

Comments

to

**Hon. Mélanie Joly
Minister of Canadian Heritage**

by

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regarding

**Canadian Content
in a
Digital World Consultation**

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Introduction

1. Pursuant to the Heritage Canada's call for comments on the " Canadian Content in a Digital World Consultation " Jean-François Mezei provides its comments. I have participated in CRTC proceedings for over 9 years (Vaxination informatique) including a Petition to Governor in Council which result in the then Minister of Industry asking the CRTC to overturn its UBB decisions.

Executive summary

2. Moving to a digital economy requires new business models, and requires older companies either move out of the way or re-invent themselves with business models that are native to the digital era instead of sticking with their steam engine era business models when setting up their Internet presence.
3. Canadian incumbents have resisted and hindered a move to a native-digital broadcasting industry because they are not willing to cannibalize their highly profitable legacy linear TV and BDU businesses set at monopoly prices.
4. Canada must end its dependence on incumbents if it wishes to just into the digital economy for broadcasting, while giving those incumbents a fair chance to make the jump if they (finally) choose to do so.
5. Getting foreign companies to contribute to the GST is a large challenge. I suggest using the copyright act to provide the incentive for companies such as Netflix to have a presence in Canada which would trigger their participation to the GST.
6. Trying to replace tax or broadcasting fund revenues by taxing telecommunications carriers such as ISPs is not acceptable as ISPs merely carry packet and this is deeply entrenched into the Telecommunications Act. This would also be unfair for ISPs who specialize in providing access to non-broadcasting services (payment services etc) and unfairly burden ISPs which would result in reduction in affordable Internet access.

Incumbents are not the answer, they are the problem

If you don't cannibalize your own products, someone else will.

Steve Jobs.

7. Vertically integrated incumbents have vested interests in protecting their monopoly-priced media operations. This is especially true of Bell Canada Enterprises which launched a wireline BDU services in 2010 and (re)entered the broadcast content business in 2011 with the (re)purchase of CTV, increasing its stake later when it purchased Astral. Bell Canada has no interest in moving its customers to OTT services such as CraveTV which have lower profit margins due to competition from Netflix and others.
8. And even today, Bell Canada does not put on current programming on CraveTV. Shomi was a pale attempt with existing low value TV rights without any compelling content.
9. In August, when The Tragically Hip held their "final" concert in Kingston, it was streamed live on a US service called YouTube and on the CBC not by any Canadian incumbent streaming services since they don't exist. Instead of adopting and leading the way with digital services, Canadian incumbents protected their legacy linear TV business by hindering new media and throttling and limiting Internet connections with low UBB limits.
10. Despite a short time, history is showing that legacy/established companies are never leaders, and rarely are able to transform rapidly enough into a totally new digital model. Disruption comes from new entrants who are born digital-native and have nothing to lose.
11. Tower Records and in Canada, Sam the Record Man have been replaced by new entrants iTunes and Amazon. In the matter of a few years, iTunes became the world's largest music store and is now being challenged by music streaming services. It is a totally new entrant called Uber that is disrupting the taxi industry, not an established taxi company.
12. One notable exception is Montréal's LaPresse which was able to detach itself from legacy business model and jump feet first into a "millennial" business model. The CBC has also made good attempts at moving to digital, but they are pale in comparison, as the CBC maintains many of the legacy restrictions on digital (such as limiting "catch up" timing and quality, delaying news programmes etc). In fairness, tout.tv from Radio Canada appears to be more native to digital.
13. It should be noted that legacy newspapers who limit viewership of their web site via a paywall have no right to claim that the CBC is stealing advertising dollars since on the web, advertising dollars are based on the number of eyeballs. Paywalls explicitly prevent users from viewing content and thus viewing ads. It is a self inflicted wound. It's like a merchant complaining about the guy next door stealing customers instead of admitting the lack of customers is due to merchant not unlocking his door to let them in.

14. Because the history of the Internet shows that there is a high risk of failure by legacy companies who fail to convert fully to digital, Canada should not rely on legacy incumbents to lead the way to the future. It should instead foster the creation of new entrants who will disrupt and innovate.
15. Established companies who merely transpose their legacy business models to their web presence will not lead the way.

