December 5, 2008   *Via Epass*

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
  Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Mr. Morin:

Re: Broadcasting Notice of Public Hearing CRTC 2008-11:
       Notice of consultation and hearing: Canadian broadcasting in new media

1. The Canadian Association of Broadcasters (CAB) - the national voice of Canada's private
    broadcasters, representing the vast majority of Canadian programming services, including
    private television and radio stations, networks and specialty, pay and pay-per-view television
    services - is pleased to submit these comments in response to the above-noted Notice of
    Public Hearing.

2. The CAB requests the opportunity to appear at the February 17, 2009 hearing.

3. In our July 11, 2008 response to Broadcasting Public Notice CRTC 2008-44, which launched
    this current proceeding, the CAB noted that, at the time PN 2008-44 was issued and on a
    number of occasions since, the Commission had publicly stated that its intent for the new
    media broadcasting proceeding was not to regulate the Internet generally or to apply
    traditional broadcasting-style regulation to Internet content. Accordingly, we stated our
    understanding that, based on the Commission's public statements, the intent of this
    proceeding is to explore means other than regulation of the Internet which the Commission
    might employ to contribute to the ability of Canadians to take advantage of the opportunities
    presented by the Internet for the creation, distribution and accessing of high-quality
    professional Canadian content.

4. The CAB submits that the manner by which the CRTC can best contribute to the above
    objective is to refrain entirely from attempting to exercise its broadcasting regulatory mandate
    on online content generally, as well as from imposing any new reporting or other regulatory
    obligations on traditional broadcasters with respect to their own online activities. As the
    Competition Review Panel recognized in its Report tabled last spring, Canada's
    competitiveness depends on governments welcoming, rather than seeking to control, the new
    freedom and choices brought by the Internet as an agent of change.

Radio/Television/Specialty and Pay | Radio/Télévision/Services de télévision spécialisée et payante
Mailing/Postale: PO Box 627, Stn B, CP 627, Succ B, Ottawa ON K1P 5S2 | Street/Municipale: 700-45 rue O'Connor St., Ottawa ON K1P 1A4
Tel./Tél.: (613) 233-4035 | Fax/Téléc.: (613) 233-6961 | www.cab-acr.ca

5. Instead, the most effective means by which the CRTC can exercise its regulatory mandate to support and promote Canadian content online is by ensuring licensed Canadian radio and television broadcasters are in the best position to take on the risks and uncertainties of moving their vast amounts of programming to new platforms, and to experiment with both existing and new forms of content, distribution mechanisms and business models.

6. In this respect, the CAB considers that the Commission can play an important role by monitoring the competitive impact on the traditional, regulated broadcasting system of those new media providers operating outside the system. Through the ongoing monitoring of this competitive impact, the Commission will ensure it is in a position to act in an informed and timely manner, as necessary, to ensure that members of the traditional, regulated broadcasting system can respond to competitive pressures from other new media providers which may affect the ability of traditional broadcasters to contribute to meeting Canada's broadcasting policy objectives.

7. It is with these guiding principles in mind that the CAB offers its responses to the Commission's questions as posed in NPH 2008-11. As part of our response, we have also attached two appendices: Appendix 1- *A Study of Private Broadcasters' New Media Activities: "Hitting the Right Notes"*; and Appendix 2 - *Copyright Barriers to Canadian Content Online*.

Sincerely,

Original signed by:

Jay Thomson,
Vice-President, Regulatory & Policy

Attach.

CAB Answers to the Questions Posed in
Notice of Public Hearing CRTC 2008-11

I.   Defining broadcasting in new media

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?

In issuing the 1999 New Media Exemption Order, the Commission made a clear determination that it was neither appropriate nor necessary to regulate *any* forms of new media broadcasting. Since it was not going to regulate, the Commission's definition of "new media broadcasting undertakings" as those which "provide broadcasting services delivered and accessed over the Internet" was sufficient and in no need of any further precision. Further precision would only be necessary if the Commission now proposed to regulate certain forms of new media broadcasting.

The CAB supports maintenance of the existing New Media Exemption Order and the Mobile Broadcasting Exemption Order. Accordingly, provided these exemption orders remain unchanged, we submit there is no need for the Commission to reconsider its current definition.

Alternatively, if the Commission's intent is to monitor the competitive impact of new media broadcasting developments on the traditional broadcasting system rather than seek to regulate - an approach and role CAB supports - it is worthwhile for the Commission to identify which aspects of new media broadcasting it will monitor. Again, as all new media broadcasting would remain exempt, this is not so much a need to redefine 'new media broadcasting' as it is a need to identify what aspects of new media broadcasting are relevant to the Commission's monitoring plans.

That being said, the CAB submits that all new media broadcasting content, in all its forms - including online music services and so-called "user-generated content" - is impacting, in one manner or another, on traditional broadcasters. Thus the CAB submits that the Commission should monitor all forms of new media broadcasting content to fully understand the competitive landscape and to appreciate and address any barriers created by the current regulatory system which prevent traditional, licensed radio and television broadcasters from competing with new media broadcasting. Accordingly, CAB recommends the Commission broadly monitor the competitive impact of developments in new media broadcasting including, for example, information regarding usage and trends.

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?

Again, the CAB submits that the Commission would only need to distinguish between types of

broadcasting content in new media if it proposed to regulate some types but not others. Given that the CAB submits the Commission should continue to exempt from regulation all types of new media broadcasting, there is no need to distinguish between types.

Alternatively, for competitive monitoring purposes, see the CAB's answer to Question 1 above.

II. The significance of broadcasting in new media and its impact on the Canadian broadcasting system

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?**

The 1999 New Media Exemption Order has allowed innovation online by not imposing regulatory burdens or limitations or regulatory uncertainty on Canadian Internet entrepreneurs. The Commission's December 2006 "Report on the Future Environment Facing the Canadian Broadcasting System" and its May 2008 report, "Perspectives on Canadian Broadcasting in New Media", reference a number of the developments that have taken place in terms of the services that are delivered and accessed over the Internet, including the growth of search engines, Web 2.0/social networking, video sharing sites and the movement of traditional TV and radio programming online. The CAB's report, *A Study of Private Broadcasters' New Media Activities: "Hitting the Right Notes",* attached as Appendix 1, provides further information on some of these developments.

Many of the most popular services of today were never envisaged in 1999; based on experience, they will in all likelihood be replaced in the next ten years by other services that none of us can presently envisage. Accordingly, it is difficult if not impossible to offer credible predictions as to the role that broadcasting in new media can be expected to play in the future. The only real constant throughout, as all stakeholders would agree, is that the search continues for a stable business model for new media broadcasting services.

The CAB's only prediction in this respect is that maintenance of the current hands-off regulatory approach to new media will generate more creativity and innovation than will the imposition of any regulatory measures.

Moreover, the CAB submits that there is no current crisis regarding Canadian new media broadcasting content; in other words, there is nothing in the online content world that currently warrants a regulatory response from the Commission.

Q.4. **Who are the relevant players in the creation and distribution of Canadian broadcasting content in the new media environment? How are they performing financially and how are they contributing to the creation and distribution of Canadian broadcasting content in new media today? What can be expected in the future?**

While they are the most important players in the creation and distribution of Canadian radio and television content in the traditional media environment, Canadian broadcasters stand to be one group of many in terms of offering professional quality new media content. To contribute,

however, they must be given the opportunity to do so. Neither CRTC regulation of online content generally, nor the imposition of new reporting or other regulatory obligations on broadcasters respecting their online activities, will support this goal.

Broadcasters' online financial performance has been constrained by the difficulties they face in securing program rights under reasonable terms for online distribution of content, particularly foreign audio-visual content, and the historical and ongoing inability to monetize this content online. Where they can secure the necessary program rights, broadcasters are contributing by making select Canadian programs available on their web sites; nevertheless, this is still largely cost prohibitive given that little, if any, additional revenue is generated to offset the costs of clearing these rights.

The CAB's report in Appendix 1 provides examples of the current online activities of a cross-section of our members. As that report states, "[P]rivate Canadian broadcasters are exploiting the online environment creatively as they navigate a changing market and its challenges. The range of offerings Canadians enjoy on internet-enabled platforms is the result of concerted effort by them to ensure Canadians have the content they seek at the time and place of their choosing."

The report also "brings into focus the enormous challenges Canadian private commercial broadcasters face on a going forward basis in launching new ventures in terms of business models, ancillary rights, and costs. Canadian broadcasters are embracing these challenges in a manner that allows for rational development of growth in light of uncertainty in the market success of products and applications."

Q.5.   How are traditional Canadian broadcasting undertakings adapting to new media and what is the impact on their business models?

As regards how broadcasters are adapting to new media please see the above answer to Question 4 and Appendix 1.

As regards the second aspect of this question, there is no doubt that radio and television broadcasters are concerned about their ability to continue to meet their current regulatory obligations in light of the consumption of new media delivered over unregulated platforms. The competitive impact of new media is expected to grow over time, affecting the audiences and advertising revenues available to the traditional broadcast sectors (radio, television and specialty services).

With regard to radio, for example, the Commission explicitly acknowledged this factor in Broadcasting Public Notice CRTC 2006-158, *Commercial Radio Policy 2006*, when it made the following observations:

> *The key challenge facing the radio industry is to keep relevant and local in an environment of rapidly changing technology and consumer behaviour.* [paragraph 21]

> *According to the CAB's submission, while the short term impacts of the parallel, for the most part unregulated, systems of new audio technologies may be modest, their combined effect may result in a reduction in tuning levels to conventional radio, followed, eventually, by a loss of advertising revenue.* [paragraph 24]

> *It is apparent from the above that, while the radio industry is currently healthy, it is entering a period of uncertainty as it comes to grips with the challenges and opportunities that will be provided by new technologies*

for the distribution of audio programming. Many radio broadcasters are themselves exploring ways of using new distribution platforms to complement the service provided by their conventional radio stations. In addition to continuing to monitor how new distribution technologies for audio programming are affecting the radio industry, the Commission also intends to question radio licensees, at licence renewal and in new licensing and ownership transfer proceedings, about their plans to employ new distribution platforms to the benefit of the Canadian broadcasting system. [paragraph 31]

The Commission commented on similar issues in Broadcasting Public Notice CRTC 2008-100, *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services,* when it made the following general comments about the broadcasting environment:

> *…New media and the rapid evolution of related digital technologies require the Canadian broadcasting system to be regulated in a more flexible way to permit it to continue achieving the objectives set out in the Broadcasting Act (the Act) and to retain its relevance for and connection to Canadians.* [paragraph 2]

> *The Canadian broadcasting system, like other broadcasting systems throughout the world, is currently adapting to new, multi-platform, digital technologies. While traditional linear channels still command the largest audiences and revenues, there is no denying the growing impact of VOD and new media platforms.* [paragraph 27]

> *…The Canadian broadcasting system – if it is to be attractive and competitive in the evolving environment – must operate under a regulatory framework that is flexible and supports the transition from analog mass media to personal and interactive digital media…* [paragraph 28]

As noted above, while the CAB submits the Commission should not attempt to impose broadcasting-style regulation on Internet content or new reporting or other regulatory burdens respecting broadcasters' online activities, we would support the Commission maintaining an on-going monitoring function, which would focus on monitoring the impact of new media providers and the extent to which they are directly competitive with the traditional broadcast sectors. This would build on and extend the Commission's statement in the 2006 commercial radio policy that it would "monitor how new distribution technologies for audio programming are affecting the radio industry".

