural sector; (3) other sources that derive from tax or cultural policies. I argue that the general revenue approach is the preferred one, given the benefits of new funding and without the significant drawbacks of the expansion of taxes or levies.⁵

Any discussion of increased culture funding should include the context for how much public money is already allocated toward supporting the sector. According to the CMPA, nearly \$3 billion was spent on film and television production in Canada in 2014-15. That represents a \$230 million increase from the prior year and \$500 million more than five years earlier.⁶ The public already pays for nearly half of this through tax credits (18% of the total costs from tax credits from federal and provincial governments) and various levies and granting programs.⁷ Further, the more than \$1 billion in public support does not include the hundreds of millions that goes toward supporting the public broadcaster, the music industry, publishing industry, and video game industry.⁸ In other words, Canadians already invest heavily in supporting the cultural sector through taxpayer funded grants and credits.

Notwithstanding the existing support, there is pressure from some groups for more money. There are many possible sources of new revenues beyond more global success and partnerships, but all are not created equal. Possibilities include: general revenues including digital sales taxes and spectrum licensing; new levies or taxes including a Netflix tax, Internet tax, and copyright link tax; and cultural or tax policy including benefits packages, tax credits, and digital advertising tax reforms.

A. General Revenues

1. Digital Sales Taxes

⁴ Michael Geist, “Giving Pick-And-Pay a Chance: Why Skinny Basic IS Just the Start of More Competitive TV” (7 March 2016), *Michael Geist* (blog), online: < <http://www.michaelgeist.ca/2016/03/>>; Michael Geist, “In Defence of the CRTC’s Super Bowl Advertising Ruling” (6 February 2015), *Michael Geist* (blog), online: <<http://www.michaelgeist.ca/2015/02/>>; Michael Geist, “The Case for Cancelling Canada’s Simultaneous Substitution Rules” (7 December 2013), *Michael Geist* (blog), online: < <http://www.michaelgeist.ca/2013/12/>>.

⁵ “6 Reasons an Internet Tax would be a Bad Idea,” *Buzzfeed*, (10 November 2016), online: <https://www.buzzfeed.com/kcyna/6-reasons-an-ainternet-taxa-would-be-a-bad-ide-2ok0k?utm_term=.wpgmWY13O#.dxB1XzYQ6>.

⁶ Canadian Media Producers Association, “Economic Report on the Screen-based Media Production Industry in Canada,” (2015), online: <<http://cmpa.ca/sites/default/files/Profile%202015%20%28English%29.pdf>>.

⁷ Michael Geist, “Race from the Bottom: Why Government Tax Credits for Film and TV Production Don’t Pay” (20 April 2015), *Michael Geist* (blog), online:< <http://www.michaelgeist.ca/2015/04/>>.

⁸ Michael Geist, “Secrecy around \$30M Ontario music fund strikes wrong notes: Geist,” *The Toronto Star* (22 February 2016), online: < <https://www.thestar.com/business/2016/02/22/secrecy-around-30m-ontario-music-fund-strikes-wrong-notes-geist.html>>; Michael Geist, “The False Link Between C-11’s Digital Lock Rules and Video Game Industry Jobs” (14 December 2011) *Michael Geist* (blog), online: < <http://www.michaelgeist.ca/2011/12/>>.

If there is one form of new revenue that generates a broad consensus, it is that foreign digital services with a sizable Canadian consumer base should pay digital sales taxes such as GST or HST.⁹ These taxes should technically be paid by consumers self-reporting what they owe, but few take the time and effort to do so. If sales taxes are to be applied equally, an unequal form of collection will not work.

Instead, digital services that meet a certain threshold for Canadian revenues should collect and remit the sales taxes. There are no shortage of arguments in favour of expanding sales tax collection in this manner: it creates a level playing field (Canadian services such as CraveTV collect HST but Netflix does not), generates additional revenues, and a growing number of countries have moved in this direction. While there are some enforcement challenges and questions about appropriate thresholds for collection, digital sales taxes seem inevitable. As with all revenues of general application, however, there are no guarantees that the revenues will be directed toward cultural industries.

2. Spectrum Licensing

The Canadian government generates significant revenues from licensing spectrum. According to the Ministry of Innovation, Science, and Economic Development, the government collects approximately \$1 billion per year in direct revenue and another \$180 million in licensing revenue. The spectrum proceeds go to general revenues. However, many have argued that the money should be re-allocated back into the network. Indeed, spectrum revenues could help pay for programs designed to ensure affordable access to Internet services for all Canadians as well as for activities on the network, including the cultural industries.

