

FILED ELECTRONICALLY

Montreal, November 25, 2016

Government of Canada
Attention to: The Honourable Mélanie Joly, Minister of Canadian Heritage

**Subject: Canadian Content in a Digital World Consultations
Cogeco Communications Inc.'s comments**

About Cogeco

1. Cogeco Communications Inc. ("Cogeco") is pleased to address, below, the Government of Canada's Consultation Paper on Canadian Content in a Digital World issued in September 2016 (the "Consultation Paper").
2. Cogeco was founded in 1957 by the late Henri Audet, an engineer, entrepreneur and pioneer of the Canadian television broadcasting system in Canada. Over the last 60 years, Cogeco's business activities have undergone several transformations in order to adapt to changing technological, economic and social circumstances and to continue thriving.
3. It is through this entrepreneurial culture and the ability to adapt to changing realities that Cogeco has become one of Canada's leading communications groups and a major contributor to Canada's economic prosperity and employment in the Information, Communications and Technology ("ICT") sector in Canada. Cogeco generated annual revenues of over \$ 2.2 billion in fiscal 2016, most of which came from telecommunications and data services, and employs over 4,000 full-time equivalent employees overall.

General Comments

4. Like other consumers around the world, Canadian consumers expect instant and ubiquitous access to, and freedom of choice in, content from everywhere over the platform of their choice at competitive terms and conditions. This fundamental new reality is unavoidable, and it will drive the global ICT sector for the foreseeable future.
5. Cogeco commends the Government of Canada for its timely initiative of holding a nationwide discussion on Canadian content in the digital world. The Government of Canada has correctly identified the need to reassess traditional cultural policy objectives and tools in the global digital environment, and to move towards alternative means of

promoting Canadian content both domestically and abroad.

6. The Government of Canada's initiative follows on the heels of a more targeted overhaul by the Canadian Radio-television and Telecommunications Commission ("CRTC") of the ways in which Canada's broadcasting policy should be implemented in the new digital world with respect to audiovisual content.

Principle #1: Focusing on Citizens and Creators

7. Cogeco fully supports the Government of Canada's commitment to net neutrality and its clear statement that *"(t)he way forward is not attempting to regulate content over the Internet, but focusing on how to best support Canada's creators and cultural entrepreneurs in creating great content and in competing globally for both Canadian and international audiences."*¹ The Government of Canada should not only stand firm in this regard but also resist attempts to support Canadian content and culture through prescriptive regulatory tools.
8. Cogeco submits that the way to go forward in supporting Canadian creators in the consumer-driven global digital world necessarily involves a paradigm shift from prescriptive regulatory tools to more flexible cultural policy tools centered on creative initiative and free market dynamics for the private sector on the one hand, and improved public funding and mandates for Canada's national cultural institutions on the other hand.
9. Cogeco agrees with the statement that *"(w)ith so much content easily accessible, nurturing talent, curating content and promotion are increasingly important – both for Canada's national cultural institutions, such as CBC/Radio-Canada and the National Film Board, and for Canadian cultural entrepreneurs."*²

Pillar 1.1: Enabling Choice and Access to Content

10. Cogeco submits that enabling choice and access to content will be best achieved by:
 - a) moving away from regulation of actual content on selected distribution platforms, including traditional broadcasting platforms;
 - b) staying away from regulation of actual content over the Internet;
 - c) ensuring that Canadian content from all sources has fair and non-discriminatory access to all Canadian consumers on all available platforms, irrespective of who owns or operates the platform; and
 - d) promoting access for Canadian content to consumers worldwide on all available platforms on a reciprocal, fair and non-discriminatory basis.

¹ Canadian content in a digital world, consultation paper, page 7.

² Canadian content in a digital world, consultation paper, page 7.

11. As a non-vertically-integrated distributor of audiovisual content, Cogeco does not have a conflict of interest involving the distribution of its own productions on its own platforms. However, this is not the case for all players in the industry.
12. The Government of Canada must not overlook the fact that the Canadian media industry is highly concentrated with four large Canadian vertically-integrated (“VI”) groups operating most of the Canadian conventional, specialty, pay and VOD television content services, in addition to controlling over 80% of the domestic television distribution market³.
13. Such concentration in the industry and the inherent conflicts of interests that it entails will continue to require: a) *ex ante* regulatory safeguards to ensure that creative talent and independent producers have access to all Canadian consumers on all platforms pursuant to fair and commercially reasonable terms; and b) careful tailoring of all public funding initiatives to ensure that public funding programs do not encourage more concentration of market power and risk-minimization by VI groups.
14. In addition, through the implementation of bilateral and multilateral treaties, Canada must remain vigilant and proactive in ensuring that fair access to content on all available platforms is managed with a view to achieving reciprocity in foreign audiovisual markets.

