



CFTPA

Representing television, film
and interactive production in Canada

ACPFT

Porte-parole de l'industrie de la production télévisuelle,
cinématographique et interactive au Canada

www.cftpa.ca

May 14, 2010

Via CRTC comments/interventions form

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2010-97: Call for comments on the reporting requirements for new media broadcasting undertakings – Reply comments

1. The Canadian Film and Television Production Association (the “CFTPA” or the “Association”) welcomes the opportunity to provide these **reply comments** with respect to the above-referenced Notice of Consultation.
2. The CFTPA represents the interests of screen-based media companies engaged in the production and distribution of English-language television programs, feature films, and new media content in all regions of Canada. Our almost 400 member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.
3. Independent producers are increasingly creating new media broadcasting content for distribution on digital platforms in order to provide consumers with content how and when they want it. Given the growing importance of new media activities to our members’ businesses, having access to information and data on broadcasting in new media is of critical importance to their future business prospects.

The CFTPA’s Reply Comments

General comments

4. At the outset, the CFTPA notes that its comments in this reply submission are limited to issues related to English-language new media audio-visual content (i.e., new media content related to television-type content and not audio or radio-type content) and new media non-linear content related to audio-visual content. Failure on the part of the CFTPA to address a specific argument or issue raised by other parties in their initial comments filed in this proceeding should not be construed as agreement with, or acceptance of, such argument or issue.
5. The Association is disappointed that, in their initial comments filed in this proceeding, a number of parties have attempted to revisit the CRTC’s determination made in *Broadcasting Regulatory Policy 2009-329* (the “New Media Policy”), and repeated in the Notice of Consultation, that measuring and monitoring Canadian broadcasting content in the new media environment is important and necessary.

6. Specifically, in the New Media Policy, the Commission concluded the following:

...that the measurement and monitoring of Canadian broadcasting content are necessary to ascertain the growing importance and significance of broadcasting in new media in the Canadian broadcasting system. The Commission acknowledges the limitations of current data measurement tools but nonetheless sees value in collecting the best information available. Broadcasting content data will provide the Commission with a more complete base from which to review and develop appropriate broadcasting policy in an evolving environment.¹
7. The Commission went on to express the view that, given that new media broadcasting undertakings (NMBUs) are already collecting broadcasting content data for their own purposes, imposing reporting requirements for this data would not substantially increase the regulatory burden. The CFTPA agrees.
8. The Association reiterates its view that the proposals we have put forward in this proceeding strike a reasonable balance between basic information and data necessary to monitor the growing significance of Canadian new media broadcasting and the burden associated with such reporting.
9. Some parties have attempted to argue that imposing any or some new media reporting requirements on NMBUs will require entirely new workflows, systems, and resources, and thus would result in an undue regulatory burden on reporting parties. However, most companies with new media broadcasting activities are already collecting a significant amount of information and data internally for their own operational use, including detailed usage metrics for advertising sales purposes. In our view, to the extent that new workflows may be required to conform to the reporting requirements established by the Commission, the new workflows need not be overly burdensome.
10. Moreover, as MTS Allstream pointed out in its initial comments, as part of its Data Collection System, the Commission has since 2008 required all broadcasting and telecommunications entities to complete CRTC Form 560 on an annual basis. This form requires such entities to report revenues generated through websites, portals, or applications that display audio and/or audio-visual content, along with expenses related to the creation, maintenance, and delivery of such content.
11. As such, modifying Form 560 to seek additional information and data on new media broadcasting activities or creating an entirely new Form similar to Form 560 to capture more specific new media broadcasting activities should not substantially increase the regulatory burden on NMBUs, as the Commission rightly concluded in the New Media Policy.
12. Some broadcasters suggested that requiring them to report on their new media activities would detract from their ability to innovate and experiment on new media platforms. The CFTPA sees no connection. Broadcasters will need to innovate and experiment by necessity as audiences increasingly demand content how and when they want it. Reporting requirements will not be a roadblock to participating in the new media environment.
13. A number of parties argued that there are too many challenges associated with imposing reporting requirements on NMBUs. While we acknowledge that there are challenges associated with measuring and reporting new media broadcasting activities, these challenges are not insurmountable. For example, while NMBUs may currently use different metrics software and may gather different information and data, this can be addressed by developing common standards and metrics for reporting to the Commission.