B. New Taxes or Levies

3. Netflix Tax

The imposition of a “Netflix tax” is undoubtedly the most controversial new potential tax or levy. The government is on record on the issue: no new Netflix tax.¹⁰ Yet notwithstanding those public statements, many are still calling for one. Typically described as a Netflix tax, the proposals are neither limited to Netflix nor technically a tax. Rather, the Netflix tax would seek to extend the current contribution requirements on broadcast distributors to online video services such as Netflix. Supporters of the plan argue that given the growth of Netflix, the contribution requirement would generate tens of millions of dollars and help offset the likely decline in contributions from cable and satellite companies as more consumers cut the cord.

While there may be a superficial appeal to a new contribution requirement on Netflix, there are many problems with the proposal. First, online video has become a staple for a wide range of sites from giants such as Netflix to newspapers that incorporate video into their sites to independent film sites that may use YouTube to distribute their content. Identifying the limitations of a contribution program is difficult and there is a danger that the proposal quickly becomes a tax on all Internet content.

⁹ Michael Geist, “Is the Digital Taxman Headed to Canada?” (27 January 2015) *Michael Geist* (blog), online: <<http://www.michaelgeist.ca/2015/01/>>.

¹⁰ Michael Geist, “Behind the Scenes of the Digital CanCon Consultation: No Netflix Regs, CRTC Review or Copyright Overhaul,” (16 September 2016) *Michael Geist* (blog), online: <<http://www.michaelgeist.ca/2016/09/>>.

Second, conventional broadcast distributors and Netflix may look similar, but they are very different. Conventional broadcast distributors retransmit over-the-air broadcast channels at no cost, whereas Netflix licenses or creates all the content on its platform. Indeed, the contribution from broadcast distributors may reasonably be viewed as compensation for benefiting from a retransmission system at no cost for content. Netflix is very different – it pays for content and transmission, enjoying none of the benefits accorded to broadcast distributors.

Third, there are obvious enforcement concerns. Netflix and Google argued during a CRTC hearing in 2014 that their activities fall outside Canadian broadcast regulation.¹¹ The laws could be changed, but not without a legal challenge over the reach of Canadian law. In fact, even if Netflix (with its many Canadian subscribers) does fall within Canada’s reach, the extension of a levy to online video providers still raises questions about which services should or could be caught by the jurisdictional net.

Fourth, the Trans Pacific Partnership is in trouble, but if Canada moves forward with the deal, it will have agreed to no limitations on access to foreign video providers and no discriminatory payment requirements.¹² In other words, no Netflix tax.

4. ISP or Internet Tax

There is also mounting concern that Joly may be pressuring cabinet colleagues to support an Internet tax on ISPs and digital services. A levy on Internet service has long been the holy grail for the cultural industries, who argue that broadcast on the Internet is the functional equivalent of conventional broadcast and that both should face similar funding requirements. Demands for such a tax have come from cultural groups such as the Canadian Independent Music Association, which recently called for mandated contributions to support the development of Canadian content, and ADISQ, which has previously lobbied for a similar policy approach.¹³

When asked about the issue several weeks ago on CTV’s Question Period, Joly stated:

I’ve said that we’re willing to have a conversation with digital platforms. Netflix is one of them. There are Amazons, Hulus, Apple. There are big companies that are part of our ecosystem, that are used and liked by Canadians. This is why we want to make sure that

¹¹ Michael Geist, “CRTC vs Netflix: Has Canada’s broadcast regulator started a fight it can’t win?”, *The Toronto Star* (25 September 2014), online: <https://www.thestar.com/news/insight/2014/09/25/crtc_vs_netflix_has_canadas_broadcast_regulator_started_a_fight_it_cant_win.html>.

¹² Michael Geist, “The Trouble with the TPP, Day 26: Why It Limits Canadian Cultural Policies” (8 February 2016), *Michael Geist* (blog), online: <<http://www.michaelgeist.ca/2016/02/>>.

