

**Oral Remarks By**

**CANADIAN FILM AND TELEVISION  
PRODUCTION ASSOCIATION**



**CFTPA**

*Representing television, film  
and interactive production in Canada*

**ACPFT**

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

***Broadcasting Notice of Public Hearing 2008-11 –  
Review of Canadian Broadcasting in New Media***

**February 24, 2009**

*CHECK AGAINST DELIVERY*

## **GUY MAYSON**

Good morning Mr. Chair, Vice-Chairs, Commissioners, and CRTC staff. My name is **Guy Mayson** and I'm the President and CEO of the Canadian Film and Television Production Association (CFTPA). The CFTPA represents almost 400 companies that create, finance, produce, distribute, and market feature films, television programs, and interactive content for new digital platforms. Through the content we produce, independent producers help foster Canadian cultural choices and reflect the rich diversity of this country. As such, the independent production sector plays a vital role in the Canadian broadcasting system, as recognized in the *Broadcasting Act*.

I'm pleased to have with me today two of our leading television and new media producer members. To my far right is **Barbara Jones**, President and Executive Producer of SailorJones Media of Owen Sound, Ontario, a broadcast and new media consultant, and leading producer of interactive content and services. Barbara has 25 years of media experience – in radio, television, and new media – in such diverse areas as reporting, TV network program planning, production and scheduling, audience and market research, international cross-platform projects, and yes, even preparing CRTC applications. She wrote and produced the award-winning 11-language documentary **FUNDAMENTAL FREEDOMS**, and produced an extensive multilingual companion website, [charterofrights.ca](http://charterofrights.ca).

Next to Barbara and to my immediate right is **Mark Bishop**, Partner and Producer of marblemedia, an award-winning independent multi-platform content creation company based in Toronto. In 2008, marblemedia received the “Company of the Year” award and Mark was named “Producer of the Year” as part of the *Canadian New Media Awards*. marblemedia is the producer of such well-known and innovative multi-platform projects as *This is Daniel Cook*, *This is Emily Yeung*, and *deafplanet.com*, the world’s first television and online series in American Sign Language.

CFTPA staff with me today are, to my far left, **John Barrack**, National Executive Vice-President and Counsel, and to my immediate left, **Mario Mota**, Vice-President, Broadcasting Policy & Regulatory Affairs.

In addition, in the row behind us, we have **Reynolds Mastin**, the CFTPA’s Associate Counsel, as well as **Stuart Jack** and **Kurt Eby** from Nordicity Group. We’ve asked Stuart and Kurt to join us in case the Commission has any detailed questions regarding the study Nordicity conducted for us that was appended to our written submission.

Before we get into the substance of our presentation, we’d like to play a short video clip to give you a snapshot of some of the new media activities CFTPA members are engaged in. The clip is of the three nominations that were up for best “Converged New Media Project” at the *2009 CFTPA Indie Awards* held last week as part of our *Prime Time in Ottawa* conference. I know some of you were there. Please roll the clip.

\*\* [CLIPS RUNS 1 MINUTE] \*\*

For those who don't know, the winner was Reel Girls Media's Anash Interactive project.

At the outset, the CFTPA would like to commend the CRTC for its foresight in undertaking a review of Canadian broadcasting in new media. We see this review as one essential piece in a much larger discussion about Canada's overall content strategy. More specifically, this proceeding can ensure Canada becomes globally competitive in the digital space, so that Canadians can benefit from a rich range of content choices in that space. This will enable us to take a wide range of content to Canadians and to bring Canada to the world.

The Commission's decision 10 years ago to exempt new media from regulation was the right one at that time. Today, however, the landscape has been radically transformed and we believe it's entirely appropriate to ask whether the current approach is still the right one.

We are truly at a crossroads. Rapidly developing technology and changing viewer habits are altering the broadcasting landscape, and indeed re-defining what constitutes a broadcaster.

While new media poses challenges for all players, the CFTPA sees new media as a tremendous opportunity, not a threat. Canadian broadcasting in new media offers the promise of unprecedented economic and cultural dividends. Therefore, the CFTPA urges the Commission to embrace a forward-looking vision for broadcasting in new media that puts Canadian content at the centre and embraces the economic and cultural opportunities that new media offers.

While the pace of change is relentless, the key policy questions underpinning this review remain constant. They include the following:

- Does broadcasting in new media today have the potential to contribute materially to implementing the policy objectives of the *Broadcasting Act*? We believe the answer is yes.
- Is broadcasting in new media currently contributing sufficiently to meeting those objectives? In particular, can Canadians adequately see themselves in high-quality content on the second and third screens and do they have appropriate access to the system? In a medium increasingly dominated by foreign and primarily U.S. content, the answer is clearly no. Much more needs to be done.

