

**Coalition** for **culture** and **media**  
CONTINUITY - FAIRNESS - SUPPORT



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**Submission presented to the  
Broadcasting and Telecommunications Legislative  
Review Panel**

**In response to the call for comments:  
*Responding to the New Environment***

**January 11, 2019**

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## LIST OF ACRONYMS

BDU: Broadcast Distribution Undertaking

CBC: Canadian Broadcasting Corporation

CCD: Canadian Content Development

CCM: Coalition for Culture and Media

CDCE: Coalition for the Diversity of Cultural Expressions

CRTC: Canadian Radio-television and Telecommunications Commission

ECP: Expenditures on Canadian Programming

GIC: Governor in Council

ISP: Internet Service Provider

TSP: Telecommunications Service Provider (includes ISP and WSP)

UNESCO: United Nations Educational, Scientific and Cultural Organization

WSP: Wireless Service Provider (mobile)

## SUMMARY

In this submission, the Coalition for Culture and Media presents an overview of the changes occurring in the broadcasting environment, including an explanation of the typology and uses of data by platforms and other online programming companies broadcasting cultural and informational content.

In order to adjust broadcasting and telecommunications legislation effectively, it is important to understand the mechanics of this data, which is central to the business models of the still unregulated companies that are disrupting the culture and communications sectors. A comprehensive study on what is considered by some to be the black gold of the 21st century was commissioned from the Quebec chapter of the Internet Society, and is presented in appendix.

The Coalition for Culture and Media also proposes that the review panel recommend that the government implement interim measures this spring to support the Canadian system until the review of the *Broadcasting Act* and the *Telecommunications Act* is completed. Legislative amendments are also suggested to fill the gaps in the legislation and to impel all who benefit from the Canadian broadcasting system to contribute to the sustainability and development of Canadian cultural and media content.

The Coalition shares its main recommendations with the Coalition pour la diversité des expressions culturelles. A total of 19 recommendations are made.

## THE COALITION FOR CULTURE AND MEDIA

The Coalition for Culture and Media was established in the summer of 2017. It comprises more than 40 organizations from across Canada, and includes hundreds of thousands of actors, writers, technicians, journalists, booksellers, musicians, documentary makers, filmmakers, publishers, rights management companies, producers and citizens, all concerned about the future of the culture and communications sector.

In its *Declaration for the Sustainability and the Vitality of National Culture and Media in the Digital Era*, released a little over a year ago, the Coalition called for the continuity of government interventions in support of Canadian culture and media, the restoration of fiscal and regulatory fairness, and the implementation of effective support measures. These still relevant objectives, elaborated below, underpin the recommendations in this submission.

### **Continuity**

"Adapting to the current digital environment must not be an excuse to set aside the philosophy of intervention that has allowed the development of our culture and media. The existing regulatory measures must be reviewed to encourage not only the creation, but also the distribution and the discoverability of content that represents us, the diversity of cultural expression and information as well as the vitality of the French language. Regulation must be extended to all businesses that offer cultural or information products in Canada via the Internet. We must avoid the temptation to deregulate: our national identity and cultural sovereignty depend on it." <sup>1</sup>

### **Fairness**

The government "... must also update the current laws and policies to ensure Canadian and foreign companies are treated fairly in fiscal, taxation, and regulatory matters the moment they are dealing with consumers in Québec and the rest Canada. Regardless of whether services are provided online or in traditional media (radio, television and newspapers), all businesses must pay their fair share of sales and income taxes in addition to submitting to regulation – in financing and in showcasing Canadian content. Similar requirements are crucial in the current explosion of new services and digital platforms."

### **Support**

"... we ask governments to adapt the measures currently in place to allow a strong cultural and communications ecosystem to be maintained, one that is capable of developing our talents and our content in the face of global competition. It is unrealistic to think that the hundreds of thousands of jobs generated by Canada's cultural and media businesses can rely solely on exports and co-productions. We must use all the options available to us – legislative, regulatory, fiscal and financial – to ensure the vitality of our industry first on a national level, then on an international level."<sup>2</sup>

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<sup>1</sup> Coalition for Culture and Media, *Declaration for the Sustainability and the Vitality of National Culture and Media in the Digital Era*, September 14, 2017: <https://coalitionculturemedias.ca/>.

<sup>2</sup> *Idem*.

## INTRODUCTION

The coalition believes that the federal government has an essential role to play in the support and dissemination our culture and media at this pivotal time. The decisions made in the coming weeks and months are of paramount importance, as the current review of the Canadian communications legislative framework is expected in some way to renew the foundations of our system, while preserving what has been achieved over the years.

