



CFTPA

*Representing television, film
and interactive production in Canada*

ACPFT

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

Submission by the
**Canadian Film and Television
Production Association (CFTPA)**

to the
Government of Canada

In Response to
***Improving Canada's Digital Advantage
Strategies for Sustainable Prosperity***
Consultation Paper on a
Digital Economy Strategy for Canada

July 13, 2010

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Executive Summary

Independent producers have long played a fundamental role in Canada. They develop and produce entertaining programming that is seen by millions of viewers, employ more than 160,000 artists, technicians and other cultural workers, and generate billions of dollars in economic activity. More than that, independent producers provide audiences with a distinctly Canadian perspective on our country, our world, and our place in it. They help foster Canadian cultural choices and they reflect the rich diversity of this country.

The Digital Economy Strategy is an extraordinary opportunity for the Government to reaffirm the importance of the independent production sector. An updated and expanded policy framework that is better aligned to meet the challenges of the digital age would help position independent producers to more fully contribute to Canada's growth and prosperity and to our digital content advantage.

Canada's Digital Economy Strategy must incorporate three key thrusts in order to be successful. It must: i) nurture the development of a highly skilled and productive labour force; ii) foster the growth of the ICT sector and drive the creation and adoption of new technology across the economy; and iii) aggressively encourage the development of a critical mass of innovative Canadian content for both traditional media and new platforms.

With a view to helping shape these three key thrusts, we believe the Strategy must: i) strive to develop a broadband infrastructure that is second to none in the world, ii) require that Canadians own and control the broadband infrastructure in Canada, iii) ensure basic access is available to all Canadians, and iv) recognize the importance of the Canadian independent production sector and the need for all elements of the system to contribute to its growth.

The following specific initiatives would also help achieve the goal of improving Canada's digital content advantage:

- Commit to launching a legislative review process that would examine the advantages and disadvantages of bringing broadcasting, telecommunications, and radiocommunications under a new Communications Act;
- Commit to renewing the Government of Canada's financial participation in the CMF, increasing the annual resources it allocates to match the current contribution made by the private sector and reflect the Fund's broader mandate, and committing to allocate the new resource level for a minimum of five years starting in April 2011;
- Recognize the imbalance that currently exists in the system between independent producers and television broadcasters by issuing a policy direction to the CRTC that would require the Commission, in its consideration of applications for broadcasting licences, licence renewals or changes in ownership, to assess whether the applicant has taken the appropriate steps to reach an equitable arrangement with the independent production sector regarding the ownership and exploitation of program rights;
- Update the Canada Feature Film Policy by retooling its performance objectives so that they properly reflect the aim of reaching audiences across all platforms and by enhancing the annual contribution to the CFFF to help address issues related to achieving a critical mass;
- Initiate a review of the program guidelines under the CMF, CFFF and the CPTC that require a producer to have a signed agreement with a Canadian television broadcaster or distributor in order for a project to qualify for funding with a view to giving independent producers the best opportunity to commercialize their content across new distribution platforms;
- Introduce an International Trade and Investment plan that would: i) examine appropriate measures to attract private financing, ii) establish a new policy framework for Canada's Official Co-Production Treaties to enhance their effectiveness and to include digital content production, iii) create a new dedicated co-production fund, and iv) launch a new export development program to assist producers to further penetrate foreign markets.
- Commit to enhanced and ongoing support to national mentorship and training programs that are so crucial to developing the high-quality digital skills of professionals in the independent production sector, and particularly in the non-convergent sector;
- Expand the existing CPTC to allow access by independent non-convergent production companies in support of non-convergent content; and,
- Allocate enhanced and stable funding to the CBC, NFB and TFC, and mandate these institutions to play a leadership role in the digital space in partnership with independent producers.

