



Broadcasting Notice of Public Hearing CRTC 2008-11

Ottawa, 15 October 2008

Notice of consultation and hearing

17 February 2009

National Capital Region

Canadian broadcasting in new media

Deadline for submission of comments: 5 December 2008

The Commission hereby initiates a public proceeding to consider the issues addressed in this notice pertaining to Canadian broadcasting in new media.

*As part of the public proceeding, the Commission will hold an oral public hearing commencing on **17 February 2009 at 9:00 a.m. at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec.***

The Commission invites written comments and proposals, with rationale and supporting evidence, on the issues identified below. The Commission anticipates that many of these issues can be adequately addressed through written comments and will not require further examination at the public hearing.

The Commission is seeking responses to questions surrounding the following six main themes:

- I. Defining broadcasting in new media*
- II. The significance of broadcasting in new media and its impact on the Canadian broadcasting system*
- III. Are incentives or regulatory measures necessary or desirable for the creation and promotion of Canadian broadcasting content in new media?*
- IV. Are there issues concerning access to broadcasting content in new media?*
- V. Other broadcasting or public policy objectives*
- VI. The appropriateness of the new media exemption orders*

*The deadline for filing comments is **5 December 2008**. Parties are asked to clearly identify, with rationale, those issues that, in their view, need to be considered at the public hearing. The Commission will only accept submissions that it receives on or before the date noted above. Parties wishing to appear at the public hearing must state their request on the first page of their written submissions. Parties requesting appearance must provide clear reasons, on the first page of their submissions, as to why the written submission is not sufficient and why an appearance is necessary.*

Background

1. On 15 May 2008, the Commission released the document *Perspectives on Canadian Broadcasting in New Media*, which provided a compilation of research and stakeholder views on broadcasting in new media. The document highlighted stakeholder views regarding the challenges and opportunities that exist with respect to the support, promotion and distribution of Canadian broadcasting content in new media. Further, the document demonstrated the considerable change in the environment for broadcasting in new media since the Commission issued the exemption order for new media broadcasting undertakings in Public Notice 1999-197 (New Media Exemption Order) and the continued advancement of mobile technologies since the issuance of the exemption order for mobile television broadcasting undertakings in Broadcasting Public Notice 2007-13 (Mobile Broadcasting Exemption Order).
2. In light of these developments, the Commission also issued Broadcasting Public Notice 2008-44 on 15 May 2008. In Broadcasting Public Notice 2008-44, the Commission announced its intention to initiate a public proceeding to examine broadcasting in new media to determine whether the New Media Exemption Order and the Mobile Broadcasting Exemption Order continue to be appropriate or to what extent those orders need to be revised.
3. The Commission received 65 submissions in response to its call for comments. In these submissions parties provided various perspectives. While there was no clear consensus with respect to potential approaches that the Commission should consider, the majority of comments supported a review of the environment for broadcasting in new media at this time.
4. Parties commented on a variety of issues. These included:
 - possible definitions for broadcasting in new media;
 - incentives for the promotion and production of Canadian broadcasting content in new media;
 - the inclusion of the concept of net neutrality in the proceeding; and
 - the advisability of retaining the New Media Exemption Order and the Mobile Broadcasting Exemption Order.
5. As part of the public process, Nanos Research, on behalf of the Commission, conducted an online consultation on broadcasting in new media, drawing on the same themes highlighted in Broadcasting Public Notice 2008-44. The [transcripts](#) and [summary report](#) of the online consultation are available on the Commission's website.
6. Research studies that form part of this public record are also available on the Commission's [website](#): *Changing Channels*, prepared by Two Solitudes Consulting, and *TV or Not TV, Three Screens, One Regulation*, prepared by Eli Noam.
7. In Broadcasting Public Notice 2008-44, the Commission noted that it had previously identified several preconditions that would suggest the need to review the environment

for broadcasting in new media. These include:

- insufficient levels of Canadian content on the Internet;
 - evidence that the new media environment is having an impact on various aspects of the business model of traditional broadcasters; and
 - increased availability of high-quality video programming on the Internet.
8. In addition, the Commission highlighted developments in the environment for broadcasting in new media since the issuance of the New Media Exemption Order in 1999, including:
- increases in national broadband connectivity;
 - increased availability of audio and video broadcasting content in new media;
 - Canada's participation in the creation and distribution of professionally produced broadcasting content in new media; and
 - evolving business models for broadcasting in new media.

