



Opening Remarks by the
Canadian Media Production Association
(CMPA)

To

Standing Senate Committee on
Transport and Communications

Pursuant to the

Study to examine the challenges faced by the
Canadian Broadcasting Corporation in
relation to the changing environment of
broadcasting and communications

January 29, 2014

Thank you, Mr. Chairman. And, thank you to all members of this Committee for inviting the CMPA to share how the independent production sector's business has changed over the past 10 years, specifically in light of technology and the digital world.

Of course, we are appearing here today against the backdrop of the Committee's study of the challenges faced by the Canadian Broadcasting Corporation in relation to the changing environment of broadcasting and communications.

Without doubt there have been massive shifts in technology that are enabling consumer access to content from around the globe and over a variety of new platforms. That said traditional television remains the core economic engine driving our industry. And it is still the control of rights to broadcast the content in Canada that goes on TV that makes the business of broadcasting viable for all stakeholders from producers to broadcasters to cable and satellite companies. This may be the most important aspect for all of us to understand and address.

We are pleased to be here today on behalf of our 350 members to answer your questions about Canadian broadcasting from the perspective of an industry that spends almost \$6 billion each year producing screen-based content and employs a very considerable number of Canadians.

I am joined today by:

- Jay Thomson, Vice-President, Broadcasting Policy & Regulatory Affairs;
- Marc Seguin, Senior Vice-President, Policy;
- Marla Boltman, General Counsel; and
- Brian Goodman, Director, Government Relations and Policy

Over the past 30 years, I have worked in both the public and private sectors in telecommunications and broadcasting, addressing ever more complex issues arising from the intersection of competition, convergence and consumer choice through digital technologies.

But just as importantly, I am a direct product of the first generation to grow up connected to – and defined by – media. One of my first memories, as a four-year-old living in Kingston, was of the neighbors across the street getting one of the first television sets on the block. The neighborhood kids would sneak up to their house and peer in their window to watch TV.

In the early days, there was virtually no indigenous content to go with this amazing technology. As a kid my choice was then limited to CBC or Radio Canada. More content arrived with commercial TV like CTV, but as we moved towards Canada's centenary in the 1960s, it was still the access to news, sports and entertainment from CBC/Radio Canada that most defined the space we lived in and the future we were entering.

As more content crossed the border and as technology increased competitive alternatives both to the public broadcaster and to indigenous content creation in general, the challenge facing policy-makers was how to create a national identity in a culture defined by another state.

This challenge ultimately led to the *Broadcasting Act* and the creation of the CRTC; the result of which was the growth of a vibrant and competitive media sector in Canada.

Initially, under the regulator, entry and choice were limited to protect a nascent industry. Over time, however, the focus shifted to a balancing of domestic incentives, open markets and choice. We think that remains

a good approach to the future. But again the system only works in favor of Canadians if the rights to create, produce, distribute and exhibit content in Canada are respected in terms of geography, the prevention of unauthorized use through the Internet and fair commercial practices. It is on these issues that the future of the Canadian broadcasting system rests.

I think we ultimately got it right in this country by embracing choice and competition even as we embraced policies like public broadcasting, tax credits and regulation to ensure a Canadian place in the media world. Incentives attracted investment while competition and choice made our content world class.

Because of this balance in public policy, the Canadian film and television production industry now generates significant economic growth, exports and jobs. In 2012/13 alone, our sector contributed \$7.6 billion to Canada's GDP, including \$2.3 billion in exports, and sustained more than 127,000 full-time, high-quality jobs.

More information on these statistics, which were in fact just released today, along with a video that provides some of the highlights, can be viewed on the memory sticks that have been distributed to the Committee.

So, we have moved from an industry that survived only because it was protected to an industry that is increasingly export driven and which is exporting our entertainment and cultural products around the globe. But trade in content, as I suggested at the outset, can only occur if the rights to broadcast and exhibit content are respected and creators fairly compensated.

Twenty years ago we were focused on telling our stories to each other. Today we tell our stories to the world. And the CBC has played an

important role in achieving this success, as have our independent producers, which the CBC helps to support.

But we can't be lulled by this growing success. The industry and public broadcaster are at tipping points due to the restructuring of the media world due to digital technologies, the Internet and more a-la-carte consumption.

So what is the plan for tomorrow? Forty-five years after peeking through that window in Kingston, I had a similar experience watching video on demand in its infancy while working for the cable industry as it transitioned to becoming an Internet provider.

Both times, it was the technology that initially dazzled. The content came later, but when it came, it changed our world view and led to the creation of billion dollar industries, including right here at home. For my generation, that content included a Canadian perspective that informed as much as it entertained.