¹³ Stuart Johnston, “Ottawa must put Creators First as It Reviews Canada’s Cultural Industries” (October 2016) *Canadian Independent Music Association*, online: <<http://cimamusic.ca/cima-focuses-on-creators-in-response-to-joly-cancon-review/>>; “Quebec Music industry wants CanCon Rules for streaming services, ISPs” (30 September 2016), *The Wire Report*, online: <<http://www.thewirereport.ca/news/2016/09/30/que-music-industry-wants-cancon-rules-for-streaming-services-isps/31350>>; “Un plan d’action pour la musique et le spectacle de variétés au Québec” (29 September 2016), *Association Québécoise de L’Industrie du Disque, du Spectacle et de la Vidéo*, online: <<http://adisq.com/medias/pdf/fr/LA-MUSIQUE-QUEBECOISE-EN-TRANSFORMATION.pdf>>.

*we know that they are using a large part of our spectrum that we can have a conversation with them to see how they can participate.*¹⁴

The comment suggests that Joly subscribes to the view that there is a parallel between conventional broadcast and the Internet that invites a similar regulatory approach. Part of the rationale for broadcast regulation is that broadcast spectrum is scarce, therefore requiring licensing and regulation. By indicating that Internet services use a “large part of our spectrum”, Joly is making the case for treating Internet services as equivalent to broadcast. Moreover, Joly speaks of the need to have a conversation with Internet services “to see how they can participate.” Services such as Hulu and Amazon’s streaming service are not even available to Canadians, but even with those services that are (such as Netflix), the notion of exploring how they can participate again assumes a regulatory approach in which offering a service leads to regulated participation in the Canadian system.

To date, the law has not supported that argument with the Supreme Court of Canada ruling in 2012 that ISPs are not “broadcast undertakings” for the purposes of the Broadcasting Act.¹⁵ However, Joly’s legislative overhaul could involve changing the law to allow for the imposition of new fees on Internet services.

The ISP tax would come at an enormous cost to other policy priorities. Internet access in Canada would become less affordable, expanding the digital divide by placing Internet connectivity beyond the financial reach of more low-income Canadians. The tax would be particularly damaging in indigenous communities.¹⁶ The increased costs would also be felt by the business community, potentially undermining the innovation strategy currently championed by Navdeep Bains, the Minister of Innovation, Science and Economic Development.

An Internet or ISP tax is largely premised on the argument that ISPs and Internet companies owe their revenues to the cultural content accessed by subscribers and they should therefore be required to contribute to the system much like broadcasters and broadcast distributors. The reality, however, is that Internet use is about far more than streaming videos or listening to music. Those are obviously popular activities, but numerous studies point to the fact that they are not nearly as popular as communicating through messaging and social networks, electronic commerce, Internet banking, or searching for news, weather, and other information.¹⁷ From the integral role of the Internet in our education system to the reliance on the Internet for health information (and increasingly tele-medicine) to the massive use of the Internet for business-to-business communications, Internet use is about far more than cultural consumption. Given its importance to virtually all aspects of modern day life, there are few policy goals more essential

¹⁴ Laura Payton, “GST on Netflix still a possibility as Liberals review cultural production” *CTV News* (16 October 2016), online: <<http://www.ctvnews.ca/politics/gst-on-netflix-still-a-possibility-as-liberals-review-cultural-production-1.3115996>>.

¹⁵ *Reference re Broadcasting Act*, 2012 SCC 4, [2012] 1 SCR 142.

¹⁶ “A New Internet Tax in Canada would Keep Indigenous People Offline,” *Motherboard* (2 November 2016), online: <http://motherboard.vice.com/read/a-new-internet-tax-in-canada-would-keep-indigenous-people-offline?utm_source=mbtwitter>; “Infographic: Internet Use and e-Commerce – Data from the 2012 Internet User Survey,” *Statistics Canada*, online: <<http://www.statcan.gc.ca/pub/11-627-m/11-627-m2014003-eng.htm>>.

¹⁷ “From Broadband Access to Smart Economies: Technology, skills and Canada’s future,” *Canadian Internet Registration Authority* (June 2016), online: <<https://cira.ca/sites/default/files/public/Broadband-Internet-access-across-Canada-en.pdf>>.

than ensuring that all Canadians have affordable access to the network. That goal would be badly undermined by an Internet tax that would increase consumer costs and stymie Canadian innovation.

