



## Broadcasting Notice of Consultation CRTC 2010-97

Ottawa, 18 February 2010

### Call for comments on the reporting requirements for new media broadcasting undertakings

*The Commission seeks comments from interested parties on the questions set out in this notice of consultation regarding reporting requirements for new media broadcasting undertakings, including what information should be required and from whom. The deadline for comments is 19 April 2010.*

#### Introduction

1. In Broadcasting Regulatory Policy 2009-329 (the New Media Policy), the Commission set out its determinations following its review of broadcasting in new media. The Commission noted the importance of measuring and monitoring Canadian broadcasting content in the new media environment and indicated its intent to require new media broadcasting undertakings to report information on their new media broadcasting activities. The Commission also stated that details of any reporting requirements, including what information would be sought and from whom, would be open to comment from interested parties in a subsequent public proceeding.
2. In Broadcasting Order 2009-660, the Commission maintained the *Exemption order for new media broadcasting undertakings*, originally set out in Public Notice 1999-197 (the New Media Exemption Order) but imposed reporting requirements on these undertakings. Specifically, each new media undertaking must report, as requested by the Commission, information regarding its activities in broadcasting in new media and such other information required by the Commission to monitor the development of broadcasting in new media.
3. In Broadcasting Order 2009-660, the Commission also revised its definition of a new media broadcasting undertaking. The definition that was adopted and will be used for the purposes of this proceeding is as follows:

The undertaking provides broadcasting services, in accordance with the interpretation of “broadcasting” set out in *New Media*, Broadcasting Public Notice CRTC 1999-84 / Telecom Public Notice CRTC 99-14, 17 May 1999, that are:

- a. delivered and accessed over the Internet; or
  - b. delivered using point to point technology and received by way of mobile devices.
4. In the present proceeding, the Commission seeks to establish what information new media broadcasting undertakings should be required to report pursuant to the New Media Exemption Order. Collection of this information is intended to provide the Commission with information to monitor broadcasting in new media in Canada.

5. The Commission recognizes that appropriate reporting requirements should balance the scope and depth of information required to monitor broadcasting in new media with the burden associated with such reporting. Reporting requirements should not impose an undue burden on new media broadcasting undertakings.
6. The Commission therefore seeks comments from interested parties to assist it in determining the following.
  - Considering the potential regulatory burden associated with reporting, what information is relevant and necessary to understand trends in Canadian broadcasting in new media?
  - From whom should the Commission seek information, keeping in mind the relevance of the data to be provided by new media undertakings and the relative regulatory burden of requiring them to report the information?
7. The Commission seeks responses with supporting rationale to the specific questions posed in this notice of consultation.

### **Scope of the consultation**

8. The Commission noted in its New Media Policy that it is not concerned with user-generated content<sup>1</sup>. As such, the Commission does not intend to impose any reporting requirements on undertakings engaged exclusively in transmission of user-generated content. Further, to the extent that an undertaking offers both user-generated and professionally-produced broadcasting content<sup>2</sup>, any reporting requirements will apply only to the latter form of content. The Commission also notes that it is only interested in obtaining data from undertakings that have the appropriate legal rights in Canada to the content in question.
9. The Commission has referred to the Federal Court of Appeal the question of whether Internet service providers (ISPs), when they provide access to broadcasting content, are broadcasting undertakings within the meaning of the *Broadcasting Act* (the Act), and thus subject to the New Media Exemption Order including any reporting requirements. Consequently, the Commission is of the view that it would be premature in the present proceeding to consider what information should be collected from ISPs acting solely as access providers. If the Federal Court of Appeal determines that ISPs are subject to the Act when they operate as access providers, the Commission will at that time assess whether any reporting requirements ought to be imposed on ISPs acting solely as access providers. The Commission notes that, to the extent that ISPs act as content providers or aggregators, measurement of those activities will be considered in the present proceeding.

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<sup>1</sup> Defined, for the purpose of this notice of consultation, to mean content created by individuals in a personal capacity.

<sup>2</sup> Defined, for the purpose of this notice of consultation, to mean all audio and audio-visual content that is not user generated.

## **What information should be collected?**

10. The Commission considers it essential to collect information relating to new media broadcasting content in Canada to ensure that it has an understanding of the new media broadcasting environment in Canada. To that end, the Commission seeks to collect information on audio and audio-visual new media broadcasting content available to Canadians. With this information, the Commission will be able to examine whether new media broadcasting content is addressing the objectives of the Act.

