



Broadcasting Public Notice CRTC 2008-44

Ottawa, 15 May 2008

Notice of consultation

Call for comments on the scope of a future proceeding on Canadian broadcasting in new media

Research and stakeholder views on the new media broadcasting environment compiled in the document released today, Perspectives on Canadian Broadcasting in New Media, demonstrate that the new media environment has evolved considerably since the Commission issued the exemption order for new media broadcasting undertakings in Public Notice 1999-197.

The document highlights stakeholder views on the challenges and opportunities with respect to the support, promotion and distribution of Canadian new media broadcasting content. While the Commission takes no position on the merits of the various stakeholder suggestions, technological, cultural and economic trends point to significant new opportunities for the Canadian broadcasting system and high-quality professional Canadian content on both the national and global stage as a result of new media broadcasting developments.

The Commission considers it appropriate to examine the new media broadcasting environment to determine whether the exemption orders relating to new media issued in Public Notices 1999-197 and 2007-13 continue to be appropriate or to what extent, if any, such orders need to be revised. Fundamentally, it is necessary to determine if the new media broadcasting environment is contributing sufficiently to the achievement of the broadcasting policy objectives of the Broadcasting Act and if it will continue to do so. Public discussions encompassing Canadian new media broadcasting content and access to such content are necessary to explore the contribution by new media broadcasting undertakings to the achievement of the broadcasting policy objectives of the Broadcasting Act.

Given the expansiveness and complexity of the new media broadcasting environment, the Commission seeks input on the scope of the issues, as well as the questions associated with those issues, to be discussed in a future new media broadcasting proceeding, including:

- *What is the scope of new media broadcasting?*
- *Are incentives or regulatory measures required for the creation and promotion of Canadian new media broadcasting content?*
- *Are there any barriers to accessing Canadian new media broadcasting content?*
- *What other broadcasting policy objectives should be considered within the scope of the proceeding?*

Parties are asked to identify, with rationale, the issues and questions that, in their view, need to be discussed in the public proceeding.

*The deadline for filing comments is **11 July 2008**. The Commission will make a determination as to the matters to be dealt with in the public proceeding following the comment period and will issue a Notice of Public Hearing in the late summer of 2008 outlining the details of the new media broadcasting public hearing to be held early in 2009.*

Background

1. In Broadcasting Public Notice 1999-84 / Telecom Public Notice 99-14 (the New Media Policy), the Commission announced its determinations following public consultations under both the *Broadcasting Act* (the Act) and the *Telecommunications Act* regarding the range of communications and information services referred to as new media.
2. At that time, the Commission considered that the majority of services available on the Internet consisted predominantly of alphanumeric text and therefore did not fall within the scope of the Act and were outside the Commission's jurisdiction. The Commission also determined that among the services that 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 considered that these types of services do not involve the transmission of programs for reception by the public and are therefore not broadcasting under the Act.
3. New media services that were considered to fall within the Act's definitions of "program" and "broadcasting" included digital audio services and audiovisual services. For those undertakings that offered new media services that do fall within the definition of broadcasting, the Commission concluded that regulation was not necessary to achieve the objectives of the Act and declared its intention to issue an exemption order without terms or conditions in respect of all undertakings that were providing broadcasting services over the Internet, in whole or in part, in Canada.
4. Further, in the New Media Policy, the Commission made several determinations concerning the state of the industry that informed its decision to exempt new media undertakings, namely:
 - New media had not had an impact on conventional radio and television audiences. The Commission was of the view that the effect of new media on television audience size would be limited, at least until such time as high-quality video programming could be distributed on the Internet.
 - Evidence that the Internet had impacted advertising revenues of traditional broadcasters was not apparent.

5. In Public Notice 1999-197 (the New Media Exemption Order), the Commission issued an exemption order with respect to new media broadcasting undertakings, which were defined as undertakings that provide broadcasting services delivered and accessed over the Internet, in accordance with the interpretation of “broadcasting” set out in the New Media Policy. The Commission further clarified that:

...for the purposes of the Act, a single corporate entity (or other person) may carry on more than one distinct broadcasting undertaking. It considers that the new media activities of a company (or any person) involve a separate undertaking from any other type of broadcasting undertaking that the company or person is licensed to operate. For example, the same company may be the licensee of both a television programming undertaking and a separately licensed specialty service programming undertaking and also operate an exempt new media broadcasting undertaking. Another example would be a company licensed to carry on a distribution undertaking and a separately licensed video-on-demand programming undertaking that also operates an exempt new media broadcasting undertaking.