Moreover, as described below, the Commission should, as an important part of this monitoring activity, use tuning data as the basis for establishing relevant but simple indicators of the competitive impact of new media which would define when it is time to provide more regulatory flexibility to traditional radio and television broadcasters. The objective of such an impact analysis would be to ensure that the Commission regulates the traditional broadcasting system in a manner that enables broadcasters to compete fairly with the unregulated new media sector.

Possible indicators to assess impact of new media on broadcasting

As discussed above, a framework to assess the competitive impact of new media on broadcasting should include relevant but simple indicators, measured over time, to define when a review of the regulatory obligations applicable to a given traditional broadcasting sector would be held.

The CAB suggests that the single most relevant indicator in this regard is a measurement of total hours tuned, whether to radio, conventional television or specialty television, because of the direct link that tuning ultimately has to ability of radio and television undertakings to generate advertising

revenues. Any sizeable loss of audience would indicate a negative economic impact on licensed broadcasters, calling into question their ability to continue to meet regulatory obligations imposed by the Commission.

For the purpose of assessing this indicator, the Commission could compile and publish tuning data for the radio and television sectors, as follows:

Radio:
- Total hours tuned to Canadian private commercial radio, satellite radio and alternative music distribution platforms, measured quarterly
- 12+ demographic, 6 am to midnight, Mon. to Sun.
- Separate Anglophone and Francophone markets

Television:
- Total hours tuned to Canadian private television, Canadian pay/specialty television, Canadian public broadcasters and non-Canadian television services, measured quarterly
- 2+ demographic, 6 am to midnight, Mon. to Sun.
- Separate Anglophone and Francophone markets

Compiling such data over a period of several years starting, for example with the 2002/2003 broadcast year and moving forward, would facilitate the examination of long-term tuning trends relative to the base year. Assuming that any overall decrease in the level of tuning to a given traditional broadcasting sector will be attributable to the competitive impact of new media (which is analogous to the assumption in the case of the deregulation of cable rates that loss of subscribers relative to a starting point was attributable to the impact of DTH), then it would be possible to specify a level of tuning in the future that would trigger a review of the regulatory obligations imposed on that traditional broadcasting sector.

The purpose of such a review would be to determine if increased flexibility respecting current regulatory obligations is required to better enable traditional licensees to respond to the competition represented by new media, as evidenced by the decrease in tuning to the regulated sector.

The CAB submits that the development of such a framework would provide a relevant, objective tool to monitor the competitive impact of new media on traditional broadcasters over time. We would be pleased to work with the Commission and other industry partners to develop the details of such an approach.

Commission precedents

The approach the CAB suggests above would not be new for the Commission, which has previously adopted similar relevant objective tests to address and respond to competitive impact in both the broadcasting and telecommunications sectors.

Broadcasting sector – Cable rate deregulation

In developing the 1998 *Broadcasting Distribution Regulations*, the Commission devised a two-part test based on the availability of a competitive alternative and loss of market share to determine the circumstances under which a Class 1 cable system's basic service rates would no longer be regulated.

Specifically, the Commission determined that a Class 1 system could become rate-deregulated when (i) the basic service package of one or more licensed DTH or terrestrial distributors was available to 30% or more of the existing households in the cable system's licensed area, and (ii) the number of basic service subscribers had decreased by at least 5% from the date that the basic service of a licensed competitor was first introduced in the licensed area of the incumbent.

This policy provided a simple test, with straightforward criteria measured over time, which defined the circumstance under which the Commission would stop regulating specific elements of a cable system's operations.

Telecommunications sector – Decision 94-19 forbearance test

Telecom Decision 94-19 sets out criteria for evaluating when to forbear from regulation. It is a test to determine the degree of competiveness and the extent to which any one firm is dominant or possesses "market power" to the point that it could unilaterally and profitably impose a significant, non-transitory price increase.

The 94-19 test assesses five criteria: (i) a definition of the relevant market; (ii) a determination of market share; (iii) an assessment of supply and demand conditions; (iv) evidence of rivalrous behaviour; and (v) evidence of innovation and technological change. In the context of determining the degree of competition that new media represents to traditional broadcasters, supply and demand side substitution are key components.

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?**

The CAB's report in Appendix 1 provides examples of the availability of Canadian radio and television broadcasting content in new media. At the same time, the report highlights that "Canadian broadcasters face enormous challenges as they navigate the digital space. On the one hand, the opportunities to extend their brands are limitless; on the other, this must be balanced by gaining access to content that may appeal to an audience and the costs associated with making it available on alternate platforms. Ultimately, it is the audience that dictates the terms by which it wants to receive content." To this, the CAB would add that the audience also dictates the *type* of content that it wants to receive, which is not necessarily a replication of currently-available linear programming - for example, social networking applications and online games.

See also the answer to Q.4 above.

Q.7. **What is the extent of consumer demands in Canada for broadcasting content in new media? How is the broadcasting sector responding?**

As stated in the CAB's report in Appendix 1, "[g]enerally, each of the broadcaster's strategies varies depending on the nature of the services it provides. Each of the broadcasters …interviewed acknowledged the necessity in today's environment to use online and mobile applications to deepen the consumers' relationship with the broadcast brand in order to maintain or increase their audiences. Each broadcaster sets out a unique mix of applications, and situates the opportunity to provide audiences the content they want at the time and place of their choosing as at the heart of their offer."

See also the answer to Q.4 above.

III. Are incentives or regulatory measures necessary or desirable for the creation and promotion of Canadian broadcasting content in new media?

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?**

See responses to Qs 1 and 2: the CAB submits that definitions for new media broadcasting are only necessary if the CRTC proposes to regulate; for example, the CRTC would only need to establish a definition of "Canadian content" in new media if it planned to impose related obligations, e.g. quotas, which the CAB opposes.

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?**

As demonstrated in Appendix 1, Canadian radio and television broadcasters are making increased amounts of Canadian new media content available online.

The CAB submits that the most effective way for the Commission to support the creation, promotion and visibility of Canadian broadcasting content in new media is to undertake measures which serve to strengthen the ability of traditional broadcasters to create and promote the Canadian programs they offer on their linear platforms; with this kind of support for their traditional offerings, broadcasters will be in a better position to take on the risks of migrating those programs to new media platforms as well as to create and promote ancillary and original online content which will respond directly to audience demands. Moreover, the Commission clearly has the regulatory tools to support traditional broadcasters in this way. We submit that it would be inappropriate and ineffective for the Commission to attempt to apply these regulatory tools to online content.

This means the Commission needs to be very cautious about increasing any radio or television broadcaster's current regulatory obligations at this time; rather the Commission should be prepared to remove any barriers created by the current regulatory system which prevent traditional, licensed broadcasters from competing with new media broadcasting.

Otherwise, the CAB submits that the most effective measure the CRTC could employ to support the creation, promotion and visibility of Canadian broadcasting content in new media would be to maintain its current exemption orders so as to allow innovation to continue to flourish as it has done online for the last 10 years, unencumbered by regulatory limitations or obligations.

In this respect, we note with support the "light touch" approach that the UK regulator, Ofcom, has adopted regarding Internet content, as described by Ofcom Chair Philip Graf in his October 31, 2008 speech to delegates at the CAB's Annual Convention in Ottawa:

I know you are currently grappling with the internet, IPTV content. We certainly are. I think everyone is. There certainly doesn't seem to be a straight answer.

Ofcom had a key role in shaping the European Union approach which distinguishes between the world wide web regulated only by the general law in areas such as child pornography and race hate, and the IPTV world which is conceptually no different to any other on-demand platform.

Here we are looking for accredited self regulation.

In other words the State regulator, Ofcom, is the ultimate backstop with a light touch and a focus very much on child protection.

For us the issue in the wider internet is one of distributed but shared responsibility.

Government established general law. Ofcom as a domestic regulator is in this context more of a facilitator than a regulator.

Our role is to:

- *Encourage providers to develop classification, search and filtering systems that parents can use to inform themselves and protect their children.*

- *Promote transparency and informed consent for adults, for example in the areas of behavioural advertising.*

- *Promote kite marking and branding by responsible site operators including those of the traditional broadcasters and newspapers who have web sites and*

- *Promote media literacy so that parents and children understand how to sensibly access, understand and use material.*

I do not pretend we have found the final answer in this area.

It remains one of Ofcom's major continuing tasks.

To the extent government-initiated support measures may be possible or desired, the CAB submits they fall outside the Commission's broadcasting mandate as they relate instead to tax measures, copyright reform and direct government funding.

For the Commission's information, Appendix 2 (*Copyright Barriers to Canadian Content Online*) describes the barriers created by the current Canadian copyright regime, which are related to the standards that apply in Canada with respect to the management of rights, both on collective basis and on an individual basis.

On a collective basis, broadcasters face the fragmentation of rights, the correlated multiplication of rights holders, rights managers and methods for valuating rights and for the setting of their pertaining tariffs. As a result, broadcasters are subject to an ongoing inflation of tariffs and face increased financial burdens. For instance, in 1997 radio broadcasters paid a single tariff that

amounted to $28.3 million; in 2008, they face five different tariffs for their linear services alone which are estimated to amount to $148.8 million, or 12% of their revenues. TV broadcasters face similar problems.

Moreover, both audio and audio-visual online broadcasting services now face similar tariff multiplication.

Also relevant is the fact that radio broadcasters currently face proposed copyright tariffs which seek payment for the digital processing of music during the broadcasting process. If approved, these tariffs would result in radio broadcasters being charged an additional premium for using innovative technologies that are relied on to make the broadcasting process simply more integrated and plainly seamless. Recent developments suggest that broadcasters could face similar copyright-related constraints on innovation in regards to their online activities. For this reason, the CAB is opposing these tariffs.