Pillar 1.2: Supporting our Creators

15. Support for Canadian creators and content should be based on the following:
 - a) a clear, realistic and workable definition of what constitutes Canadian content, focused on the actual use of Canadian creative and other resources for its production, distribution and promotion both domestically and abroad, for all available platforms;
 - b) incentives that actually promote risk-taking and reward financial success for Canadian content productions, both domestically and abroad; and
 - c) incentives for the effective promotion and marketing of Canadian content productions on world markets, including support for export of these productions through export development programs.
16. Incentives for Canadian content production are typically found in the form of public funding, tax credits and tax deductibility of certain expenditures or input costs. In order to generate the desired outcome, these incentives must be tailored to incent risk-taking and innovation, as opposed to guaranteed income or guaranteed returns on investment in Canadian content.
17. In a competitive global digital world, effective promotion and marketing strategies and expenditures are essential requirements for any measure of financial success, both domestically and abroad. Therefore, cultural policy measures should not be confined to the production and distribution of Canadian content, to the exclusion of its promotion and marketing in the marketplace.

³ CRTC Communications Monitoring Report 2016, table 4.3.5, page 189.

18. There has been considerable discussion recently on the “discoverability” of Canadian content in the digital world. The fact remains that consumers in Canada or abroad will not “discover”, much less actually view Canadian content, unless it is inherently of internationally-competitive quality, and unless it is effectively promoted and marketed on a commercially competitive basis in Canada and around the world.
19. Although the Consultation Paper does not specifically raise this issue for discussion, we have heard renewed calls from some industry participants for the establishment of a new dedicated tax on Internet access services to provide increased funding for the support of Canadian creators and Canadian content production.
20. The Supreme Court of Canada has already unambiguously ruled that, under the present statutory framework, the CRTC cannot impose a financial levy on such a telecommunications service in order to financially support Canadian content pursuant to the objectives of the Canadian broadcasting policy under the *Broadcasting Act*⁴.
21. Taxing the use of Canadian Internet access services in order to cross-subsidize Canadian creators and content is the wrong way to go for several commanding public policy reasons.
22. First, Internet access is the modern electronic highway through which all manners of goods and services are transacted and consumed worldwide. It would be bad public policy to tax the use of this electronic highway in order to subsidize the production of a selected kind of content that transits through it.
23. By analogy, it would make no public policy sense to set tolls on highways to subsidize the production of Canadian manufactured goods, to tax air traffic in order to subsidize Canadian tourist facilities, or to tax seaways and ports to subsidize Canadian fish products.
24. Second, a tax on Internet access services would inevitably raise the cost of these services and make them less accessible to, and affordable for, Canadians. This is contrary to the Government of Canada’s objective.
25. Third, a tax on Internet access services would act as a disincentive for greater productivity and innovation in the digital economy and would be contrary to the Government of Canada’s innovation policy.
26. Fourth, a tax on Internet access services would be contrary to general tax policy principles in Canada, including equity and fairness in taxation, non-duplication of taxes, avoidance of special purpose taxes, and avoidance of tax-induced economic distortions.
27. For all these reasons, rather than contemplating a dedicated tax on Internet access services in addition to the federal GST sales tax regime, the Government of Canada should focus instead on stopping the loss of revenue under that sales tax regime for the

⁴ Reference re *Broadcasting Act*, (2012) 1 S.C.R. 142

purchase by Canadian consumers in Canada of digital products and services obtained over the Internet from abroad. Countries such as Australia are already moving to plug this sales tax loophole⁵.

28. We wish to emphasize that making the GST apply fairly and effectively to the domestic retail consumption of all products and services without exception, including digital products and services, is simply a matter of basic fairness and of sustainability of the federal sales tax revenue going forward, as more and more high value-added goods and services are provided from abroad over the Internet. It is not about specifically taxing Netflix or forcing Netflix to support Canadian content, as some have argued in the past.
29. It would be contrary to the Government of Canada's objective under Pillar 1.2, and contrary to sound fiscal and economic policy, to double tax Canadian telecommunications service and television content suppliers over the Internet while allowing foreign digital content suppliers to evade the general GST sales tax regime on the sale in Canada of any of their digital products or services.
30. In addition, Cogeco submits that all public funding initiatives to support Canadian creators under Pillar 1.2 should come from the general consolidated revenue fund, based on general appropriations made by Parliament for the Government of Canada's cultural institutions and programs, and not based on the amount of money collected from a special dedicated tax imposed on selected telecommunications services such as Internet access services.
31. Finally, the Government must be mindful that Canadian public policy cannot be more favorable to foreign companies than it is for domestic companies operating in Canada. This issue must be resolved to restore a fair and equitable competitive environment.

Principle #2: Reflecting Canadian Identities and Promoting Sound Democracy

32. Canadian content can most usefully be delineated in relation to the use of Canadian creative and other resource inputs, as opposed to Canadian "culturally relevant or desirable" themes or stories.