Introduction

1. The Canadian Film and Television Production Association¹ (CFTPA) is the national organization representing the most successful Canadian independent production entrepreneurs of English-language television, theatrical film, and interactive content across Canada. All our members are involved to varying degrees in the creation of Canadian digital content. While they are already actively contributing to Canada's digital content advantage, we believe that much more can be done to better position independent content producers to more fully contribute to Canada's economic prosperity and cultural vitality in the digital age.
2. We wish to congratulate the Government of Canada for acting swiftly in developing a comprehensive, multi-year Digital Economy Strategy for Canada. We also appreciate that all Canadians have been invited to participate in this important process by submitting briefs in response to the Consultation Paper entitled *Improving Canada's Digital Advantage – Strategies for Sustainable Prosperity*.
3. Our submission presents general views with regard to the key thrusts and main principles we believe should be reflected in Canada's Digital Economy Strategy. We present more detailed comments with regard to *Creating Canada's Digital Content Advantage* and *Building Digital Skills for Tomorrow*. We are available at any time to expand on the views and recommendations expressed in this submission.
4. We applaud the Minister of Canadian Heritage, the Honourable James Moore, for already acknowledging that digital media and content are essential to *both* Canada's economy and culture. We believe that our future economic prosperity and cultural vitality are intrinsically linked. Achieving success in both these areas will increasingly depend on our capacity to innovate and take advantage of new opportunities in the digital age.
5. As the Minister of Human Resources and Skills Development, the Honourable Diane Finley, has pointed out, underpinning the transition to the digital age and our ability to innovate and position ourselves effectively to be able to compete globally is the need to ensure that our labour force acquires and/or upgrades high quality skills. We fully agree, and we congratulate the Minister for already taking steps to ensure Canadian businesses can attract and retain the workers they need to succeed in the digital economy.
6. We also wholeheartedly agree with the Minister of Industry, the Honourable Tony Clement, that Canada has the talent and the will to be a world leader in the digital economy. We now have to channel our collective strengths into developing an effective, multi-year digital strategy that will help ensure Canada take its rightful place at the top.

Public Policy Context

7. Independent producers have long played a fundamental role in Canada. They develop and produce entertaining programming that is seen by millions of viewers, employ more than 160,000 artists, technicians, and other cultural workers, and generate billions of dollars in economic activity in what is a very environmentally green industry. More than that, independent producers provide audiences with a distinctly Canadian perspective on our country, our world, and our place in it. They help foster Canadian cultural choices and they reflect the rich diversity of this country. Independent producers are dynamic trade and cultural ambassadors who actively showcase Canadian communities to Canadians and to the world. Federal public policy has long sought to promote the growth of the independent production sector and the content it creates in recognition of this important role.
8. The independent production sector has grown considerably over the last 20 years. Businesses have matured and become increasingly well-established across the country. Independently produced content

¹ Please note that the Canadian Film and Television Production Association is currently in a transition period and will soon change its name to the Canadian Media Production Association (CMPA).

has achieved impressive commercial and critical success both in Canada and abroad. In short, the independent production sector is a remarkable success story. This is the result of the astute policies and programs introduced by successive governments at both the provincial and federal levels and the entrepreneurial drive of producers.

9. The role of independent producers in our system will not lessen in importance in the digital age. In fact, as communications borders increasingly dissolve and a greater volume of content from every corner of the world becomes more accessible to more people, we maintain that it will become even more crucial to ensure that Canada's distinct and diverse voice can be heard among those of our international competitors. While the various means by which we strive to achieve this goal may change in the future, we must hold firm to the most basic of policy objectives – that is, to ensure that in the digital age a strong Canadian independent production sector can exist and flourish, and that the content it creates, including innovative digital content, is easily accessible by Canadian and international audiences.
10. The Digital Economy Strategy is an extraordinary opportunity for the Government of Canada to reaffirm the importance of the independent production sector to Canada. An updated and expanded policy framework that is better aligned to meet the challenges of the digital age would help put independent producers on a solid path to more fully contribute to Canada's economic and cultural growth and prosperity for years to come.