In a globally connected world, if Canadian content does not occupy the field, foreign content will. In short, the window of opportunity for Canadian new media broadcasting is rapidly closing.

In our view, if we are to fully achieve the objectives of the *Broadcasting Act*, we need strong, well capitalized Canadian companies able to develop, produce, and promote a critical mass of Canadian new media content.

Canadian independent producers are creating world-class new media content, winning awards, and attracting audiences here and abroad. We are able to take up this challenge, but we face significant hurdles in the development, financing, and promotion of our work.

Canada's independent producers have the talent, business acumen, and global reputation to lead content creation over all platforms. However, in order to succeed, Canada needs a coordinated national digital media strategy and a 21<sup>st</sup>-century policy toolkit. Mark.

## **MARK BISHOP**

The CFTPA believes now is the time for light-handed yet decisive action to ensure that in the new media environment, Canadians continue to have opportunities to participate in and enjoy a distinctly Canadian broadcasting system. We believe that the Commission should continue to exempt new media and mobile broadcasting undertakings from regulation, but the criteria for exemption should be broadened, with a goal towards promoting Canadian content choices online and on mobile devices.

Within that context, we have put forward a series of strategic recommendations focused on the following broad objectives:

- Stimulating investment in the production and promotion of a robust supply of high-quality Canadian new media broadcasting content;
- Encouraging exploitation of Canadian multi-platform digital media content by all players through greater contractual certainty and parity, underpinned by Terms of Trade; and
- Building on the value that independent producers bring to the system in developing, innovating, and creating diverse Canadian new media broadcasting content.

We believe that one of the best ways to ensure Canadians can see themselves in the global unregulated new media environment is to ensure that there is a robust supply of professional, high-quality Canadian choices that are readily available and accessible. Some say that anything other than a hands-off regulatory approach to broadcasting in new media will stifle innovation and creativity. In our view, the opposite is true. Tangible economic stimulus is critical to create the conditions from which Canadian innovation, creativity, and culture can thrive. Without it, we risk Canadian content being further marginalized in a rapidly expanding landscape.

In order to create a critical mass of high-quality Canadian new media broadcasting content, additional funds are needed. As in traditional television broadcasting, Canada's relatively small marketplace will not support the kind of massive venture capital and corporate investment that underpins U.S. multi-platform content. Current Canadian funding streams are important but far too small to develop a critical mass of Canadian new media content.

New funding for multi-platform production will enable producers to provide a significant quantity of compelling Canadian content. This content will be made available for distribution across a variety of screens, will unlock greater value in television content, and achieve important economies of scale. In addition, funding for direct-to-new media broadcasting content would allow Canadian independent producers to innovate and compete in this growing but difficult to finance category.

The CRTC has a role to play, together with the federal and provincial governments, in finding new sources of funding. This hearing provides a tremendous first step to developing a much larger overall Canadian Content Strategy. Mario.

## **MARIO MOTA**

Consumers, broadcasters, distributors, and content creators alike are increasingly utilizing the Internet today as an extended broadcasting platform. The result is an integrated system.

For the most part, large broadcasting distribution undertakings (BDUs) and telcos are also Internet service providers (ISPs) and wireless service providers (WSPs). They have acknowledged publicly that their Internet services in particular have become viable alternatives for the distribution and consumption of video content. These large communications conglomerates are benefiting greatly in providing conduits for Canadians to access new media broadcasting content. While it's true that they have spent heavily to build out their networks, they are profiting greatly from these activities.

We believe, therefore, that large ISPs and incumbent WSPs should be required to contribute a small percentage of their gross revenues derived from broadcasting activities to an independently administered fund that is mandated to support the development, creation, and promotion of high-quality Canadian new media broadcasting content produced by independent producers. Let us be clear about our proposal: it would apply to only the largest, facilities-based ISPs and the

incumbent WSPs. This mirrors the CRTC's contribution approach applicable to BDUs – that is, only the largest BDUs are required to contribute.

Canadians support the concept of ISPs and WSPs contributing to Canadian new media content creation, according to the results of a survey we commissioned along with our union and guild partners last year. Professor Eli Noam in his report “TV or Not TV: Three Screens, One Regulation” and many parties to this proceeding also support this proposal.

The ISPs have questioned the CRTC's jurisdiction to impose such a contribution regime on them under the *Broadcasting Act*. We respectfully disagree with their position. As part of our written submission, we submitted a legal opinion from McCarthy Tétrault that argues that the Commission indeed has the jurisdiction.