The content produced here – whether entertaining, moving, informative or captivating – is greatly appreciated by the public. Regardless of the technology used to disseminate it, it contributes to our identity and is also an important element of integration and social cohesion. It is a true collective asset that must be protected and whose development and accessibility must be fostered so that future generations will be able to watch and listen to content that reflects the diversity of our communities.

In this submission, the Coalition for Culture and Media (CCM) focuses primarily on support for the creation, production and discoverability of Canadian content. The CCM supports the main recommendations for legislative amendments and interim measures presented by the Coalition for the Diversity of Cultural Expressions (CDCE)<sup>3</sup> to the Broadcasting and Telecommunications Legislative Review Panel.

The CCM is also proposing an inventory of the use of data by online programming companies, social networks and other digital platforms (see the ISOC Quebec study in Appendix 3). In this regard, it makes recommendations on the required legislative framework for supporting Canadian content and improving the rights of the digital consumer. Canadian ownership of communications companies and the governance of the public broadcaster are also discussed.

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<sup>3</sup> CDEC, *Brief by the Coalition for the Diversity of Cultural Expression in the context of the Broadcasting and Telecommunications Legislative Review submitted to the Broadcasting and Telecommunications Legislative Review Panel*, January 11, 2019.

## BACKGROUND

The world of culture and communications has been experiencing a series of disruptions since the late '90s. The dematerialization of content, the advent of the Internet and e-commerce, as well as changes in consumption habits have profoundly destabilized the culture and media ecosystem. This imbalance has increased in recent years due to unfair competition resulting from the inaction of our decision makers faced with the emergence of the Internet giants.

On the one hand, multinationals (Google, Apple, Facebook, Amazon, Netflix, Spotify, etc.) offer services that allow access to a broad range of content, but without being subject to the same rules as Quebec and Canadian companies in terms of taxation and regulation. On the other hand, Internet Service Providers (ISPs) and Wireless Service Providers (WSPs) give access to audiovisual and musical productions without contributing to the financing of the product of which they are reaping the benefits.

The popularity of these services, which use massive amounts of data, has altered the sharing of revenues generated by our cultural and information content. The new middlemen of the digital age now reap a large share of the gains from productions in which the media, the creators, the publishers and the producers have invested, while having no obligation to fund Canadian content and its diffusion in return. This situation is harmful to Canadian culture and media and jeopardizes the achievement of the social and economic objectives of the Canadian broadcasting policy<sup>4</sup>.

### Canadian Broadcasting Policy

These objectives are more relevant than ever in the digital age, in terms of job creation, fairness, sharing of values and language, social reflection and the diversity of voices. The Canadian broadcasting policy stipulates that:

“operating primarily in the English and French languages ... [it] provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;”<sup>5</sup>

the Canadian broadcasting system should, “through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society;”<sup>6</sup>

“...each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming ...;”<sup>7</sup>

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<sup>4</sup> *Broadcasting Act*, art. 3.

<sup>5</sup> *Ibid.*, art. 3(1) b).

<sup>6</sup> *Ibid.*, art. 3(1) d) (iii).

<sup>7</sup> *Broadcasting Act*, art. 3(1) f).

"each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;"<sup>8</sup>

"the programming provided by the Canadian broadcasting system should ... be varied and comprehensive; ... be drawn from local, regional, national and international sources; ... [and] provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern..."<sup>9</sup>

It should be noted that, in terms of information, this last provision offers Canadians exposure to a variety of points of view. Traditional media therefore promote a healthy democracy by helping Canadians to be better informed, and more open to the world and to diversity. This is not the case for the exempted companies<sup>10</sup> who escape this obligation, such as social media whose algorithms reinforce a narrow view of reality<sup>11</sup>.

The algorithms of online programming companies also limit the access of Canadian users to a diversity of programming by suggesting a limited selection of music or audiovisual productions based on their listening history, the popularity of certain content, or other criteria that do not guarantee the presentation of Canadian music or programs<sup>12</sup>.

We must add to these findings and those of CDCE<sup>13</sup> and the review panel<sup>14</sup> that the inaction of the CRTC and the government has for years been promoting the growth of foreign companies and their unlimited use of data. In the audiovisual sector, this inequity is reflected in a real downward spiral that unfolds as follows:

### **The Downward Spiral**

- a) Firstly, there has been an increase in subscriptions to unregulated foreign online programming undertakings that do not contribute to the Canadian broadcasting system. In Quebec, Netflix's penetration rate (33%) is seven percentage points higher than the penetration rate of the three Canadian online programming services (Extra tou.tv, Club illico, and Crave TV).