6. In Broadcasting Public Notice 2003-2, the Commission examined, among other things, whether the New Media Exemption Order should continue to apply to Internet retransmitters. The term “Internet retransmission” was defined as the act of retransmitting via the Internet the signals of over-the-air television or radio programming undertakings. The Commission determined that Internet retransmission would not become a substitute for licensed over-the-air broadcasting or distribution until it was capable of performing the same functions less expensively, more conveniently and with greater choice or higher quality, or unless it offered content that could not be provided by such undertakings. The Commission also considered that Canadian Internet users would have to demonstrate a substantial interest in accessing programming on their computers.
7. The Commission concluded that it was not necessary or appropriate to require the licensing of Internet retransmitters and therefore the New Media Exemption Order continued to apply.
8. In Broadcasting Public Notice 2005-82, the Commission called for comments on an appropriate regulatory framework for broadcasting services delivered to mobile telephones and other mobile receiving devices.
9. In Broadcasting Public Notice 2006-47, the Commission determined that mobile broadcasting services would only be exempted if they were both delivered and accessed over the Internet. Typically, these would be services that are available over the public Internet to Internet users through an Internet service provider. The Commission noted that the New Media Exemption Order does not draw any distinction among the various technologies that may be used to access the Internet, despite what their differences may be.

10. The Commission concluded that the mobile broadcasting services at issue in the proceeding were delivered and accessed over the Internet and exempt pursuant to the New Media Exemption Order. The Commission further concluded that given the technical challenges associated with wireless technology at that time, mobile television broadcasting services were unlikely in the near future to become substitutes for conventional broadcasting services or impede the ability of traditional broadcasters to fulfil their obligations under the Act.
11. Accordingly, in Broadcasting Public Notice 2007-13 (the Mobile Broadcasting Exemption Order), the Commission exempted mobile television broadcasting undertakings that provide mobile television services received by way of mobile devices. The Commission clarified that the exemption order applied to undertakings providing television broadcasting services that are received by way of mobile devices, including cellular telephones and personal digital assistants, and that have obtained prior consent of a broadcaster for the retransmission of its signal.
12. The Commission did not include point-to-multipoint mobile technologies in the Mobile Broadcasting Exemption Order as their potential impact remained unknown based on the record of the proceeding. The Commission clarified that undertakings falling under the exemption order use point-to-point technology to deliver their service, i.e. these undertakings transmit a separate stream of broadcast video and audio to each end-user.

Recent initiatives

13. In December 2006, in response to an order by the Governor in Council to create a factual record to inform the Government's policy determinations, the Commission issued *Report on the Future Environment Facing the Canadian Broadcasting System: A Report Prepared Pursuant to Section 15 of the Broadcasting Act* (the Future Environment Report).
14. In the Future Environment Report, the Commission determined that public policy action would need to be taken in the new media environment within the next three to seven years. Since then, significant advances in technological, economic and consumer behaviour trends have led the Commission to launch the New Media Project Initiative in 2007.
15. The New Media Project Initiative was established to investigate the cultural, economic, and technological issues associated with new media broadcasting. The initiative conducted research and solicited stakeholder views on the new media broadcasting environment from leaders in the Canadian broadcasting and telecom industry, academics, and policy-makers (nationally and internationally) and has compiled this information in *Perspectives on Canadian Broadcasting in New Media*, released today.

A comprehensive review of the role of new media in the broadcasting system

16. In the Commission determinations cited above, preconditions for a review of the Commission's approach to the new media environment were established. In brief, the circumstances that would give rise to the need for a review included evidence that:
- Canadian content on the Internet was insufficiently available;
 - the new media environment was having an impact on conventional radio and television audiences;
 - the Internet was having an undue economic impact on the advertising revenues of traditional broadcasters;
 - the availability of high-quality video programming on the Internet was increasing;
 - new media content was becoming substitutable for the content of licensed over-the-air broadcasting or distribution undertakings or the new media environment was offering content that could not be provided by traditional broadcasting undertakings; and/or
 - Canadian Internet users were demonstrating a substantial interest in accessing programming on their computers.