We also commissioned economic consulting firm Nordicity Group to undertake an analysis of potential impacts of such a contribution regime. As Nordicity concludes, the impact on ISPs and WSPs and/or their customers of a modest contribution to Canadian new media content production would be negligible if any. Yet the results for the system and Canadians could be exponential. John.

## **JOHN BARRACK**

The relationship between broadcasters and independent producers is one of partnership. That partnership has, however, become severely

and increasingly imbalanced. Nowhere is this imbalance more evident than in the area of digital rights – a point we can illustrate further in the question and answer session.

A key way to restore balance in this partnership is through fair and equitable Terms of Trade. Mr. Chairman, as you have stated on a number of occasions, Terms of Trade agreements between broadcasters and the CFTPA will provide the stability and clarity necessary to help unlock full exploitation of television content across all platforms.

The Commission has stated that Terms of Trade should provide a mechanism for establishing a fair valuation of new media rights and ensuring their equitable exploitation by broadcasters and independent producers. In our view, fair and equitable Terms of Trade that recognize the value of, and provide appropriate compensation for, multi-platform production are integral to stimulating greater new media content creation across all platforms.

More specifically, these terms should squarely address the issue of the exploitation of new media rights, and must at their core, fundamentally respect producer ownership of those rights. Independent producers are the copyright owners of traditional broadcast content, and the rightsholders to all further exploitation. However, they are increasingly losing these rights to broadcasters, without compensation, during initial licence negotiations for traditional broadcast windows. The “Changing Channels” report commissioned by the CRTC for this proceeding noted

that broadcasters all too often obtain new media platform rights and then fail to exploit them.

When broadcasters demand domestic new media rights and fail to exploit them, the entire production and creative industries suffer. Furthermore, by tying up digital rights, we deny Canadians and others around the world access to Canadian choices on new media platforms. It is a missed opportunity to fill new digital shelf space with distinctly Canadian product.

Accordingly, the CFTPA is of the view that Terms of Trade agreements with Canadian broadcasters must include a “use it or lose it” provision that would apply to broadcaster acquisitions of new media rights. Such a provision would provide that where a broadcaster has not exploited a given new media right within a reasonable period of time (such as 12 months), the right would automatically revert back to the independent producer.

Burdening producers with the costs of financing new media content for exploitation by others without appropriate compensation is not sustainable. It will ultimately put the production of high-quality Canadian content on all screens in jeopardy.

Therefore, we urge the Commission to continue to reiterate its expectation that broadcasters conclude Terms of Trade agreements with the CFTPA as a matter of priority. Barbara.

## **BARBARA JONES**

Canadian independent producers are the architects of award-winning and innovative content. We are key economic engines in the multi-platform environment. We create value in the digital marketplace by merging creativity with technology to develop, finance, and market Canadian content. Often this is on a global scale.

Canada has many examples of new media talent and entrepreneurship. One such example is the Emmy-award winning [regenesistv.com](http://regenesistv.com) from Xenophile Media and Shaftesbury Films. Their work, and the work of many other interactive producers, has earned Canada a reputation as a leader in the global new media industry.

Independent producers come from all regions of Canada. We represent an array of editorial perspectives, cultural, and linguistic heritage. We are catalysts of diversity in new media broadcasting, and we are important vehicles for furthering key objectives of the *Broadcasting Act*.

New production models require new resources in order to embrace the transition to multi-platform content production. The production models require advanced capital equipment and technology, appropriate human resources, training, and technical upgrading. We need to transfer and store content in multiple formats, and forge new distribution and development partnerships globally. Independent producers must have the means to negotiate this complex transition successfully.

Adequate funding for the creation and promotion of independently produced Canadian new media broadcasting content, providing appropriate shelf space for that content, and fair and equitable Terms of Trade, are essential to the overall health of our independent production companies and the thousands of jobs we support. Guy.

## **GUY MAYSON**

In closing, Mr. Chairman and members of the Commission, the CRTC's actions in supporting Canadian broadcasting in new media are critical. In our view, it is clear that broadcasting in new media has arrived and that it has exciting potential to contribute to the Canadian broadcasting system. The light-handed approach we have outlined, while recognizing the global and unregulated nature of the Internet, will help build a strong framework for healthy growth of Canadian innovation, jobs, and long-term industrial prosperity. Most importantly, it will ensure that at a time when the traditional broadcasting landscape is changing, Canadians will continue to have access to Canadian content choices via new media.

We've tried to address, in a broad way, most of the issues the Commission asked parties to address in their oral remarks at this public hearing. We look forward to answering any questions you may have on these and other issues. Thank you for your attention.