


SOCAN

 Society of Composers, Authors and
 Music Publishers of Canada

 Société canadienne des auteurs,
 compositeurs et éditeurs de musique

DATE	August 9, 2006	# of PAGES (including cover)	16
TO/À	Leonard St. Aubin, Acting Director General Telecommunications Policy Branch		
Tel/Tél			
Fax/Télécopieur	613-998-1256		
FROM/DE	C. Paul Spurgeon, Vice President Legal Services & General Counsel Email : spurgeonp@socan.ca	Judy Black, Assistant to C. Paul Spurgeon Email : blackj@socan.ca	
Tel/Tél	416-442-3812	416-442-3848	
Fax/Télécopieur	416-442-3831	416-442-3831	

Attachment: SOCAN's Comments re:

Canada Gazette, Part 1, June 17, 2006 - Proposed Policy Direction to the CRTC



The information contained in this transmission is confidential and intended only for the use of the individual or entity to whom it is addressed. If you have received this transmission in error, please notify us immediately and return the original transmission to us.

FAX TÉLÉCOPIÉ

**SOCAN**Society of Composers, Authors and
Music Publishers of CanadaSociété canadienne des auteurs,
compositeurs et éditeurs de musique**C. PAUL SPURGEON**Vice President, Legal Services & General Counsel
Vice-président, Services juridiques et Chef du contentieux

August 9, 2006

By Fax: (613) 998-1256

Mr. Leonard St. Aubin
Acting Director General
Telecommunications Policy Branch
Industry Canada
300 Slater Street, 16th Floor
Ottawa, Ontario
K1A 0C8

Dear Mr. St. Aubin:

**RE: CANADA GAZETTE PART I, JUNE 17, 2006
PROPOSED POLICY DIRECTION TO
THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION**

* **INTRODUCTION**

1. These preliminary submissions are presented on behalf of the members of **The Society of Composers, Authors and Music Publishers of Canada/Société canadienne des auteurs, compositeurs et éditeurs de musique** ("SOCAN") in response to the Notice published on pages 1606-1610 of the Canada Gazette, Part I dated June 17, 2006 (the "Notice").
2. SOCAN is a not-for-profit Canadian-owned and operated organization that represents composers, lyricists, songwriters and publishers of musical works from across Canada and around the world. On behalf of our over 25,000 active Canadian members, and members of the affiliated, similar societies from around the world, SOCAN collectively administers *performing rights* in music and lyrics -- musical works.
3. The performing right is that part of copyright that gives owners of musical works the sole right to perform in public, to broadcast their works, or to authorize others to do so, in return for royalty payments.
4. Performing rights are essential for music creators and their publishers because they are remunerated by the performing rights royalties they receive when their songs are used (i.e. performed in public or broadcast) by music users.
5. When Bell Globemedia or other users play musical works written by Canadians, royalties remain at home with Canadian creators. On the other hand, when users play more foreign music, royalties are paid to foreign sources.



6. It is for this reason that SOCAN has always supported measures which strengthen Canada's identity and sovereignty and promote the use of Canadian music, including foreign ownership regulations and Canadian Content rules.
7. SOCAN believes that the proposed policy direction should not be adopted because it is not in the national interest. Our preliminary submissions are presented under the following headings:
 1. The Cabinet Proposal would alter the balance between the economic and non-economic legislative objectives enacted by Parliament
 2. Although the Proposal focuses on the telecommunications sector, its effects will be felt in other sectors due to technological convergence and corporate integration
 3. The Proposal's focus on economic objectives fails to recognize the dual nature of cultural goods
 4. Summary

1. **THE CABINET PROPOSAL WOULD ALTER THE BALANCE BETWEEN THE ECONOMIC AND NON-ECONOMIC LEGISLATIVE OBJECTIVES ENACTED BY PARLIAMENT**

8. The Notice states:

Section 8 of the Telecommunications Act provides the Governor in Council (GIC) with the authority to issue policy directions of general application to the CRTC on broad policy matters with respect to the telecommunications policy objectives set out in the Act.

The proposed policy direction to the CRTC will provide policy guidance on how the Commission should exercise its regulatory mandate and direct it to take a more market-based approach to implementing the Act.