Developments since the issuance of the New Media Exemption Order

17. As demonstrated in *Perspectives on Canadian Broadcasting in New Media*, the new media environment has evolved considerably since the issuance of the 1999 New Media Exemption Order.
18. Canada is a world leader in broadband connectivity. Recent data published by the Commission indicates that high-speed residential Internet access is available to 93% of households across the country and has been adopted by more than 60% of Canadian households. Canada places first among G8 countries, despite the challenges inherent in connecting a geographically dispersed population.
19. Another significant evolution in the global new media broadcasting environment has been the increased availability of audio and video broadcasting content in various forms. *Perspectives on Canadian Broadcasting in New Media* highlights data demonstrating that Internet television, mobisodes, and podcasts now share mainstream awareness in Canadian society.
20. Globally, the pace at which professionally produced broadcasting content is being made available online is accelerating, but Canadian participation is lagging with respect to the amount of high-value, professionally produced new media broadcasting content and the level of early stage investment in the new media broadcasting environment.

21. Recent consumer market research indicates that Canadian Internet users have begun making use of online broadcasting content across a variety of fixed and mobile platforms. Canadian Internet users are spending more time online, while traditional broadcasting consumption is experiencing little growth overall and a demonstrated decline among younger demographics.
22. Further, new advertising revenue business models are emerging in the new media broadcasting environment, with growing participation by advertisers indicating support for these new media broadcasting marketing strategies.
23. An additional development since the issuance of the New Media Exemption Order has been a change in behaviour by the broadcasting industry toward new media. Today, broadcasters are making content available online, new media broadcasting alternatives and business models are evolving on a continual basis, and creators, aggregators and content providers are increasingly distributing content directly to Canadians via fixed and mobile new media platforms.
24. Given the above, the Commission intends to initiate a public proceeding to examine the new media broadcasting environment to determine whether the New Media Exemption Order and the Mobile Broadcasting Exemption Order continue to be appropriate or to what extent, if any, such orders need to be revised.

Call for comments

25. The broadcasting system will be increasingly characterized by open-entry, global competition and innovation in a networked, digital environment. Fundamentally, it is necessary to determine if the new media broadcasting environment is contributing sufficiently to the achievement of the broadcasting policy objectives of the Act and if it will continue to do so. Should the Commission find that the objectives of the Act are being met on these platforms, the existing exemptions from regulation would continue to apply. If new measures are required, the Commission is seeking ways to support Canadian digital content with tools that embrace the innovation and creativity of the new landscape. To this end, the Commission seeks input on the scope of the issues, as well as the questions associated with those issues, to be discussed in the future new media broadcasting proceeding.
26. Specifically, to focus submissions, while not wishing to limit comment, the Commission seeks input, with rationale, on the issues and questions which should be explored surrounding the following:

I. WHAT IS THE SCOPE OF NEW MEDIA BROADCASTING?

The Commission has previously defined new media broadcasting undertakings as those providing broadcasting services delivered and accessed over the Internet and mobile television broadcasting undertakings as those providing mobile television services by way of mobile devices.

Given the changes in the new media broadcasting environment, along with the introduction of many new media broadcasting content providers, a multitude of new services (e.g. video aggregation, podcasts), and a large variety of content ranging from high-quality professional to user-generated content, what issues and relevant questions will assist in defining the scope of new media broadcasting? For example, should the Commission explore the following questions:

- Is the new media broadcasting environment contributing sufficiently to the achievement of the broadcasting policy objectives of the Act?
- How have new media broadcasting and the corresponding business models evolved since the 1999 New Media Policy?
- Who are the relevant stakeholders in the creation and distribution of Canadian programming in the new media environment?
- How should new media broadcasting be defined?
- Is an approach which differentiates between downloaded broadcasting content and new media broadcasting necessary? If so, how should these terms be defined?
- Is an approach which differentiates between user-generated and high-value professional new media broadcasting content necessary? If so, how should these terms be defined?
- What specific types of new media broadcasting services and content require particular attention?

II. ARE INCENTIVES OR REGULATORY MEASURES REQUIRED FOR THE CREATION AND PROMOTION OF CANADIAN NEW MEDIA BROADCASTING CONTENT?

In 1999, the Commission determined that it was not necessary to impose any regulatory measures to support the development, production and promotion of Canadian new media content and services. Based on the record of the proceeding at the time, the Commission concluded that the industry was moving in a direction that would result in a strong Canadian new media industry and presence on the Internet and encouraged the continued leadership and innovation of the Canadian new media broadcasting sector.