In this respect, it is important to note that the European Communities, the UK and France all have provisions which exempt from liability and payment a person making a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and which has no independent economic significance if the sole purpose of making the copy is to enable a lawful use of the work or other subject matter. This means that no additional payments are required for acts which are accessory to the main activity, namely broadcasting, as long as the latter is authorized.

It is also important to recognize that not all content is subject to collective management. For instance, TV and online broadcasting licences for audiovisual programs are typically negotiated individually on an exclusive territorial basis. Unfortunately, this often requires detailed multiple negotiations with rights holders and results in prohibitive licensing terms. Also, the lack of clarity regarding licensing for on-demand streaming has prevented companies from starting projects.

Appendix 1 also describes some of the challenges that exist in terms of negotiating online rights clearance for television programs, including rising costs, the temptation by rights holders to bundle content that may not be appropriate for online distribution, and the fact that online rights to some shows continue to be unavailable or limited.

These problems exist in other countries as well. For example, the European Commission's 2007 public consultation on "Content Online in the Single Market" disclosed the need for specific changes in the legal framework on intellectual property rights licensing, noting that the "lack of availability of creative content for online distribution and lack of active licensing of rights on new platforms remain major obstacles for the development of online content services." Appendix 2 describes some of the initiatives underway or under consideration within Europe's i2010 policy framework.

Canada needs to address its copyright barriers in a similar manner – something which the CAB is pursuing in other forums and which the CRTC should support.

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?

See responses to Questions 1, 2 and 8: the CAB submits that benchmarks or measures to assess the level of Canadian broadcasting content in new media would only be necessary if the CRTC proposed to impose related regulatory obligations, such as quotas, which we strongly oppose.

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?

The provision of local broadcasting content is of course important to achieving the policy objectives of the Act; however, local content is typically news and information, which is already widely available in various forms online. The CAB submits that local content needs are already being met online.

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?

The CAB is unaware of any barriers that prevent broadcasting in new media from meeting the above-noted policy objectives. That being said, we recognize that CAB member APTN has called for support for aboriginal programming online. Consistent with the above-stated positions, the CAB submits that this is best accomplished through more support for linear aboriginal programming which will then migrate online.

We also suggest that the same approach should apply with respect to minority language and multicultural programming.

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?

The CAB believes this question is best answered by members of the Canadian independent production sector.

IV. Are there issues concerning access to Canadian broadcasting content in new media?

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?

The CAB recognizes that many parties have raised net neutrality as a potential issue related to possible restrictions on the delivery and accessing of Canadian content online. We are not aware of any current problems in this respect; however, we urge the Commission to remain vigilant on this matter and to exercise its power swiftly in the event any related problems are identified.

V. Other broadcasting or public policy objectives

Diversity of Voices

Q.15.   The Commission has no policy with respect to the cross-ownership of licensed broadcasting undertakings and new media broadcasting undertakings. Is such a policy necessary or appropriate? Why or why not?

Even if such a policy were necessary or appropriate, the CAB does not see how the Commission could enforce it without attempting to regulate new media broadcasting undertakings which, as noted throughout, the CAB opposes.

In any event, a cross-ownership policy as contemplated would be neither necessary nor appropriate. There are no barriers to entry for new media broadcasting undertakings, nor barriers to access such undertakings. Market forces ensure a diversity of online voices. Moreover, any attempt by the Commission to limit the ownership of new media undertakings by licensed broadcasting undertakings would be entirely counter-productive. As summarized in the above responses and detailed in Appendix 1, licensed broadcasters are contributing in many ways to making Canadian content available online. The CAB submits that these efforts should be encouraged through a hands-off regulatory approach, not limited in any way by cross-ownership or any other regulatory restrictions.

Q.16.   How, and to what degree, does the environment for broadcasting in new media affect diversity of voices in the Canadian broadcasting system?

The CAB submits that the environment for broadcasting in new media only enhances diversity of voices. Further, we submit that any sort of regulation would only act as a barrier to entry and would thus serve to undermine such diversity of voices.

The role of public broadcasters

Q.17.   Is there a special role for Canada's public broadcasters in the environment for broadcasting in new media? If so, are measures required? Describe any such measures and how these can be accomplished within the mandate of the Commission.

The CAB has no comment.

The role of community broadcasters

Q.18.   Is there a special role for community broadcasters in the environment for broadcasting in new media? If so, are measures required? Describe any such measures and how these can be accomplished within the mandate of the Commission.

The CAB has no comment.

VI. The appropriateness of the new media exemption orders

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.

The CAB submits that the exemption orders continue to be appropriate and should be maintained without alteration or amendment. In our view, any changes would only make the orders more restrictive, which would be counter-productive. The exemption orders promote innovation. Given that online opportunities and business models are still uncertain, we submit that regulation will only serve to impede development and experimentation.

As stated above, the CAB submits that the CRTC must be ready and willing to address any existing regulatory barriers which prevent traditional broadcasters from competing with new media broadcasters.

Q.20.   Under what conditions should the Commission revisit the appropriateness of the new media exemption orders in the future?

As noted in the CAB's response to Question 3, above, it is difficult if not impossible, given the rapid pace of change in the online world, to offer credible predictions as to the role that broadcasting in new media can be expected to play in the future. For the same reason, it is equally difficult to predict developments that would lead the CAB to alter our strongly-held view that the new media exemption orders should be maintained without change.

In other words, while we foresee that the unregulated new media environment will continue to challenge the traditional broadcasting system in many ways, it will take much to convince us that CRTC regulation of new media would represent either an appropriate or effective means to address those challenges. For example, if and when it can be demonstrated that new media is having a negative competitive impact on the traditional, regulated broadcasting system, the CAB submits that the necessary, appropriate and most effective approach will be to remove or alter any regulatory barriers which prevent traditional broadcasters from competing with new media broadcasters – absent extraordinary circumstances, it will not be to try to impose new barriers on anyone.

communications
mdr

REPORT

A Study of Private Broadcasters' New Media Activities: "Hitting the Right Notes"

PREPARED FOR

Canadian Association of Broadcasters

700-45 O'Connor St.
Ottawa, Ontario
K1P 1A4

SUBMITTED BY

Maria De Rosa and Marilyn Burgess
Communications MDR
503 Victoria Ave
Westmount, Quebec
H3Y 2R3

December 5, 2008

Table of Contents

A. Executive Summary

At more than any other time, Canadians are dictating the terms by which content will be accessed. The range of offerings Canadians enjoy on internet-enabled platforms is the result of concerted effort by Canadian broadcasters to ensure Canadians have the content they seek at the time and place of their choosing. However, private Canadian broadcasters face enormous challenges as they navigate the digital space. On the one hand, the opportunities to extend their brands are limitless; on the other, this must be balanced by gaining access to content that may appeal to an audience and the costs associated with making it available on alternate platforms.

This study seeks to provide a qualitative assessment of the nature and extent of activities being undertaken on alternative platforms by a select number of Canadian private broadcasters and to highlight some of the innovative and diverse applications being deployed online and via mobile networks.

By conducting interviews with senior executives of a select number of private Canadian broadcasters, including conventional, pay, and specialty television, and radio broadcasters operating in French, English, and Aboriginal languages, in both large and small markets, our intention was to provide insight into the experiences of some broadcasters as they adapt to the new media environment. Each broadcaster sets out a unique mix of applications, and situates the opportunity to provide audiences the content they want at the time and place of their choosing as at the heart of their offer. The various strategies employed by the broadcasters we interviewed can be grouped as follows below.

Strategies

1) Platform Remodels: A number of broadcasters have already made, or have plans to make, significant investments in redesigning their online platforms to provide an enhanced user experience for on-demand audio-visual streaming, and to provide opportunities for user engagement and loyalty in a trusted environment.

2) Make Rich Content Richer*:* Offering audio-visual content online is not simply a matter of posting traditional broadcast offerings (and even this can be a complex legal undertaking). The issues for broadcasters revolve around the kind of user experience their branded platforms can offer as they seek to extend their brands and build loyalty online.

Broadcasters seek to blend rich content with user interaction, making it richer by wrapping **new content around streaming video to create a unique destination for a show's audience.** Ancillary content is a differ**entiator for broadband delivery, is a 'value add' f**or the consumer and provides a compelling reason to visit broadcaster websites.

3) Theme Based Content*:* Due to rights considerations some broadcasters have developed unique websites that aggregate specialised content, exploiting the search functions of the Web and 3rd **party aggregators' platforms to attract niche audiences used to searching for** their content online.

4) Pushing the Information: A number of private broadcasters have moved quickly into the mobile space, providing Canadians with opportunities to access information-based content such as news, weather and sports, through proprietary applications.

In addition to information-based mobile broadcasting services, one broadcaster is now offering Canadians primetime drama conceived for mobile platforms.

5) New forms of Community: Creating opportunities for participatory media has been a successful strategy for some broadcasters with a younger audience demographic. Mixing professional and semi-professional content, providing opportunities for audiences to contribute creative content and engage with each other, and extending their broadcast offerings to social networking sites, are earning them credibility with their web-savvy audiences.

News and local content offerings also feature prominently in community building strategies. Citizen journalists and bloggers are engaging in the telling of their own stories, thereby participating in the creation of compelling news narratives online and deepening their experience of news content. Regional broadcasters are extending their local offerings online, providing their audiences with opportunities to stay connected to their communities.

7. Live Streaming: The radio broadcasters we interviewed provide live streams of their radio broadcasts, while television broadcasters have experimented with live video streaming or offer subscription-based broadband simulcast services for some specialty services.

Issues and Challenges

Licensing issues: As owners clarify their rights agreements, broadcasters are gradually acquiring online licenses for their prime time programming. However, online rights to some shows continue to be unavailable or limited. Rights clearances are more easily obtained for more recently produced shows, though new challenges exist in terms of negotiating rights clearance for third party distribution.

Canadian broadcasters are watching as the business model for 3rd party aggregated content emerges. As American rights holders are already in the space with their content, the question for Canadian broadcasters is when and how they may exploit separate Canadian licensing rights on platforms such as Hulu and Kangaroo.

One of the most significant challenges faced by sports broadcasters is the rising cost of online rights to sports content. While league rights to major sports franchises are still affordable, costs for online rights are fast becoming prohibitive.

Production and distribution costs: Adapting broadcast content to the online environment is a complex process that involves numerous considerations that drive costs. In addition, growth is costly. Success online translates to increases in streaming costs. In the end, the broadcaster must balance the desire to do more, with the potential to earn more revenues. The Internet and mobile platforms present a huge opportunity to connect with audiences, providing an indirect value. However, bandwidth costs are high, while online advertising revenues are limited.