It is unthinkable that this may not be the case for the next generation. The exclusion of a Canadian perspective would likely not affect the future of media on a global scale, but it would deprive a generation of Canadian creators, innovators and entrepreneurs of the benefits, both economic and cultural, that will arise from the opportunities presented by the Internet revolution.

Without regulation to promote diversity and to protect intellectual property, and without a public broadcaster, we would have no Canadian broadcasting system today. And, in an Internet world where choice "seems" abundant, I still believe, as much as I still believe in the market and consumer choice, that such regulation and a renewed CBC must be part of the framework going forward if consumers as audiences are

going to fully benefit from a broadcasting system that includes Canadian perspectives.

I also believe, however, that without the opportunity for both independent producers and independent broadcasters to have access to broadcast and cable networks – and indeed commercial opportunities to control and exploit rights in the content they create – diversity of voices will disappear. This is increasingly a threat when our networks are controlled by giant vertically integrated corporations, and when multi-national corporations can effectively compete in Canada without any requirement to operate within the system.

The CMPA believes in choice and competition. But we need to be careful when someone says rely solely on the market or rely solely on consumers to drive the future. These are critical elements but consumer choice is a shallow thing without diversity. And the market is a glass half empty if our marketplace cannot include Canadian goods and services. What's wrong with having the best of both worlds?

We should never forget that our system is unique in that it has increasingly been open to the best content in the world but has still been able to juggle public policy and competition and adapt to technological change. This ensures Canadians get the best content from Canada without sacrificing access to the best content in the world.

We need to support the export of our cultural and entertainment products as enthusiastically as Hollywood did in the last century. But we need a healthy Canadian rights market place to be that exporter. And, in an increasingly market driven environment a lot of valuable and diverse content will only survive if there is at least one platform for it that is not dependent solely on return on investment. And that platform is the CBC. But access to that network also has to be on fair commercial terms to ensure the production of high-quality content, exactly because it

may be the only network where diverse voices may be guaranteed a home.

So what is our recipe for achieving objectives of choice, diversity and growth in a more open market place.

First, we need to ensure that we are creating content that resonates with audiences both in Canada and globally. That requires inclusion of independent producers and creators in the broadcast system in order to enable diversity and allow for the opportunity to create.

Second, we need to ensure the consumer has more flexibility to choose so she stays in the Canadian system. But there needs to be recognition that an a-la-carte world can also hobble the opportunity to continue to create high-quality content for niche markets, from documentary to feature films to children's programming.

Third, we must take measures to ensure Canadian broadcasters and broadcast distributors can exploit the program rights they have acquired and to ensure a level playing field when it comes to broadcasting in Canada, just as we have done for over 40 years.

That begins with (a) requiring that foreign-based content companies like Netflix, which now takes millions of dollars out of Canada every month, also put some of those dollars back into our country to contribute to our system as Canadian broadcasters and distributors must; (b) requiring that, in return for providing broadcasting services online to Canadians through an open Internet, Netflix and others ensure Canadians cannot use false IP addresses to access content that Canadian companies already own the rights to distribute in Canada and (c) ensuring that all over-the-top services like Netflix (which has 4 million Canadian subscribers) pay retail taxes for providing services here just like every Canadian business does.

Fourth, we must ensure that our public broadcaster has the tools to support diversity in critical categories, from feature films to documentaries, which cannot survive based on consumer demand alone.

And finally, we need to put measures in place to ensure that the public broadcaster and vertically integrated private broadcasters do not use their power as gatekeepers to squeeze independent producers to the point where there is no return on our investment in the creation of intellectual property. Producers need creative control over the programs they make, as that's what leads to diversity. And creative control derives from controlling the rights in those programs.

In summary, if we cannot prevent unauthorized services from operating in Canada and infringing on the territorial rights of broadcasters to the content they have paid for, then we have no broadcasting industry of any importance.

But equally important, if broadcasters, as highly concentrated gatekeepers, wrest control of rights from producers or do not fairly compensate them for content they created as "partners," then we will have no diversity of voices.

In that regard, we often fear the power of the broadcasters, public or private, as gatekeepers as much as we worry about the ability of the Internet to redefine markets, by undermining territorial rights.

Without regulatory protections to ensure broadcasters and vertically integrated carriers don't discriminate against the independent voices we have in our system, Canadian content creation and exhibition will ultimately fall under the control of a small number of large corporations.

Not only would this have negative consequences for our broadcasting system as a whole, it would also be contrary to Canada's *Broadcasting Act*, which requires that our system include a significant contribution from the Canadian independent production sector. It is concerns like this that ultimately led the UK to entrench independent producer rights in legislation. Perhaps we need similar rights in Canada.

I thank you once again for inviting us to appear here today and we now welcome your questions.