9. The Notice involves the following three entities of the Government of Canada:
 - The Governor in Council;
 - The Canadian Radio-television and Telecommunications Commission (the "CRTC" or the "Commission"); and
 - Parliament.
10. The **Governor in Council** ("GIC"), or the Cabinet, is the executive branch of the Canadian government.



11. The **CRTC** describes itself as an independent public authority which was established to sustain and promote Canadian culture and achieve key social and economic objectives by regulating and supervising Canadian broadcasting and telecommunications in the public interest. The CRTC is governed by the *Broadcasting Act* and the *Telecommunications Act*.
12. **Parliament** is the legislative branch of the Canadian government which enacts federal legislation, including the *Telecommunications Act* (the "Act")
13. Under the Act, Parliament has provided Cabinet with the power to direct the CRTC. Section 8 of the Act states:

The Governor in Council may, by order, issue to the Commission directions of general application on broad policy matters with respect to the Canadian telecommunications policy objectives.
14. In the description of the proposed policy direction, the Notice refers to the Report issued by a three-person Telecommunications Policy Review Panel on March 22, 2006 (the "Panel Report"). Page 10-6 of the Panel Report recognizes that:

The Governor-in-Council cannot use the power of direction to alter the Canadian telecommunications policy objectives or other legislated provisions.
15. SOCAN opposes the recommendations contained in Chapter 2 of the Panel Report because they make no mention of the Act's objectives regarding the maintenance of Canada's identity and sovereignty and because they would eliminate the Act's non-economic objectives. It is noteworthy that the Panel Report recognizes that legislative amendments would be required to implement these recommendations.
16. Instead of tabling legislative amendments, the government proposes to use a Cabinet order to alter Parliament's policy objectives by downgrading the importance of the Act's non-economic objectives. SOCAN submits that a legislative amendment, and not a Cabinet order, is required to make the proposed changes.
17. In particular, Cabinet's proposed policy direction directs the CRTC to exercise its powers and perform its duties under Parliament's Act by interpreting and implementing the Canadian telecommunications policy objectives set out in Section 7 of the Act – "particularly in paragraphs 7(c) and 7(f)" – in accordance with several principles specified under three sub-headings (the "Proposal").
18. Cabinet's Proposal only specifies two objectives contained in Paragraphs 7(c) and 7(f) of the Act. However, under the heading "Canadian Telecommunications Policy", Parliament specified 9 objectives. By focusing on only 2 of Parliament's 9 objectives, the Proposal raises several concerns.



19. First, Cabinet appears to be attempting to elevate 2 objectives to a higher status than Parliament's 7 other objectives. SOCAN submits that the Proposal would upset the delicate balance of objectives enacted by Parliament. If it intended that some objectives were more important than others, or that one objective should trump another, Parliament would not have enacted Section 7 the way it did.
20. Second, the 2 objectives highlighted by the Proposal deal solely with the *economic* components of Parliament's objectives. Paragraph 7(c) focuses on "efficiency and competitiveness", and Paragraph 7(f) focuses on "increased reliance on market forces".
21. However, in addition to these 2 economic objectives, Parliament has specified several other important *non-economic* objectives, including Canada's identity, sovereignty, social fabric, and regional development as well as foreign ownership and individual privacy.
22. The following underlined language highlights Parliament's non-economic objectives, whereas the 2 paragraphs selected by the Proposal appear in bolded font. Section 7 of the Act states:

It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives

- (a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;*
- (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;*
- (c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;***
- (d) to promote the ownership and control of Canadian carriers by Canadians;*
- (e) to promote the use of Canadian transmission facilities for telecommunications within Canada and between Canada and points outside Canada;*
- (f) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;***
- (g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;*



- (h) to respond to the economic and social requirements of users of telecommunications services; and
- (i) to contribute to the protection of the privacy of persons.