Revenue models: Business models are still im**mature and revenues don't necessarily cover** new media broadcasting expenditures. Broadcasters therefore continue to experiment with ways to monetize their online and mobile offerings and work with evolving advertising models. Banner and pre-roll ads, sponsorships and advertising-as-content are some of the strategies being used to support content development and distribution and build return on investment.

B. Introduction

Atlantic Records announced this month that it had reached a milestone that no other record label had hit. For the first time in the history of the music industry in the US, its digital sales **surpassed CD's, with more than half of its earnings coming from digital products like** downloads on iTunes and ring tones for cellphones. The Chairman of Atlantic Records in commenting on his company making the transition to a digi**tal business observed: "Today** you have to be like Leonard Bernstein making sure everyone is hitting the right notes at just the right millisecond. The tipping point, if you will, is when everything converges and your timing with everything is im**peccable."** [1]

While this statement was made in the context of the changes impacting on the music sector, nevertheless it epitomizes both the exciting and challenging state of new media broadcasting.

Private Canadian broadcasters are exploiting the online environment creatively as they navigate a changing market and its challenges. The range of offerings Canadians enjoy on internet-enabled platforms is the result of concerted effort by them to assure Canadians have the content they seek at the time and place of their choosing. At more than any other time, Canadians are dictating the terms by which content will be accessed.

This study seeks to provide a qualitative assessment of the nature and extent of activities being undertaken on alternative platforms by a select number of Canadian private broadcasters and to highlight some of the innovative and diverse applications being deployed online and via mobile networks. It is a snapshot in time. As such, the anecdotal information conveys the dynamic and fluid nature of the digital environment.

This study also brings into focus the enormous challenges Canadian private commercial broadcasters face on a going forward basis in launching new ventures in terms of business models, ancillary rights, and costs. Canadian broadcasters are embracing these challenges in a manner that allows for rational development of growth in light of uncertainty in the market success of products and applications.

---

[1] Tim Arango, **"Digital Sales Surpass CDs at Atlantic"**, *New York Times*, November 25, 2008

C. Approach and Methodology

The goal of this study was to acquire an appreciation of the new media broadcasting activities being undertaken by a select number of Canadian private broadcasters on alternate platforms[2] including third party aggregators. This study is not meant to provide an exhaustive accounting of the quantity of content that these broadcasters are offering online. Rather we have approached the question by considering how private broadcasters are responding to the market realities of the digital space, with a view to providing insights into the business opportunities as they see them and also what obstacles stand in their way.

Our approach included conducting interviews with senior executives of a select number of private Canadian broadcasters, including conventional, pay, and specialty television, and radio broadcasters operating in French, English, and Aboriginal languages, in both large and small markets. These interviews allowed us to gain an understanding of broadcasters' business strategies, ventures, and future plans in the online environment as well as the issues and challenges faced along the way.

The broadcasters interviewed represented CTVglobemedia (CTVgm), Canwest Broadcasting, Astral Media, the Aboriginal Peoples Television Network, Score Media, Pelmorex, Channel Zero, Corus Radio (Splice Interactive), and Radio Nord Communications (RNC Media). (The list of broadcasters interviewed is attached in Annex 1.)

In preparation for the interviews, we reviewed the websites of each of the broadcasters in order to acquire an understanding of their offerings. Our review focused on the key attributes that are commonplace in online broadcasting, such as the type and quantity of content available online and on mobile platforms, the richness of the user experience and opportunity for engagement and the nature of the advertising supporting the delivery of the content.

A brief literature review was also conducted to provide a context for the study that describes the volatile and evolving competitive environment generally facing Canadian broadcasters.

The results of this study are not meant to be representative of all the new media activities of private Canadian broadcasters, but are rather meant to provide insight into the experiences of some broadcasters as they adapt to the new media environment.

---

[2] Alternate platforms are defined as either a broadcaster broadband Internet website; a 3rd party aggregator (such as a retailer like iTunes, or an online content aggregator like Joost or MoboVivo); or a mobile device connected to a Canadian wireless network. Audio and video content in the survey below refers to content that is not advertising or promotional or a public service announcement.

D. New Media Broadcasting: The Context

This section presents key highlights of the most relevant trends affecting Canadian broadcasters in the evolving digital media environment.

1. The Explosion in Popularity of Online Video

Consumers around the world have grown accustomed to viewing video over the Internet and have come to expect a viewing experience that they control. While this has not replaced traditional broadcasting, the trend towards on-demand consumption is clear as the explosion in popularity of online video continues to grow. US broadband Internet Service Providers expect to deliver more than 300,000 Terabytes of data transferred over broadband networks by 2012 - **over 25 times the figure in 2006.**[3]

Demand for on-demand video has been fuelled by significant worldwide trends. The broadband Internet has now reached most corners of th**e world. According to Screen Digest,** "Consumer broadband connections in North America, Mexico and Western Europe reached 155m by year-end 2007. 46 per cent of homes in Western Europe were connected, trailing the US with 58 per cent. By 2012, these are set to climb to 68 per cent and 77 per cent respec**tively."** [4] In Canada, penetration has now reached 70% and is expected to continue to grow steadily. [5]

 As reported in **Tech Media Reports,** the 2007 Canada Online! survey found that downloading and streaming of online content by Canadians has increased dramatically since 2004. "Downloading and listening to online music is by far the most popular entertainment activity**...**Topping the list are downloading and listening to music online, visiting television websites, playing games, downloading or watching videos and listening to the radio, followed by other popular entertainment-related activities."[6]

Numerous players have moved into this environment, seeking to exploit the potential opportunities that now exist. In the US and Canada, traditional broadcasters have adopted online strategies to extend their offerings to advertisers and audiences. Third party aggregators have also emerged in recent years, seeking to aggregate audiences to advertisers around user-generated content, or content bundled by established and emerging broadcasters and distributors.

YouTube very rapidly established itself as the premier aggregator of audiences to streamed video. Originally a social-networking site dedicated to user-generated content, YouTube has enriched its site with branded channels providing well known professionally produced content. Broadcasters and other content producers, including Canadian producers, now distribute their content on YouTube.

With over 5 billion streams in September 2008, YouTube is far ahead of other aggregators in user popularity. Immediately behind it, Yahoo! delivered less than 300 million streams in the same month. Interestingly, the American 3rd party aggregator, Hulu – both an online destination and a distribution network, ranks behind the American broadcaster Fox, but ahead of

---

[3] James Garlick, "Will the Internet Break? ISP Economics Assessment to 2012," *Screen Digest,* October 2008

[4] *Ibid*.

[5] *Canada Online! 2007*, Charles Zamaria and Fred Fletcher, published in 2008 by the Canadian Internet Project

[6] Brian Adeba, "Despite popularity, the Internet doesn't trump traditional media", *Tech Media Reports*, September 24, 2008

CNN and MTV in number of video streams delivered in September.[7] Note that content on some of these services is geo-blocked so as to prevent Canadians and other foreign-based users from accessing it.

Other 3rd party aggregators also seek to establish themselves with audiences: the Dutch online broadcaster Joost, and the American aggregator, Veoh, are among the most well known. In Canada, GlassboxTV, owner of BiteTV, has built a business around making use of new technologies to engage audiences by delivering its channels and content across the globe in innovative ways. Bite TV makes its content available on Broadcasting Distribution Undertak**ings' (BDU) video**-on-demand (VOD) offerings; on **Bite's own website**; **on Canada's three** main wireless carriers; on Joost; and on YouTube.

The rise of these online services is giving rise to experiments in innovative advertising strategies based on aggregated and disaggregated viral networks of viewers.

2. iTunes – the single most important aggregator of retail content

iTunes has emerged as perhaps the single most important aggregator of retail media content, successfully driving its business by aggregating buyers around its combination of devices – the iTunes Store coupled with the Apple TV set-top box. According to a recent study, in the US alone, Apple iTunes generated 7 million download-to-own (DTO) movie sales in 15 months ending January 2008 and captured a 75% market share of all online movie transactions in US in 2007.[8] It captured 85% of the 2008 annual market share in the UK after being operational only 6 months. American studios now have agreements to release their films for iTunes rental and then download-to-own day-and-date with DVD. Overall, iTunes is now selling over 50,000 movies each day in North America, the UK, Australia and New Zealand. Unfortunately, limited content is available in Canada compared to what U.S. consumers can download.

Other digital retailers with similar business models **include Microsoft's Xbox Live, which a**llows users to buy games and movies; Sony PSP, which sells content from Canal+ and Sky; the Cezzer set-**top box, which sells content from TF1 Vision; and Sony's Bravia TV, which allows** users to buy amazon.com content.[9]

In Canada, MovoVivo is a retailer of *a la carte* content – mostly short form – primarily for download to portable devices, via computer.

3. Mobile Viewing

At 62% penetration, mobile subscriber numbers in Canada appear to be catching up to broadband penetration, currently at 70%.[10] According to a recent national survey of Canadian online habits, 32% of Canadians are using wireless devices to go online, almost doubling their time spent online from 1.6 hours per week in 2004 to 2.6 hours per week in 2007.

---

7 Neilsen Online. VideoCensus. Note: includes progressive downloads and excludes video advertising.

8 *Selling online video, the rise of 'value-add' economics*, Ben Keen, Screen Digest Future of Online Media Seminar, June 2008

9 *Selling online video, the rise of 'value-add' economics*, Ben Keen, Screen Digest Future of Online Media Seminar, June 2008

10 "Canada's Mobile Penetration Rate Rises to 61.6%," *Cellular News*, September 9, 2008

Walled garden subscription-based **television services offered by Canada's mobile carriers are** losing traction to mobile Internet access of video content. According to a number of reports, con**sumers are increasingly looking for content 'off deck' on their mobile** devices. Fully 10% of Canadians are accessing the Internet through their cell phones.[11]

What these trends point to is the multiplication of touch points with the consumer and of potential revenue streams in the online environment. Audiences expect broadcasters to find them when and where they are, and to provide content however they wish to access it.

---

[11]*Canada Online! 2007*, Charles Zamaria and Fred Fletcher, published in 2008 by the Canadian Internet Project. **The survey of Canadians' Internet habits compares data** obtained in 2007 to a previous survey in 2004.

E. Interview Findings: In Search of the Tipping Point

1. Overview

Canadian broadcasters face enormous challenges as they navigate the digital space. On the one hand, the opportunities to extend their brands are limitless; on the other, this must be balanced by gaining access to content that may appeal to an audience and the costs associated with making it available on alternate platforms. Ultimately, it is the audience that dictates the terms by which it wants to receive content. There are tradeoffs and challenges.