Questions

I. Defining broadcasting in new media

9. In Broadcasting Public Notice 1999-84 (New Media Policy), the Commission stated:

The term “new media” can refer to a diverse range of communications products and services, which include but are not limited to video games, CD-ROMs, electronic-mail (e-mail), on-line paging services, faxing, electronic commerce, IP telephony, and services delivered over the World Wide Web and the Internet.

10. The Commission also set out the following working definition for “new media:”

New media can be described as encompassing, singly or in combination, and whether interactive or not, services and products that make use of video, audio, graphics and alphanumeric text; and involving, along with other, more traditional means of distribution, digital delivery over networks interconnected on a local or global scale.

11. Further, in the New Media Exemption Order the Commission defined “new media broadcasting undertakings” as follows:

New media broadcasting undertakings provide broadcasting services delivered and accessed over the Internet.

12. In the Mobile Broadcasting Exemption Order, the Commission defined “mobile television broadcasting undertakings” as follows:

The undertaking provides television broadcasting services that are received by way of mobile devices, including cellular telephones and personal digital assistants.

13. To provide further clarification, the Mobile Broadcasting Exemption Order further stated that:

The undertaking uses point-to-point technology to deliver the service; that is, the undertaking transmits a separate stream of broadcast video and audio to each end-user.

14. Several parties suggested that a clear definition of what constitutes broadcasting in new media is essential to frame the discussion.

15. The term “broadcasting” is defined in section 2 of the *Broadcasting Act* (the Act) as follows:

“broadcasting” means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place.

16. The Act sets out the following definition of a “program:”

“program” means sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text.

17. In the New Media Policy, the Commission stated that it considered that the majority of services that were available on the Internet consisted predominantly of alphanumeric text, and, therefore, did not fall within the scope of the Act and thus fell outside the Commission’s jurisdiction. The Commission added:

Among the services that also do not fall within the scope of the definition of broadcasting are those where the potential for user customization is significant, i.e., services where end-users have an individual, or one-on-one, experience and where they create their own uniquely tailored content. The Commission considers that these types of services do not involve the transmission of programs for reception by the public and are, therefore, not broadcasting.

18. However, the Commission noted:

The proceeding also made it clear that some new media services fall under the Act’s definitions of “program” and “broadcasting.” These include digital audio services and audio/visual signals.

19. In the New Media Exemption Order, the Commission clarified that the exemption pertains to those undertakings that provide broadcasting services delivered and accessed over the Internet. Subsequently, the Commission exempted undertakings that provide mobile television services that are received by way of mobile devices, using point to point technology to deliver the service.
20. In summary, the Commission has found it appropriate to exempt from regulation under Part II of the Act those undertakings that provide broadcasting services:
 - delivered and accessed over the Internet; and
 - received by way of mobile devices, using point to point technology.
21. Accordingly, the Commission will use the term “new media” to encompass both of these delivery methods.
22. The Commission’s preliminary view is that whether or not content qualifies as “broadcasting” should not be affected by the specific mode of transmission. Rather, the definition of broadcasting should properly be neutral with respect to the means of transmission, that is, it would apply in the new media context to content that is downloaded, streamed, transmitted peer-to-peer, etc.
23. Finally, the Commission is not concerned with user-generated broadcasting content. That is, the Commission does not seek to inquire into the content, quality or availability of material created by individual Canadians in a personal capacity.
24. Given the importance of defining specifically what constitutes broadcasting in new media, the Commission seeks responses, with rationale and supporting evidence, to the following questions:

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?