(emphasis added)

23. By specifying only 2 objectives, and not highlighting the other objectives, the Proposal does not recognize the relationship between the Act's economic objectives and its non-economic objectives. In effective, the Proposal would have the Act's economic objectives trump its non-economic objectives.
24. Third, the Proposal maximizes the importance of market forces, and minimizes the role of regulatory measures designed to pursue non-market objectives like national identity, sovereignty, and other social goals.
25. For example, Subsection 1(a) of the Proposal states:

The CRTC should

 - (i) *rely on market forces to the maximum extent feasible as the means of achieving the telecommunication objectives; and*
 - (ii) *when relying on regulation, use measures that are efficient and proportionate to their purpose and that interfere with the operation of competitive market forces to the minimum extent necessary to meet policy objectives.*
26. Likewise, Subsection 1(b) of the Proposal includes the following provisions which subjugate Parliament's non-economic objectives to the Proposal's economic objectives:

When it is determined that regulatory measures are required, then that regulatory measure should satisfy the following criteria:

 - (i) *each regulatory measure should specify the telecommunications policy objective that is advanced by the measure and demonstrate compliance with this policy direction...*
 - (iii) *regulatory measures designed to advance non-economic objectives of regulation should, to the greatest extent possible, be implemented in a symmetrical and competitively neutral manner...*
27. In effect, Cabinet is attempting to use an executive order to alter the balance between the *economic* and *non-economic* objectives enacted by Parliament. SOCAN submits that this Proposal must be subjected to full parliamentary overview and approval before it comes into force because only Parliament has the authority to change a duly enacted statute.



2. ALTHOUGH THE PROPOSAL FOCUSES ON THE TELECOMMUNICATIONS SECTOR, ITS EFFECTS WILL BE FELT IN OTHER SECTORS DUE TO TECHNOLOGICAL CONVERGENCE AND CORPORATE INTEGRATION

28. The Proposal will affect how the CRTC regulates major telecommunications corporations like Bell Canada Enterprises ("BCE"). With local and long distance phone service, wireless voice and data services, Internet access, satellite television, and a host of other services, BCE is a major telecommunications player.

29. However, BCE is not a simple common carrier that owns a transmission facility which provides telecommunications services to the public for compensation. On its website, BCE recognizes the importance of convergence to its business strategy:

As technologies converge and the Internet's potential is realized, Bell Canada is evolving to serve Canadians with innovative solutions and services for another 125 years and beyond.

30. BCE's evolution includes buying media companies that produce and distribute cultural content. For example, BCE owns 68.5 % of Bell Globemedia ("BGM"), which is a major multi-media company with ownership interests in Canada's leading media properties – including CTV Inc., the largest private broadcaster, and The Globe and Mail, the national daily newspaper.

31. BGM's website states that CTV operates 21 conventional television stations across Canada and offers a wide-range of news, sports, information and entertainment programming.

32. In addition, CTV has interests in 17 specialty channels, including Canada's number-one specialty channel, TSN, along with the companion website tsn.ca. Other specialty properties include MTV, CTV Newsnet, The Comedy Network, Report on Business Television, Réseau des sports, Discovery Channel and OLN, along with several digital specialty channels, Animal Planet, Discovery Civilization, Discovery HD Theatre, ESPN Classic, NHL Network, CTV Travel and RIS Info Sports. Each channel features a complementary interactive and dynamic website. CTV also has interests in ARTV and Viewer's Choice Canada.

33. Another BCE entity, Bell Canada ("Bell"), recently asked the CRTC to amend its cable licences to authorize the distribution of one or both of the audio programming services offered by Canada's two satellite subscription radio undertakings.

34. BGM is also in the process of completing its \$1.4 billion purchase of the extensive television and radio assets of CHUM Ltd. The CHUM radio and television broadcasters pay substantial royalties to SOCAN for the use of our members' musical works.



35. There has been considerable research on the convergence between the telecommunications sector and musical content. For example, the Organization for Economic Co-operation and Development ("OECD") Directorate for Science, Technology and Industry includes a Committee for Information, Computer and Communications Policy, which created a Working Party on the Information Economy.
36. This OECD Working Party published one of the most comprehensive and recent sources of information regarding the music industry in December, 2005 in a 130-page document entitled *Digital Broadband Content: Music* (the "OECD Study").
- See: <http://www.oecd.org/dataoecd/13/2/34995041.pdf>
37. On pages 65-66, the OECD Study describes the convergence between voice, broadband, and broadcasting as follows:

Telecommunication, Internet Service Providers (ISPs) and Web portals are also seriously involved in trying to secure a role in content delivery. In fact, digital music and other content distribution has contributed to blurring the boundaries between content providers, broadcasters and telecommunication service providers.