OTT "Set Top Boxes"

16. As a positive development, new Internet set-top boxes such as Apple TV and Roku are able to load apps written by developers. This is in contrast with TV sets and Blue Ray players that came pre-loaded with a fixed set of apps with no Canadian apps.
17. A number of Canadian services, including the NFB, and Radio Canada's tou.tv have their content available through those new devices. Even legacy broadcasters have dipped their toes, such as City TV making "go" (catch up) content available. CBC has a news app with programmes available on a delayed basis (catch up). CraveTV and FibeTV are there, but CraveTV has purposefully limited content while the FibeTV app must be tied to a legacy BDU subscription.
18. Such OTT platforms give potential new entrants a means to access potential customer/viewers worldwide or just in Canada without requiring negotiations with legacy media moguls in Canada.
19. The limited content on CraveTV (and soon to be defunct Shomi) is a good indication that legacy incumbents are not willing to lead in digital as it would cannibalise their legacy linear TV empires with customers "cutting the cord" to move to digital. The end result is that young Canadians obtain "Game of Thrones" through "other means". <wink wink. nudge nudge>

Giving Legacy Incumbents a level playing field

20. Despite the need to avoid relying on incumbents to shape Canada's cultural future, there is a need to give them a level playing field, especially one that would foster a jump to a digital model should they choose to do so.

Contributions to media funds

21. BDUs are expected to make contributions to media funds based on their revenues. New Media competitors are not. As it is not realistic to expect new media from anywhere in the world to make such contributions, Canadian BDUs should no longer be expected to make such contributions. The shortfall needs to be made up from general tax revenues. As cultural content is an integral part of Canada's identity everyone should share in its production and no single industry should be burdened with those costs.

CPAC, APTN, TV5 and other 9(1)h services

22. A number of services are considered essential and funded through contributions by BDUs. And while the "must carry" rules should continue for BDUs, funding should come from general tax revenues with a precondition that they be available OTT. In the case of CPAC, it fulfils a very important role in democracy, and its on-line service surpasses its linear TV channel on BDUs by being able to provide live coverage of multiple events at the same time.
23. Availability on OTT platforms must not be "catch up" or "library" rights, but be in the same window and content quality as the current linear broadcast. (for instance, CBC's web based "catch up" is often limited in screen size and downgraded to stereo sound, and current event programmes only available the next day at which point their content is already stale.)
24. If Canada is to make the move to Digital, it may have to break through legacy rights models (such as broadcast, catch up, library rights which limit timing etc). These rights are imposed by legacy media to protect their empire.

Freeing producers from legacy incumbents

25. When Bell Media purchased Astral, it removed from the "free market" the last significant independent media company who could have made the leap to digital without cannibalizing a legacy content distribution model.
26. One of the problems with the current environment is that smaller production companies are dependent on being selected by incumbents for funding. But to be disruptive and innovative, one must be able to go against old legacy incumbents who refuse to move. It is a bigger leap of faith when you can't transition with one foot in digital and the other still with incumbents. But to go digital, you need to jump in the water with both feet, not just dip a toe in it.
27. Linear television has a fixed number of hours per season available, and they are mostly filled with US content. This leaves few opportunities for Canadian content to emerge, and the little that does emerge is often repackaged foreign content such as Amazing Race Canada because incumbents feel there is less risk in reproducing concepts that have had success in the USA.
28. The .com bubble left many more casualties than winners. But it left winners. Allowing more freedom to develop new content without the incumbents' "curation" will lead to more failures, but may yield more winners. Not doing so ensures there are no winners.
29. New platforms on the Internet, whether YouTube, Netflix, an app on a STB or building your own distribution service make it possible for smaller new entrants to get to their audience, whether in Canada or worldwide. Canadian incumbents have no worldwide distribution as they are primarily importers of US contents and have refused to lead the way to claim worldwide digital stakes as Netflix and Youtube have done.
30. Incumbents prefer to hoard Canadian rights to prevent availability on OTT platforms to protect their linear TV businesses, which hinders the ability of Canadian content to reach younger audiences who are not interested in their grand parents' linear televisions.