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?

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

25. In comments filed in the proceeding initiated by Broadcasting Public Notice 2008-44, several parties suggested that a comprehensive discussion on the significance of broadcasting in new media and its impact on traditional broadcasting undertakings is necessary to ensure that the Commission gathers a complete record.

26. Accordingly, the Commission seeks responses, with rationale and supporting evidence, to the following questions:

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?

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?

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

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?

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

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

27. Given the pace of change and level of competition that characterizes the global environment for broadcasting in new media today, the Commission seeks responses, with rationale and supporting evidence, to the following questions:

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?

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?

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?

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?

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?

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?

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

28. Several parties suggested that issues exist with respect to the distribution of and access to broadcasting content in new media and called on the Commission to explore fully the issue of net neutrality. The Commission notes that the issue of net neutrality extends well beyond the distribution of and access to broadcasting content in new media. As such, only access issues relevant to the achievement of the broadcasting policy objectives of the Act will be explored during this proceeding.
29. In the context of the various options offered to Canadians to access and deliver broadcasting content in new media, the Commission seeks responses, with rationale and supporting evidence, to the following questions:

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?

V. Other broadcasting or public policy objectives

30. Parties raised the importance of addressing other broadcasting and public policy objectives in this proceeding including: diversity of voices, the role of public broadcasters and community broadcasters, and the accessibility of broadcasting content.

Diversity of voices

31. In Broadcasting Public Notice 2008-4 (Diversity of Voices Policy), the Commission stated that the concept of diversity of voices in the Canadian broadcasting system should be approached at three distinct levels: diversity of elements, plurality of editorial voices within the private element, and diversity of programming.
32. Further, the Commission noted that it currently has no policies with regard to the cross-ownership of licensed broadcasting undertakings and new media undertakings, stating:

... with regard to editorial voices, new media platforms largely offer content that was originally produced for licensed radio or television stations or for newspapers. As a consequence, the Commission's approach to ensuring a plurality of editorial voices on traditional media would also benefit the plurality of voices available on new media undertakings. In addition, the Commission recognizes the availability on the new media platforms of an enormous range of user-generated and editorial content from Canadian and foreign sources.

33. Accordingly, the Commission seeks responses, with rationale and supporting evidence, to the following questions:

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?

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 role of public broadcasters

34. Parties have suggested that there may be a distinct role for public broadcasters with respect to the production and promotion of Canadian broadcasting content in new media.
35. Accordingly, the Commission seeks responses, with rationale and supporting evidence, to the following questions:

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 role of community broadcasters

36. The Act states that the Canadian broadcasting system is a single system comprising public, private and community elements.
37. Regarding the community element, the Commission seeks responses, with rationale and supporting evidence, to the following questions:

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.

Accessibility of broadcasting content

38. The Act states that “programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose.” In Broadcasting Notice of Public Hearing 2008-8, the Commission launched a public proceeding to address unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities. In that proceeding, the Commission will explore proposals for improving the accessibility of telecommunications and broadcasting services, including those provided via the Internet and/or to mobile devices. The Commission considers the accessibility proceeding to be the most appropriate proceeding to explore the issues surrounding the accessibility of broadcasting in new media.

VI. The appropriateness of the new media exemption orders

39. Given the aforementioned questions, it is necessary to determine if the environment for broadcasting in new media is contributing sufficiently to the achievement of the broadcasting policy objectives of the Act under the current new media exemption orders, and if it will continue to do so.
40. Accordingly, the Commission seeks responses, with rationale and supporting evidence, to the following questions:

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.

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

Issues beyond the Commission’s jurisdiction

41. The Commission notes that it has received comments that identify issues and ideas pertaining to copyright, direct government subsidy, and amendments to the federal *Income Tax Act*. While the Commission will not be in a position to implement any of these proposals, it will consider arguments and solutions which call for broader policy deliberations to assess whether any problems might best be resolved in a different context.