An Added Policy Focus on New Opportunities

11. There are different segments in the independent content creation sector and to be effective Canada's Digital Strategy must recognize this reality. We do not believe that a new one-size-fits-all policy framework for the independent content sector as a whole is likely to be very effective at contributing to Canada's digital advantage.
12. As the Consultation Paper highlights, the average weekly hours Canadians spend watching television has slightly increased over the last number of years. At the same time, however, the average hours Canadians spend on the Internet have increased quite markedly. These data clearly illustrate that Canadians are not abandoning traditional television in favour of the Internet as some might suggest. Similarly, box office revenue and admissions to movie houses remain solid – although almost exclusively for American studio product. In our view, traditional television, theatrical film, and the Internet will continue to co-exist for quite some time to come.
13. Against this backdrop is the phenomenal enthusiasm with which consumers are embracing newer platforms like smart phones, game consoles and, most recently, wireless tablet computers. These platforms, along with the Internet, represent very significant new markets for independent content and the opportunities in this sector are growing exponentially every year. The Internet and wireless platforms also represent new opportunities for independent producers of both traditional (e.g. television and film) content and newer forms of interactive, non-linear or “non-convergent”(e.g. games, social networking websites) content to directly reach audiences.
14. Canada's Digital Strategy as it relates to content, therefore, must have a two-pronged approach. It must, on the one hand, seek to update existing measures and programs in support of traditional content to more properly reflect the current trends in the media environment. At the same time, it must introduce new initiatives that are custom tailored to meet the needs of the non-convergent content sector.
15. We do not believe it appropriate to attempt to repurpose or retool existing measures and programs to meet the growing demand for content in the non-convergent sector. A policy strategy that seeks to effectively abandon one sector in favour of another will only serve to undermine the main objective of being a world leader in the digital age.
16. The CFTPA thus echoes the Telecommunications Policy Review Panel conclusions that “it is important to develop effective policies to promote the presence of Canadian content in the converging broadcasting

and Internet spaces” and that “Canada should develop sustainable policy and regulatory approaches to ensure that its cultural and content production communities can take advantage of technological and market trends and not be undermined by them.”²

The Key Challenges to Overcome

A Modern Legislative and Regulatory Framework

17. Canada’s communications system, like the content industry, has undergone tremendous advancement and change. Digital technology has eliminated traditional distinctions between the broadcasting and telecommunications sectors. Broadcast and telephony services (including cellular networks) are commonly used to transmit data and video content, including content previously distributed on network television. Broadcast distribution undertakings (BDUs) offer high-speed Internet service and local telephony. Telephone companies have entered the broadcasting business, using digital platforms traditionally used exclusively to transmit voice and data. What has emerged is a communications infrastructure – a multi-purpose, inter-connected information technology backbone.
18. As has been suggested several times by the Chairman of the Canadian Radio-television and Telecommunications Commission, Konrad von Finckenstein, and most recently before the Standing Committee on Canadian Heritage in the context of its study on Emerging and Digital Media, careful consideration should be given to adopting a single “Communications Act” that would cover broadcasting, telecommunications and radiocommunications.
19. We fully appreciate that this is a significant undertaking that could take several years to complete. But, other countries have already done it. With a view to ensuring Canada remains competitive well into the future, we urge the Government of Canada to use the occasion of the Digital Economy Strategy to commit to undertaking a review that would examine the advantages and disadvantages of adopting a single Communications Act.

Non-Convergent Content and the CMF

20. Much exploration and innovation is being undertaken in the non-convergent sector. While in some areas firm business models have been established, in others they continue to evolve. The sector also does not benefit from the same breadth of federal policy instruments as do the traditional production sectors. Non-convergent companies do not qualify for the federal tax credit program and therefore do not have access to this incentive to help grow their businesses or finance non-convergent content. In fact, the only federal program that supports non-convergent production is the Canada Media Fund (CMF), and only a small portion of CMF funding is allocated to its Experimental Stream.
21. The CMF (and the Canadian Television Fund before it) has been a vitally important support program for independent producers and has been a tremendous success since its inception in 1996. It has contributed over \$2.7 billion to more than 5,400 high-quality Canadian television programs in the under-represented genres of drama, documentary, children’s and youth, and variety and performing arts in English, French, and Aboriginal languages. This investment has triggered more than \$9 billion in production activity across the country, which in turn has sustained quality jobs for hundreds of thousands of people in every region of Canada. These productions have been broadcast during peak viewing periods to millions of viewers and have achieved immense critical acclaim both in Canada and abroad.
22. The CFTPA applauded the Government of Canada when it introduced the CMF as a replacement program for the CTF just 18 months ago, and gave it a new mandate to promote innovation in Canadian content creation and distribution with a view to providing Canadians with content across multiple platforms. This was a bold and innovative policy decision, and one that will assist independent producers as they continue to adapt to the digital age.