Generally, each of the broadcaster's strategies varies depending on the nature of the services it provides. Each of the broadcasters we interview**ed acknowledged the necessity in today's** envi**ronment to use online and mobile applications to deepen the consumers' relationship** with the broadcast brand in order to maintain or increase their audiences. Each broadcaster sets out a unique mix of applications, and situates the opportunity to provide audiences the content they want at the time and place of their choosing as at the heart of their offer.

More importantly, it is in the context of online social norms, and consumer preferences that new business models are emerging. Not surprisingly, these models remain unclear.

With the social networking phenomenon, and its ability to expand market reach, Canadian broadcasters are searching for innovative ways to optimize revenue. Marketers and advertisers are also exploring new ways to tap into this market.

As online video services successfully aggregate audiences to content online, the cost of Internet rights is rising. New distribution technologies demand that content be made available in multiple formats. Compensation for multi-platform distribution involves complex market-driven negotiations between content providers and content distributors, with both sides seeking to maximize their return on investment. The emergence of viable business models continues to be tempered by rights clearance and other rising costs of Internet rights for some content.

2. Platform Remodels

Broadcasters appreciate the creative and business potential of Web 2.0 applications. They have been learning from their online experiences and fundamentally understand that the new platforms provide opportunities for creative expression and user engagement unlike traditional television and radio. In the past year, CTVgm and RNC Media have invested significantly in redesigning their respective online platforms (ctv.ca and planeteradio.ca) to provide an enhanced user experience for on-demand audio-visual streaming and a unified look and feel to support each of their brands.

CTVgm has invested in a significant reengineering of its online platform, optimizing it for video viewing, in a bid to serve up and monetize its audio-visual offerings. Approaching the development of its alternate platform with a view to rational growth, the broadcaster believes this investment will pay off with audiences.

RNC Media has made significant investments in the past 18 months in its own platform development infrastructure. This will allow it to execute its future plans more efficiently and cost effectively, and provide its regional audience with a sophisticated platform equal in quality to those of larger networks. The objective is to roll out enriched content on new platforms, to stay connected to audiences and create a community of listeners with shared interests.

Rolling out the first phase of RNC Media's alternate platform development plan, the broadcaster launched planeteradio.ca earlier this fall, uniting seven music radio stations under a single brand - Planète. The seven stations, each with its own call letters, share the same online platform developed by RNC Media, providing a common look and feel to the stations with the web audience. To build audiences to its online offering, the broadcaster successfully launched its new Web portal with a contest that was cross promoted with its on-air stations.

Canwest is also making significant investments in its online offerings, rewarding online users with a rich user experience, through program portals that offer full episodes and behind-the-scenes footage, such as that available through the *"Kink cam"* feature on its portal for the Canadian program, *'da kink in my hair*. **Canwest's r**ecently launched portal for *The Young and the Restless*, which features full episodic video on demand and a fresh new design, gives a taste of where Global is going as it rolls out new content portals for its programs.

The broadcaster's online strategy for Global TV is to get its content to where the audiences are, building around its brand to create a trusted environment (globaltv.com) where viewers can engage with it. At the core of the strategy is a belief that strong online video content is a driving factor for why audiences visit the website.

For its part, Astral is preparing for the redesign of its Family Channel website (family.ca) by conducting research on how children use its online content offerings.

The broadcaster is investing in developing a deeper understanding of how children and young people consume its content: through which screens, and during which kinds of activity. For Astral, it's important to understand this audience and its habits and assure that online offerings are in sync with possible uses.
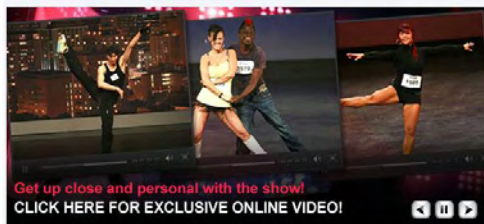
3. Making Rich Content Richer

The two most common ways that Canadian broadcasters make content available over broadband are video portals, providing access to a number of shows, and individual program portals. Offering audio-visual content online is not simply a matter of posting traditional broadcast offerings (and even this can be a complex legal undertaking). The issues for broadcasters revolve around the kind of user experience their branded platforms can offer to assure loyalty among viewers. Ancillary content often includes behind-the-scenes information, **blooper reels, and 'minis' or 'mob**isodes' – short stories that are done with the same actors and either extend the storyline or explore different directions. This type of content is a differentiator for broadband delivery, is a 'value add' for the consumer and provides a compelling reason to visit broadcaster websites.

CTVgm has taken a very active approach to moving audiences across platforms, extending its brand by building unique opportunities for viewer engagement and feedback. The strategy is to blend rich content with user interaction, making it richer. Wrapping new content around streaming video creates a unique destination for a show's audience. With a view to responsible growth that will lead to return on investment, CTVgm takes a case-by-case approach to the development of enriched content for alternate platforms. In the hope that unique content will be more easily monetized, CTVgm has focused its efforts on enriching its most popular brands, taking as much content as is commercially reasonable and making it available on demand.

Its strategy has been to lead with its hit Canadian programs: *Degrassi TNG, Flashpoint* and *So You Think You Can Dance Canada.* There is a better chance of finding a critical mass of viewers online with successful broadcast properties. For example, *Degrassi TNG*, a hit with younger viewers, has a very large and loyal online community. There is

also an advantage to working with Canadian programming, in that the broadcaster has a more immediate relationship to the development of the content.

CTV has invested significantly in the online portal to *So You Think You Can Dance Canada,* a success on TV and online. The show, a dance contest, is built around engaging viewers to participate by voting for the dancer of their choice. The online portal extends the user experience through on-demand episodes, clips, bios, program recaps, news, photos, music, blogs, a community page and an assortment of "fun stuff" (wallpaper, quizzes, etc.)

The recent hit *Flashpoint* provides another opportunity for users to engage more deeply with the show at ctv.ca. The show's online portal is rich with full episodes, clips, photos, cast bios, music and program news. The reality based show, *Canada's Next Top Model,* which will be returning for its third season, is now fully integrated with the web and prospective competitors can apply online for a spot on the show.
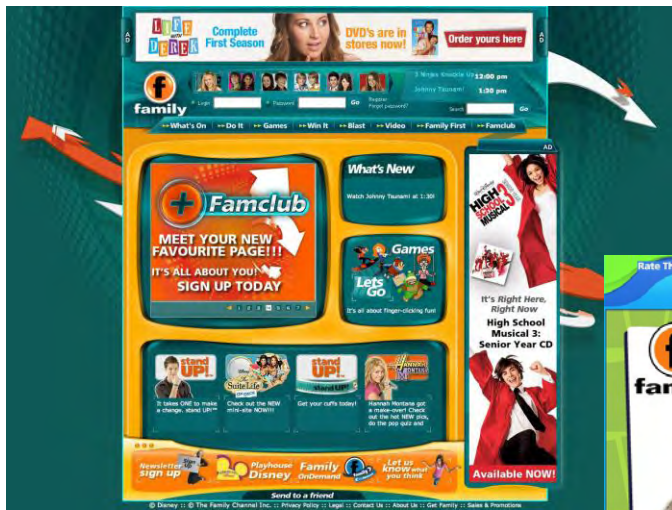
At Canwest, the aim is to exhibit online all major shows acquired or commissioned by the broadcaster wrapped in rich for-the-Web content on its program portals. While there is an audience for video on the Internet, Canwest recognizes that audiences want to do more. A good example is The Food Network, whose audiences are not interested in watching full-length episodes online nearly as much as in short content, such as how-to videos created for the Web and downloading recipes.
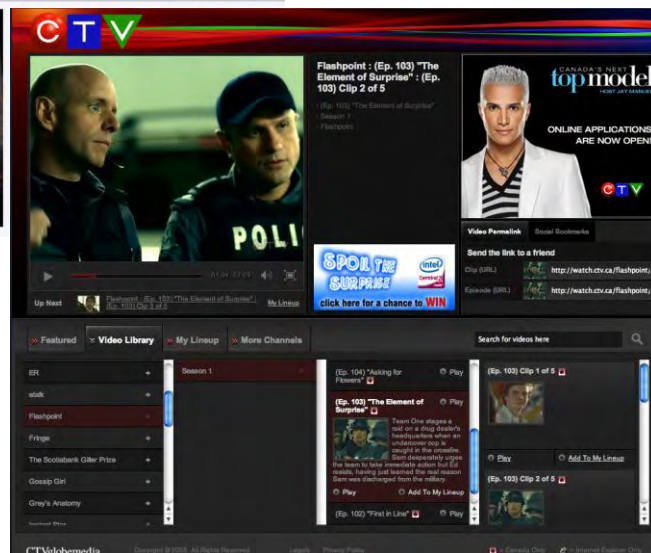
Canwest recently announced it has secured the online rights to some top Fox programs popular with Canadians such as *Prison Break*, *Family Guy*, *Bones* and *24*. Individual episodes and full seasons will be accessible at globalTV.com and eonline.com. In addition, viewers will have access online to exclusive behind-the-scenes footage and video extras, offered on dedicated program portals for each show. Canwest will soon be posting over 60 of their broadcast titles, both conventional and specialty, offering full seasons of on-demand video.

Overall, the suite of properties owned by Canwest and CTVgm offer viewers a vast amount of Canadian content online. Canadian content is also available from all three major Canadian mobile providers.

The Family Channel's brand essence, "never a dull moment" shapes the offerings on its website, designed to extend the brand into the online world and drive viewership to its paid tele-

vision broadcasting service. Geared to the 8 to 14 year old demographic, the strategy is to offer children their favourite programming along with a host of activities and ancillary program content to keep them close to the brand.

Games are central to **The Family Channel's** strategy of online offerings, and represent its most popular content. Though they may be more expensive to produce, games have a longer shelf life with users when associated to hit shows. For example, the game associated with the Canadian show *Life with Derek*, created in 2006, continues to enjoy significant monthly plays.

Key to the success of Astral's online strategy is how it positions its television video offerings online. For example, Family.ca offers a significant number of on-demand videos. The broadcaster has also experimented with day-after catch up programming as well as with sneak previews of new shows and upcoming broadcasts, to see what best engages its audiences. The broadcaster is finding success with online offerings of sneak previews of televised content, which are driving viewers to television airings.

Score Media is a niche player appealing to sports fans through multiple platform offerings including specialty television broadcasting, a branded website, thescore.com, and mobile services. The broadcaster has also invested in wrapping rich online content around material originally aired on television. Blogs, betting pools and forums enable users to engage more deeply with their favourite sports and teams and in some cases with live television broadcasts, creating their own participatory media at thescore.com. The aim is to use online platforms to increase users' participation in the broadcaster's media, a strategy that is in line with **Score Media's** positioning with young adult audiences.