Network operators no longer rely solely on faster access to drive higher subscriptions and profitability. In this changing environment, network operators wonder how to generate revenue to support investment in next-generation networks and how to replace loss of traditional business (essentially fixedline voice traffic). Telecommunication service providers must thus develop skills beyond the building and running of vast networks.

Another essential question is what applications/content can put greater speeds to use. In their move to becoming triple-play providers (voice, broadband and TV/content), network operators are moving into more value-added services like the provision of content and information services. In competition with other broadband providers, licenced content offerings of this kind are expected to drive subscriber numbers in the next years.

Next to the constant upgrading of network speeds, this quest for content revenues includes the development of Web portals that source content from various content providers for subscribed broadband users. As telecommunication service providers move up the value ladder their goal is to retain end customer ownership through the provision of content of others rather than having third party providers earn revenues from their broadband customers. Premium broadband packages which depending on the chosen service propose fee-based or included ("all you can eat") content services are being developed. Operators have the advantage that they can bill consumers directly over the monthly ISP bill.

Network operators also have to position themselves or form relationships around new value chain services. Few of these roles are managed by a single player any longer (joint activity of content provider, network operators, intermediaries, etc.). ISPs have for many years been entering into a series of



commercial relationships with content aggregators and content owners to offer authorised content. ISPs and Web portals have one significant advantage over many other players in the online music business: a large Internet audience.

The ISP as the intermediary distribution platform benefits financially along with the content owner when their customers take advantage of rich, high speed content selections offered at reasonable prices. As ISPs will be a distributor, but usually not a producer or owner of content, success will depend on entering into partnership with content firms and sharing in some way in the resulting revenue (i.e. ISPs rely on the input from the content industries)...

This tendency for ISPs to venture into providing content to their subscribers is particularly noteworthy in the field of music...

(emphasis added)

38. Although the Proposal purports to only apply to the CRTC's telecommunications role, it cannot be assumed that telecommunications regulatory changes will have no impact on the broadcasting sector.
39. The Panel Report also recognized that technological developments and the corporate strategy of BCE and others have blurred the traditional boundaries between the telecommunications and broadcasting industries. The Panel Report contains an Afterword which underlined the importance of convergence on Page 11-3:

The mandate of the Telecommunications Policy Review Panel was to recommend a modern policy and regulatory framework to ensure that Canada continues to have a strong, internationally competitive telecommunications industry that delivers world-class products and services at affordable prices for the economic and social benefit of all Canadians. In conducting its review, the Panel was asked to focus on three key areas: telecommunications regulation, access to broadband, and information and communications technology (ICT) adoption. In this final report, the Panel recommends the actions required in each of these areas to meet the overall objectives of the review.

In this Afterword, the Panel deals with two related issues that were not specifically made part of its mandate, but that significantly affect the future of the Canadian telecommunications industry:

- *the implications of the technology and market trends that are transforming the telecommunications industry for Canada's broadcasting policy and regulatory framework*
- *the current policies that restrict foreign ownership and control of telecommunications common carriers and broadcast distribution undertakings.*



The technology and market trends discussed in Chapter 1 affect both the telecommunications and broadcasting industries, and many of the major players in the Canadian telecommunications industry, such as BCE Inc., Rogers Communications Inc., Shaw Communications Inc. and Vidéotron Itée, are also major players in the Canadian broadcasting industry. The continuing convergence of Canada's communications industries, with former "cable TV" companies and "telephone companies" both offering a similar range of voice, data and video services on broadband Internet Protocol (IP) platforms, will significantly increase competition between the telecommunications and broadcasting industries. The entry of wireless companies into the video distribution business will intensify this competition.

This convergence of telecommunications and broadcasting markets brings into question the continued viability of maintaining two separate policy and regulatory frameworks, one for telecommunications common carriers like the incumbent telephone companies and one for their competitors in most of the same markets, the cable telecommunications companies.

The second issue relates to the restrictions on foreign ownership and control of Canadian telecommunications carriers. The policy debates on this issue generally involve different considerations from the issue of restrictions on foreign ownership or control of Canadian broadcasters.