The BDU is a dinosaur

31. Many Internet disruptions have resulted in removing extra layers between the producer and the consumer. Airlines now sell directly to consumers. The Internet now allows large corporations such as Apple to have direct relationships with their retail customers. Similarly, an Internet service will reach the whole world by default, unless it decides to restrict availability. A content producer could make its content available worldwide on the Internet without having to deal with BDUs or TV networks in each and every country.
32. As the Internet allows worldwide distribution of content, it potentially allows cultural producers to reach a larger audience, whether they post videos on YouTube, make content available via Netflix, or host their own content. In the long term, BDUs may become far less relevant. While government policies should foster BDUs to evolve into a new business model, it should in no way seek to protect them as they currently hinder the move to a new digital culture which could allow Canadian content to reach more people with fewer hassles.

The Broadcasting and Telecommunications Acts

33. There have been some rumours of restructuring of the Broadcasting and Telecommunications Acts. Under no circumstances should they be merged.
34. The Telecommunications Act concerns a content agnostic distribution of data, whereas the Broadcasting Act is concerned with production, aggregation and distribution of broadcasting content.
35. Where there is overlap is that a BDU or a Television station/network may use a Telecommunications Service to reach customers. As was decided by the CRTC and the Federal Court of Appeal for the Bell MobileTV case, it is possible to deliver broadcasting content using a telecommunications service in which case, the telecommunications carrier merely treats the packets as data without preference or discrimination.
36. While the precedent has been set with the FCA decision on the above case, an update on Section 4 of both cases could be made to make it clear that a broadcaster may use a telecommunications service to deliver its content which ceases to be "broadcasting" during transit as it is merely content agnostic packets. Such a change would allow BDUs to deliver their content over the Internet, as VMedia tried to do before being blocked by Bell.
37. Currently, Telcos such as Bell Canada, Telus and soon-to-be-extinct MTS use separate VLANs in the telecommunication service to claim that their BDU (IPTV) service is separate from the Telecom service (ISP business) and exempt from Telecommunications Act. Similarly, cablecos use separate frequencies on the coaxial cable to claim that TV channels are not carried by the telecommunications service even if they travel as a merged signal on fibre links.
38. With the move to turn the coax into a baseband medium with 1 very large channel instead of the current broadband 150 to 200 separate 6MHz channels, even cablecos may end up with only a virtual distinction between their BDU and Internet services.
39. Since a BDU service is able to be delivered over a data/Internet connection, this does not create a conflict between the 2 Acts. The BDU is an aggregator of content, and then uses a Telecommunications Carrier for content agnostic delivery of those packets to end users. So the Broadcasting act can continue to control the BDU as aggregator of broadcasting content, and the Telecommunications Act can continue to regulate the carrier.
40. Where things get interesting is when an independent BDU wishes to be delivered over a cable or telco telecom infrastructure. Currently, incumbents use those networking smoke and mirrors to give their BDU and undue preference on their Telecommunications infrastructure. (such as enabling multicasting, not counting data used). Moving the delivery of BDU content to the Telecommunications Act would require incumbents treat all content agnostically which means opening their multicasting to competing BDUs.

41. On the other hand, with the future moving to on-demand access to content, except for live multicasting may no longer be so important. In the USA, the major sports networks are starting to bypass legacy TV and make their live events available via apps on devices such as AppleTV.
42. The above has been a discussion mostly from a Telecommunications point of view. The Broadcasting point of view will likely need far more rethinking to enable and foster independent production of content to be delivered outside of the legacy linear TV and BDU environments.
43. Therefore the Broadcasting Act needs to focus far more on enabling and facilitating production of Canadian content than in its distribution.
44. As the Internet is disrupting both BDU and linear TV models, these two should be given a chance to re-invent themselves under a new "all digital" on-demand business model. As such, the Broadcasting Act should encourage such moves instead of imposing regulations that force legacy TV to continue to operate without changes. (This implies there is also a move to provide affordable Internet to all Canadians).
45. If, despite regulations fostering such a change, legacy linear TV and BDUs choose to protect their business instead of cannibalizing it to create a new digital business model, then they must be allowed to die as their existence as dinosaurs hinders new entrants who wish to lead the way. (for instance, an incumbent hoarding rights that prevent new entrants from providing great content on new platforms).
46. Just as LaPresse successfully moved from legacy "pay for a printed newspaper" model to a subscription-less model where you access updated news when you want, the broadcasting industry needs to make that leap to the new business models of the digital era.
47. Merely transposing a legacy "brick and mortar" business model to the Internet does not work as new entrants with new business models better suited to the digital age will still kill older companies.