4. Theme Based Content

Corus Radio and Channel Zero have developed unique websites that aggregate specialised content for fans of new rock music and independent short films, respectively. Responding to the challenge it faces in not owning online rights for the music it broadcasts over the air, Corus Radio has developed an innovative approach that offers its listeners extended search capabilities online for the music that interests them. By contrast, Channel Zero exploits the large catalogue of films for which its distribution company, Ouat Media, owns the rights, offering short films on its specialised destination portal and out to 3rd party platforms.

Working with Splice Interactive Media, the interactive arm of Corus Radio, Corus has created an innovative website to further engage its listeners that steers clear of costly online rights. Launched in October of this year, ExploreMusic.com is associated with a popular syndicated on-air show and its host Allan Cross, **one of Corus Radio's star personalities** and a trusted music expert.

As there is an infinite choice of music on the Web, the concept is to help people navigate the choice, by providing a radio show and online destina**tion guided by the show's host, a recognized opinion on what's worth** listening to among his numerous fans. The website exploits search engine optimization techniques popular on the web and points people to music they are interested elsewhere on the web. The website also promotes local independent bands.

Rather than streaming audio or video directly, the website provides a jumping off point to access music through iTunes or YouTube. In this way, the broadcaster is also shielded from rising bandwidth costs associated with the popularity of streaming content. Original content created for the website includes music news, interviews with established and emerging artists and behind-the-scenes information.

For entirely different reasons, Channel Zero has also created a theme based website to appeal to users searching for short film content. Channel Zero is unique amongst broadcasters in that it also owns Ouat Media, a film distribution company that supplies the broadcaster with content. The broadcaster may also commission content. Either as producer or through the acquisition of distribution rights, the broadcaster owns the content it offers on its various **platforms. Fully half of Ouat Media's catalogue is Canadian co**ntent.

Through Ouat Media, Channel Zero supplies content to its two television properties, Movieola and Silver Screen Classics, and to its online services, movieola.ca and silverscreen-classics.com. The two websites, movieola.ca and silverscreenclassics.com, are differently de**signed, tailored to the two services' different audience dem**ographics.

The overall value proposition of movieola.ca is to be a destination for independently and professionally produced short content. By providing some content online for free, the intention is to entice users to watch more on satellite and cable.

In bringing its content ferings to alternate forms, the broad**caster's** strategy for its Movieola property is to exploit the potential of its three platform layers: longer offerings on television (up to 45 minutes), short videos no more than 20 minutes in length online, and shorter 2 to 3 minute videos on mobile **devices. Movieola's "shorts"** can be streamed at movieola.ca, enticing viewers to subscribe to the specialty service. The strategy will go deeper in the coming year, when movieola.ca will offer live programming, with a host introducing featured movies. By providing content geared to them, as well as a rich online experience, the broadcaster's online and mobile offerings are intended to attract a younger more web-savvy audience.
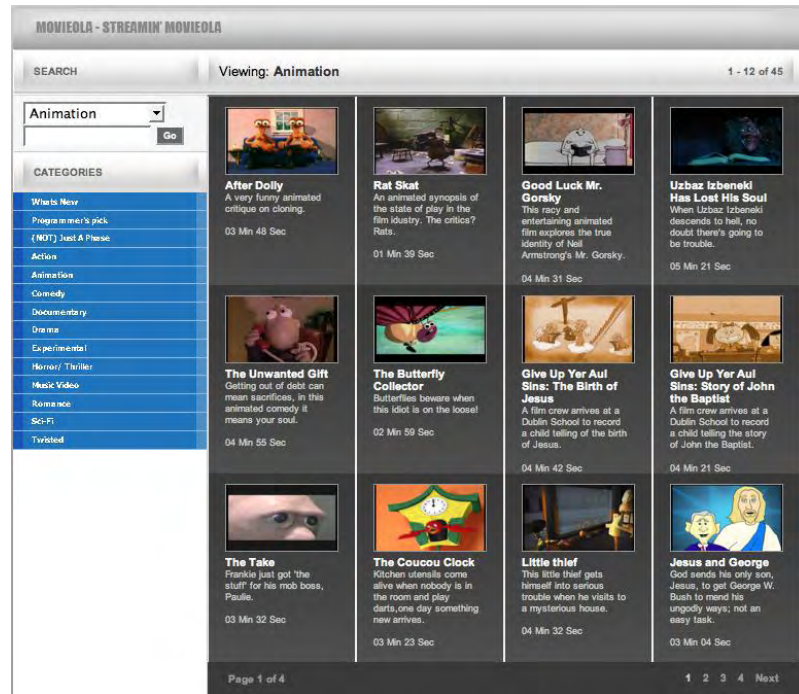
The Silver Screen Classics channel appeals to an older audience, and its website offerings are **designed accordingly. The website is designed primarily to promote the broadcaster's televi**sion offerings on Silver Screen Classics. Film clips offer a glance at television content, pointing visitors to the TV channel where the films are playing. The strategy is successful in that the web**site's online schedule is pop**ular with visitors.

5. Pushing the information

A number of private broadcasters have moved quickly into the mobile space, providing Canadians with opportunities to access information-based content through proprietary applications.

The Pelmorex broadcast group operates the broadcasting licences for The Weather Network and MétéoMédia. The Weather Network is primarily an information provider and its online platform provides the broadcaster with the opportunity to complement the weather information it broadcasts on television with a variety of other applications, such as additional alpha-numeric weather information, user-generated content and videos produced for the website.

The broadcaster's strategy on alternate platforms extends to downloadable PC applications such as the Weather Eye, interacting with consumers through email and SMS, and video offerings including user-generated content. As the multi-platform strategy evolves to include active news content online, video will play a larger role. Future plans also include adding **more content to the sites'** dynamic mapping content application.

Pelmorex offers its viewers PC applications intended to drive traffic to its online platforms **and aggregate audiences to advertisers. The Weather Eye can be installed on the user's co**mputer, bringing the user back to the brand through temperature updates, short and long term weather forecasts and weather warnings.

The broadcaster's Mobile Weather offering provides weather forecasts for over 5,000 cities and specific daily **'made for mobile' video forecasts for 25 Canadian** cities **and 4 'regional' clips.** This and the TrafficEye mobile applications allow users to access local weather and traffic information, including traffic and weather updates, maps and live video streams, on their iPhones or Blackberries.

Pelmorex is optimistic about the revenue potential in the mobile space, if issues surrounding data costs to consumers can be resolved. As it is expected that location-based devices will soon do what computers can do, the broadcaster would like to develop more location-based applications to send localized weather information content to users on different platforms through ad-driven alerts.

Score Media's mobile platform strategy revolves around downloadable applications for mobile devices, including the iPhone, which it says **has been a game changer. Score Media's two** mobile applications allow Canadians to receive their content on-demand through a range of wireless network partners. Score Mobile Video enables users to watch videos from the various portals as well as game highlights from the 2008-09 Barclays Premier League, while ScoreMobile for iPhone and iPod is a free application that allows users to access game scores and other statistics.

First to market with the application, Score Media now has a significant user base throughout North America. The broadcaster is also planning future expansion of the features of the current application, capitalizing on fan requests for feature upgrades and the smartphone market.

Other broadcasters also recognized the value of distributing news, sports and weather information to their audiences over mobile networks. Video-enabled cell phone users can watch CTVgm news and weather, updated regularly. CTVgm also pushes non-video news and sports to cellphones, BlackBerrys, PDAs and other mobile devices.

RNC Media has plans to develop mobile applications for its urban, information based radio stations, where it is in a position to provide exclusive content that works well in this market. Corus Radio also intends to increase its current offerings, through new mobile applications that can be installed on computers and phones to keep Corus radio stations as a choice with consumers, as well as offering new web services and RSS feeds.

In addition to information-based mobile broadcasting services, Canwest is now offering Canadians primetime drama conceived for mobile platforms. The broadcaster has just launched a new mobile campaign to offer 120 exclusive webisodes of *24* to mobile subscribers**.**

6. New forms of Community

The Aboriginal Peoples Television Network (APTN) has spent the past 18 months investing in the transition to high definition broadcasting, and laying the foundation for a significant push to develop its online offerings over the coming 18 months. The broadcaster has a unique challenge in developing its online broadcasting strategy, in that its audience is almost evenly divided between the younger demographic (25 – 30 years and younger) and those who are **older. The broadcaster's online strategy is to reach out to the younger dem**ographic and build loyalty amongst them through its online offerings. Key to the strategy is building a web environment that mimics many of the characteristics of a social networking site.

The digitaldrum.ca and digitaldrumpro.ca portals, two recent initiatives launched on the broad**caster's website, aptn.ca, sho**wcase a mix of professional and non-professional user-generated video content. Digitaldrum.ca offers users the opportunity to share, network, and hopes to bring elders together with younger viewers. Users can upload their own original materials or stream past APTN broadcasts of significant cultural and historical value.

Digital Drum Pro is also a youth inspired initiative, designed to capture the younger demographic by providing a forum for emerging filmmakers to share their work and showcase it to interested buyers. Now that the architecture is launched, the ground campaign will roll out this winter to entice film students across the country to produce content for the platform through a national contest, cross-promoted on television.

The broadcaster is currently developing a new online platform, Digital Nation, in partnership with the Banff Centre for the Arts, Telefilm Canada and the National Film Board, that will support several layers of interactivity for users on both computers and cellphones. Originating as content produced for the website, videos produced for Digital Nation online will also serve as content for APTN TV. New videos for the platform are currently in production. In addition, the broadcaster intends to extend its broadcast offerings through more regionally representative content online. In this regard, news programming will form a greater part of its online offerings over the coming year and a half.

Creating opportunities for participatory media has been a successful strategy for Score Media, earning it credibility with its younger sports fans. The web**site's use of semi**-professional Canadian sports critics is popular with sports fans, helping to position the broadcaster with its younger base. A recent example of this type of successful positioning with audiences is **thescore.com's Independent Sports Network, which aggregates semi-professional bloggers'** websites for users and advertisers, with whom the initiative has also been a success. These partnerships with sports fans websites have creased traffic to thescore.com, and earned the website credibility with its online consumer base. A deal is also in the works to launch a branded YouTube nel, furthering the **broadcaster's reach** through participatory social networks.

Central to RNC Media's online strategy for its radio stations is the fact that it is a regional broadcaster. Based in Montreal, the broadcaster owns stations in Quebec City, in the Outaouais region, Abitibi-Témiscamingue, Saguenay-Lac-Saint-Jean as well in Eastern Ontario.