Given the level of competition that characterizes the global new media broadcasting environment today and the reduced constraints of time and geography for audiences in the new media broadcasting environment, what issues and relevant questions should be explored with respect to supporting and promoting Canadian new media

broadcasting content and enabling strong Canadian participation in this environment? For example, should the Commission explore the following questions:

- Are new or enhanced support mechanisms required for the development and production of Canadian new media broadcasting content? If so, in what form?
- Are new measures needed to ensure that all elements of the new media broadcasting environment contribute to the creation and presentation of Canadian programming?
- Is there a need for measures to enhance the promotion and visibility of Canadian new media broadcasting?
- Do we need benchmarking and measurement standards for new media broadcasting?

III. ARE THERE ANY BARRIERS TO ACCESSING CANADIAN NEW MEDIA BROADCASTING CONTENT?

Canadians are increasingly accessing the content of their choice across a broad variety of fixed and mobile devices. There have been great advances in the technology used for these activities in both fixed broadband and mobile access. At the same time, an environment of increased participation and numerous content delivery models has given rise to ever-increasing bandwidth demands on companies offering the physical access to the content.

Given the understanding that access is a fundamental part of new media broadcasting, what issues and relevant questions should be explored in the context of the various physical access options being offered to Canadians to access and deliver Canadian new media broadcasting content? For example, should the Commission explore the following questions:

- Are there practices that affect the distribution of and access to Canadian new media broadcasting?
- Are there issues with respect to access to Canadian new media broadcasting content on mobile devices?

IV. WHAT OTHER BROADCASTING POLICY OBJECTIVES SHOULD BE CONSIDERED WITHIN THE SCOPE OF THE PROCEEDING?

The Act outlines several policy objectives encompassing various cultural, economic, social and technological issues. What other issues and relevant questions regarding new media broadcasting and the achievement of the broadcasting policy objectives of the Act should be explored in the new media broadcasting proceeding?¹

27. The deadline for filing comments is **11 July 2008**. Parties are asked to clearly identify, with rationale, the issues and questions that in their view need to be discussed in the public proceeding. The Commission will make a determination as to the matters that will be dealt with in the public proceeding following the comment period and will issue a Notice of Public Hearing in the late summer of 2008 outlining the details of the new media broadcasting public hearing to be held early in 2009.

New media online consultation

28. To facilitate further dialogue among Canadians, the Commission is conducting an online consultation on the new media broadcasting environment. Nanos Research, on behalf of the Commission, will host an independent New Media Online Consultation website at <http://crtc.newmedia.econsultation.ca>. The website will allow the public to engage in discussion on issues and questions relating to this public notice and assist in defining the scope of the new media broadcasting proceeding.
29. The site is open for postings beginning today and ending 15 June 2008. Participation details are available on the website.
30. Following the e-consultation period, a summary report of the comments will be prepared by Nanos Research and posted on the Commission's website.

Procedures for filing comments

31. 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

¹ The Commission plans to conduct a public proceeding shortly to address the issues associated with the accessibility of telecommunications and broadcasting services (including broadcasting in new media, e.g. over the Internet and mobile devices) to persons with disabilities.

OR

- **by fax at**
819-994-0218

32. Submissions longer than five pages should include a summary.
33. 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

34. 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.
35. 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.
36. 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.
37. 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 our 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.
38. 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

Central Building
Les Terrasses de la Chaudière
1 Promenade du Portage, Room 206
Gatineau, Québec K1A 0N2
Tel.: 819-997-2429
Fax: 819-994-0218

Metropolitan Place
99 Wyse Road
Suite 1410
Dartmouth, Nova Scotia B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

55 St. Clair Avenue East
Suite 624
Toronto, Ontario M4T 1M2
Tel.: 416-952-9096

205 Viger Avenue West
Suite 504
Montréal, Québec H2Z 1G2
Tel.: 514-283-6607

Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba R3B 2B3
Tel.: 204-983-6306
TDD: 204-983-8274
Fax: 204-983-6317

Cornwall Professional Building
2125 - 11th Avenue
Room 103
Regina, Saskatchewan S4P 3X3
Tel.: 306-780-3422

10405 Jasper Avenue
Suite 520
Edmonton, Alberta T5J 3N4
Tel.: 780-495-3224

530-580 Hornby Street
Vancouver, British Columbia V6C 3B6
Tel.: 604-666-2111
TDD: 604-666-0778
Fax: 604-666-8322

Secretary General

Related documents

- *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
- *Call for comments on a regulatory framework for mobile broadcasting services*, Broadcasting Public Notice CRTC 2005-82, 11 August 2005
- *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>.