Tax and Revenues

48. Funding for Canadian content is changing due to a number of issues:
 - BDU contributions will decline as BDUs see lower ARPU as people shave the cord, and as people cut the cord entirely.
 - More and more content will be distributed through unregulated systems.
 - Many of the unregulated systems are outside the geopolitical reach of the taxman. (aka: Netflix). Canadians services would be at a disadvantage if forced to charge taxes while foreign competitors don't have to.
49. Earlier in this document I have advocated that BDUs be relieved of their burden to contribute a percentage of their revenues to media funds in order to create a level playing field with new entrants who are not required to contribute (and it is logistically not possible to require such contributions from a company in Nepal making content available to Canadians.)
50. This shortfall in funding of media funds should come from general tax revenues. It is the only logical means to replace such funds.
51. There has been a discussion of shifting this burden to ISPs. While BDUs, by law, operate exclusively in broadcasting, ISPs are regulated by the Telecommunications Act. Should an ISP who specializes in providing connectivity for payment systems be forced to contribute to some broadcasting fund through a special tax ?
52. In fact is the Telecommunications Act is meant to ensure that carriers remain content agnostic, so taxing them because some of the packets they deliver contain bits that originated from someone who would be considered a broadcaster if in Canada is not logical and unfair.
53. Furthermore, as others had raised, putting the burden on ISPs also raises the price to access the Internet to access services such as banking, email and a number of applications that have nothing to do with broadcasting.

Copyright and taxes

54. It is very hard to expect a content provider in Madagascar to charge the GST to the 27 Canadian customers it has, or to expect some ad-supported content provider from Vanuatu to somehow contribute to the GST. While Netflix is the visible elephant in the room, any policy must consider that the worldwide nature of the Internet results in a large number of situations that make it impossible to target any/all content providers.
55. One area to consider are advertising networks such as Google-AdSense, Doubleclick, Facebook etc and ensure that they contribute to the GST when they sell their services to Canadian companies who advertise on the Internet. So if Tim Hortons buys advertising from AdSense, AdSense would collect the GST and remit it to Revenue Canada, even if the ad was displayed when a Canadian was accessing a web site from Vanuatu. Ensuring that the major ad networks participate in the GST when selling advertising services to Canadian companies should fill some of the gaps.
56. The other area to consider relates to copyright. While current tax laws allow giants such as Netflix to carefully avoid participation in the GST, what if the copyright law offered fewer protections (or no protections) for bodies who hold distribution rights in Canada but have no presence in Canada ?
57. A company like Netflix could still remotely buy rights for Canada, but would not be able to fight in court should there be infringements. This might be sufficient incentive to get Netflix to stop avoiding a presence in Canada. Tax laws would have to cover situations where an outfit such as Netflix would just get some numbered Canadian company to buy the rights (so it can protect them) while Netflix would remain without presence in Canada and thus not contribute to GST.
58. Various international copyright agreements may make this scheme illegal. Providing incentives to have a Canadian presence for copyright protections would be a subtle way to get tax revenues from those who provide significant "broadcasting" content to Canadians.
59. Had Canadian incumbents lead the way into the digital economy, CraveTV, tout.tv, illico. tv would be leaders and maybe Bell might go worldwide with CraveTV. Because we're late staking our claims, we're left with the crumbs and relying on foreigners.

Conclusion

60. Canada missed the initial gold rush, allowing the likes of Google and Netflix to stake large claims. This is in part because our incumbents feared making the real leap into digital, fearing cannibalization of their monopoly-priced legacy broadcasting businesses.
61. It is time to end Canada's dependence on incumbents and allow innovative and creative producers to develop content without a dependence on incumbents and make the full leap to digital distribution.
62. At the same time, regulation and financial burden on BDUs and TV networks need to be loosened to give them a chance to make the leap to digital if they so choose. In exchange, they must not be propped up when their legacy business model fails and be allowed to fail to make room for innovation with new entrants.

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