### **New media broadcasting information to collect**

11. **The Commission seeks comment on what type of information ought to be collected (e.g. availability, consumption, financial data) and on the metrics that should be used in the collection of such data.**

**Q1. What information should the Commission collect to better understand the new media broadcasting industry in Canada? What are the appropriate metrics for measuring such information?**

12. **With respect to content availability in particular, the Commission seeks comment on the following questions.**

**Q2. What are the most appropriate metrics for monitoring the availability of new media broadcasting content? In particular, address the appropriateness of using the following metrics for monitoring availability of new media broadcasting content:**

- **the number of audio and audio-visual programs offered by a new media broadcasting undertaking in the past year; and**
- **the total hours of new media broadcasting content offered by a new media broadcasting undertaking in the past year.**

**Q3. What are the most relevant and feasible metrics for measuring the availability of Canadian content<sup>3</sup> in new media broadcasting? In particular, address the appropriateness of using the percentage of Canadian content, either in terms of total number of hours or total number of programs, offered on new media platforms as a possible metric for monitoring availability of Canadian new media broadcasting content.**

**Q4. To understand whether broadcasting in the new media environment is serving a comprehensive range of interests and tastes, consistent with the broadcasting policy set out in the Act<sup>4</sup>, to what extent is it appropriate to categorize content based on the**

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<sup>3</sup> Existing criteria include the basic definition of a Canadian program set out in Public Notice 2000-42 as well as requirements defined by the Canadian Audio-Visual certification office (<http://www.pch.gc.ca/pgm/bcpac-cavco/pgm/cipc-cptc/pubs/103-eng.cfm>). For audio programming, the current usage of the MAPL system ([http://www.crtc.gc.ca/eng/INFO\\_SHT/R1.HTM](http://www.crtc.gc.ca/eng/INFO_SHT/R1.HTM)) may determine what content is considered Canadian.

<sup>4</sup> [http://laws.justice.gc.ca/eng/B-9.01/page-1.html#anchorbo-ga:l\\_l-gb:s\\_3](http://laws.justice.gc.ca/eng/B-9.01/page-1.html#anchorbo-ga:l_l-gb:s_3)

**following five characteristics for the purposes of reporting? What are the most appropriate metrics for measuring these characteristics?**

- type of programming (e.g. original new media content/content common to new media and conventional broadcasting, live content/on-demand content, complete program/clip);
- origin (e.g. Canadian/foreign, independent/broadcaster-affiliated<sup>5</sup>/in-house production);
- genre;<sup>6</sup>
- accessibility (e.g. captioned and/or described)<sup>7</sup> ; and
- language of content.

#### **Confidentiality of information**

13. Much of the information currently submitted as part of the annual reporting by broadcasting undertakings is granted confidentiality, or is disclosed only in an aggregated manner. **The Commission therefore seeks comment on the following question.**

**Q5. Should confidentiality be extended to information regarding any of the data which parties propose the Commission collect in Questions 1 through 4 above? If so, to what extent should such confidentiality be extended?**

#### **Frequency of reporting**

14. The Commission proposes that reporting by new media broadcasting undertakings pursuant to the New Media Exemption Order be carried out on an annual basis concurrent with the annual broadcasting survey. The Commission further proposes that this annual reporting commence in the fall of 2010.
15. **The Commission seeks comment on the following question.**

**Q6. Considering the dynamic nature of the new media environment, what is the appropriate frequency for reporting pursuant to the New Media Exemption Order? In particular, address the appropriateness of annual reporting, as proposed in paragraph 14.**

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<sup>5</sup> See the definition of “affiliated production company” in section 9 of the CRTC’s *Guide to the Canadian Program Certification Application Process*.

<sup>6</sup> As an example of program categories, see Appendix I to Public Notice 1999-205.

<sup>7</sup> The Commission encouraged the pass-through of closed captioning and described video to broadcasting in new media in paragraph 129 of Broadcasting and Telecom Regulatory Policy 2009-430.

## Who would be subject to the reporting requirements?

16. Given the potentially large number of new media broadcasting undertakings that are subject to the New Media Exemption Order, the Commission considers it would be appropriate to collect information from only a subset of undertakings whose data would be most relevant and from whom data gathering is most feasible. These undertakings may include content aggregators associated with conventional broadcasting distribution undertakings (BDUs), radio-streaming websites, conventional broadcaster websites, certain content aggregators featuring a significant amount of professionally-produced broadcasting content and any other websites identified as drawing a significant audience to its professionally-produced broadcasting in new media content.
17. For the purpose of reporting requirements, the Commission has identified two general categories of new media broadcasting undertakings:
  - new media broadcasting undertakings affiliated with a broadcasting undertaking that is not subject to the New Media Exemption Order (i.e., a conventional broadcasting undertaking)<sup>8</sup>; and
  - unaffiliated<sup>9</sup> new media broadcasting undertakings.

