CANADIAN BROADCASTING POLICY FOR A WORLD OF ABUNDANCE

ABSTRACT

Canadian broadcast regulation was designed for a world of scarcity where broadcast spectrum and consumer choice was limited. Yet today's broadcasting environment is no longer one of scarcity, but rather one of near limitless abundance as satellite, digital channels, and the Internet now provide instant access to an unprecedented array of original content. Broadcasters have been forced to adapt by shifting from their reliance on protective regulations and inexpensive U.S. content to instead competing on the unregulated global stage with their own, original Canadian content delivered to an international audience on conventional and Internet platforms. Adapting to the changing environment requires action from more than just the broadcast community. There is an important role for government and the CRTC as well. It must launch its own assault on a regulatory environment by rejecting the conventional "walled garden" approach, re-imagining cultural support programs, and emphasizing network neutrality.

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Given our easy access to Hollywood movies and U.S. television programming, it is unsurprising that Canadians have long placed great emphasis on cultural policies. To avoid marginalizing homegrown talent, Canada has set Canadian content as a key objective in the *Broadcasting Act*, established foreign ownership restrictions within the cultural industries, and safeguarded cultural policies in its international trade agreements.

Canadian broadcast regulation was designed for a world of scarcity where broadcast spectrum and consumer choice was limited. As a result, Canadian television and radio broadcasters must be Canadian-owned and comply with Canadian content requirements, while funding programs at the federal and provincial level help the Canadian cultural sector compete on the global stage. This has led to a highly regulated environment that uses various policy levers to shelter Canadian broadcasters from external competition, limits new entrants, and imposes a long list of content requirements and advertising restrictions.

As a result, a dizzying array of regulations have kept the entry of new broadcast competitors to a minimum, enshrined genre protection so that Canadians are treated to domestic versions of popular channels such as HBO and ESPN, and firmly supported simultaneous substitution, a policy that allows Canadian broadcasters to simulcast U.S. programming but substitute their own advertising.

Given that framework, it comes as no surprise to find incumbent broadcasters averse to significant change. Media consolidation has left the market with a handful of private Canadian broadcasters who fill their broadcast schedules with profitable U.S. programming, relegate most original Canadian content to undesirable timeslots, and generate an estimated $200 million annually from the simultaneous substitution rules alone.

Yet today's broadcasting environment is no longer one of scarcity, but rather one of near limitless abundance as satellite, digital channels, and the Internet now provide instant access to an unprecedented array of original content. Spectrum limits have given way to broadband pipes that carry everything from original television networks to YouTube videos. Fledgling broadcasters rely primarily on Internet distribution, while conventional broadcasters make their programming freely available online on multiple sources and give users the ability to embed clips of their shows anywhere they choose.

The Internet offers the promise of global distribution of content, a welcome opportunity for Canadian creators who have often suffered from a lack of shelf space or room on the dial in foreign countries. Moreover, technology has leveled the creative playing field, as evidenced by the explosion of user generated content that requires little more than a camera, a computer, and a great idea.

Canadians are a growing part of this story. From video sites (TonClip.com) to video creators (Galacticast.com) to hundreds of Canadian podcasters (Canadapodcasts.ca), the emergence of Canadian new media has blossomed largely without any reliance on longstanding Canadian cultural policies.

In light of these developments, it is increasingly clear that Canada should re-examine the foundational cultural policies with the goal of ensuring that the regulatory environment has kept pace with recent technological developments.

Rethinking the foundation – walled gardens

The "walled garden" approach that promotes Canadian content by limiting access to foreign content is increasingly being surpassed by technologies that provide universal access to near-unlimited content regardless of the country of origin. In response, some conventional broadcasters rely on "geo-gating" technologies that seek to replicate offline borders on the Internet. The re-emergence of geographic borders on the Internet coincides with broadcasters finally jumping on the Internet bandwagon as they race to make their content freely available online. Some U.S. broadcasters are selling downloads through services such as Apple iTunes or Amazon.com, yet the unmistakable trend is toward free, ad-supported streaming of content mere hours after it first appears on commercial television.

Each major U.S. broadcaster already offers a handful of shows in this manner with ambitious plans to expand their services in the months ahead. NBC and Fox recently unveiled Hulu.com to some critical acclaim, while Comedy Central created a new site for the popular Daily Show that features a complete archive of eight years of programming.

Canadians, alas, are generally locked out of these sites due to licensing restrictions. Canadian broadcasters have been scrambling to buy the Internet rights to U.S. programming, both to protect their local broadcasts and to beef up their online presence.

With the growing popularity of Internet streaming, the Canadian Association of Broadcasters fears that U.S. broadcasters may ultimately stream their programming into Canada and thereby diminish the value of those programs on Canadian television networks.

In response, the CAB seemingly wants the CRTC to erect barriers to Internet streaming, concluding that "all reasonable public policy measures and instruments will be needed to maintain the integrity of a separate and distinct Canadian program rights market."

While the CAB is right that the Internet is erasing the distinction between geographic markets and that U.S. broadcasters are likely to stream on a global basis in the near future, the likely impact on Canadian content is precisely opposite of what it suggests.

Rather than reducing the production of Canadian content, Internet streaming and new media create incentives for more Canadian productions since profitability in the emerging environment will depend upon original content that can be distributed across all platforms, old and new. If Canadian broadcasters are unable to rely on cheap U.S. programming, they will be forced to compete by investing in their own original content. This will dramatically alter Canadian content production from one mandated by government regulation to one mandated by market survival.