¹ *Broadcasting Regulatory Policy CRTC 2009-329*, Review of broadcasting in new media, June 4, 2009, at paragraph 52.

14. Given the growing importance of new media broadcasting within the overall Canadian broadcasting system, not collecting relevant information and data on new media broadcasting activities would be foolish. Rather than throw up our collective hands and say “this is too hard” or “this can’t be done, so let’s not do it,” the Association would encourage all parties to work together to find reasonable solutions to any challenge associated with measuring and reporting new media broadcasting activities.
15. Accordingly, the CFTPA supports in principle the proposal made by CTVglobemedia Inc. (CTVgm) and Canwest Television Limited Partnership that the Commission establish and coordinate the activities of a “New Media Reporting Working Group” to discuss the challenges associated with measuring and reporting new media broadcasting activities, and recommend solutions to such challenges where possible. However, our support is conditional on the working group having broad representation, including independent producers, or the CFTPA, as their representative, and new media funds such as the Canada Media Fund and the Bell Fund.
16. In our view, it would be inappropriate to limit participation in such a working group to just NMBUs and Commission staff. It is important that new media content creators be included in the discussions given the significant role that they play in supplying content for the new media broadcasting market. It is equally important that representatives from new media funds be at the table to ensure that reporting requirements meet the needs of all stakeholders and are designed in a streamlined and efficient fashion. It may also be useful to allow “observers” to attend working group meetings so that they can monitor and learn from the discussions.
17. Moreover, the CFTPA respectfully submits that limiting participation in a New Media Reporting Working Group to just NMBUs and CRTC staff would effectively turn what is currently a public process into a private one held behind closed doors. That would not be in the public interest.
18. From our perspective, the mandate of the working group will be key. It must be to work through challenges and propose solutions and common standards for reporting, and not allow for participants to erect roadblocks and resist reporting requirements. In other words, parties should strive to achieve consensus on what is possible and reasonable in terms of reporting.
19. The working group would need to be given a hard deadline to complete its work and report to the Commission, so that it doesn’t simply become a delaying tactic to the implementation of reporting requirements. Best efforts should be made to complete the work in time for reporting to commence in the fall of 2010, as proposed by the Commission in the Notice of Consultation.
20. Below we respond in more detail to certain comments made by other parties in their initial comments. The CFTPA stands by its proposals made in its initial comments in this proceeding, but offers the following additional observations.

Doing nothing should not be an option

21. A central theme expressed in several initial comments filed in this proceeding is that measuring new media broadcasting in any detail is wrought with challenges and is too difficult. As such, some parties argued, the Commission should, therefore, not attempt to measure new media broadcasting at all.
22. For example, Shaw Communications Inc. noted in its initial comments that the *Broadcasting Act* requires the Commission to issue exemption orders where “satisfied that compliance with [the requirements of the Act and regulations] will not contribute in a material manner to the implementation of the broadcast policy set out in subsection 3(1).” However, as Astral Media Inc. noted, if the Commission does not collect information and data on new media

broadcasting activities and monitor the new media environment, how will it and interested parties know that new media broadcasting is “contributing in a material manner” without regulation?

23. Another argument put forward is that if the Commission only intends to require reporting from a subset of NMBUs, then there’s no point in doing it at all since such an approach will provide only a limited picture of the new media broadcasting environment.
24. The CFTPA disagrees with this view. The fact is that the Commission needs to start somewhere in terms of collecting information and data on new media broadcasting. The first phase of data collection may not be perfect or complete, but it will establish an important base for trending. It will not be a waste of time and resources, as some parties suggested.
25. Indeed, older BBM Canada data collection systems such as the television diary system were far from perfect, but that did not stop broadcasters and advertisers from using and buying into the system. Eventually, the diary system evolved into better television measurement systems such as the television meter system and now the Portable People Meter.
26. The federal government’s recent launch of national consultations on developing a National Digital Economy Strategy, which could include a digital media content component, makes the need to begin collecting and tracking information and data on new media broadcasting all the more important and urgent. As the Ontario Media Development Corporation (OMDC) noted in its initial comments, “the ability to measure the impact and success of Canadian new media initiatives will be important to ensure that [a National Digital Economy Strategy] is relevant and effective over the long term.”
27. It is understandable that licensed broadcasting undertakings are reluctant to take on additional reporting obligations. However, in our view, the public interest benefits associated with measuring, monitoring, and learning more about the new media broadcasting environment far outweigh the concerns raised by parties in their initial comments.