² Telecommunications Policy Review Panel, Final Report, March 2006, P.13

23. The Government of Canada's contribution to the CMF, however, is slated to expire at the end of the current fiscal year. Historically, this contribution has only been committed for terms of one or two years. Such a short commitment term hinders all stakeholders' ability to develop multi-year business strategies. The federal government's annual allocation to the Fund has also not kept pace with the level of financial resources that are now contributed by the private sector, nor has it been increased to reflect the expanded mandate given to the CMF.
24. Should the Government's commitment to the CMF not be renewed, there would be a significant decrease in the annual production volume of high-quality Canadian television programs in key under-represented genres, and a proportional decrease in export revenue. This in turn would also cause the loss of tens of thousands of jobs in our sector across the country. Moreover, it would undermine the television broadcasting sector, Canada's economic and cultural objectives, and ultimately the Government of Canada's strategy for the evolution of digital content creation.
25. It is therefore critical that the Government of Canada use the opportunity of the Digital Economy Strategy to renew and enhance its support to the CMF by making a five-year funding commitment to the Fund. Such a commitment would provide financial stability to the sector at a crucial time of transition and thereby allow stakeholders to develop multi-year business plans.

Enhancing Opportunities by Levelling the Playing Field

26. The Digital Economy Strategy is also an important opportunity to address two issues in the system that are now undermining independent producers' ability to grow, attract greater private financing, ensure multiplatform exploitation of their content, and better position themselves to contribute to Canada's digital advantage and economic prosperity. The first relates to certain business practices by broadcasters in the negotiation of program rights that are a direct result of the high degree of consolidation in the television broadcast sector. The second relates to program guidelines that effectively give television broadcasters near absolute decision-making power regarding which programs get made in this country, and which do not.
27. With only four large broadcast corporate groups now in English Canada as a result of industry consolidation, there are effectively few selling opportunities in the television market for independent producers. The Canadian television broadcasters that remain are using their dominant position in the market to secure unreasonable terms that are undermining Canadian independent producers.
28. Television broadcasters are now demanding more rights, including all digital and online rights, and often for very little additional fees, if any. In addition, where broadcasters obtain the digital and online rights, they often fail to exploit these rights, leaving Canadian programming simply sitting on the shelf. Such an outcome flies in the face of the Government's objective of making Canadian content available to Canadians how, when, and where they want it.
29. In a study recently undertaken by the CFTPA, 56% of the content producers surveyed reported that broadcasters did not pay any incremental licence fee for digital rights or any revenue share on those rights.³ The study also showed that producers sold their digital rights for an average licence fee of only \$540 per episode, with 90% indicating that the amount paid represented less than 1% of the production budget.⁴
30. By not having an even playing field in the negotiation of rights, producers cannot fully exploit the inherent value of the programs they create. This results in the undercapitalization of their businesses and, by extension, reduces their ability to attract greater private financing. It also reduces the amount and variety of Canadian content that is available to Canadians on multiple platforms.

³ CFTPA, *A Framework for Digital Rights*, June, 2010, page 14 (available at <http://www.cftpa.ca/newsroom/publications/>).

⁴ *Ibid.*, page 15.