5. Copyright Link Tax

Since the government is scheduled to conduct a full copyright law review in 2017, copyright should be excluded from the ambit of the canon consultation as it can be more thoroughly examined as part of that review. However, that has not stopped some groups from pointing to copyright reform as a source of new revenues for the sector. For example, Duff Jamison of the Alberta Weekly Newspaper Association told the Standing Committee on Canadian Heritage:

I do think that copyright laws were designed before we had this mass digital distribution of content. They probably need to be reviewed and brought up to date, so that there is a means.... We put in a possible suggestion. If you click through to a journalist's story, then at that point perhaps that journalist and the newspaper that employs him should receive a payment. There are ways to get at this.¹⁸

Jamison's comments point to a new copyright link tax. The link tax proposal, which has gained traction in Europe, speaks to the possibility of requiring compensation for merely linking to an article.¹⁹ Yet as the Supreme Court of Canada noted in the Crookes case involving links:

The Internet's capacity to disseminate information has been described by this Court as "one of the great innovations of the information age" whose "use should be facilitated rather than discouraged". Hyperlinks, in particular, are an indispensable part of its operation....

The Internet cannot, in short, provide access to information without hyperlinks. Limiting their usefulness by subjecting them to the traditional publication rule would have the effect of seriously restricting the flow of information and, as a result, freedom of expression. The potential "chill" in how the Internet functions could be devastating, since primary article authors would unlikely want to risk liability for linking to another article over whose changeable content they have no control. Given the core significance of the role of hyperlinking to the Internet, we risk impairing its whole functioning.²⁰

While the Crookes case involved defamation, the Court clearly understood the importance of linking to freedom of expression. Attempts to limit linking – whether by regulation or the imposition of fees – would undermine critical freedoms.

Moreover, creating a link tax would likely mean that sites and search engines stop linking to certain kinds of content. Such an approach would hurt independent creators and others who are dependent on links to find their audiences.

¹⁸ Standing Committee on Canadian Heritage, 42nd Parl 1st Sess, No 025 (22 September 2016) (Duff Jamison).

¹⁹ Ruth Coustick-Deal, "A Hitchhikers Guide to the Link Tax delivering your messages to MEPs" (4 October 2016) *Open Media*, online: <<https://openmedia.org/en/hitchhikers-guide-link-tax-delivering-your-message-meps>>.

²⁰ *Crookes v Newton*, 2011 SCC 47, [2011] 3 SCR 269.

C. Cultural and Tax Policy

6. Benefits Packages

An oft-overlooked source of revenue, benefits packages are created where there is a change in control/merger in the communications sector. Given the number of transactions in recent years, there is a considerable amount of money currently in the system. According to some estimates, benefits packages have already provided hundreds of millions of dollars and will provide \$420 million more over the next five years. Any calculation of cultural revenues should take this source into account.

7. Expansion of Tax Credits

Tax credits are commonly used by federal and provincial governments to support the cultural industries on the premise that public support should be contingent on private investment. The value of the tax credits runs into the hundreds of millions of dollars every year. As noted above, the CMPA data indicates that last year the value of federal and provincial tax credits for film and television production was over \$500 million. Tax credit programs similarly sit at the heart of support for the video game industry, where provinces compete with other jurisdictions to attract companies based on generous tax credit programs. Looking ahead, a rationalization of the tax credit system for the cultural sector is long overdue and would provide a far better sense of the full scope of taxpayer support for the industry.

8. Digital Advertising

There has been some emphasis on the need to target digital advertising, focusing on two issues. First, there has been discussion on applying digital sales taxes to large firms such as Google and Facebook that dominate the digital advertising space. Much like applying GST/HST to Netflix, sales taxes on digital advertising should be similarly uncontroversial. However, unlike consumer purchases such as Netflix subscriptions, digital advertising is typically a business-to-business transaction with some of those revenues offset by the GST/HST paid by the firms.

There have also been recommendations to change the Income Tax Act by removing the availability of tax deductions for advertising through services such as Google and Facebook. Some believe that removing the deduction will increase advertising on traditional Canadian-based services and sources. I think that's wrong and misunderstands how digital advertising works.

First, digital advertising is a function of the audience. Given that more and more people are shifting their viewing and media consumption habits from offline to digital, advertisers are unsurprisingly following their audience. A change in the tax code will not result in a shift to less effective advertising venues. Rather, it will simply make the digital advertising more expensive and leave Canadian business less competitive in the digital marketplace.

Second, digital advertising with companies such as Google typically involves a revenue share between Google and the site where the advertising appears. In other words, the advertising is on the same Canadian sites that we want to support. That revenue goes to Google, which then sends a portion back to the site or media organization. There is a reasonable debate to be had over the

dominance of Google and Facebook in the digital advertising sector, but cutting the flow of dollars to those companies will do little to actually help Canadian organizations seeking to attract digital ad dollars.