The CRTC’s objectives and proposed use of new media data do not need to be clarified

28. Some parties raised questions concerning the scope and intended use by the Commission of new media information and data to be collected. They argued that the Commission must clearly indicate why it needs certain information and data and what it intends to do with it before determining whether such information should be collected.
29. The CFTPA respectfully submits that, given the rapidly evolving nature of the new media broadcasting environment, it is unreasonable to expect the Commission to have all the answers at this time.
30. As is often the case with data collection, determining what information to collect becomes clearer only after some basic information and data is collected and analyzed. In fact, as trending data becomes available and a picture of the new media broadcasting environment begins to emerge, the Commission may need to adjust its reporting requirements to better capture and understand new media market activities.
31. Surely, all parties should have confidence in the Commission that it will collect only the information and data that it deems necessary to properly monitor new media broadcasting in Canada, while balancing the issue of regulatory burden.

Relying on third-party sources of information and data is not sufficient

32. A number of parties suggested that the Commission rely primarily or solely on third-party sources of information and data for monitoring developments in the new media broadcasting environment. While the CFTPA believes that obtaining third-party research and data is an important and necessary component in effectively monitoring the new media broadcasting environment, it should not be the primary or sole method of doing so for several reasons.
33. First, third-party sources of information or data such as comScore, Nielsen, or the Interactive Advertising Bureau of Canada provide too broad and aggregate data to provide the level of insight required to monitor new media broadcasting properly. For example, comScore, which to our knowledge offers the only syndicated online measurement service available in Canada at this time, captures data for only the most visited websites. As a result, many smaller or niche broadcaster websites, which may be popular among a smaller but nevertheless engaged user base, are not captured by comScore data.
34. Second, as CTVgm pointed out in its initial comments, there are significant questions as to the accuracy of third-party research products that are based on random consumer surveys or, as is the case with comScore's Video Metrix report, opt-in panels of consumers and projecting results to the population at large. As CTVgm noted during its appearance at the New Media Policy hearing in March 2009:
- There are some wild discrepancies between our internal metrics...versus our external metrics, or external analytics, which are [measured] by comScore. In the month of December [2008], just as an example, we had a 646 percent discrepancy between the number of video streams that we reported and the number of video streams that comScore reported.²
35. It is clear, therefore, that if the Commission were to rely primarily or solely on third-party data, it would not result in a sufficient or accurate picture of the new media broadcasting environment.
36. As CTVgm acknowledges, providing internal data such as unique visitors to websites, page views, video views, video starts, and time spent are all theoretically possible. Indeed, we would be surprised if this data are not already being collected by NMBUs for their own internal business use. There's no doubt that gathering such data is absolutely necessary in today's new media environment in order to be accountable to online advertisers. Therefore, charging a New Media Working Group to develop common standards and metrics for the reporting of such internal data to the Commission is a reasonable and appropriate approach.

The collection of financial information is appropriate

37. Some parties suggested that requiring the reporting of financial information relating to new media broadcasting activities is unnecessary and inappropriate. Rogers Communications Inc. (Rogers), for example, argued that "no purpose would be served by discretely reporting" revenues associated with new media broadcasting.
38. The CFTPA disagrees. In fact, in our initial comments we provided a very real and legitimate purpose for collecting financial information (namely revenues and expenses) related to new media broadcasting activities, particularly those affiliated with licensed broadcasting undertakings. We repeat our rationale for collecting such information below for clarity.