### Affiliated new media broadcasting undertakings

18. With respect to affiliated new media broadcasting undertakings, the Commission considers that such undertakings are easily identifiable and relatively limited in number. During the New Media proceeding<sup>10</sup>, the Commission heard submissions that conventional broadcasters are currently a primary source of professionally-produced broadcasting content in new media. The Commission noted in the New Media Proceeding that, on the distribution side, the search for a viable business model in broadcasting in new media is leading to experimentation with aggregator services, such as the broadband portals offered by conventional BDUs.
19. **The Commission seeks comment on the following question.**

**Q7. Should all affiliated new media broadcasting undertakings be subject to reporting requirements? If not, what are the appropriate criteria and methodology for identifying those new media broadcasting undertakings affiliated with a conventional broadcasting undertaking that ought to submit data?**

### Unaffiliated new media broadcasting undertakings

20. The new media environment offers opportunities for undertakings not affiliated with conventional broadcasting undertakings to contribute to the overall Canadian broadcasting system. Internet and other new media technologies allow Canadians to access new media

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<sup>8</sup> Defined, for the purpose of this notice of consultation, to mean an undertaking carrying on business in Canada, in which a conventional broadcasting undertaking or any company related to such an undertaking owns, in aggregate, a 30% or greater (voting) equity interest.

<sup>9</sup> Not affiliated with a conventional broadcasting undertaking

<sup>10</sup> Broadcasting Notice of Public Hearing 2008-11

broadcasting content from around the world. Considering the potentially large number of these undertakings, for the purposes of reporting, it may not be feasible or necessary to identify every new media broadcasting undertaking making professionally-produced content available to Canadians. In addition, the Commission notes that the Act only applies to broadcasting undertakings including new media broadcasting undertakings that are carried on in whole or in part within Canada or in certain other limited circumstances.<sup>11</sup>

21. **The Commission seeks comment on the following questions.**

**Q8. Considering the potentially large number of unaffiliated new media broadcasting undertakings, what criteria and methodology should the Commission use to define the subset of unaffiliated new media broadcasting undertakings, carried on in whole or in part in Canada, that should submit data? In particular, should the subset be defined by level of revenue, unique visitors, and/or the amount of content transmitted?**

**Call for comments**

22. The Commission invites comments that address the issues and questions set out in this notice. The Commission will accept comments that it receives on or before **19 April 2010**. Parties may also file replies on or before **3 May 2010**.
23. The Commission cannot be held responsible for postal delays and will not notify a party whose comment is received after the deadline date. Late comments will not be considered by the Commission and will not be part of the public file.
24. The Commission will not formally acknowledge comments. It will, however, fully consider all comments, and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

**Procedure for filing comments**

25. Interested parties can submit their comments to the Secretary General of the Commission in **only one** of the following formats:

**by using the**  
[\[Broadcasting interventions/comments form\]](#)

or

**by mail to**  
CRTC, Ottawa, Ontario K1A 0N2

or

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<sup>11</sup> See section 4(2) of the Act.

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

26. Submissions longer than five pages should include a summary.
27. Each paragraph of the submission should be numbered. In addition, where the comment is filed by electronic means, the line **\*\*\*End of document\*\*\*** should be entered following the last paragraph of the document, as an indication that the document has not been damaged during electronic transmission.

### **Important notice**

28. All information that parties 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](http://www.crtc.gc.ca), becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e-mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.
29. The personal information that parties 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.
30. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, 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.
31. The information that parties 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 web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.
32. 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 documents**

33. A list of all comments will also be available on the Commission's website. An electronic version of all comments submitted will be accessible from this list. To access the list, select "Lists of interventions/comments" under "Public Proceedings" from the Commission's website.
34. The public may examine public comments and related documents at the following Commission offices during normal business hours.

## **Location of Commission offices**

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

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

Les Terrasses de la Chaudière  
Central Building  
1 Promenade du Portage, Room 206  
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Fax: 204-983-6317

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Tel.: 306-780-3422

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

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

Secretary General

#### **Related documents**

- *Amendments to the Exemption order for new media broadcasting undertakings (Appendix A to Public Notice CRTC 1999-197); Revocation of the Exemption order for mobile television broadcasting undertakings*, Broadcasting Order CRTC 2009-660, 22 October 2009
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009
- *Review of broadcasting in new media*, Broadcasting Regulatory Policy CRTC 2009-329, 4 June 2009
- Broadcasting Notice of Public Hearing CRTC 2008-11, 15 October 2008
- *Certification for Canadian Programs – A revised approach*, Public Notice CRTC 2000-42, 17 March 2000
- *Definitions for new types of priority programs; revisions to the definitions of television content categories; definitions of Canadian dramatic programs that will qualify for time credits towards priority programming requirements*, Public Notice CRTC 1999-205, 23 December 1999

- *Exemption order for new media broadcasting undertakings*, Public Notice CRTC 1999-197, 17 December 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>.*