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**ORAL REMARKS BY**

**THE DOCUMENTARY ORGANISATION OF CANADA**

***Broadcasting Notice of Public Hearing 2008-11***

**Review of Canadian Broadcasting in New Media**

**FEBRUARY 24<sup>th</sup>, 2009 PUBLIC HEARING**

CHECK AGAINST DELIVERY

1. My name is John Christou, and I am the co-chair of DOC (the documentary organization of Canada), and I am with Danijel Margetic, the newly minted chair of DOC's Policy and Advocacy Committee.
2. 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 documentary community, from all provinces and regions of our nation. 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.
3. We have carefully weighed the submissions brought before the commission by various parties to date and have followed the discussion that has occurred over the last week. We are heartened by the frank exchange of ideas that is occurring here. As a result, we have been able to strengthen, streamline and elaborate on our own proposals, which we are happy to present here today.
4. Since some presenters have taken a similar position as our own, we will attempt to focus our presentation on a number of practical and concrete solutions which we believe will help to increase the amount of Canadian content available to Canadian and international consumers. But before we get into DOC's recommendations and responses to the commissions questions, we'd like to give the commission an overview of our position in this matter and provide a bit of background of our members and our point of view.
5. First, let me define what we mean when we say "New Media". 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. Furthermore, unless otherwise noted, we also define "New Media" as content that is primarily produced for the Internet, and not content that is repurposed from TV, or for new media created as a marketing tool in support of a TV project.
6. DOC represents individuals - small businesses owners, independent producers, and craftspeople - who make documentaries. The Internet represents a golden opportunity for our members - the opportunity to practice their craft and be both the producer and broadcaster of their own work - without being restricted by an increasingly out of touch broadcasting system.
7. We view this as a period of exceptional opportunity and evolution for our industry. One where our members will be active participants. As such, our members remain very concerned about potential Internet regulation. DOC strongly believes in the idea of Net Neutrality and consequently we would like to urge the Commission wherever possible to strive to ensure unfettered access to the Internet by both the Canadian public and Canadian content producers.
8. In order to protect these potential opportunities, we believe that all content producers, whether professional or non-professional, should have fair and equal access to broadcasting over the Internet. Filmmakers should have the ability to self distribute their content as they see fit without any hindrance or dependence on television broadcasters.
9. We acknowledge that other parties have addressed this issue, but DOC is also concerned about the role ISP's have assumed in recent years by acting as gatekeepers or self-appointed regulators by engaging in the practice of traffic shaping. The argument presented by the ISP's has been that this is simply good 'pipeline' management, but by specifically targeting one segment of Internet traffic, the ISP's have stepped out of the passive distribution role they have so far claimed for themselves.

10. In order for New Media to grow and develop, no party should be able to restrict or modify the ability of the public to access New Media on the Internet (notwithstanding the restrictions imposed by copyright rules). The power of the Internet lies precisely in its ability to create a direct link between a consumer and content creator. In this forum the content creator can simultaneously become a broadcaster and distributor of their own content, without facing the same barriers of entry. However, if the Internet is not Neutral – new and insurmountable barriers will emerge.
11. With that in mind, DOC strongly opposes the proposition of licensing “new media undertakings”. DOC recommends that the “new media exemption” order should continue. Furthermore, we believe it is highly unlikely that these exemption orders can ever be lifted, due to the lack any workable means of implementing a licensing system, but most importantly because we are not persuaded that such regulation would benefit the Canadian broadcasting system or Canadian consumers.
12. However, DOC does recommend the implementation of very specific and targeted measures that we believe would help to increase the amount of Canadian New Media content available on the Internet.

### **Canadian Content New Media Certification**

13. In order to know how much Canadian content is available online, we first have to define what constitutes Canadian content in New Media.
14. We agree that User Generated content should be exempted from regulation, though we would not support any regulation that inhibits the ability of non-professionals to make their content available to the world through new media.
15. Only content that meets certain minimum criteria should be certified as Canadian Content and DOC fully supports the notion that financial support should only be available to professionals and productions meeting these criteria.
16. DOC recommends that New Media meet the following Canadian content criteria:
  - I. Must be produced by a Canadian owned and controlled company
  - II. 75% of the budgets must be spent in Canada (with food, travel & accommodation expenses for Canadian crew abroad counting as Canadian expenditures)
  - III. Majority of key crew must be Canadian as determined by a point system.
17. Although we believe the CAVCO point system has merit, it does not reflect the nature of documentary production, because there are significant differences in key crew positions for documentary production. Also, the CAVCO point system may not be not fully relevant to the Internet.
18. We propose the following point system be used for documentaries for key creative positions filled by Canadians:
  - I. Director (2)
  - II. Writer (1)
  - III. Director of Photography (1)
  - IV. Editor (1)
  - V. Composer (1)
19. In order to Qualify as Canadian, the New Media Production would have to score 4 out of 6 points.

20. We understand that a similar but different point system would have to be developed for drama productions.

21. DOC would also recommend that CAVCO be given the responsibility of certifying Canadian new media productions.

#### **Cancon Tracking/Measurement:**

22. The second recommendation is the creation of a method to track Canadian content online.

23. Doc recommends the CRTC work with private software developers on creating a method of tracking certified Canadian content online. For example, a company in the US called Digimarc ([www.digimarc.com](http://www.digimarc.com)) has been working with a number of clients to create video tracking methods. They imbed invisible digital watermarks that can be tracked over the Internet. There is no reason why a "Canadian" watermark couldn't be developed to track the usage of Canadian video on the web. This invisible watermark could be inserted into the code of video files once it has been certified as Cancon. This information could also be beneficially shared with the content creators, so that they can better track how their content is used online, and therefore hopefully develop better and more targeted content in the future.