As the Commission is aware, virtually all advertising sales made by broadcasters today are integrated TV-new media sales. While the new media portion of these sales is likely currently small, broadcasters have an incentive to allocate a greater portion of the revenues from integrated sales to

² *Broadcasting Notice of Public Hearing CRTC 2008-11*, Hearing Transcript, Vol. 9, paragraph 10652 and 10653, March 10, 2009.

the unregulated new media sides of their businesses (i.e., to their affiliated new media broadcasting undertakings) and to load as many costs on the regulated sides of their businesses (e.g., to licensed programming undertakings).

This is problematic since, for the most part, broadcasters' required expenditures on Canadian programming are based on gross regulated revenues. In fact, the potential for "gaming" of costs and revenues will be even greater going forward as the group-based regulatory framework for television services, which includes expenditure requirements based on regulated revenues, takes effect in 2011.

Accordingly, the CFTPA respectfully submits that transparency with respect to new media expenses and revenues is absolutely necessary to curb the potential for cost and revenue misallocation as between regulated and unregulated activities. Moreover, we recommend the Commission issue guidelines regarding proper financial allocation to licensees affiliated with new media broadcasting undertakings, and to affiliated new media broadcasting undertakings themselves, as a way of ensuring consistent and accurate reporting.

39. Broadcasters often claim that revenues from new media activities are modest compared to those from traditional broadcasting. However, there is no way for the Commission or interested parties to verify these claims if only broadcasters have access to this data.
40. Accordingly, the CFTPA submits that the collection of expenses and revenues (and perhaps profits or losses) associated with new media broadcasting activities is absolutely essential to curb "gaming". While it is necessary for the Commission to collect financial information on an individual undertaking basis to properly assess issues of gaming, given the competitive nature of such information, we would not object to the Commission disclosing such information publicly on an aggregate sector basis only.

Who should be subject to reporting requirements?

Unaffiliated NMBUs

41. In initial comments filed, there was considerable discussion about who should be subject to reporting requirements. A number of parties noted that it would be impractical for the Commission to require reporting from any unaffiliated NMBU, and, therefore, it would place affiliated NMBUs at a competitive disadvantage if they were the only parties required to report to the Commission. Some also noted that it would be unfair for the Commission to require reporting by only Canadian-based NMBUs.
42. Accordingly, a number of parties stated that any reporting requirement placed on affiliated NMBUs should be equally, or substantially, applied to unaffiliated NMBUs. The CFTPA acknowledges the competitive inequity concerns raised by affiliated NMBUs and agrees that it is not unreasonable for the Commission to ask certain unaffiliated NMBUs to report on their new media activities in exchange for continued exemption from regulation.
43. The Commission states in the Notice of Consultation that it is "only interested in obtaining data from undertakings that have the appropriate legal rights in Canada to the content in question." The CFTPA agrees with the Independent Broadcasters Group (IBG) that the "correct approach should be to exert jurisdiction over all undertakings that carry on an undertaking, in whole or in part, in Canada, and that, therefore, *should* require legal rights to use content in Canada." [emphasis original] We agree that it is more important that the CRTC monitor the actual activities performed in Canada by a NMBU, "than to pre-judge the question by asking only whether an undertaking actually acquires the Canadian rights that it should."
44. However, we are mindful of the fact that a potentially large number of unaffiliated NMBUs fall under the New Media Exemption Order and, therefore, it may not be practical at this point to collect data from all of them. Given this reality, the Commission specifically asked in the Notice

of Consultation what criteria and methodology should it use to define the subset of unaffiliated NMBUs, carried on in whole or in part in Canada, that should submit data. In particular, the Commission asked whether the subset should be defined by level of revenue, unique visitors, and/or the amount of content transmitted.

45. Beyond considering voluntary registration with the CRTC of all NMBUs that are subject to the New Media Exemption Order, the CFTPA believes that a reasonable starting point would be to limit reporting requirements to unaffiliated NMBUs whose predominant activity is producing or distributing professional new media broadcasting content for commercial purposes. As discussed below, an exemption should apply to independent content creators given their very limited resources.

