



CRTC “Television” Policy Review

Overview and Engagement Approach

Creative Cluster Policy Unit (CCPU)

DM/MO Briefing

March 2014

Purpose

To provide:

- Background on current **television (TV) broadcasting regulatory framework**
- Overview of **expected CRTC TV Policy Review**, including purpose, scope and anticipated outcomes
- **Ontario's interest** in TV Policy Review
- Assessment of **engagement opportunities, benefits and risks**
- Recommended **engagement approach** and **preliminary position**
- Details on **next steps**

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Background: “TV” System Terminology

The “TV” system:

Traditional TV: Programs delivered over-the-air (OTA) and by broadcasting distribution undertakings (BDUs) via cable, satellite or Internet Protocol.

New media TV: Made-for-TV programs delivered by the Internet and mobile platforms. New media TV includes two subcategories:

- TV Everywhere: Services affiliated with TV BDUs, which are inherently domestic
- Over-the-Top (OTT): Services not affiliated with TV BDUs, can be foreign (e.g., Netflix) or domestic

Reference Glossary		
Player	Role	Examples
Producer	Generates Cancon programs; can be independent or in-house (i.e., affiliated with a broadcaster)	DHX/Cookie Jar, marblemedia, Shaftsbury
Broadcaster (Programming Service)	Amalgamates and delivers Cancon and foreign programs (created by producers)	CTV, Global, CBC, Astral, Corus
Broadcasting Distribution Undertaking (BDU)	Amalgamates and delivers Canadian and foreign programming services (delivered by broadcasters)	Telus, Cogeco
Vertically-Integrated Companies (VICs)	Fulfills combination of roles through a single company which includes producers, broadcasters and/or BDUs	BCE, Rogers, Shaw, Quebecor

Background: Current Regulatory Framework

- The *Broadcasting Act* establishes Canadian broadcasting objectives including: to serve the needs and interests, and reflect the circumstances and hopes, of all Canadians; and to provide programming that is diverse and accessible, including a diverse range of high-quality Canadian content (Cancon).
- To achieve these objectives, CRTC has established regulatory tools or supports. These tools include, but are not limited to, requirements for broadcasters and BDUs to contribute to the creation, presentation and promotion of Cancon.
- However, CRTC’s current regulatory framework is characterized by “**regulatory asymmetry**” with different approaches for traditional and new media TV.

Regulatory Asymmetry			
	Licensing	Cancon Regulatory Supports	Other Regulatory Supports
Traditional TV	Licensed	Yes (e.g., Cancon spending/contribution quotas, Cancon broadcasting quotas, tangible benefits obligations, etc.)	Yes - Heavy (e.g., limits on direct entry by foreign TV broadcasters, program rights protections, competitive safeguards, etc.)
New Media TV	Unlicensed	No	Yes - Light (primarily competitive safeguards to protect industry players and consumers from anti-competitive behaviour)

Background: Current Regulatory Framework cont'd

CRTC's current framework can be summarized as generally achieving three **"buckets" of broadcasting objectives**. CRTC has established **regulatory tools** that differently support each of these buckets.

Objectives	<p>CANADIAN SYSTEM The broadcasting system is <u>Canadian</u>.</p>	<p>COMPETITIVE, ACCESSIBLE & DIVERSE SYSTEM The broadcasting system is competitive, accessible and diverse.</p>	<p>CANADIAN CONTENT (Cancon) Cancon is produced, available and accessible.</p>
Example Tools	<p><u>Barriers to direct foreign entry</u>: Prohibit foreign TV broadcasters from BDU distribution in Canada unless authorized, and from competing with Canadian specialty broadcasters in certain genres.</p> <p><u>BDU packaging</u>: TV BDUs must distribute a % of Canadian broadcasters.</p> <p><u>Program rights protection</u>: Canadian TV broadcasters' Canadian distribution rights to <i>foreign</i> programs are protected (e.g., simultaneous substitution, authorized foreign broadcasters must obtain Canadian rights to foreign programs).</p> <p>Together, these regulatory tools support the Canadian Program Rights Market (CPRM), which ensures Canadian TV BDUs, broadcasters and producers can obtain, retain and monetize Canadian distribution rights to made-for-TV programs (foreign and Cancon) (see details in Appendix A).</p>	<p><u>Market entry rules</u>: Canadian TV broadcasters and BDUs must be licensed.</p> <p><u>Transaction approval</u>: TV transactions must be reviewed and approved.</p> <p><u>Competitive safeguards</u>: Protect against anti-competitive behaviour by TV and new media TV industry players, between vertically-integrated companies (VICs) and between independents and VICs (e.g., undue preference rules, BDU-broadcaster carriage rules, producer terms of trade and dispute settlement and enforcement).</p> <p><u>BDU packaging</u>: TV BDUs must provide "basic" and "discretionary" service packages (but NOT pick-n-pay for individual services), and preferentially distribute certain Canadian broadcasters (e.g., local OTA, public interest specialty).</p>	<p><u>Spending/contribution quotas</u>: TV broadcasters must spend a % of revenues on Cancon (including independent Cancon), and TV BDUs must contribute a % of revenues to independent Cancon production funds (e.g., the Canada Media Fund) (see details in Appendix B).</p> <p><u>Broadcast quotas</u>: TV broadcasters must broadcast a % of Cancon (including independent Cancon) during specific viewing periods.</p> <p><u>Tangible benefits</u>: Buyers of TV broadcasters must make financial investments in the Canadian broadcasting system (see details in Appendix B).</p> <p>These supports enable Ontario creators and producers to develop successful, sustainable careers and to produce, distribute and market high-quality, commercially viable Cancon to domestic and international audiences.</p>