Rethinking the foundation – supporting Canadian content creation

The emergence of the Internet as the cheapest and most effective distribution platform in the world points to the need to rethink Canadian funding programs. Many programs and policies (foreign investment restrictions, tax credits, movie co-production treaties) are geared chiefly to support either the production or distribution of Canadian content, which was once viewed as the primary barrier to global success for the culture industries. To date, far less attention has been paid to creation, marketing, and access side of Canadian content, yet in the Internet world that is precisely where support is most needed.

Canadian content requirements will unquestionably remain relevant for conventional television and radio for the foreseeable future, however, the more challenging question is whether – or for how long – conventional television and radio will itself remain relevant,

particularly in light of Statistics Canada data that indicates that younger Canadians are abandoning radio en masse.

As the importance of the Internet and new media grows, the Canadian cultural strategy must surely adapt to this new reality. The CRTC showed signs of recognizing this with its 2005 satellite radio decision that implemented Canadian content safeguards better suited to the technology. Internet-based content presents an even greater challenge since there is no hope – nor any need – to bring Canadian content requirements to the likes of Joost or YouTube. The policy emphasis must instead shift toward creating Canadian content and touching as many people as possible involved in the creative process.

Funding for new media is an important part of the equation. In 2007, the Department of Canadian Heritage committed $29 million over the next two years to the Canadian New Media Fund, as then Minister Bev Oda warned that Canadians were falling behind in the new media arena. That funding will help, yet it pales in comparison to the $1 billion invested in television production by federal and provincial governments.

Moreover, there are other fiscal possibilities, such as tax incentives that place new media on an equal footing with newspaper and broadcasting advertising as well as funding programs that recognize that Canadian creative opportunities extend well beyond the large production companies.

Rethinking the foundation – media consolidation and Net neutrality

The Canadian market has featured creeping consolidation in recent years, leaving four companies – CTVGlobemedia, Canwest Global, Quebecor, and Cogeco – with dominant control over the television market (Rogers is rapidly emerging as the fifth player and Astral is a key player in specialty channels). Four companies similarly dominate the radio market (Corus, Astral Rogers, and CTVGlobemedia) and five companies lead the newspaper market (Canwest Global, Quebecor, Torstar, Power Corp., and CTVGlobemedia).

Since many of these same companies also control some of Canada's most trafficked websites, regulators must consider the impact of cross-ownership of conventional broadcast platforms and new media. Indeed, many of the dominant media companies play a key role in the Internet service provider market, which is also highly consolidated with the six leading Canadian ISPs (Bell, Telus, Rogers, Shaw, Quebecor, and Cogeco) controlling well over 70 percent of the market.

Many of the major media companies argue that new media, particularly the Internet, provides a strong counterbalance to consolidation in the television, radio, and newspaper sectors since Internet video, podcasting, and blogging deliver similar content from a diverse array of sources. Yet the companies fail to acknowledge that the counterbalance is dependent upon Canadians' ability to access new media content without interference or prioritization. Indeed, in a world where the same companies, such as Rogers, Quebecor, and Cogeco, control both content and carriage of content, there is a real danger that the carriage side of the business may prioritize its own offerings at the expense of the diverse, third-party content.

Indeed, leveraging their dominant positions, Canadian telecommunications companies have been embroiled in a growing number of incidents involving content or application discrimination. In recent years, Telus blocked access to hundreds of websites during a dispute with its labour union, Shaw attempted to levy surcharges for Internet telephony services, Rogers quietly limited bandwidth for legitimate peer-to-peer software applications, and Videotron mused publicly about establishing a new Internet transmission tariff that would require content creators to pay millions for the privilege of transmitting their content.

Canada is not alone in this regard. In the United States, the Federal Communications Commission, the U.S. counterpart to the CRTC, has ordered at least one ISP to stop blocking access to third-party Internet telephony services, while major carriers such as Verizon and Bell South have unabashedly promoted their vision of a fee-based higher-speed Internet that would run alongside a slower, free public Internet.

Europe and Asia have similarly not been immune to net neutrality concerns. This summer, Norway's public broadcaster, the Norwegian Broadcasting Corporation, learned that NexGenTel, one of the country's largest broadband providers, was limiting bandwidth to its content. The ISP dropped the practice only after public disclosure and customer complaints. Meanwhile

in South Korea, three million broadband Internet subscribers were recently denied access to HanaTV, an Internet-based video-on-demand service. The ISPs engaged in the blocking were evidently concerned that the service would harm their own video offerings.

Safeguarding against this form of content discrimination requires considering structural separation of carriage and content as well as network neutrality rules that would require carriers to treat all Internet content and applications in an equal manner regardless of its source.

Conclusion

The changes to the Canadian broadcasting environment has been dramatic, forcing broadcasters to shift from their reliance on protective regulations and inexpensive U.S. content to instead competing on the unregulated global stage with their own, original Canadian content delivered to an international audience on conventional and Internet platforms. This should alter Canadian content production from one mandated by government regulation to one mandated by market survival.

Adapting to the changing environment requires action from more than just the broadcast community however. There is an important role for government and the CRTC as well. It must launch its own assault on a regulatory environment designed for a bygone era of broadcast scarcity by crafting new regulations tailored for the world of abundance.