Part Two: Policy Reforms

The Cancon in a Digital World consultation should be about more than just demands for new funding. While copyright reform is off the table until the 2017 review, there are other issues or policies that could be adopted that would enhance the access to, and awareness of, Canadian content both at home and around the world.

1. Role of the CRTC

Canadian broadcasting and telecommunications law should keep pace with the changing digital environment. Rules that grant the CRTC the power to determine which channels may operate in Canada should be repealed. Instead, the Commission should concentrate on consumer protection and marketplace competition. The consumer protection issues include regulations maintaining maximum consumer choice through pick-and-pay models, truth in advertising on communications services, and guaranteed Internet access for all Canadians.

Competition encompasses an even broader range of issues including enforceable net neutrality rules to ensure that creators and consumers benefit from neutral network service without unfair preferences, safeguards against vertically integrated media giants unfairly favouring their own content, and the possibility of structural separation for companies that own significant content and carriage businesses.

The issue of net neutrality is particularly noteworthy within the context of the Cancon consultation. Minister Joly has strongly affirmed the government's support for net neutrality. However, as part of the CRTC's recent hearing on differential pricing, the CMA raised the possibility of establishing new requirements on Canadian providers to "zero rate" Canadian content. Such an approach would violate basic net neutrality principles against treating all content in an equal manner and should be rejected.

2. The CBC

Accompanying the Cancon consultation has been a very public debate on the ongoing troubles in the newspaper industry with intensifying criticism of the CBC's emphasis on digital news services, including a new opinion section and its acceptance of digital advertising, which are both viewed as direct competition for the struggling private sector alternatives. The CBC has argued that given the struggles of smaller papers, its online presence is more important than ever. Further, it has tried to downplay the significance of its digital advertising revenue, arguing that it amounts to \$25 million annually, a very small share of the total digital advertising expenditures in Canada.

It is helpful to separate two issues: the CBC competing in digital news as opposed to it competing for digital advertising dollars. While some have characterized CBC's role in providing digital news as an unfair, publicly-subsidized competitor to private news services that

increasingly rely on paywalls and subscriptions to generate revenue, the industry's reliance on paywalls is precisely why the CBC should be offering a free, taxpayer-backed digital alternative. An informed electorate demands that all Canadians have access to reliable news and expert opinion without regard for their ability to pay for it. In a digital world filled with paywalls and concerns about fake news, the importance of a publicly-funded, freely available, trusted media institution is greater than ever and the CBC (now backed by hundreds of millions of extra tax dollars) is ideally suited to meet that need.

While the CBC should be responding to its audience with a strong digital news service, it does not follow that it should also compete for digital advertising dollars. Its total digital advertising revenues are relatively small (and they are even smaller - roughly \$6 million - for the online news service) so the foregone earnings will not have a material impact on the CBC. However, there is a market effect of having the CBC compete for ad dollars that affects news organizations of all sizes. This includes large players like the Globe as well as smaller, independent media for whom a loss of thousands in advertising can be significant. An ad-free online service would better justify the public investment in the public broadcaster, make for an enhanced user experience, and remove the concern that the CBC is harming private sector alternatives by competing for advertising dollars.

The government just gave the CBC a \$150 million taxpayer boost- six times its annual digital ad revenue - with the promise of much more to come. It would be entirely appropriate for Minister Joly and the Standing Committee on Canadian Heritage to attach a condition to the funding that encourages a robust digital presence for the public broadcaster but mandates that it remain ad-free.

3. Digitization

Imagine going to your local library in search of Canadian books. You wander through the stacks but are surprised to find most shelves barren with the exception of books that are over a hundred years old. This sounds more like an abandoned library than one serving the needs of its patrons, yet it is roughly what a recently released Canadian National Heritage Digitization Strategy envisions. Led by Library and Archives Canada and endorsed by Minister Joly, the strategy acknowledges that digital technologies make it possible “for memory institutions to provide immediate access to their holdings to an almost limitless audience.”

Yet it stops strangely short of trying to do just that and this Cancon consultation offers the opportunity to do much more.

Rather than establishing a bold objective as has been the hallmark of recent Liberal government policy initiatives, the strategy sets as its 10-year goal the digitization of 90 per cent of all published heritage dating from before 1917 along with 50 per cent of all monographs published before 1940. It also hopes to cover all scientific journals published by Canadian universities before 2000, selected sound recordings, and all historical maps.