31. This is why we have consistently advocated for the negotiation of an equitable and enforceable Terms of Trade agreement with each broadcast corporate group. Terms of Trade would provide a marketplace framework for the ownership and exploitation of digital rights, thereby maximizing the distribution of content across all platforms – a key Government policy objective that would be achieved at no cost to taxpayers and with minimal, if any, direct regulatory intervention.
32. The CRTC, for its part, has repeatedly stated its expectation that producers and broadcasters reach an agreement before television licence renewals in 2011. By setting this firm deadline, the Commission is helping to facilitate the negotiation of Terms of Trade, while at the same time leaving it to the parties themselves to arrive at an equitable and flexible framework for multiplatform content exploitation. The CFTPA agrees with this approach, having long been of the view that Terms of Trade are best achieved through negotiation by the market players concerned, with direct regulatory intervention being a last resort.
33. For the same reason, we believe that a strong statement by the Government of Canada in support of Terms of Trade would provide an additional incentive for broadcasters to sit down with the CFTPA to negotiate an agreement. We would therefore urge the Government to issue a policy direction to the CRTC, pursuant to section 7 of the *Broadcasting Act*, requiring the Commission, in its consideration of applications for broadcasting licences, licence renewals, or changes in ownership, to assess whether the applicant has taken the appropriate steps to reach an equitable arrangement with the independent production sector regarding the ownership and exploitation of program rights. Such a direction would enable the Commission to better fulfil its mandate under section 3 (i)(v) of the *Broadcasting Act* to ensure a significant contribution to the Canadian broadcasting system from the independent production sector, and would lend additional impetus to the parties to conclude a Terms of Trade agreement in time for the spring 2011 CRTC licence renewal hearings.
34. The power broadcasters hold to be able to carry on such unfair business practices in their rights negotiations is amplified by the requirement under federal support programs like the CMF, the Canada Feature Film Fund (CFFF), and Canadian Film or Video Production Tax Credit program (CPTC) that a producer have a signed agreement with a Canadian television broadcaster in order for a project to qualify for funding. This requirement was introduced at a time when there were many more individual Canadian television broadcasters, and where digital distribution platforms were either non-existent or still in a nascent stage of development. But in today's hyper-consolidated broadcasting sector, the requirement has enabled corporate broadcast groups to become near-absolute gatekeepers when it comes to accessing federal funding in our system. This puts them in an extremely strong bargaining position when our members attempt to negotiate fair terms on a project.
35. New distribution options now exist that allow independent producers to directly access consumers. As such, federal program guidelines need to be re-evaluated with a view to giving producers the best opportunity to freely commercialize their content across these new distribution platforms. We would therefore propose that the Government of Canada initiate a review of the guidelines under the CMF, CFFF and the CPTC for the purpose of evaluating alternatives to the requirement that a producer have a signed agreement with a Canadian television broadcaster or distributor in order for a project to qualify for funding.

Canadian English-language Theatrical Films

36. While cinemas are still the primary market for theatrical films, increasingly feature films are available on new Internet or wireless platforms. Today, consumers can easily rent a film online by visiting sites the likes of Zip.ca or buy a feature film directly via iTunes and have that film downloaded either to their home television decoder or mobile device.

37. Producers of Canadian English-language theatrical films face their own particular challenges. The chronic lack of financing for production and marketing has long been a major obstacle in this sector. This helps explain why our national output of theatrical films and the average production budgets of those films are so low. For every seven feature films released in theatres in English Canada each year, only one is a Canadian film. Further, the average production budget of a typical Hollywood studio film is 30 times that of a Canadian film. And for those relatively few Canadian films that are produced each year, there are often too few financial resources available to effectively market them. Hollywood studio films typically have North American marketing budgets reaching some \$50 million. By contrast, over the last nine years, the marketing dollars spent on each English-language Canadian film has averaged about \$300,000.
38. With so few, low-budget films produced each year and insufficient marketing, Canadian films are simply not able to effectively compete against the Hollywood entertainment machine that controls so much of the theatrical market in Canada. If not for the implementation of the CFFF in 2001, the situation for Canadian theatrical films would be even bleaker. Since its inception, the CFFF has invested more than \$570 million in Canadian films, leveraging some \$2.4 billion in total financing and supporting many thousands of quality jobs. While this represents an impressive return on investment, the CFFF can only do so much with its limited resources to address the key issues facing the Canadian feature film sector.
39. Unlike the television sector, there are no regulations in the theatrical market requiring a minimum screen-time be reserved for domestic films. Decisions by theatre owners on whether a film is programmed, or how long it remains on the bill, are exclusively based on box office revenue projections and ongoing receipts. Further, the performance objectives of the Government of Canada's Feature Film Policy are focussed exclusively on Canadian films achieving arbitrary box office targets in the theatrical market. This approach fails to recognize the very basic fact that many more people see feature films on television and DVD than they do in theatres. And, increasingly, feature films are also available for purchase or rent over the Internet from e-stores like iTunes, Blockbuster, Zip.ca, or Amazon.
40. We would therefore propose: i) retooling the performance objectives of Canada's Feature Film Policy so that they properly reflect the aim of reaching audiences across all platforms, (ii) enhancing the annual contribution to the CFFF to help address issues related to achieving a critical mass, and iii) re-evaluating the distribution requirements in the CFFF guidelines to qualify a project for funding.