#### **Cancon Goals:**

24. DOC believes the CRTC should establish Canadian Content goals, but it is difficult to suggest a specific target, since reliable information about the availability of Canadian new media content doesn't yet exist. The question of how to measure Canadian content online is also relevant and needs to be answered. DOC believes that Canadian content should be measured by the total number of viewing hours of certified new media content. Once a tracking measure is put in place, goals can be established.

#### **New Media Fund:**

25. The biggest current barrier to creating new media content is the lack of production financing. This is compounded by the fact that new media content is most valuable as a long-term investment. Once a show is online, it can remain there indefinitely and thus continue to earn money over many years. This is commonly referred to as the Long Tail. We'd also like to refute the assertion that the production of new media content is cheaper than producing content for Television. This is just false, and is based on a series of erroneous assumptions, which we would happily address in the follow-up. Original New Media productions can be just as expensive as TV production. Thus, a new fund needs to be created to finance the production, promotion and accessibility of New Media.

26. First, let us recommend some of the parameters of a new fund.

27. DOC recommends that the mandate of a new, New Media fund, should be to **support original content created primarily for the Internet**. Funds already exist that support interactive new media, and new media that serves as a marketing tool for TV programs. Furthermore, the costs of re-purposing TV content for the Internet are small and can easily be assumed by the producer or distributor of the content.

28. We believe the definition of new media content should be left somewhat flexible, and that the fund should seek to fund a range of projects, including web series, web shorts, web docs, and other content that is defined as priority content (ie, excluding news, sports, game shows etc etc.)

29. DOC recommends that this fund be administered by either the CTF or Telefilm. There is no need to create a new administrative structure, but this fund must be completely separate from the current new media funds run by those organizations, since those funds do not currently support the type of programming we are talking about.

30. DOC is reluctant to recommend a dollar figure for this fund, since the financing sources are uncertain, but we believe that substantial, multi-year commitment is necessary.

31. We recommend that the new fund employ a temporary panel of consultants who are active New Media producers and creators whose role would be to select projects that should receive funding.

32. We feel that the best approach to New Media production financing by the fund would be in the form of equity investments, and that it should be reasonably expected that the fund see a return on its investments.

33. The fund should support the following three objectives through different funding streams. While we have not reached a conclusion about how the funds would be divided among the different streams we do have suggestions about how each stream should be structured:

I. New Media Production

- i. 1/20 of the funds should be earmarked for First Nations Productions
- ii. 1/3 of the remaining funds should be earmarked for French production
- iii. 1/5 of both the English and French funds should be earmarked for regional production.
- iv. 1/3 of all the funding should be earmarked for documentaries

II. New Media Promotion

- i. 1/2 of the Promotion Stream Funds should be earmarked to supporting the marketing of Canadian Content through on-line ventures
- ii. 1/4 of the funds should be earmarked to supporting the marketing of Canadian Content through traditional outlets (broadcast, print)
- iii. 1/4 of the funds should be earmarked to supporting the marketing of Canadian Content through alternative marketing endeavors

III. New Media Accessibility

- i. 1/2 of the Accessibility Stream Funds should be devoted to improving broadband access in remote and rural areas, until broadband penetration reaches 95%.
- ii. 1/2 of the Funds should be devoted to improving accessibility to New Media for Canadians with disabilities.

34. We believe that it would be difficult for a fund to have real impact unless it concentrates on all three areas: Production, Promotion and Accessibility. We are particularly concerned by the fact that none of the ISP's or Broadcasters have acknowledged the problem of accessible media. A brief examination of the broadcaster websites shows that no efforts have been made to make their New Media content accessible – despite the fact that availability of affordable technological solutions to adapt their already captioned broadcast material to the Internet. Of all the major players who have submitted to these proceedings NFB alone has acknowledged the accessibility issue and is actively working on it.

## Sources of Funding

35. DOC believes there are 3 main methods of finding money for any such new fund.
36. First, we can appeal to the government to contribute financially to this new fund.
37. Second, a levy on ISP revenues can be implemented to contribute to the fund.
38. Third, a "Spectrum Heritage Trust" can be created, whereby a % of the money raised from the sale of wireless spectrum is put into a legacy trust, and the interest and investment income from the trust go into the New Media Fund.
39. The commission has already heard numerous recommendations about the ISP levy, therefore we won't spend too much time on it right now, but we do want to reiterate one main point.
40. DOC believes that ISP's are the direct beneficiaries of increased bandwidth usage, and it is clear from the data that video is the driver of bandwidth usage around the world. Therefore, as bandwidth usage continues to increase in Canada, so will the profits of ISPs. As such, they are the main beneficiaries of bandwidth usage, and thus, must contribute to the creation of Canadian content in new media in the same way that cable companies are mandated to contribute to the creation of Canadian content for Television.
41. In this regard, DOC would be happy to see the money for a New Media Fund come from any of these three sources, or perhaps a combination of all three.
42. In conclusion, DOC propose that the New Media Exemption order continues to be appropriate, but that a number of conditions and mechanisms need to be implemented in order to achieve the goals of the Broadcasting Act.
43. In our follow-up we would like to address some important issues that have emerged during the hearings or in other parties' submissions. Specifically we would hope to address:
  - I. The myth and non-existence of geo-blocking (in respect to Hulu and other similar services)
  - II. the proposed CAB metric for measuring impact of New Media on broadcasting
  - III. proposal by Allarco to change existing rules to consider broadcaster involvement in developing new media programming (websites, etc. ) as recognized contributions to Canadian content
  - IV. The contention by Quebecor, CBC and Corus that Broadcasters are the best stewards of Canadian Content and as such are entitled to control ALL rights
  - V. The notion advanced by ISP's that the best metric of internet use is "time spent" and not bandwidth consumed
44. Thank you very much. We look forward to your questions.