The online strategy is therefore to focus on local content, giving it importance on each indi**vidual station's website. In this way, the broadcaster intends to stay connected to its audi**ence, inviting its audience to find enriched local information online than enhances the information transmitted over the airwaves.

Playlists, contests, blogs, podcasts of pre-recorded pro**grams, musical artists' pages,** and song request applications provide numerous opportunities for listeners to engage with their community radio station. To assure that listeners can access their favourite radio station wherever they may be, and thereby stay connected to the brand and to their com**munity, each station's pro**gramming can also be streamed live from its website.

Corus Radio has also successfully engaged citizen journalists at its iNews880 radio station in Edmonton. The goal is to engage listeners from six different Edmonton neighbourhoods, providing a greater granularity of news. Most traffic to the site occurs on days when something happens in a neighbourhood.

Canwest's initiatives with news broadcasting have been particularly successful. News programming online is about community for Canwest. The broadcaster provides extensive local news programming, which viewers can download as podcasts to a variety of portable media and stay connected with their community. In addition, citizen journalists can deepen their experience by uploading their own news stories to the website's *Assignment Desk*.

During the recent national election, reporters blogged on their cellphones, filing stories that resonated with audiences. Online broadcasting took the best of what was recorded and used it to open up the conversation with the audience, inviting the audience to participate on the website. The debates were streamed online accompanied by live blogging.

Global's news strategy will evolve for mobile platforms, in response to demand for news clips when and where consumers want them. At the current time, daily newscasts are downloadable to iTunes.

7. Live Streaming

Most Internet content is delivered on a one-to-one model, transmitted separately to each viewer. The more viewers, the costlier the transmission costs. Live streaming, or simulcasting, over broadband can take advantage of one to many communication technologies over IP networks, thereby mitigating bandwidth costs. The solution is affordable for live radio streaming, compared to the point-to-point signal and the radio broadcasters in our sample (Corus, RNC Media, Score Media and Astral) provide live streams of their radio broadcasts. APTN and Score Media have experimented with live video streaming while CTV offers paid broadband simulcast services for some of its specialty services on a monthly subscription basis.

8. Issues and Challenges – the Value Conundrum

Licensing issues

Rights to recently produced shows are more easily cleared today than even just two years ago, though new challenges exist in terms of negotiating rights clearance for third party distribution. Broadcasters are acquiring online licenses for their prime time programming as owners clarify their rights agreements. However, online rights to some shows continue to be unavailable or limited. For example, Canwest has recently acquired online rights to approximately 50 programs, which it will distribute online for windows typically limited to 24 days, in accordance with recent deals inked with American talent guilds. These windows allow audiences opportunities to "catch up" on their viewing but do not include 3rd party distribution.

A wider syndication model extending to third parties would allow for more revenue streams. The challenge for broadcasters licensing American content is that American broadcasters are already in the space with their content. The question for Canadian broadcasters is when and how to exploit separate Canadian licensing rights on platforms such as Hulu and Kangaroo.

CTVgm has begun to push content to 3rd party aggregators in an *ad hoc* manner. However, the business models are still in development and the broadcaster must be careful not to compete against its own premium brands to protect the core value of its business.

As bandwidth costs are considerable and movieola.ca is not geogated, Channel Zero has developed links to many content delivery partners to mitigate streaming costs. The broadcaster pushes content to partner platforms that have more robust mechanisms to monetise it, such as Babelgum, Viral Frog, VUZE, Sling Media, Apple TV, Joost, Hulu and more. The platform

strategy also extends to Air Canada, which buys programs for airing on its airplanes, with every platform getting a slightly different mix of content. Though usually staggered, distribution on different platforms may not always be mutually exclusive and rights to its content may be exploited on more than one platform at a time.

One of the most significant challenges faced by sports broadcasters is the rising cost of online rights to sports content. While league rights to major sports franchises are still affordable, costs for online rights are fast becoming prohibitive. Rights holders worldwide have become much more insistent on negotiating online rights separately, unlike a decade ago, when they would have likely been included with on air rights. Some major league online rights are now four times more expensive than their television rights.

Even when not directly monetized, Internet rights are becoming increasingly valuable, exploited either as a complement to matches aired on TV, or transmitted simultaneously. When online sports video rights are exploited simultaneously to the live TV broadcast, users have access to the sports event without need of a television set. [12]

While at the present time bandwidth costs are within reason due to the short nature of the clips offered on thescore.com, the broadcaster wonders how demand for high definition programming will impact on streaming and storage costs for its content.

Monitoring bandwidth and production costs

Adapting broadcast content to the online environment is a complex process that involves numerous considerations that drive costs. For example, it is critically important to the success of CTVgm's strategy to secure the cross platform rights for the content it seeks to exploit. Content for the Web must be produced in-house, driving costs. User-generated content must be reviewed before posting, and in some cases commentary is also produced for it, again driving production costs. Finally, the broadcaster must encode content to the specific requirements for screening online.

In addition, growth is costly. Success online translates to increases in streaming costs. Due to the Internet's point-to-point transmission model, the more viewers pulling the content, the greater the cost (of bandwidth). High Definition video, with its higher bandwidth consumption, will also drive up costs. Current funding programs such as the Bell Fund and the Canada New Media Fund are described as archaic by some broadcasters. They are not well suited to Web 2.0 applications.

APTN is responding in interesting ways to the rising costs of production and rights for online broadcasting. To meet the challenge of production costs, the broadcaster is partnering with other organizations to share costs and has created an in-house production company to navigate rights and public funding realities. In addition, the broadcaster is working with emerging professionals to produce online content, where rights can be balanced against professional opportunities for creators.

Score Media prefers to adapt its own in-house production to the online environment because of the prohibitive cost of program rights for online distribution, and the temptation by rights holders to bundle content that may not be appropriate for online distribution. Astral too invests in in-house production where possible, though the broadcaster does not have the infrastructure to produce its own games. Astral has had great experiences working with Canadian independent producers and values the exchange of ideas and shared shaping of projects.

---

[12] *Online Sports Video: Rights, Revenues and Forecasts*, Aresh Amel, Published in February 2008 by Screen Digest Limited

Corus Radio also manages the growth of its online business carefully, applying finite resources to risky and costly development. In a profit-driven business, there is little room for unproven business models. For these reasons, Splice Interactive (Corus' interactive development arm) finds it easier to focus on developing applications for its member radio stations, rather than developing new content. In this context, ExploreMusic.com is an accomplishment the company is proud of.

As RNC Media has ramped up its own in-house production capability, it has been important to control costs, to assure it can meet its operational costs in the future. To roll out live streaming, bandwidth costs had to be carefully projected. The roll out of the online strategy has therefore been incremental. Now that the online architecture is in place, the broadcaster must assume new production costs, working with its in-house producers to fill the pipes with enriched content.

Assessing risk in the mobile space

In the mobile space, deals from carrier to carrier and year to year have been radically different for CTVgm and the broadcaster is still investigating where the right fit is in terms of platforms for its content. In moving into the mobile space, the brand is perceived as multiplatform. CTVgm has entered the mobile content market to learn, increase the visibility of its brands and earn incremental revenues. However, profitability is an issue for the time being.

A balancing act for value

RNC Media would like to provide its audiences with a deeper experience about the music they are listening to, but online rights costs are a concern. In the end, the broadcaster must balance the desire to do more, with the potential to earn more revenues.

This is also true for CTVgm, which must balance building its online audiences with moving its business model from TV to multiplatform broadcasting, closely monitoring costs.

While Pelmorex's online video strategy overall is beginning to have impact, it is still a relatively small part, in terms of usage and revenue generating capacity, of its overall interactive platforms and products. Bandwidth is not inexpensive, and the online video advertising market is neither large nor sturdy. In addition, as existing television content may not work well online or on mobile, new production costs must be incurred to either adapt it, or to create content specifically for alternate platforms.

The challenge for Canwest is to consider what value is in this changing environment. The Internet and mobile platforms present a huge opportunity to connect with audiences, providing an indirect value. However, bandwidth costs are high, while online advertising revenues are limited.

Revenue models

Canadian broadcasters told us that while their new media activities are very much a work in progress, with business models still immature and the revenues not necessarily covering their costs, it is clear that there is no turning back. Broadcasters therefore continue to experiment with ways to monetize their online and mobile offerings and work with evolving advertising models. Cross-platform sponsorships, advertising-as-content, and viral advertising models are some of the strategies being used to support content development and distribution, enhance CPM value and increase return on investment.

The trend in online sports video is towards online ad buys, in keeping with the rising value of online sports video content. In sports media advertising, brands are now launching their own portals and content plays. Advertising on thescore.com is in line with the trend, tending to online ad buys for full portal advertisements and integrated programming with branded extreme sports events. Sophisticated advertising strategies such as the Drambuie campaign on thescore.com (where a series of Drambuie action video advertisements can be accessed **through numerous content menus on the site) mimic the broadcaster's sports content offe**rings, having the effect of blending with them.

Corus Radio's revenue strategy for ExploreMusic.com is to go with overall website sponsors rather than ads, in keeping with the values of the younger demographic using the website. In addition, sponsorships with record companies support information about bands featured on the website. Astral is also moving towards custom sponsorship for its online Family Channel offerings. Believing that deep engagement with a brand should drive value Astral is moving **towards a model where it hopes that "time spent" by users with their content across plat**forms will be the new currency.

Advertisements are hard to sell on movieola.ca, as, without a geogating policy, traffic to the site is worldwide, of lesser appeal to advertisers typically interested in more targeted audiences. Channel Zero is therefore concentrating on deals with 3rd party aggregators that must also result in revenues for the broadcaster. While varied, deals involve minimum revenue guarantees beyond sharing in advertising-based revenues, as viewership is not large enough to support a strictly ad-based strategy.

While these innovations are driving increased revenues, growth has been slow and uneven. There is much talk of the growth of audiences online; however audiences for radio broadcasters have been growing more slowly. RNC Media has found its regional advertisers have been slower to move to the Internet, though the interest is there. The broadcaster is also concerned not to merely shift on-air revenues to the Internet.

Canwest's recent acquisition of online rights for some 50 programs may help the broadcaster capture some lost TV ratings due to fragmentation, as it continues to struggle with the cost structure of broadband vs. TV and other digital media."[13] Canwest is considering the user experience in its deployment of pre-roll ads to assure the best possible viewing experience for its audience.