Overview of CRTC TV Policy Review (Expected)

- In October 2013, CRTC initiated a Comprehensive “TV” Proceeding entitled “Let’s Talk TV: A Conversation with Canadians,” with three stages. The first two stages, involving a scan of Canadians’ opinions, are complete. The third stage is a **TV Policy Review**, expected in April 2014.

Purpose

- To review Canada’s current “TV” regulatory framework
- To develop a new regulatory approach to the Canadian “TV” system (for next 5-10 years)

Scope

- The scope of the review is **vast** – comprising the entire regulatory framework for both traditional and new media TV.
- The review will analyze the following questions:
 - Are **current regulatory tools** the best way to achieve *Broadcasting Act* objectives?
 - Does the changing “TV” environment call for a **fresh regulatory approach**?
 - Should **regulatory asymmetry** be addressed/reduced?
 - Should CRTC **maintain, tweak, significantly change or drastically revise** the current regulatory framework? Reform options include deregulating TV and/or increasing regulation of new media TV.
- As part of the review, CRTC is open to **re-interpreting** *Broadcasting Act* objectives.

Potential Outcomes

CRTC has publicly indicated that the review will propose a **new regulatory framework** that:

- Is flexible and responsive to a constantly changing environment
- Helps to ensure a “TV” system that:
 - Is open, diverse, affordable, responsive and forward looking
 - Delivers the best Cancon and foreign programming
 - Shifts from “constraint to choice” and from “meeting quotas to embracing new opportunities”

A new regulatory framework could **significantly impact Ontario’s broadcasting and screen-based sectors** and the broader Entertainment and Creative Cluster (ECC) by re-shaping the value chain for Ontario-produced Cancon.

Ontario's Interest

- Ontario and MTCS have significant interest in this proceeding given its potential to result in a radically-changed regulatory environment. Effects would be felt by the broadcasting and screen-based sectors and across the ECC, as well as by Ontarians (as consumers, citizens and creators).

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Potential Impacts of Interest to Ontario	<p>Changed or reduced regulatory supports could result in Canadian Program Rights Market (CPRM) erosion or disappearance, replaced by a North American or Global Program Rights Market, which would:</p> <ul style="list-style-type: none"> • Significantly limit Ontario TV BDU, broadcaster and producer (VIC and independent) ability to obtain, retain and monetize Canadian distribution rights to foreign programs and Cancon; • Result in decreased Ontario TV industry player revenues; and • Result in decreased investment in Ontario-produced Cancon (especially independent). 	<p>Changed or reduced regulatory supports could (further) erode the CPRM, and result in a substantially decreased:</p> <ul style="list-style-type: none"> • Number and diversity of independent Ontario industry players (BDUs, broadcasters and producers); • Number and diversity of Canadian TV services that are available to Ontarians; and • Amount, diversity and accessibility of Ontario-produced Cancon (especially independent). 	<p>Changed or reduced supports (especially reduced or eliminated Cancon spending and/or broadcast quotas) could have significant negative impacts, including substantially decreased investment in, and availability, accessibility and demand for, Ontario-produced Cancon (especially independent).</p> <p>These impacts would be exacerbated by the expiration of current tangible benefits, lack of tangible benefits on the horizon (given the already-concentrated Canadian broadcasting industry) and potentially reduced or eliminated federal government Cancon non-regulatory supports.</p>

Engagement Opportunities

Publicly, CRTC has signalled a single-phased approach to the TV Policy Review, with the following timelines:

April 2014.....CRTC will propose a new regulatory approach

Summer 2014.....CRTC will accept written submissions commenting on the proposed approach

September 2014..... Public hearing discussing the proposed regulatory approach

January 2015..... CRTC decision

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Proposed Preliminary Ontario Position

Overall, Ontario's submission would advocate for "TV" regulatory reform that:

- **Positively impacts** Ontario's broadcasting and screen-based sectors (especially independent producers)
- **Maximizes the benefits** of future broadcasting industry changes on Ontario's ECC
- **Strategically updates** the framework to adjust to changing realities

The submission would be organized in three sections as follows:

1. **Objectives:** Comment on the broadcasting policy objectives guiding the CRTC, including analysis of the objectives and suggestions for alternate interpretations if appropriate.
2. **Value of Regulation:** Comment on the value of regulatory supports and whether continued regulation of "TV" broadcasting in Canada is appropriate, necessary and effective.
3. **Specific Recommendations:** Comment on each of the three "buckets" of tools the CRTC currently employs, including regulatory supports for:
 - A Canadian broadcasting system
 - A competitive, accessible and diverse broadcasting system
 - Canadian content

Proposed Preliminary Ontario Position cont'd

The submission would be positioned to mitigate stakeholder management issues and is expected to generally be consistent with the position of independent creators and producers by:

- Supporting continued regulation of the “TV” system
- Favouring regulatory supports over non-regulatory/voluntary supports (e.g., incentives)
- Favouring financial Cancon supports over non-financial Cancon supports (e.g., broadcasting, promotion)
- Favouring maintained or increased traditional TV regulatory supports and expanded new media TV regulatory supports, specifically Cancon regulatory supports (especially for independent Cancon)
- **[optional]** Favouring expanded new media TV Cancon regulatory supports for *foreign OTT* and, *only if CRTC decides to lighten traditional TV regulation*, for TV everywhere (i.e., quid pro quo for lightened TV BDU/broadcaster regulation)
- **[optional – further expanded]** If CRTC decides NOT to regulate foreign OTT, then propose appropriate non-regulatory incentives

Critical Path

Key Milestones Completed

- January 31, 2014: Commissioned McCarthy Tetrault LLP *Audiovisual Broadcasting Policy Options and Analysis Report* (PO&A Report)
- March 10, 2014: Signed Editorial Services Agreement with Rita Cugini

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APPENDIX A:

Canadian Program Rights Market (CPRM) (TV only)

