



DOCUMENTARY
ORGANIZATION OF CANADA
DOCUMENTARISTES
DU CANADA

215 Spadina Avenue
Suite / Bureau 126
Toronto, Ontario
M5T 2C7
416.599.3844
1.877.467.4485
www.docorg.ca

December 5, 2008

Mr. Konrad von Finckenstein
Secretary General
Canadian Radio-Television and Telecommunications Commission
1 Promenade du Portage
Ottawa, Ontario K1A 0N2

Dear Mr. von Finckenstein,

**Re: Broadcasting Notice of Public Hearing CRTC2008-11
Call for Comments on Canadian Broadcasting in New Media**

1. The DOCUMENTARY ORGANIZATION OF CANADA | l'association des DOCUMENTARISTES DU CANADA (DOC) is the collective voice of independent documentary filmmakers across Canada. DOC is a national non-profit arts service association representing over 850 directors, producers and craftspeople in the Canadian documentary community. DOC advocates on behalf of its members to foster an environment conducive to documentary production and strives to strengthen the sector within the broader film production industry.
2. Documentary filmmakers across Canada face a number of challenges in the face of the rising consumer appetite for viewing content over the Internet and other new media platforms. But we also see a number of new and exciting opportunities for reaching new and larger audiences with our work.
3. Before I begin to describe our position, I would like to mention that while "New Media" encompasses a wide array of delivery formats and content, DOC, as a representative of documentary filmmakers, is mostly concerned with video content distributed over the Internet and over mobile devices. Therefore, when we use the words "New Media" in this submission, we are referring to those aspects of the term.
4. Primarily, DOC supports the notion of Net Neutrality. While we understand that this term of Net Neutrality is steeped in Libertarian notions, as pointed out by Mr. Eli Noam in his paper "TV or Not TV: Three screens, one regulation?"¹, and that it has been defined in a number of different ways, we would like to clarify what DOC means when it says Net Neutrality.

¹ CRTC: *TV or Not TV: Three Screens, One Regulation?* By Eli M. Noam, published July 11, 2008

5. We believe that all content producers, whether professional or non-professional, should have fair and equal access to the Internet. Filmmakers should have the ability to self distribute their content as they see fit without any hindrance. ISPs, as the gatekeepers, should not be allowed to hinder the distribution of content through traffic shaping of consumers' bandwidth usage. ISPs who own both the distribution networks and content delivery websites are at an unfair advantage in that they can speed up the download speeds of their own content while slowing the competitors download speeds to a crawl. Independent documentary filmmakers who see the Internet as an opportunity to become both content creator, and distributor of their own work fear this worst case scenario.
6. The Internet's strength is its open nature and its ability to create a direct link between content creators and consumers. In the age of the Internet, all creators of content can concurrently be the distributor and broadcaster of their work. Certainly large companies and public institutions will play a vital role in creating big budget content that will occupy the high spectrum of consumer demand, and this content will be difficult for small independent creators to duplicate, but we urge the commission not to enact any new policies which would protect this old regime of content creation to the detriment of the new regime which is emerging online. We urge the commission to maintain and protect the ease of entry of content creators allowing them to be the broadcasters of their own content if they so desire.
7. This is why DOC does not support the notion of licensing "new media undertakings" and we believe the exemption order of 1999 should stand. That said, DOC believes 2 key conditions should be added to the exemption order. 1) ISPs, as the main beneficiaries of increased bandwidth usage need to be levied so that they contribute financially to the creation of Canadian Content. 2) Limits need to be imposed on ISPs so that the practice of Bandwidth throttling is abolished and the Internet remains a competitive environment for new entrants to the Canadian market.
8. Below, you will find our answers to the questions posed in the call for submissions. We have only answered those questions we deemed relevant to our membership. We hope that these answers will give you a good understanding of our concerns and hopes for the future and that you will take them into consideration when developing the Commission's policies regarding New Media.
9. Q.1. Does the Commission's interpretation of broadcasting in new media continue to be correct and are the proposed clarifications, in the paragraphs above, of this interpretation appropriate, complete and comprehensive? If not, how should the Commission's interpretation change?
10. DOC agrees with the commissions' interpretation of broadcasting in new media as set out in public notice 2008-11. The definition is comprehensive and sufficiently flexible for documentary filmmakers.
11. Q.2. Given that the Commission has clearly articulated that it is not concerned with user-generated broadcasting content, to what type of broadcasting content in new media should the Commission pay particular attention? For example, should the Commission draw a distinction between professional versus non-professional content, or content aimed at commercial versus non-commercial use? If so, how should the terms be defined?
12. DOC agrees with the Commission that User Generated content should not be of any concern to the commission.

