

**EMERGING AND DIGITAL MEDIA: OPPORTUNITIES AND
CHALLENGES**

**MÉDIAS NUMÉRIQUES ET ÉMERGENTS : POSSIBILITÉS
ET DÉFIS**



Presentation to the Standing Committee on Heritage
by the Canadian Conference of the Arts

Présentation au Comité permanent du Patrimoine
par la Conférence canadienne des arts

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M. le Président, membres du Comité,

Mon nom est Alain Pineau et je suis le directeur général de la Conférence canadienne des arts. La CCA est le plus ancien et le plus vaste organisme-parapluie du secteur art, culture et patrimoine au Canada. Elle a pour mandat de contribuer à un débat informé sur toute politique ou réglementation au niveau fédéral qui affecte ce vaste secteur d'une façon ou d'une autre.

De plus en plus de gens réclament le développement d'une stratégie numérique nationale. Malheureusement, le débat porte trop souvent sur les infrastructures et leur financement et pas suffisamment sur ce qui est véhiculé par les nouvelles plateformes, et sur les intérêts de ceux qui développent les contenus, culturels ou autres.

Nous nous réjouissons donc que vous ayez élargi la conversation et que vous vous préoccupiez de ces aspects fondamentaux du débat.

Impact du numérique sur le secteur culturel

L'arrivée des technologies numériques a changé la façon dont les artistes produisent et la relation des institutions avec leurs publics. L'interactivité bouleverse les modèles d'affaires et modifie les modes de consommation des produits culturels.

The arts and culture sector embraces wholeheartedly the new possibilities created by digital technologies. Many individual artists have adopted them to produce performance art and otherwise meld technology with traditional artistic tools. Experimentation in the use of the new technologies is increasing among individual artists.

Beyond the use of digital technology in arts creation lies the impact of broadband Internet and wireless in its promotion and distribution. Individual artists, as well as galleries and museums, are able to digitally demonstrate the artists' creations. Some of the more innovative artists and institutions are reaching a far greater audience, faster and more efficiently than before. The Internet offers new ways to engage the audience, to promote, and to process orders.

The democratization of production tools also raises interesting questions on the professional status of artists and journalists. It is relatively easier to produce a work of art and make it accessible. Media outlets rely more and more on images and material provided by ordinary citizens who "report" with a mobile multi-tasking device. The upside of these new developments is that they encourage creation and participation; the downside is that they can debase the value of trained professionals' work, lead to the acceptance of lower standards, not to mention threaten the livelihood of creators.

Propriété intellectuelle

Plusieurs l'ont déjà dit : le développement d'une stratégie numérique canadienne doit s'appuyer sur une nouvelle loi sur le droit d'auteur. Il est urgent de reconnaître l'importance de la propriété intellectuelle de ceux qui développent les contenus et de créer un environnement numérique encourageant la création, la dissémination et la protection des œuvres. Nos artistes veulent partager leurs créations sur les plateformes les plus larges possibles, mais ils doivent pouvoir le faire dans l'assurance qu'ils recevront une juste compensation pour leur travail, que ce soit pour la distribution en ligne ou pour le transfert sur d'autres instruments médiatiques. À ce dernier chapitre, nous appuyons l'extension de façon adéquate du présent régime de copie privée : il ne s'agit pas là d'une taxe mais d'une façon aussi efficace que possible de permettre à tout

Canadien d'acquérir le droit de choisir l'appareil de son choix pour accéder aux produits culturels acquis légitimement, tout en assurant que l'artiste est compensé pour son travail. Même le président de CRIA, M. Graham Henderson, reconnaît qu'il s'agit d'une mesure complémentaire importante pour appuyer la création de contenu. Cette mesure ne saurait cependant en rien remplacer le besoin fondamental d'une protection des droits des créateurs par le biais d'une mise à jour de la Loi.

Un autre aspect des nouvelles réalités concerne le fait que plusieurs utilisateurs peuvent prendre le travail d'un artiste et recréer de nouvelles oeuvres qui peuvent violer les droits moraux du créateur. Une fois que l'oeuvre a pénétré dans l'univers numérique, il est possible d'en faire ce qu'en anglais on appelle un « mash-up ». Il est important qu'en développant une stratégie numérique nationale, le gouvernement inclut une politique innovatrice qui protège les droits des auteurs sans pour autant décourager la créativité que leurs oeuvres peuvent générer à leur tour.

Training

Let us now talk about training. The National Film Board Commissioner, Mr. Perlmutter, raised this issue very eloquently with you the other day, as part of his excellent call to action with regards to a national digital strategy. Artists and arts administrators are more obligated to learn a diverse set of skills in order to compete on an open art market. Those who have digital marketing skills and social media savvy will be able to promote, present, and professionalize their artistic practice. More attention must therefore be given to training young artists and creators, not only in digital skills but also in the basics of entrepreneurship.

With a retiring cadre of professionals in Canada's short-term future, we must invest in knowledge transfer programs, mentorships, and apprenticeships in cultural industries and in the arts. A knowledge economy is a resource which will never run dry. We must encourage a cohesive national strategy to train, promote, and implement our digital economy.