One of the most interesting new developments in ad-based revenue strategies is linked to online distribution strategies that combine syndication with viral circulation of content. Leading American online television services, like NBC and Hulu, blend syndication and viral distribution to maximize eyeballs to their videos online. Video distribution originating on **the broadcaster's core site is pushed out to affiliate sites and to aggregators like Hulu, wh**ich then push it further to social networks of bloggers and private individuals sharing the video **virally. The resulting "disaggregated advertising" deals are built on a cross**-content sponsorship model, covering all videos, not just the ones delivered on the core site. Screen Digest es**timates that more than half of Hulu's revenue comes "off-site".**

As Hulu learned from YouTube, distributing content virally dramatically grows the audience. Viral distribution taps into a disaggregated audience, extending the broadcaster**'s reach** virally as audiences share video amongst their own networks.

---

[13] Jonathan Paul, "Canwest fighting fragmentation with big-time streaming," *Media in Canada*, August 28, 2008

The challenge for Canadian broadcasters is that licensing deals to the Canadian market within this flow have not yet been defined. When they are, broadcasters in Canada will need to be prepared technologically to take advantage of this opportunity. Earlier this year, it was reported that Hulu was still comparatively bogged down by tech costs, making up more than 40% of its gross margin.[14]

---

[14] *The economics of free*, Arash Amel, Screen Digest Future of Online Media Seminar, June 2008

F. Conclusion

In the introduction to this Report, we began with an observation by the Chairman of Atlantic Records as apt in capturing some of the challenges facing Canadian private broadcasters in the digital space. We have seen that broadcasters are reaching out to their audiences with new content for new platforms, when and where they want it, and experimenting with business models along the way. Setting aside the obvious differences between the music sector and the broadcasting sector, *hitting the right notes at the exact millisecond* and arriving at the *tipping point when everything converges* implies an alignment of all the variables. It's about timing. And serendipity. Too early, too late or just right?

The broadcasters interviewed for this study fundamentally understand that the new platforms provide opportunities for creative expression, user engagement and new revenue streams unlike traditional television and radio. From their perspectives, there is no turning back. At the same time, there is no magic formula for what will succeed with consumers. It's a question of experimentation and trial and error.

In music as in business, a great performance is a lot more than just hitting the right notes. Depending on the style of music, expressive gestures like scoops, bends, vibrato and more each contribute to the overall effect. Broadcasters have noted that their success stories depend on a deep understanding of the consumer who decides what they watch, at the time they want, wherever they want, on the device of their choosing and often simultaneously in conjunction with other activities. They are the drivers in this new space. To engage their audiences, broadcasters are making rich content richer, offering theme-based content, pushing information to their mobile devices, and inviting them into online community spaces they can trust.

Hitting the right note also depends on other variables. You need to bring the notes together into a well-orchestrated sound. Licensing issues, bandwidth costs, production budgets and uncertain revenue models are the white noise of online broadcasting. Because of the uncertainty of what will succeed in terms of applications and content, there is a wait-and-see attitude from many advertisers and investors.

As in music, the importance of developing good listening skills is critical. Serious time and effort is needed to become a good musician. In the digital space, broadcasters are listening actively to their audiences who know what they want. They are conducting the score, deciding which notes to play at what time. Broadcasters are responding accordingly with new content and applications in the hope that they are hitting the right notes at the right time.

Annex 1: Broadcasters Interviewed

We wish to thank the broadcasters who made themselves available for this study and for sharing their insights about the success stories and the challenges they face as they navigate in the digital space.

1. Stephan Argent, Vice-President, Digital Media, CTVglobemedia and Richard Kanee, Director, Digital Business Development, CTV Digital

2. Pary Bell, Vice President, Digital Media, Canwest Broadcasting

3. Barbara Bailie, Director of Interactive, Astral Television Networks

4. Taylor Emerson, Vice-President and General Manager, Interactive Services Division, Pelmorex Media Inc.

5. Earl Veale, Director of Operations, Splice Interactive Media, Corus Radio Interactive Group

6. Marc Giguère, Director of Operations, Radio Nord Communications (RNC)

7. Cal Millar, Vice-President and General Manager, Channel Zero

8. Jonathan Savage, Vice President, Digital Media, Score Media

9. **Peter Strutt, Director of Programming, Aboriginal People's Television Network,** (APTN)

Appendix 2

COPYRIGHT BARRIERS
TO CANADIAN CONTENT ONLINE

Content being mainly proprietary in nature, the issue of content availability typically revolves around the question of content licensing and copyright laws. Broadcasters are currently encountering a series of constraints that are related to the standards that apply in Canada with respect to the management of rights, either on collective basis (I) or on an individual basis (II). An overview of the solutions devised elsewhere (III) can provide a useful comparative analysis for the purpose of finding the best policies or practices vis-à-vis content licensing.

I.   COLLECTIVE LICENSING

*   Musical content is typically managed collectively for various uses, including online applications.[1] Collective management theoretically allows a potential user to save important transactions costs as a result of having to deal only with a single rights manager as opposed to a multitude of rights holders.

*   Nonetheless the efficiencies achieved on the one hand seem to have been eroded on the other by the fragmentation of rights, the correlated multiplication of rights holders as well rights managers and the methods that have been followed in relation to the valuation of the rights and the setting of their pertaining tariffs.[2]

*   As a result, broadcasters are subject to an ongoing inflation of tariffs and face increased financial burden. For instance, in 1997 radio broadcasters paid a single tariff that amounted to $28.3 million; in 2008, they face five different tariffs for their linear services alone which are estimated to amount to $148.8 million, or 12% of their revenues. TV broadcasters face similar problems.

*   It is also a fact that, among the tariffs that are proposed, some aim at a payment for the digital processing of music by radio during the broadcasting process. Radio broadcasters would be charged an additional premium for using innovative technologies that are relied on to make the broadcasting process simply more integrated and plainly seamless. Broadcasters face similar copyright-related constraints on innovation in regards to their online activities. Broadcasters are of the view that acts that are merely incidental to a technical process bear no significant independent economic value.

*   The development of online broadcasting services faces the same tariff multiplication: Tariff 22 was just certified as well as the CSI Online Tariff for the reproduction of music by online music services; NRCC Tariff 8 for the webcasting and simulcasting of sound recordings was recently proposed. Furthermore, the Neighbouring Rights Collective of Canada is currently claiming a royalty for the communication of sound recordings that constitute the soundtracks accompanying audio-visual works. Although this seems to be contrary to the definition of "sound recording" in the *Copyright Act*, which excludes sounds that are presented as part of an

---

[1] The recent Tariff 22 certified by the Copyright Board extends the tariff already paid by conventional broadcasters to SOCAN to their Internet activities.

[2] CAB is facing a trend that may not be reversed by the Copyright Board whereby the music in respect of which compensation is paid allegedly becomes more valuable to broadcasters simply because more rights are associated with it. Broadcasters' position is that music is single economic input, and should be valued as such.

audio-visual work, this proposed tariff could open the door for additional audio-visual webcasting tariffs.

II.   INDIVIDUAL LICENSING

- Not all content is subject to collective management. For instance, TV and online broadcasting licences for audiovisual programs are typically negotiated individually on an exclusive territorial basis. Often this requires detailed multiple negotiations with rights holders and results in prohibitive licensing terms. Also, the lack of clarity regarding licensing for on-demand streaming has prevented companies from starting projects.

- Broadcasters in Canada happen to be in no different position than their foreign counterparts with regards to the licensing of content for online broadcasting purposes. The Australian Communications and Media Authority has identified a number of barriers to the development of broadcast services delivered online which include the licensing of content. It is stated that content owners tend to only license content to a broadcaster who holds a pre-existing catalogue of high-value content. It also refers to the fact that the cost and time involved in negotiating with content providers is also a barrier – a typical timeframe for content negotiations is about 12 months, increasing the development time before a service can be launched. It finally alludes to the fact that the illegal downloading of content hinders the growth of Internet video globally.[3] In France, it has been reported that radio streaming licenses, which are unregulated, are criticised given the excessive rates that they impose on the user as well as the complexity of the licensing terms.[4] A public consultation launched by the European Commission in 2007 on "Content Online in the Single Market" disclosed concerns and the need for specific changes in the legal framework on intellectual property rights licensing. It has been stated that the "lack of availability of creative content for online distribution and lack of active licensing of rights on new platforms remain major obstacles for the development of online content services."[5]

III.   FOREIGN POLICIES AND LAWS

- The European Communities, the UK and France all have provisions which exempt from liability and payment a person making a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and which has no independent economic significance if the sole purpose of making the copy is to enable a lawful use of the work or other subject matter.[6] This means that theoretically no additional payments are required for acts which are accessory to the main activity, namely broadcasting, as long as the latter is authorized.

---

[3] *The IPTV and Internet video market in Australia*, Australian Communications and Media Authority, April 2008 at pp. 22-23 (http://www.acma.gov.au/WEB/STANDARD/pc=PC_311325).

[4] J. Mandrillon, « La nouvelle licence légale issue de la loi DADVSI : un système complexe confronté au numérique », sept. 2007 (www.juriscom.net/documents/pla20071219.pdf).

[5] Commission of the European Communities, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on Creative Content Online in the Single Market*, SEC(2007) 1710.

[6] Article 5 of Directive 2001/29/EC *on the harmonisation of certain aspects of copyright and related rights in the information society*; section 28A of the UK *Copyright Act*; and articles L.122-5-6° and L.211-3-5° of France's *Code de propriété intellectuelle*.

- Initiatives have been taken or are being examined within Europe's i2010 policy framework for the purpose of supporting the development of online media business models, including facilitating content licensing. Such initiatives include:

  o The creation of a stakeholders' discussion and cooperation platform – the "Content Online Platform", to initiate the work on forthcoming challenges, to encourage cross-industry agreements and to improve the rights clearance mechanisms;

  o The European Charter for the Development and the Take-up of Film Online and the suggestion of using it as a model for robust inter-industry codes of conduct that encourage the emergence of new services in a secure, consumer-friendly environment;

  o Other examples of soft law and voluntary guidelines include the recommendation on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC). Transaction costs for online music offerings are considerably increased by the obligation to contract with several collecting societies in the Member States. The recommendation aims at encouraging actors to eliminate this bottleneck;

  o Examining the opportunity of compressing the release time windows between different distribution platforms;

  o Developing new standards contracts which are platform and technologically neutral;

  o Relying on competition law to remedy abuse relating to the exploitation or bundling of rights;

  o Devise more efficient mechanisms in order to use orphan works (i.e. whose rights owners cannot be located);

  o Promote global voluntary copyright registration systems, therefore facilitating the identification of chain of titles to content;

  o Enhanced cooperation to fight piracy;

  o Reducing the term of copyright. [7]

---

[7] See Commission Staff Working Document accompanying the *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on Creative Content Online in the Single Market*, COM(2007) 836 final.