13. While DOC does feel there should be a clear distinction between professional and non-professional content creators, we would not support any regulation that inhibits the ability of non-professionals to make their content available to the world through new media.
14. But if new financial support measures are created to increase the amount and availability of Canadian Content in new media, DOC fully supports the notion that financial support should only be available to professionals, as measured by a minimum experience requirement, the incorporation of a company whose sole purpose is to produce new media, or through a demonstrated desire to become a professional through the acquisition of a relevant training.
15. Irrespective of the platform, professionally produced documentaries are hard to make due to the cost, time, and the training required. Thus a distinction between professional and non-professional is important in order to maintain a high level of quality production within our industry, regardless of the platform.
16. Q.3. How has broadcasting in new media and the corresponding business models evolved since the issuance of the exemption orders for new media broadcasting undertakings and mobile television broadcasting undertakings? What role can broadcasting in new media be expected to play in the future, as part of the Canadian broadcasting system?
17. Since the exemption orders, DOC believes that the line between content creators and broadcasters has essentially disappeared, and in our view, that is a good thing. Documentary filmmakers are able to take control of their content online and deliver it to consumers all over the world. This goes beyond re-purposed content originally produced by TV, or content meant to support a broadcast on another platform, rather we see new forms of documentary storytelling emerging online.
18. In the new media world, there are now only content creators (filmmakers, writers, web artists, musicians etc), content enablers (those who fund the creation of content, aggregate content on websites, sell advertising for creators etc) and consumers. And all three of these categories can often be interchangeable.
19. Q.6. What is the current availability of Canadian broadcasting content in new media? Are there challenges related to business models with respect to the creation and distribution of Canadian broadcasting content in new media?
20. It is very difficult to determine the availability of Canadian Content in new media, as no good study has yet been done to determine the actual figures. Anecdotally, the majority of Canadian Content in new media is content that was first produced for Traditional platforms (TV), and then repurposed for the Internet, or content that was produced to supplement content produced for traditional platforms.
21. The current business model for producing professional content directly for new media is virtually non-existent. The ad mechanisms that currently exist only support the financing of low budget – and often low brow – productions and only the rare viral sensation can make back its production costs. One good example of this is the short comedy series, *Têtes à claques*.

22. The only current way to produce new media content for the web, especially documentary content, is to do so with financial support from government programs. Two good examples of documentary new media are projects such as diamondroad.tv, which was created to support the documentary of the same name and HomelessNation.org, which is an innovative stand-alone new media project about homelessness. Both projects recently won Canadian New Media Awards and could not have been made without some combination of government support or support from the Bell New Media Fund.
23. In order to increase the amount of quality Canadian new media content, more funding is paramount.
24. Q.8. How should "Canadian content" be defined with respect to broadcasting content in new media? Are any of the definitions that the Commission uses for other platforms, such as radio and television, relevant? If so, how would they be applied?
25. DOC believes Canadian content should be defined in 3 ways. Canadian ownership of content, 75% of budgets should be spent in Canada and content should be produced by a majority Canadian crew as determined by a points system, for both video production for the web, and for production of the delivery system of that content ie the websites associated to the project.
26. Although we believe the CTF's point system has merit, it does not apply to documentaries, because there are significant differences in key crew positions for documentary production. For documentaries made for the web, we propose the following points system:
27. A total of 4 points would be necessary out of the following key creative positions filled by Canadians:
- Director (2)
 - Writer (1)
 - Director of Photography (1)
 - Editor (1)
 - Composer (1)
28. For the creation of the non-video portion of new media projects, we would propose the following points system:
29. A total of 4 points would be necessary out of the following key creative positions filled by Canadians:
- creative lead (2)
 - technical lead (2)
 - underlying property be Canadian (1)
 - writers (1)
30. Q.9. Given the level of Canadian broadcasting content in new media, are measures needed to support the creation, promotion and visibility of Canadian broadcasting content in new media? If so, what measures, and how can these be accomplished within the mandate of the Commission?