In the case of Canadian carriers, the policy considerations include increasing competition, economic efficiency, access to capital and technology, as well as concerns about Canadian employment, control of head office functions and national security.

The broadcasting ownership debates focus on issues relating to creation and distribution of Canadian content, access to Canadian sources of information and cultural sovereignty.

Over the past years, the networks of both Canadian telecommunications carriers and broadcasting distribution undertakings have increasingly been used to provide both broadcasting services and other telecommunications services. Thus, questions of whether to liberalize restrictions against foreign ownership or control of these facilities inevitably bring into play two very different sets of policy considerations and interests.

40. As a result, SOCAN submits that the Proposal cannot be considered in isolation of the process of convergence of information and communications technologies and content industries.
41. In light of corporate integration and technological convergence between carriers and content, the Proposal's effects will be felt beyond the limited scope of telecommunications common carriers and will impact on content providers. In the past, the CRTC has regulated content providers primarily under the *Broadcasting Act*. SOCAN is concerned that the Proposal could affect, directly and/or indirectly, how the CRTC regulates content.



42. Even the Panel's Proposal acknowledged (however only as an "afterword"), the "clear linkages between [two related issues regarding the broadcasting policy] and the objectives of the telecommunications policy review". However, despite the fact that broadcasting policy would be directly affected by the Panel's proposal, the Proposal nevertheless notes that "[it] does not believe implementation of its recommendations for telecommunications reform should be delayed to await a review of broadcasting policy." SOCAN disagrees.
43. Government regulation, and not market forces, created Canadian Content rules. By maximizing the importance of market forces, the Proposal could adversely affect one of the most important regulatory instruments used to promote Canadian identity and cultural sovereignty.
44. As a result, the Proposal should be subject to approval by other interested parties, including the Department of Canadian Heritage and the House of Commons Standing Committee on Canadian Heritage.
45. SOCAN is also concerned that, in addition to the Proposal, the Minister of Industry has indicated that he is prepared to reconsider Canada's telecommunication foreign ownership rules. Again, if changes are made to the rules that govern foreign ownership in the telecommunications sector, such changes cannot be considered without analyzing their impact on the broadcasting sector.
46. As discussed above, telecommunications companies (e.g., BCE) are now providing broadcasting services. Likewise, cable Broadcasting Distribution Undertakings ("BDUs") are now providing telecommunications services.
47. Page 11-15 of the Panel Report has described how unilateral foreign ownership changes in the telecommunications sector will create competitive problems in the broadcasting sector:

Cable TV companies were originally authorized to construct facilities for the purpose of distributing broadcasting services. In recent years, they have upgraded these facilities so that they can also provide telecommunications services, such as high-speed Internet access and telephone service.

However, because these telecommunications services are provided by companies that are licensed as BDUs, the ownership and control of their facilities is subject to the provisions of the Broadcasting Act, not the Telecommunications Act.

BDUs could therefore potentially be disadvantaged if ownership rules were relaxed or abolished under the latter Act, but not under the former.

Because the facilities they own are now used to carry broadcasting services as well as telecommunications services, some of Canada's largest telecommunications common carriers, such as Bell Canada and TELUS Communications Inc. are now licensed as BDUs. Thus, even if the



Telecommunications Act were amended to permit greater foreign ownership or control of Canadian telecommunications common carriers, these companies would remain subject to the foreign ownership and control provisions of the Broadcasting Act. This could potentially disadvantage their shareholders, in terms of the benefits that might result from a transfer of ownership, and weaken their competitive position in the Canadian telecommunications marketplace.

In summary, asymmetrical liberalization of Canada's foreign investment rules — that is, liberalizing foreign investment rules for telecommunications carriers but not BDUs — could leave cable companies and some telecommunications companies in an unfair competitive disadvantage.

48. In a House of Commons debate on May 30, 2006, the New Democratic Party culture critic, Mr. Charlie Angus, described the linkage between changes in the telecommunications sector and Canada's cultural industries as follows:

The ongoing negotiations taking place at the GATS [World Trade Organization General Agreement on Trade in Services] right now will have profound implications on our ability to maintain a cultural identity. For example, in March, when the industry minister received the recommendations on changes to telecom, he said that it would take weeks and months to study and to come back with recommendations on lifting foreign ownership restrictions. Yet we know that at the same time he was receiving that, Canadian trade delegations in Geneva already had been given very clear instructions.