The strategy points to similar initiatives in other countries, but the Canadian targets pale by comparison. For example, the Netherlands plans to digitize 90 per cent of all books published in

that country by 2018 along with many newspapers and magazines that pre-date 1940.

Canada's inability to adopt a cohesive national digitization strategy has been an ongoing source of frustration and the subject of multiple studies which concluded that the country is falling behind. While there have been no shortage of pilot projects and useful initiatives from university libraries, Canada has thus far failed to articulate an ambitious, national digitization vision.

Financial and legal constraints are typically identified as two of the biggest barriers to ensuring universal digital access to Canadian heritage. Major digitization initiatives are certainly costly, but experience elsewhere shows that a government-led initiative that brings together public and private resources is possible with the right champion.

Digitization initiatives in other countries also demonstrate that the legal challenges are frequently overstated. For example, U.S. courts have ruled that massive digitization programs such as those undertaken by Google qualify as fair use. This means that millions of books can be freely digitized without fear of copyright infringement, though full access is limited to public domain works (where the copyright has expired) and licensed materials where the copyright owner has granted permission. Partial access may be granted consistent with fair use.

Canadian law features fair dealing rather than fair use, but a similar approach could be adopted. While the new Canadian strategy is largely limited to public domain works that can be digitized and made available without the need for permission or licences, the Supreme Court of Canada's interpretation of the law lends itself to a more ambitious digitization program in which all Canadian works are converted into digital format for research, study and education purposes.

All public domain works – which could reasonably be estimated to include anything published before 1940 - could be made immediately accessible in full text. Moreover, the government could launch a crowdsourcing initiative where Canadians identify additional public domain works of authors who died more than 50 years ago. This would include many books published in the 1940s, '50s, and '60s.

For the remaining works, fair dealing would permit a portion of the work be made available without the need for further permission. For full text, authors could be given the opportunity to specify how, if at all, their works should be accessible.

With Canada set to celebrate its 150th birthday next year, now is the ideal time to give ourselves a birthday gift that will keep giving for years to come. A national digitization strategy is long overdue and starts with a government committed to a bold vision of making Canada's heritage digitally accessible to all as part of its Cancon strategy for a digital world.

4. Open Access

The power of the Internet to shake up well-established industries has become a common theme in recent years as many businesses struggle to compete with new entrants and technologies. While it has captured limited attention outside of educational circles, the Internet has facilitated the emergence of open access publishing of research, transforming the multi-billion dollar

academic publishing industry and making millions of articles freely accessible to a global audience.

The shift toward open access becoming the default form of disseminating research in many fields is a remarkable change given that conventional publishing in expensive subscription-based journals was the standard in many areas as recently as ten years ago. The move toward open access means that global research is far more accessible to everyone – scientists, researchers, and the general public.

While the open access emphasis has focused on research articles, books and other larger publications that benefit from taxpayer support should also adopt more open models of access. The implications of open access policies extend far beyond shaking up the academic journal market. Openly available articles are already being incorporated into teaching materials, thereby replacing conventional textbooks and removing the need for copyright permissions and fees. Open access may also help foster greater collaboration between researchers and the business community with improved access leading to commercialization opportunities that might otherwise be missed.

Studies have consistently found that open access publications are more frequently cited and accessed given their open availability. Few policies would enhance the profile and access to Canadian content more than a shift toward open access for all publications receiving significant public funding. Given the large subsidies provided to Canadian publishers, it is appropriate to examine ways to enhance public access. New granting policies that would preserve the initial window for commercialization of books followed by open access would allow for book publishers to generate necessary revenues, reward authors, and increase public access and the benefits garnered through their significant investment in Canadian book publishing.

5. Opening the Canadian Market

Cultural protections have long meant that Canada restricts foreign ownership within the cultural sector. In certain areas, these restrictions no longer make sense and should be repealed. For example, in 2010, the Conservative government launched a consultation on foreign ownership in the book industry. The consultation concluded without any firm action being taken.

While there remains some opposition to foreign book publishers, neither Canadian nor foreign-owned businesses are more or less inclined to support the creation, distribution, and/or sale of books by Canadian authors by virtue of their ownership. In fact, even the Commissioner of Competition has advised the government to relax or remove restrictions in order to increase access to capital, improve conditions for the entry of new competitors, and apply pressure on incumbents to invest and innovate.