31. The most important measure currently needed is increased funding for new media projects. The crucial question of course is where would this money come from, and what would a new fund look like?
32. DOC believes that currently, ISPs and consumers are the two main beneficiaries in the new media landscape. By providing Internet connections, and charging for bandwidth fees, ISPs profit significantly from content viewed online. As for Internet users, they benefit from an almost limitless bounty of free or nearly free online content. Both ISPs and consumers also benefit tremendously from piracy – again through increased bandwidth revenues for ISPs and free content for consumers - to the direct detriment of content creators and content enablers.
33. As the two biggest beneficiaries, DOC believes that ISPs and consumers should be contributing financially to the creation of Canadian new media content. Unfortunately, there is no obvious way for consumers to contribute financially. Short of the imposition of an “Internet Tax” - modelled after the “TV Tax” in the UK – DOC does not see a feasible method of compelling consumers to contribute beyond being the eyeballs who are supposedly viewing ads online. Therefore, DOC supports the position that ISPs, through a levy, should financially support the production of Canadian content.
34. Specifically, DOC supports the proposal as described by lawyer Peter Grant in his presentation, *Reinventing the Cultural Tool Kit: Canadian Content on New Media*², for an ISP levy at 2.5% of revenues. Citing a study done by Ellacoya Networks³, Mr. Grant states that 51% of ISP traffic is broadcasting- related, and thus such an ISP levy would equate to half of the 5% levy currently imposed on the revenues of BDUs that currently contribute to the Canadian Television Fund and independent production funds.
35. DOC proposes that the money from this levy would contribute to the creation of a “Canadian New Media Fund”, which would be built on an equity investment model. The fund would provide a percentage of the crucial development financing, or production financing, necessary to get programs produced, and would recoup on its investment based on any revenue generated by the project.
36. As an added support measure, DOC would also encourage the creation of a Spectrum Trust Fund, as suggested by Mr. Eli Noam in his aforementioned paper “TV or Not TV: Three screens, one regulation?”. Such a fund would be financed by the auctioning of new cell phone spectrums. We would also like to propose that any transfer of ownership of this type of spectrum be subject to industry benefits, and as such, a percentage of these sales would also go into this fund.
37. DOC would also like to encourage the Commission to consider that any new funds need to have documentary specific guidelines and a minimum percentage expenditure on the creation of documentary programming.
38. Early and sustained investment in Canadian new media content will give the Canadian production industry a leg up on the competition allowing us to distribute our locally grown product to the world. Not only would this serve the economic purpose of growing our industry, it would also export our unique Canadian POV to the world.
- 39. Q.10. What benchmarks and measures are appropriate to assess the level of Canadian broadcasting content in new media? How should these standards be applied?**

² *Reinventing the Cultural Tool Kit: Canadian Content on New Media*, a presentation to the CFTPA Prime Time Conference, February 22, 2008. By Peter S. Grant, Senior Counsel, McCarthy Tétrault LLP