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<sup>8</sup> *Broadcasting Act*, art. 3(1) e).

<sup>9</sup> *ibid*, art. 3(1) i).

<sup>10</sup> CRTC *Amended Exemption Order for New Media Broadcasting Undertakings* (Appendix A of the Exemption Order for New Media Broadcasting Undertakings) CRTC Public Notice 1999-197, 17 December 1999, CRTC Public Notice 1999-197, CRTC 2009-660, Ottawa, October 22, 2009.

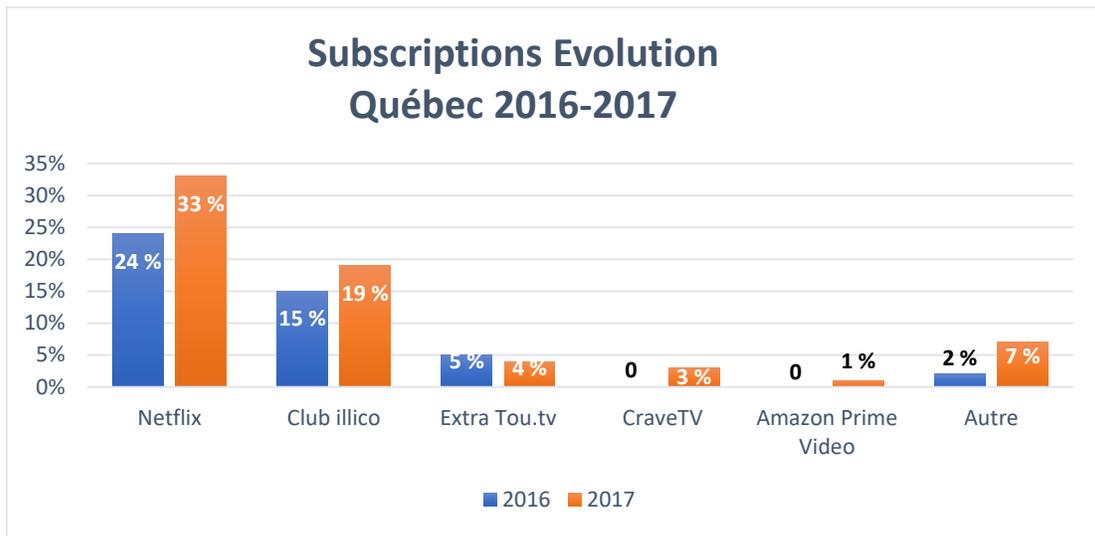
<sup>11</sup> The Conseil supérieur de l'audiovisuel (CSA), in France, considers it necessary "... to ensure, in terms of exposure, the transparency and trustworthiness of recommendation algorithms in order to promote cultural diversity and reduce the risk of locking the user into predefined choices." in CSA, *Refonder la régulation audiovisuelle*, September 2018, p. 18.

<sup>12</sup> See the quote from Olivier Schrameck, in: Tchéhouali, Destiny ; Plamondon, Josée (2018), *Données d'usage et usage des données à l'ère des plateformes : De la nécessité d'un encadrement réglementaire pour une meilleure affirmation de notre souveraineté numérique*, Montréal, ISOC Québec for the Coalition for Culture and Media (CCM), pp 31-32.

<sup>13</sup> CDEC, *Brief by the Coalition for the Diversity of Cultural Expression in the context of the Broadcasting and Telecommunications Legislative Review submitted to the Broadcasting and Telecommunications Legislative Review Panel*, January 11, 2019.

<sup>14</sup> Broadcasting and Telecommunications Legislative Review Panel, *Responding to the New Environment: A Call for Comments*, September 24, 2018.