Canada is part of a pluri-lateral request to the countries of the GATS to strip foreign ownership restrictions on all telecom industries. The trade request, as put forward by the Conservative government, is a radical change in telecom policy. It runs counter to present Canadian law and it will have profound implications on our ability to maintain domestic cultural policy in Canada. The Conservative government has already begun pushing ahead with these talks without a debate in Parliament, without input from stakeholders and without telling Canadians what is on the table....

At this point Canada is on the receiving end of a GATS pluri-lateral request in Geneva in the area of audio-visual services. The ongoing discussions, which we are not privy to and which we have no idea what mandate the government has given its negotiators, include questions of stripping domestic content, erasing the favourable tax policies that have encouraged the domestic film production in Canada and ending all foreign ownership restrictions in the delivery and production of audio-visual services.

Parliament has set very clear limits on foreign ownership in broadcast and telecom. We need to insist that our trade negotiators, who are undertaking to represent Canada on the international level, understand that they have to be in compliance with present Canadian law. If the government wants to come forward with an agenda to change our laws on broadcast and telecom, it should then come into the House and open it to debate, but it cannot partake in this in Geneva and then bring it back as a fait accompli.



Any changes to domestic ownership in Canada, any changes to who controls telecom or broadcast, has to be brought before the House.

(emphasis added)

49. SOCAN strongly opposes the Panel Report's recommendations to strip foreign ownership restrictions in the telecom sector. On May 30, 2006, the Minister of Canadian Heritage, the Hon. Bev Oda, told the House of Commons:

Maintaining current restrictions on foreign ownership is important to the cultural sector.

Currently there are no plans to change anything in this regard.

We believe that our cultural industries, artistic communities and broadcasting system must continue to support Canadian content in all its aspects.

50. SOCAN welcomes the new government's recognition that the current restrictions on foreign ownership policies are important to the cultural industry, and the Minister's confirmation that there are no plans to change anything in this regard.

51. Given the convergence between the telecommunications and broadcasting sectors, the government should not proceed unilaterally with a Proposal that purports to apply solely to the telecommunications sector for the same reasons that asymmetrical foreign investment rule changes should be rejected. It would not be in the national interest to run the risk of damaging the broadcasting sector by proceeding unilaterally with the Proposal in the telecommunications sector.

3. THE PROPOSAL'S FOCUS ON ECONOMIC OBJECTIVES FAILS TO RECOGNIZE THE DUAL NATURE OF CULTURAL GOODS

52. The Cabinet Proposal's failure to recognize the relationship between Parliament's economic and non-economic objectives is particularly significant in the context of cultural goods and services, including the musical works of SOCAN's members.

53. On November 23, 2005, the Government of Canada announced its acceptance of the United Nations Educational, Scientific and Cultural Organization ("UNESCO") *International Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (the "Convention").

54. In the House of Commons on May 30, 2006, the Minister of Canadian Heritage, the Hon. Bev Oda, confirmed the new government's support of the Convention:

The members on this side of the House do support UNESCO and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.



In fact, the government and the Prime Minister turned a new leaf and dealt directly and effectively with the question of Quebec's presence at UNESCO.

55. The Convention recognizes that books, films, music, television programs, and other cultural goods and services have a distinctive nature that goes beyond their commercial value. For example, the Convention states:

...cultural activities, goods and services have both an economic and cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value.

56. During the May 30, 2006 House of Commons debate, a Bloc Québécois Member of Parliament, Mr. Luc Malo, highlighted the fact that cultural products cannot be treated like other products:

For everyone's benefit, I would first like to review what the Convention on the Protection and Promotion of the Diversity of Cultural Expressions will do; it will: recognize in international law the distinctive nature of cultural goods and services as vehicles of values, identity and meaning...

When we read that, it is easy to understand why Québec, its artists and everyone connected with its cultural industry have taken and continue to take a leadership role in promoting this convention.