Private Investment and International Trade

41. In addition to the several challenges noted above is the fact that foreign financing to Canadian certified television and theatrical film production has significantly decreased over the last number of years, dropping from \$407 million in 2001 to \$196 million in 2008. Canada's official treaty co-production activity has also experienced major drops, decreasing by more than half to about \$390 million over roughly the same timeframe.
42. The lack of private sector financing, including venture capital funding, is an overarching issue having a negative impact on the entire independent production sector, be it the traditional or the non-convergent segment. And, as the Consultation Paper rightly pointed out, accessing early stage development financing can also be a challenge for the creative industries. While virtually all stakeholders agree that more private investment is needed to stimulate growth, there is little consensus on how to achieve that objective or what type of incentive would be most effective. Some believe that flow-through and tax shelter measures would yield the best results, while others believe that venture capital models are best.
43. A relatively straight-forward solution to helping independent producers attract private financing would be to review the copyright requirements that currently exist under the CPTC. In some cases, a private investor insists on acquiring a portion of the copyright in a production in return for their investment. When this occurs, it renders the project ineligible under the CPTC.

44. One thing is certain, however: the future growth of the independent production sector hinges on our ability to build on the successes we achieve at home and leveraging that success to increase exports and otherwise capitalize on the opportunities available in capital markets, both domestically and abroad.
45. The adoption of a Digital Economy Strategy presents an ideal opportunity to introduce a new Investment and International Trade program for the independent production sector. The first step would be to launch consultations with industry stakeholders regarding the appropriate measures to be adopted to attract private financing, with a view to introducing a new incentive within the next 12 to 18 months. Other initiatives could include i) a new dedicated early stage development program, ii) a new policy framework for Canada's Official Co-Production Treaties that could seek to expand official treaties to include digital content, iii) a new dedicated co-production fund to kick-start this segment of the industry, and iv) a new export development program to assist producers in penetrating foreign markets.

Marketing and Promotion

46. An often overlooked aspect of the content industry from a policy perspective is the need to effectively market and/or promote content to its intended audience. As the number of platforms grows, the broadband capacity multiplies, and the volume of available content ultimately increases as a result, it becomes incredibly important to effectively market content so that audiences know how, where, and when to access it.
47. Growing the audience base for Canadian content whether in traditional media or the non-convergent sector will lead to direct economic returns and is fully consistent with government policy.

Skills Development

48. Skills development is another area where certain barriers exist and where enhanced opportunities are crucial to ensuring that business and technological savvy are merged with creative skills and effective use of information. Placement programs, such as those administered by the CFTPA, provide opportunities for established companies to mentor new talent and bridge the digital divide, all the while guaranteeing succession planning in the production industry.⁵ Mentoring between emerging professionals and established companies of all sizes is a career development process based on one-on-one sharing of practical, accumulated knowledge. According to a recent study commissioned by the Cultural Human Resources Council, "on the job learning is by far the most common method of acquiring skills for interactive media producers. (...) Interactive media producers feel strongly that the significant majority of all learning related to their field occurs on the job."⁶
49. Mentoring complements traditional training options by reinforcing the need to constantly innovate and upskill to boost business productivity and success, contribute to local and national communities, and ultimately help professionals succeed in the global knowledge economy. It is a symbiotic process by which mentees and mentor companies glean skills, insights, and information from each other. The mentee may have acquired some digital skills in a number of personal learning environments that the mentor company may use to increase its own knowledge base and productivity. The mentor company in turn will impart its practical experience and business acumen to the mentee.

⁵ "This issue of succession was identified as a pre-occupation for the industry and may impact on what type of training that should take priority. Within the next 5-10 years, it is estimated that 50% of current company owners and key producers in the industry will have retired. (In the English survey, 32% of respondents were over 50, 30% were 41-50, and 26% were 30 – 40 years of age). A talent pool of potential successors may be coming through the ranks. However, the skills necessary to assume a senior level of activity and the responsibility for managing business affairs must also be in place for this to follow naturally." Source: *Cultural Human Resources Council: Training Gaps Analysis – Film and Television Producers*. Angela Birdsell, Cultural Research and Communications. 2008.