Affiliated NMBUs

46. With respect to affiliated NMBUs, smaller independent broadcasters argued for an exemption to reporting requirements given their limited resources and marginal presence in the new media space. In this regard, the CFTPA generally agrees with the view expressed by CTVgm that “the size or the level of revenues of an undertaking is irrelevant when the Commission is attempting to monitor the development of broadcasting content in the new media environment.”
47. However, we are sympathetic to the potential burden that detailed new media reporting would have on smaller independent broadcasters, given that the majority of independent production companies are also small businesses with very limited resources. Therefore, as suggested by various parties including the IBG, smaller affiliated NMBUs could be required to report less detailed information and data than that required of larger undertakings. To be clear, any exemption to reporting granted to affiliated NMBUs would be based on the level of detail of the reporting, not to reporting itself. All affiliated NMBUs, regardless of size, should be required to report basic information.
48. Independent producers generally have even fewer resources than the smallest broadcasters and they do not have the workflows, systems, or staff in place to report to the Commission like licensed broadcasting undertakings do. As such, the CFTPA agrees with the OMDC’s recommendation that “independent content creators who are in no way affiliated with a licensed undertaking and who are engaging in self-distribution of their content should be exempt from reporting on such distribution.”
49. We note that Rogers has raised the concern that requiring all affiliated NMBUs to report on their new media activities would potentially capture some of its consumer magazines, while excluding such magazines not owned by companies affiliated with traditional broadcasting undertakings. As such, the CFTPA supports Rogers’ proposal that only those NMBUs directly tied to licensed broadcasting undertakings be required to report to the Commission.

Broadcasters provide a significant level of existing new media broadcasting content

50. A number of broadcasters have challenged the Commission’s observation made in the New Media Policy that traditional broadcasters are currently the primary source of professionally produced broadcasting content in new media. They point to comScore data that show that Google, YouTube, and Facebook are among the most watched websites for video, and note that few Canadian broadcaster websites make the most-visited list.
51. What these parties fail to point out, however, is that a significant level of the video content offered on YouTube and other top-ranked video websites is user-generated rather than professionally produced. And while professionally produced can be defined in many ways, the

CFTPA would define “professionally produced” as that which is made by persons or entities that are in the business of producing or distributing content on a commercial basis.

52. Moreover, broadcasters have failed to acknowledge that the three largest broadcasters in Canada – CTV, Canwest, and the CBC – are the main source of professionally produced Canadian video content available online. As CTVgm noted at the public hearing last December pursuant to *Broadcasting Notice of Consultation CRTC 2009-614*³:

While only seven of the top 30 video [web]sites in Canada are Canadian, CBC, Canwest and CTVgm together represent the source of over 55 percent of the total Canadian videos viewed online.⁴

53. Given the above, the Commission should reject suggestions that it should not require broadcasters or other affiliated NMBUs to report on their new media activities because they do not provide the majority of audio-visual content online.

Conclusion

54. In the CFTPA’s view, the proposals we have put forward in this proceeding strike a reasonable balance between basic information and data necessary to monitor the growing significance of Canadian new media broadcasting and the burden associated with such reporting.
55. Given the growing importance of new media broadcasting within the overall Canadian broadcasting system, it is critical that the Commission begin collecting relevant information and data on new media broadcasting activities as soon as possible.
56. While we acknowledge that there are challenges associated with measuring and reporting new media broadcasting activities, these challenges are not insurmountable. While initial data collection by the Commission may be incomplete and imperfect, in our view these are insufficient reasons for not collecting such data.
57. If the Commission believes that the challenges associated with measuring and reporting new media broadcasting activities require further discussion and study, the CFTPA supports in principle the establishment of a broad and inclusive industry New Media Reporting Working Group to discuss the issues, and recommend solutions where possible. It is important to note that our support is conditional on the working group having broad representation, including independent producers, or the CFTPA as their representative, and new media funds such as the Canada Media Fund and the Bell Fund.
58. The CFTPA appreciates the opportunity to file these reply comments in this important proceeding.

All of which is respectfully submitted.

Yours truly,

[Original signed by Norm Bolen]

Norm Bolen
President and CEO

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³ *Broadcasting Notice of Consultation CRTC 2009-614*, Call for comments following a request by the Governor in Council to prepare a report on the implications and advisability of implementing a compensation regime for the value of local television signals, October 2, 2009.

⁴ *Broadcasting Notice of Consultation CRTC 2009-614*, Hearing Transcript, Vol. 2, paragraph 2603, December 8, 2009.