While the Québec nation is creative and endowed with a vibrant cultural heritage, it is also up against foreign competitors that have enormous production and distribution systems, and so it is crucial that cultural products and services not be regarded as ordinary, disposable products and services.

57. As discussed above, Section 7 of the Act recognizes the important role that telecommunications play in the maintenance of Canada's identity and sovereignty and includes several non-economic objectives which are not recognized in the Proposal.

58. During the May 30, 2006 House of Commons debate, the Parliamentary Secretary to the Minister of Human Resources and Social Development, Mrs. Lynne Yelich, stated:

Let me now turn to some other details of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Many members I suspect will not know the central role Canada is taking in bringing the convention into force. It is important for all members to recall that the pursuit of the convention was supported by all sides of the House.

Canada was the first nation to ratify the UNESCO convention. I have spoken about the tools the convention gives the government to defend Canadian culture. I have said that the key to the convention is that it gives the government the flexibility to address new concerns as they arise.

The convention itself is based on two principles.



First is the recognition in international law that cultural goods and services have both a social and an economic benefit.

Second is that the governments have the right to put in place measures aimed at securing a diversity of cultural expressions.

(emphasis added)

59. In light of Canada's commitments under the Convention and Parliament's clear statutory language, SOCAN submits that the Proposal should not be approved because it fails to recognize the dual nature of cultural goods and services, which have both economic value as well as non-economic and social values.
60. Since market forces do not recognize non-economic objectives, it has long been recognized that government regulations are required to promote Canadian identity and cultural sovereignty. By focusing solely on market forces and economic objectives – and downplaying the role of government regulation and social objectives – the Proposal nullifies the multidimensional telecommunications objectives enacted by Parliament.

4. SUMMARY

61. SOCAN believes that the proposed policy direction should not be adopted because it is not in the national interest.
62. The Proposal is not in the national interest because it fails to strike a proper balance between economic objectives and non-economic objectives.
63. By swinging the pendulum so far in favour of market forces and economic objectives, the Proposal ignores the role that government regulation must play in pursuing important non-economic objectives like cultural sovereignty and national identity.
64. In light of corporate integration and technological convergence between carriers and content, the Proposal's effects will be felt beyond the limited scope of telecommunications common carriers and will impact on content providers.
65. SOCAN is concerned that the Proposal could affect, directly and/or indirectly, how the CRTC regulates content. Government regulation, and not market forces, created Canadian Content rules. By maximizing the importance of market forces, the Proposal could adversely affect one of the most important regulatory instruments used to promote Canadian identity and cultural sovereignty.
66. On June 13, 2006, the Minister of Industry issued a Press Release entitled **Canada's New Government Tables Proposed First-of-its-Kind Policy Direction on Telecommunications to CRTC Calling for Greater Reliance on**



Market Forces.

67. The Press Release highlighted the fact that this is the first time since the *Telecommunications Act* was adopted in 1993 that such a policy direction has been issued to the CRTC. Minister Bernier also stated that the wording of the proposed policy direction will be reviewed in light of comments and submissions received through the Gazette process, and through parliamentary debate.
68. On June 13, 2006, the Proposal was also tabled in the House of Commons and permanently referred to the Standing Committee on Industry Science and Technology (the "Committee").
69. Given that this is the first time a policy direction has been issued to the CRTC, and given the Proposal's potential impact on the policy objectives enacted by Parliament, SOCAN submits that Committee should hold public hearings.
70. SOCAN hereby requests an appearance in any such Committee hearings.
71. Given that the impact of the Proposal will extend beyond the telecommunications sector and the mandate of Industry Canada, the Proposal should also be carefully scrutinized by other interested bodies, including the Department of Canadian Heritage and the House of Commons Standing Committee on Canadian Heritage.
72. As discussed above, Cabinet is attempting to use an executive order to alter the balance between the economic and non-economic objectives enacted by Parliament. In the end, the Proposal must be subjected to full parliamentary overview and approval before it comes into force because only Parliament has the authority to make such changes.

Yours sincerely,

C. Paul Spurgeon
Vice President, Legal Services & General Counsel
SOCAN

cc: The Hon. Bev Oda
Minister of Canadian Heritage
Fax: (819) 994-1267