

**THE CANADIAN FILM AND TELEVISION  
PRODUCTION ASSOCIATION**

**PRESENTATION BEFORE  
THE STANDING COMMITTEE ON CANADIAN  
HERITAGE**

**RE: BILL C-48**

**4 JUNE 2002**

*(CHECK AGAINST DELIVERY)*

Good morning. My name is Beatrice Raffoul and I am Vice President, External Relations, of the Canadian Film and Television Production Association. With me this morning is Stephen Stohn, Vice President Epitome Pictures Inc.– producer of *Degrassi*, *The Next Generation*, and Principal Partner in the law firm of Stohn Abramovitch, specialists in copyright law. Mr. Stohn is also the Chair of the CFTPA Copyright Committee.

The CFTPA represents over 400 companies that finance, produce, distribute and market television programs, feature films and multi-media products in English. Our members are present in every region of Canada, from coast to coast to coast. We are the content creation industry and the protection of intellectual property rights or copyright is extremely important to us.

It is generally agreed by all but a handful of people that Internet retransmission of the iCraveTV or JumpTV variety is simply wrong. It is of no net benefit to society. The government has made it clear that it will legislate against this type of Internet retransmission, and that has led to us all being here today.

We would like to highlight that we are here today after having spent the last two years working with officials of the Departments of Canadian Heritage and Industry, as well as, working with members of a media content coalition. We felt strongly that this was a matter of public policy and that neither the courts nor the Copyright Board should determine public policy. We are looking for your support to move forward. (turn over to Mr. Stohn)

As a practical matter, we suggest there are three primary options to legislate against this type of activity.

- The first is a so-called “Internet carve-out”, in other words an express statement in the *Copyright Act* that Internet retransmission is not allowed. There is a lot to be said for this option. It is one that we would certainly support. And the United States has effectively accomplished this in its own copyright legislation.

If there is a drawback to this option, it is that it is possibly too blunt an instrument. It rules out the possibility of legitimate cable and satellite operators in Canada using the Internet as a beneficial adjunct to their activities. It does not select the aspects of Internet retransmission that are bad for society and legislate those out, it simply legislates out all Internet retransmission.

Having said that, it is certainly an effective short-term solution, and we would support it.

- The second option is to try to differentiate the copyright policy issues from the broadcast policy issues raised by Internet retransmission, and then to deal with the largely copyright component within the *Copyright Act*, while dealing with the largely broadcasting component under regulations via the CRTC under the *Broadcasting Act*. Thus under the *Copyright Act* there would be provisions requiring effective technological measures to keep the retransmissions not just within Canada but specifically to authorized users within Canada. And under the CRTC regulations, the Internet retransmitters would hopefully be licensed under essentially the same conditions that cable or satellite operators are

licensed, including the panoply of requirements such as tiering and linkage, simultaneous substitution, operating community channels, providing funding to the Canadian Television Fund, etc.

There is a lot to be said for this option, and it is also one that we would ultimately support. Effectively, this is the option which the government has selected.

If this option has a drawback, it is the assumption that there is a clear distinction between copyright policy objectives and broadcasting policy objectives. Yet this is not the case. The CRTC has in the past quite properly taken the position that its mandate was to deal with broadcast policy, and that any impact upon copyright was at best a secondary concern to it. If the CRTC in its wisdom were to decide that its broadcast policy objectives would be met by licensing Internet retransmitters with very minimal conditions, then this would have a clear impact upon copyright, and indeed could render almost useless the *Copyright Act* component of the legislation.

Nevertheless there is certainly a good hope that the CRTC would impose more than minimal conditions upon Internet retransmitters, and would at the very least place a ban on advertising added to the Internet retransmission. Cable and satellite operators have never been able to add advertising to their retransmissions—something that would suddenly change them from being enhancers of the broadcast signal to being direct competitors of the broadcasters—and thus there is every reason for the CRTC to ensure that Internet retransmitters are not treated differently in this regard.

We are however left with the question of whether it is most effective to leave copyright objectives to be implemented by the broadcast regulator.

- The third option is to use the *Copyright Act* alone to regulate those aspects of Internet retransmission which are bad for society. This option does not preclude the CRTC from issuing its own regulations regarding Internet transmissions and/or retransmissions. Such regulations are always within its mandate, and if it sees Internet activities of any sort causing imbalance within the broadcasting system, it will certainly move to redress the situation. But this option presumes that the copyright

policy objectives should be met whether or not the broadcast regulator intervenes.

This final option is the one which until quite recently the government was pursuing most vigorously. It is the one we are the most supportive of.

This third option would be accomplished by introducing the regulations which have been proposed to you by the government but with the inclusion of one additional section. This section reads as follows, and you may be surprised to know that it was not generally controversial among all the various interested parties. What it addresses is the ban on advertising in association with Internet retransmission. It does so in a slightly complicated way, because it also permits so-called “picture-in-picture” advertising—in television sets which have picture-in-picture capability the broadcast streams can routinely include both advertising within the little picture and advertising within the larger picture. The cable industry was concerned that legislation should not have the inadvertent effect of precluding one of those pictures from being an Internet retransmission, since the other picture might have advertising in it which might be said to be “in association with” the Internet retransmission. In any event, here is the wording:

6. Pursuant to paragraph 31(3)(c) of the Act the following condition shall apply to all retransmitters for the purpose of paragraph 31(2)(e) of the Act.

Without the written consent of the broadcaster who broadcasts the signal, the retransmitter shall not transmit or arrange for another person to transmit advertising or other information promoting any product, service, cause or institution which may be rendered perceivable by a recipient's broadcasting receiving apparatus at the same time as, or otherwise in association with, the content of the signal, unless as a result of the recipient's own actions which are not necessary to render the content of the signal itself perceivable and which do not result in a reduction in any cost to the recipient of receiving the signal or any other product or service.

We suggest that this ban on advertising, when added to the requirement that effective technological measures be taken to restrict the retransmissions to authorized users in Canada, meets the basic copyright concerns, and are properly dealt with within the *Copyright Act*. To the extent that there remain

concerns that Internet retransmitters are getting away without having to do all the things that licensed cable and satellite operators have to do, then we suggest those other imbalances can be properly dealt with by the broadcast regulator. But even if the broadcast regulator chooses not to intervene, with the addition of a ban on advertising associated with Internet retransmissions, the copyright regime would be effective.

In conclusion, we are in the happy position today of discussing three options, one of which is our preference, but all three of which we would ultimately support. We thank you for listening to our thoughts on these options, and we would be pleased to respond to any questions you might have for us.