Pillar 2.1: Redefine Canadian Content for Contemporary Canada

33. Cogeco wishes to emphasize the need for a clear, realistic and workable definition of what constitutes Canadian content, focused on the actual use of Canadian creative and other resources for its production, distribution and promotion both domestically and abroad, and for all available platforms.

⁵ Applying GST to digital products and services imported by consumers, Parliament of Australia
http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201516/digital

Pillar 2.2: Strengthen the Availability of Quality News and Information in Local markets

34. Cogeco agrees with the statement that “(in) our interconnected world, “community” is no longer synonymous with “local”. The communities of which we are part can be local, but they also frequently connect across the country, the continent or the globe”.⁶
35. While Canadians remain generally of the view that access to local content in their community is important, their actual consumption of local content has changed as a result of this new sense of extended community and the ubiquitous interactive on-demand platforms now widely available to them.
36. Local news is no exception to this new reality. Canadian consumers are increasingly driven to accessing news, including “local” news, from diverse sources that are not pre-programmed or otherwise organized in “local” linear, segmented or fixed-time formats on traditional local broadcasting platforms.
37. Cogeco therefore wishes to caution the Government of Canada against any policy initiatives that would seek to subsidize - or force the cross-subsidization of - local news gathering, production or distribution, particularly on any specific local platform.
38. Cogeco submits that any government-directed scheme to fund the production of news information and local content would be counter-productive and contrary to the Government of Canada’s objective of promoting “sound democracy” in Canada. More specifically, news and information content must remain free of any government intervention, influence, or appearance thereof, so that our democratic institutions can continue to thrive and retain the trust of the Canadian public.

Principle #3: Catalyzing Social and Economic Innovation

39. Cogeco agrees with the Government of Canada’s focus on creativity and innovation, not only in the cultural sector but also in other sectors of the economy, including the ICT sector at large.⁷
40. Cogeco wishes to emphasize that Canadian Internet access services already play a key role in enabling social and economic innovation. Its ever increasing importance was further stressed by Minister Navdeep Bains, in a recent speech where he indicated that Canada needs to start planning and building networks that are ten times faster than the current standard and that for the cities of the future, networks are paramount.⁸

⁶ Canadian content in a digital world, consultation paper, page 8.

⁷ Canadian content in a digital world, consultation paper, page 10.

⁸ The Honourable Navdeep Bains, PC, MP, Minister of Innovation, Science and Economic Development, International Institute of Communications Canada Conference, Speaking Points, Ottawa, November 17, 2016

41. If the Government of Canada's objective is to be successful in the coming years, Internet access services should remain free of government intervention and not be burdened with higher taxes.

Pillar 3.1: Positioning Canada as a Culture and Digital Content Leader

42. The Government of Canada's cultural policy tools must be centered on enabling creative initiative and free market dynamics to unfold in the private sector on the one hand, and on improving the public funding initiatives and the mandates for Canada's national cultural institutions on the other hand.

Pillar 3.2: Leveraging Canada's National Cultural Institutions

43. Cogeco submits that the CBC/Radio-Canada and the National Film Board should act as key incubators and venture capital investors of original Canadian content on multiple platforms, particularly for high-risk, high-cultural productions such as drama, children's programming, live performance and documentary programs. They should receive sustainable and predictable funding from the consolidated revenue fund for that purpose.
44. CBC/Radio-Canada's mandate should be tightened in order to limit the diversion of its available resources for the acquisition of non-Canadian programming content and the acquisition of rights to commercial programs in the movie, sports and variety categories in competition with the private broadcasting sector.

Pillar 3.3: Promoting Canadian Content Globally

45. Cogeco reiterates that cultural policies in effect should provide incentives for the effective promotion and marketing of Canadian content productions on world markets, including support for export of these productions through export development programs.

Concluding Remarks

46. In conclusion, Cogeco submits that the Government of Canada should:
 - a) move away from regulation of actual content on selected distribution platforms, including traditional broadcasting platforms;
 - b) stay away from regulation of actual content over the Internet;
 - c) refrain from imposing a special dedicated tax on Internet access services;
 - d) correct the loophole in the implementation of the federal GST sales tax regime that allows foreign suppliers of digital products and services to evade federal sales tax liability on digital products and services sold in Canada to Canadian consumers over the Internet;

- e) ensure that Canadian content from all sources has fair and non-discriminatory access to all Canadian consumers on all available platforms, irrespective of who owns or operates the platform;
 - f) support access for Canadian content to consumers worldwide on all available platforms on a reciprocal, fair and non-discriminatory basis in world markets through bilateral and multilateral treaties; and
 - g) support the effective promotion and marketing of Canadian content productions on world markets, including support for export of these productions through export development programs.
47. Cogeco wishes to thank the Canadian Heritage Minister for the opportunity to submit its views and participate in this important consultation.



Nathalie Dorval
Vice-President, Regulatory Affairs and Copyright

*****END OF DOCUMENT*****