³ *Ellacoya Networks, Study of 1 million broadband users in North America, 2007*

40. There is inadequate measurement available, which means an opportunity exists to create mechanisms to do so. DOC recommends that there be a cross-stakeholder measurement study initiated as soon as possible to measure Canadian content in new media from 2009-2012, which should be published on-line and made available to the public. Such a study should build on unique partnerships in the new media space begun by such academic-private sector-creator associations as the MEIC (Mobile Experience Innovation Centre), or the joint programme of Communications and Culture between York University and Ryerson University.
41. Q.11. Is there a specific role for local broadcasting content in new media in achieving the broadcasting policy objectives of the Act? If so, are measures required to further local participation in this environment?
42. Q.12. Does broadcasting content in new media reflect Canada's linguistic duality, multicultural nature, and special place of Aboriginal peoples within society, as well as the broadcasting policy objectives of the Act? If not, are measures feasible or necessary, and how would they be applied?
43. In answer to both Questions 11 & 12, DOC believes the Internet is a powerful tool for creating and disseminating content about and geared for niches. DOC considers that local communities, linguistic communities, cultural communities all fall under the category of a niche. DOC believes that these are very important to the Canadian media landscape and that any new fund created to support Canadian new media content should reserve a minimum percentage of its funds to support these types of diverse programming. This kind of programming will be significant and be of great importance to the members of countless Canadian communities.
44. DOC also supports a minimum percentage of funds being earmarked for the production of educational new media projects, which could also be classified as niche productions.
45. More importantly, we would like to reiterate that maintaining "Net Neutrality" and defending ease of access to Internet broadcasting will also help to ensure that a strong diversity of voices is maintained.
46. Q.13. Is the Canadian independent production sector contributing in a significant manner in the environment for broadcasting in new media? If not, are measures feasible or necessary, and how would they be applied?
47. Yes, but not in the way one might imagine. Documentary producers are increasingly required to license new media rights to broadcasters for negligible license fees. Broadcasters are able to use their power to license a documentary and have the producer "throw in" streaming, downloading and other new media rights; they claim that until there is a revenue model for streaming, they expect these rights as part of their license. Yet there is a direct cost to producers in giving up these rights as Internet-based distribution erodes non-theatrical and home video sales. On certain films there are also additional royalty payments to actors, writers and archival rights holders to secure these rights.
48. It is unsustainable for producers to continue to give-away Internet rights in order to secure a broadcast license for their documentary – there needs to be a mechanism to fairly license these rights, or more willingness on the part of broadcasters to enter into revenue-share agreements. It is not acceptable for broadcasters who license documentaries for broadcast, to withdraw their license offer when producers demand reasonable license fees for Internet-distribution rights.
49. When repurposing traditional content for the web, producers are significantly contributing through extra expenses, loss of revenue and loss of control.

50. Q.14. Are there practices that restrict or enhance the distribution of and access to Canadian broadcasting content delivered and accessed over the Internet and through mobile devices? If so, describe the practices and the nature and extent of their effect. Are measures necessary, and how would they be applied?
51. Yes. Traffic shaping and bandwidth throttling is the greatest threat. Currently in Canada there is a virtual monopoly on the “last mile” of connectivity to the Internet. This virtual monopoly has created a severely lopsided competitive imbalance. ISPs can control without regard for anyone which websites are put in the “fast lane” and which ones are slated for the “slow lane”. This gives them the ability to speed up the download speeds of content that is also owned by the same ISP and slow down the download speeds of competitors. This of course leads to a competitive disadvantage for the independent production sector.
52. Q.19. Do the exemption orders for new media broadcasting undertakings and mobile television broadcasting undertakings continue to be appropriate? Why or why not? Are measures and/or regulatory amendments required to ensure that the environment for broadcasting in new media is contributing in an appropriate manner to the achievement of the broadcasting policy objectives of the Act? If so, describe any such measures or amendments.
53. DOC believes that the exemption orders continue to be appropriate in the current circumstances. But DOC would like to reiterate that it believes 2 conditions should be attached to the exemption order. 1) A levy of 2.5% of revenues be imposed on ISPs be directed to the creation of Canadian Content. 2) Limits on bandwidth throttling be imposed on ISPs so that the Internet remains a competitive environment for new entrants to the Canadian market.
54. Thank you very much for the opportunity to present our positions and ideas to the Committee. Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, consisting of a horizontal line followed by a stylized, cursive name.

John Christou
Advocacy Chair

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