⁶ *Interactive Media Producers Training Gaps Analysis*, Cultural Human Resources Council (CHRC), 2009.

50. Continued support of mentoring and training programs is crucial to expand the pool of trained professionals in the production industry, and to provide all Canadians with the basic skills needed to function in, and meaningfully contribute to, the digital economy.

Copyright

51. As a key component of Canada's Digital Strategy, we support the Government's efforts to modernize Canada's copyright regime. Copyright ownership is one of the essential building blocks of the audiovisual sector. Updating the *Copyright Act* so that it is WIPO-compliant and better aligned with our major trading partners and competitors is critical to the long-term growth of the sector. We look forward to working with the Government and with Parliament to ensure that the new legislation facilitates multiplatform content production, digital entrepreneurship and innovation.

National Institutions

52. National institutions like the National Film Board (NFB), Canadian Broadcasting Corporation (CBC), and Telefilm Canada (TFC) have all been working towards adapting their respective activities to take advantage of opportunities in the non-convergent sector. For example, the NFB has been actively digitizing its inventory and making hundreds of its programs available online. In fact, the NFB even has a widely popular iPhone application that allows users to access these programs anytime from the palm of their hand.
53. The CBC plays a particularly vital role in our system. Its prime time schedule is dedicated to Canadian programs and includes a very significant contribution from the independent production sector. It is also extremely active in the digital space and has one of the most visited websites in Canada. This is consistent with its public broadcaster mandate, and in particular, with the policy objective articulated in section 3(m)(vii) of the *Broadcasting Act* that programming provided by the CBC "should be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose."
54. Other countries, like the United Kingdom, have recognized that their national public broadcaster, by virtue of its unique role and public interest mandate, can and should be a leader in multiplatform content creation and distribution, and have allocated stable, long-term funding in order to achieve this purpose. If the CBC is to continue to play its national leadership role in the digital arena – a role that includes working in a fair and equitable partnership with the independent production sector – it also requires stable, long-term funding that reflects the actual costs of multiplatform content creation and distribution.
55. We were encouraged by the Government's statement in its consultation paper that "it will ensure that our public institutions have the tools they need to continue to take risks, lead by example and serve Canadians." We would therefore recommend enhanced and stable funding for the CBC, NFB, and TFC that reflects the actual costs of multiplatform content creation and distribution, and which will enable these institutions to meet the Government's expectation that they "maximize their presence on all digital platforms."

A Broad Framework for Canada's Digital Economy Strategy

56. Canada's Digital Economy Strategy must incorporate three key thrusts in order to be successful, as was represented by the main themes outlined in the Consultation Paper. We must nurture the development of a highly skilled and productive labour force. We must foster the growth of the ICT sector and drive the creation and adoption of new technology across the economy. And we must aggressively encourage the development of a critical mass of innovative Canadian content for traditional media and, increasingly, Canadian digital content for new platforms.

57. The potential for sustainable growth and prosperity is maximized only when each of these three key areas – skilled labour, technology, and content – merge and result in innovative products and services that represent value for Canadians and, more particularly, for consumers around the world.
58. With a view to helping shape the three key thrusts noted above, we believe that Canada's Digital Economy Strategy should reflect the following general, top-level principles and goals:
- First, Canada must strive to develop a broadband infrastructure that is second to none in the world. This goal, we would suggest, is the modern day equivalent to building the transcontinental railway or the TransCanada Highway. Canada's broadband infrastructure is quickly becoming the backbone of our economy and the main pipeline for the sharing of our culture among Canadians and with the rest of the world. If our broadband infrastructure is sub-par by international standards, so too will be our economic well-being and cultural vibrancy. Ultimately, the quality of life for all Canadians will be less than the best it can be.
 - Second, we must ensure that Canadians own and control their own broadband infrastructure. While there is clearly a need to attract foreign private investment in the building of leading-edge networks, we do not believe that the course of Canada's economic or cultural future should be determined by foreign interests. To use a tired, yet appropriate cliché, he who pays the piper typically gets to call the tune. The Minister of Industry has launched a separate consultation initiative related to foreign investment in telecommunications, and we intend to expand on our views in this area during that process.
 - Third, we believe that basic access should be available to all Canadians so that they have full opportunity to participate in the digital age. There should be few if any geographic, economic, cultural, ethnic, linguistic, or even knowledge-based barriers to such participation. One of Canada's strengths has long been its diversity. Ensuring that all Canadians can participate in the digital age will help promote and celebrate that diversity.