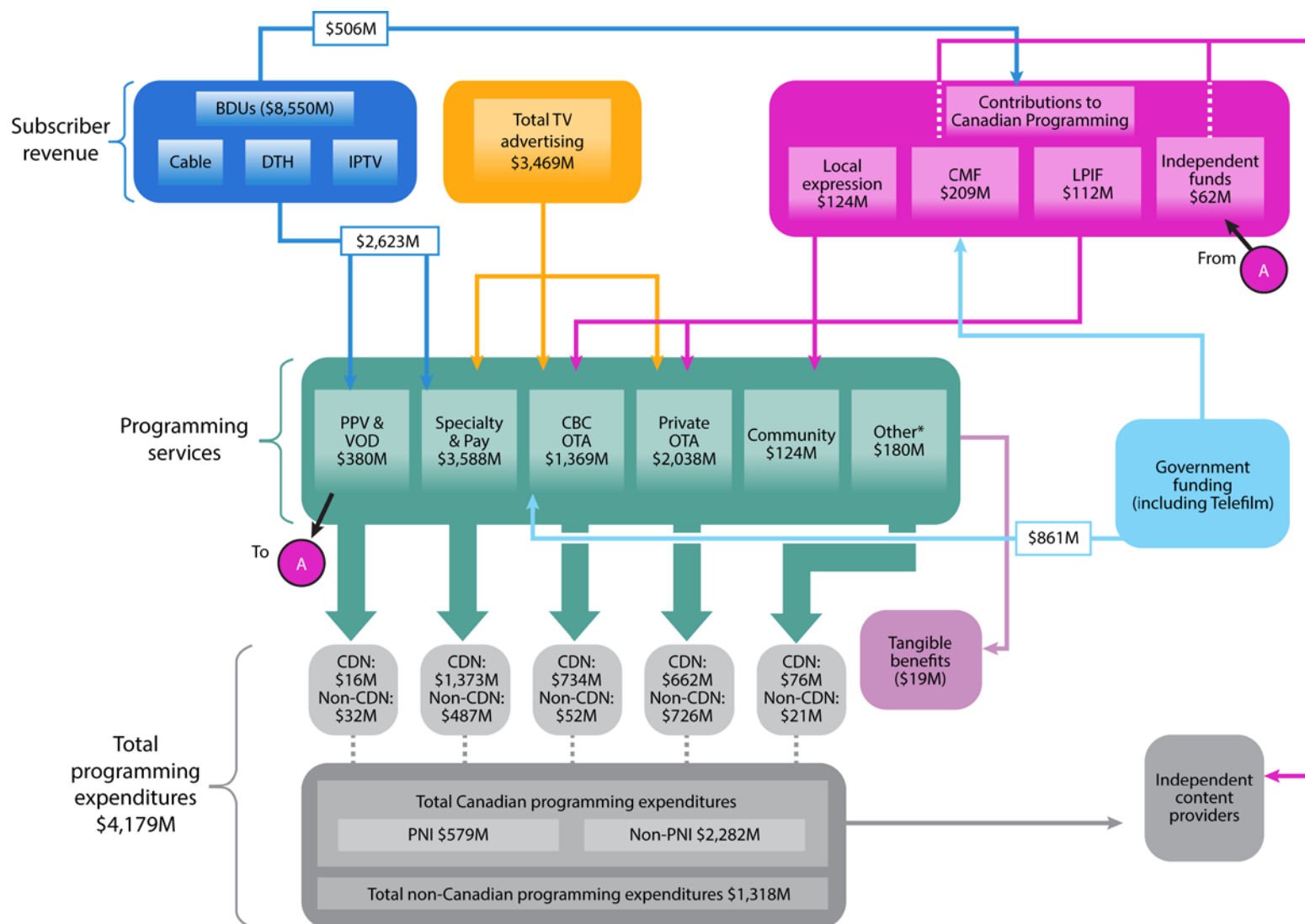
- Ensures Canadian TV BDUs, broadcasters and producers can obtain, retain and monetize Canadian distribution rights to made-for-TV programs (foreign and Cancon).
- No explicit statutory basis. However, “(i)t is not a stretch to suggest that it is the *functioning* of a separate Canadian program rights market that gives *greatest effect* to the broadcasting objective of Canadian ownership and control” (Peter Miller’s CRTC-commissioned CPRM paper, 2007 [emphasis added]).
- Supported by public policy (regulatory and non-regulatory)
 - Non-regulatory supports include advertising tax deductibility under the *Income Tax Act*, and Cancon funding rules (i.e., eligibility criteria).
- Threatened by industry developments, including:
 - Foreign OTT services, which provide programs directly to Canadians (thus bypassing Canadian TV BDUs and broadcasters). Direct provision is either legal (i.e., the foreign OTT service has Canadian rights) or illegal (i.e., the foreign OTT service does NOT have Canadian rights); and
 - TV technology advancements, which undermine current CRTC regulatory supports for CPRM.
- Key question is “one of ‘tipping point’ theory”: “Is there a point at which the reduced effectiveness of existing (policy supports for CPRM) benefiting Canadian (TV) broadcasters, combined with their non-application to new media (TV services), completely undermines the separate (CPRM)? And if so, what can/should be done about it?” (Peter Miller’s CPRM Paper, 2007)

APPENDIX B: Financial Regulatory Supports for Cancon

- Television service providers (BDUs and broadcasters) financially support Cancon, via spending, contribution/funding, and tangible benefits.
- Cancon financial regulatory supports are a crucial strand of what CRTC has called “**(t)he intricate web of public and private support for Canadian programs**”, especially **independent Cancon**.

Entity	Component	Value
Broadcasting Distribution Undertakings (BDUs)	Discretionary Canadian programming services (PPV, VOD, pay and specialty)	\$2,623M (in 2011-12)
	Cancon contributions	\$506M (in 2011-12) ----- 41% (\$209M) Canada Media Fund (CMF) 24% (\$124M) Local expression 22% (\$112M) Local Programming Improvement Fund (LPIF) 12% (\$62M) CRTC-certified independent funds
Broadcasters	Canadian Programming Expenditure (CPE) Requirements	\$2,861M (in 2011-12) ----- 20% (\$579M) Programming of National Interest (PNI) 80% (\$2,282M) Non-PNI
	Tangible Benefits	\$449.6M from 2008-2012 At least \$175.4M (BCE/Astral) in 2013

Funding and Spending by Broadcasting Entities to Canadian Programming (2011 – 2012 broadcast year)



*Other: Includes low-power, non-profit community-based television programming undertakings and educational television programming undertakings.

Source: CRTC's 2013 Communications Monitoring Report (released Sept 2013), reporting on the 2011-12 broadcast year.