Public proceeding

42. The Commission hereby initiates a public proceeding to address the matters set out in this notice.

43. The Commission invites written comments and proposals, with rationale and supporting evidence, concerning the issues and questions set out above. The deadline for filing written comments is **5 December 2008**. For ease of reference for all parties, please reiterate the question you are addressing with your response. The Commission will only accept submissions that it receives on or before the date noted above.
44. As part of this public proceeding, the Commission will hold an oral public hearing commencing on **17 February 2009 at 9:00 a.m. at the Conference Centre, Phase IV, 140 Promenade du Portage, Gatineau, Quebec** to allow for further discussion of some of the matters set out in this notice. In their written submissions, parties are asked to clearly identify, with rationale, those issues that, in their view, need to be considered at the public hearing. Following the receipt of written submissions, the Commission will determine the issues that require further examination at the hearing.
45. Parties wishing to appear at the public hearing must state their request on the first page of their written submissions. Parties requesting appearance must provide clear reasons, on the first page of their submissions, as to why the written submission is not sufficient and why an appearance is necessary. The Commission will subsequently inform parties whether their request to appear has been granted. While submissions will not otherwise be acknowledged, they will be considered by the Commission and will form part of the public record of the proceeding, provided the procedures set out herein have been followed.

Procedures for filing comments

46. Interested parties can file their comments to the Secretary General of the Commission:
 - **by using the**
[Broadcasting Intervention/Comments Form](#)
 - OR
 - **by mail to**
CRTC, Ottawa, Ontario K1A 0N2
 - OR
 - **by fax at**
819-994-0218
47. Submissions longer than five pages should include a summary.
48. Please number each paragraph of your submission. In addition, please enter the line *****End of document***** following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

Important notice

49. Note that all information that you provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or

through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes your personal information, such as your full name, e-mail address, postal/street address, telephone and facsimile number(s), and any other personal information you provide.

50. The personal information you provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.
51. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as you send them, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
52. Please note that the information you provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the webpage of this particular public process. As a result, a general search of our website with the help of either the Commission's own search engine or a third-party search engine will not provide access to the information which was provided as part of this public process.
53. The Commission encourages interested parties to monitor the public examination file and the Commission's website for additional information that they may find useful when preparing their comments.

**Examination of public comments and related documents at the following
Commission offices during normal business hours**

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

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530-580 Hornby Street
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Secretary General

Related documents

- *Unresolved issues related to the accessibility of telecommunications and broadcasting services to persons with disabilities – Notice of consultation, Broadcasting Notice of Public Hearing CRTC 2008-8 / Telecom Public Notice CRTC 2008-8, 10 June 2008*
- *Call for comments on the scope of a future proceeding on Canadian broadcasting in new media, Broadcasting Public Notice CRTC 2008-44, 15 May 2008*

- *Perspectives on Canadian Broadcasting in New Media*, 15 May 2008
- *Diversity of voices – Regulatory policy*, Broadcasting Public Notice CRTC 2008-4, 15 January 2008
- *Exemption order for mobile television broadcasting undertakings*, Broadcasting Public Notice CRTC 2007-13, 7 February 2007
- *Report on the Future Environment Facing the Canadian Broadcasting System: A Report Prepared Pursuant to Section 15 of the Broadcasting Act*, 14 December 2006
- *Regulatory framework for mobile television broadcasting services*, Broadcasting Public Notice CRTC 2006-47, 12 April 2006
- *Internet retransmission – Report to the Governor in Council pursuant to Order in Council P.C. 2002-1043*, Broadcasting Public Notice CRTC 2003-2, 17 January 2003
- *Exemption order for new media broadcasting undertakings*, Public Notice CRTC 1999-197, 17 December 1999
- *New Media*, Broadcasting Public Notice CRTC 1999-84 / Telecom Public Notice CRTC 99-14, 17 May 1999

This document is available in alternative format upon request and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.