Basic access also means *open* and *direct* access by Canadian content creators to their audiences, without having to go through ISP gatekeepers. In other words, net neutrality. As convergence and consolidation accelerate between the broadcasting, telecommunications, and digital media sectors, the greater the risk that ISPs will enter into preferential carriage arrangements with their own or affiliated services, or employ technical measures that favour certain content providers over others. Left unchecked, this could effectively shut off the Internet as a distribution platform to independent Canadian content creators, aggregators, and distributors. While the CRTC recently adopted a new net neutrality framework, careful monitoring will be required to ensure that Canada has the rules in place to keep the Internet as an open access content distribution platform.

- We believe that the fourth key principle is in many ways the most important. Canada's Digital Strategy must recognize our broadband infrastructure as being a public service that is essential both to Canada's economic prosperity and to the maintenance and enhancement of Canada's national identity and cultural sovereignty. Further, we believe that it must explicitly recognize the importance of the Canadian independent production sector and the need to encourage the growth of this sector. And lastly, the Strategy must also require that each element of the broadband system contribute in an appropriate manner to the creation and presentation of professional Canadian content, including non-convergent content, and that a large majority of that content should originate from the independent production sector.

Specific Initiatives Underpinning the Digital Economy Strategy

59. The following specific initiatives incorporated as part of Canada's Digital Economy Strategy would, in our view, help ensure that we achieve the goal of improving Canada's digital advantage. We recommend that the Digital Economy Strategy for Canada:

- Commit to launching a legislative review process for the purpose of assessing the advantages and disadvantages of bringing broadcasting, telecommunications, and radiocommunications under a new Communications Act;
 - Commit to renewing the Government of Canada's financial participation in the CMF, increasing the annual resources it allocates to match the current contribution made by the private sector and reflect the Fund's broader mandate, and committing to allocate the new resource level for a minimum of 5 years starting in April 2011;
 - Recognize the imbalance that currently exists in the system between independent producers and television broadcasters by issuing a policy direction to the CRTC, pursuant to section 7 of the *Broadcasting Act*, requiring the Commission, in its consideration of applications for broadcasting licences, licence renewals, or changes in ownership, to assess whether the applicant has taken the appropriate steps to reach an equitable arrangement with the independent production sector regarding the ownership and exploitation of program rights;
 - Update the Canada Feature Film Policy by retooling its performance objectives so that they properly reflect the aim of reaching audiences across all platforms and by enhancing the annual contribution to the CFFF to help address issues related to achieving a critical mass;
 - Initiate a review of the program guidelines under the CMF, CFFF, and the CPTC that require a producer to have a signed agreement with a Canadian television broadcaster or distributor in order for a project to qualify for funding with a view to giving independent producers the best opportunity to commercialize their content across new distribution platforms;
 - Introduce an International Trade and Investment program that would: i) examine appropriate measures to attract private financing, ii) establish a new policy framework for Canada's Official Co-Production Treaties to enhance their effectiveness and to include digital content production, iii) create a new dedicated co-production fund, and iv) launch a new export development program to assist producers in further penetrating foreign markets.
 - Commit to enhancing and providing ongoing support to national mentorship and training programs that are so crucial to developing the high-quality digital skills of professionals in the independent production sector, and particularly in the non-convergent sector;
 - Expand the existing CPTC to allow access by independent non-convergent production companies in support of non-convergent content; and,
 - Allocate enhanced and stable funding to the CBC, NFB, and TFC, and mandate these institutions to play a leadership role in the digital space in partnership with independent producers.
60. We thank the Government again for working with all stakeholders in developing a Digital Economy Strategy for Canada that will ensure that our country takes its rightful place at the top and that better positions independent producers to contribute more fully to Canada's digital advantage for years to come.

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