Expanding digital literacy within the Canadian population is also an important part of a national digital strategy. The creation of multi-media community centres as proposed by the Canadian Association of Community Television Users and Subscribers (CACTUS), which the CCA supported last week in front of the CRTC, is a very important piece of the puzzle which you should include in your report.

Investing in Canadian cultural expressions

Canadians have a right to their own culture, a fact recognized by years of public policy through government support of international agreements under the United Nations and UNESCO. Over the past 50 years, our government has developed various support mechanisms to ensure Canadian cultural products and services are made available to Canadians and to the world at large.

In the new digital environment, such policies are more important than ever. The government must use all the tools at its disposal, whether through direct financial support, regulation or tax incentives. As mentioned by others, notably by ACTRA and CFTPA, it is important to expand and adapt previous policies to new realities. This is why we at the CCA support increasing public investments in the creation of Canadian works, whether through existing institutions like the CBC, the National Film Board and the Canada Council or through new instruments like the

Canadian Media Fund. This is why, for several years now, we have advocated for extending the contribution regime in place for over the air broadcasters, cable and satellite operators to the new distribution platforms like the internet and wireless. This is why we support extending the Private Copying Levy to digital recording devices and urge the government to put an end to piracy by upgrading the Copyright Act.

Finally, we insist that the government maintain in all trade negotiations its official position that cultural goods and services are not like other goods and must be kept off the table, lest our federal and provincial governments lose their capacity to adopt or modify the cultural policies which have led to the development of our arts and culture sector.

Canadian ownership of cultural industries

This leads me to my last point: foreign ownership. For the past several decades, the operating principle in Canadian cultural policy has been that Canadian ownership and effective control of our cultural industries will ensure more Canadian content is made available to Canadians. It has been deemed easier to regulate Canadian owned companies than foreign owned ones. Moreover, Canadians are more likely than non-Canadians to tell our own stories and to present our own view of the world based on our own values.

The absence of appropriate regulation in the movie industry is the best illustration of the negative impacts of foreign ownership and control of a cultural industry. Film distribution policy does not distinguish the distribution rights for the Canadian market from North American rights for most of the largest distributors. As a consequence, foreign film distributors maintain a lock on the majority of the film distribution activity in Canada. Foreign films (i.e. US movies) occupy over 98% of screen time in English Canada, whereas the situation is somewhat better in Québec cinemas. This demonstrates how foreign controlled cultural industries can successfully shut Canadian cultural goods and services out of the market with impunity as the result of ineffective policy.

There is increasing debate about the wisdom of opening up foreign investment and eventual control in telecommunications. This is done to bring more competition and lower prices for consumers. One cannot be against the latter objective, but there are serious reasons to fear the consequences of the current back door approach to changing long-standing cultural policies.

The 2008 *Competition Panel Report* recommended a liberalization of telecommunications and broadcasting investment restrictions “**following a review of broadcasting and cultural policies including foreign investment**”. With due respect, we do not think that a handful of committee hearings here and at the Standing Committee on Industry, where witnesses are limited to 10 minute presentations, and questioning to 5, constitute a review of broadcasting and cultural policies.

The Chair of the CRTC has recently stated in front of the Standing Committee on Industry it is impossible to erect a firewall between telecommunications companies and broadcasting undertakings:

“in view of the convergence of telecom and broadcasting, any liberalized foreign-ownership rules for telecom should give due consideration to the social and cultural objectives of the Broadcasting Act... it is widely agreed that given its economic

importance” and I would add its strategic and cultural importance, “control of the communications sector should remain in Canadian hands.”

Foreign trade agreements may contribute to restricting Canada’s capacity to adopt cultural policies. NAFTA’s Chapter 11 provides foreign investors with a right to sue the Canadian government and seek compensation for government actions. Investors could sue the government for the decisions of regulatory agencies like the CRTC, if they believe the decisions violate their rights under NAFTA. The CCA is very concerned with the fact that the Canadian government has tabled such a dispute resolution mechanism in the current comprehensive negotiations with the European Union. Why are we concerned?

First, in relation to NAFTA, the CCA would point out that the *cultural exemption* is limited in scope to *the cultural industries that existed at the time NAFTA was created*. Importantly, this does not include the new media sector, such as interactive television, computer games, etc.

Second, Chapter 11 rights could potentially come into play in two ways in this matter. If the rules in Telecommunications are changed, a foreign company that decides to invest in a Canadian cable company or broadcaster could structure a deal in a way that mirrors the new telecom rules. If the CRTC were to prevent them from proceeding, they could launch a Chapter 11 challenge on the basis that they are being treated unfairly in relation to a direct competitor operating in the same marketplace.

Finally, if foreign companies are permitted or force entry into Canada’s broadcasting system, existing rules and regulations relating to the production and distribution of Canadian content productions may be sustainable, since the foreign company is entering the market where those rules exist. But if the CRTC or the government were to try to update the rules to reflect a new environment, the foreign company may have a cause of action under Chapter 11.

Je vous remercie de votre attention et suis prêt à répondre à vos questions.