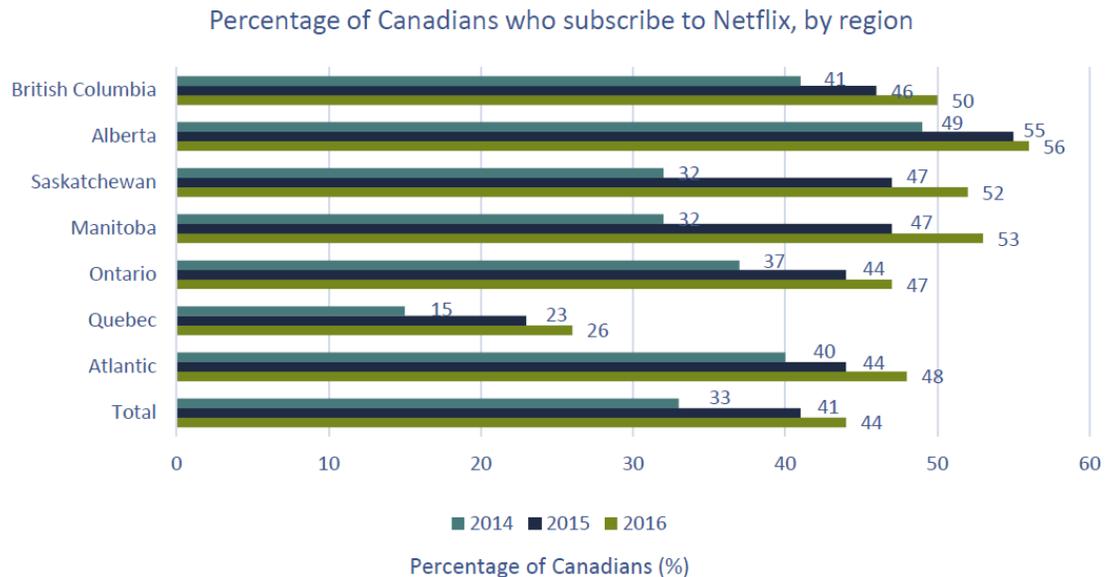
**TABLE 1 – Online Subscriptions to Video On Demand**



Source: CÉFRIO, *Portrait numérique des foyers québécois*, Volume [Digital Portrait of Quebec Households], Volume 8, no. 1, *NETendances* 2017, p. 16.

In English Canada, the popularity of Netflix is even greater with penetration approaching 50% in several provinces.

**TABLE 2 – Subscriptions to Netflix in Canada**



Source: CRTC, *Communications Monitoring Report* 2017

- b) At the same time, there has been an increase in subscriptions to residential Internet services and wireless mobile services while subscriptions to the services of broadcasting distribution undertakings (BDUs) are decreasing.

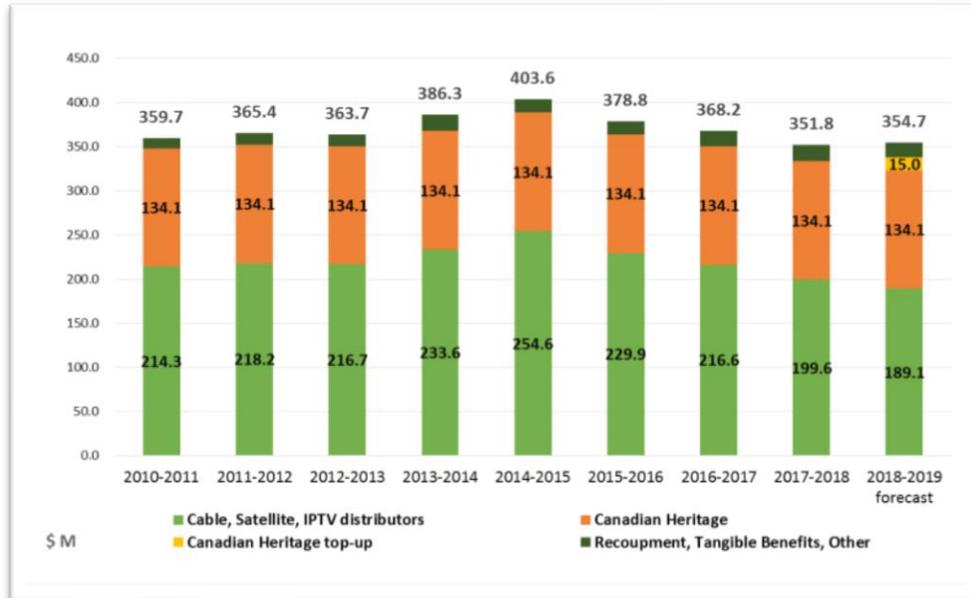
**TABLE 3 – Subscriptions to Internet Services, BDUs and Wireless Services**

<b>Canada (in millions)</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<i>Home Internet</i>	10.9	11.25	11.63	12.02	12.3
<i>BDU (including DTH, MDS, IPTV)</i>	11.5	11.5	11.4	11.2	11.1
<i>Wireless services</i>	27.7	28.4	28.8	29.8	30.8

Source: CRTC, *Communications Monitoring Report 2017*

- c) This results in lower revenues for BDUs and, consequently, less funding available for Canadian audiovisual production from Certified Independent Production Funds (CIPF) and the Canada Media Fund (CMF). To curb this decline and maintain CMF funding at the 2016-17 level, the Government of Canada announced a reinvestment of \$172 million over 5 years for its 2018-2019 fiscal year.<sup>15</sup>

**TABLE 4 – Total Revenues of the CMF**

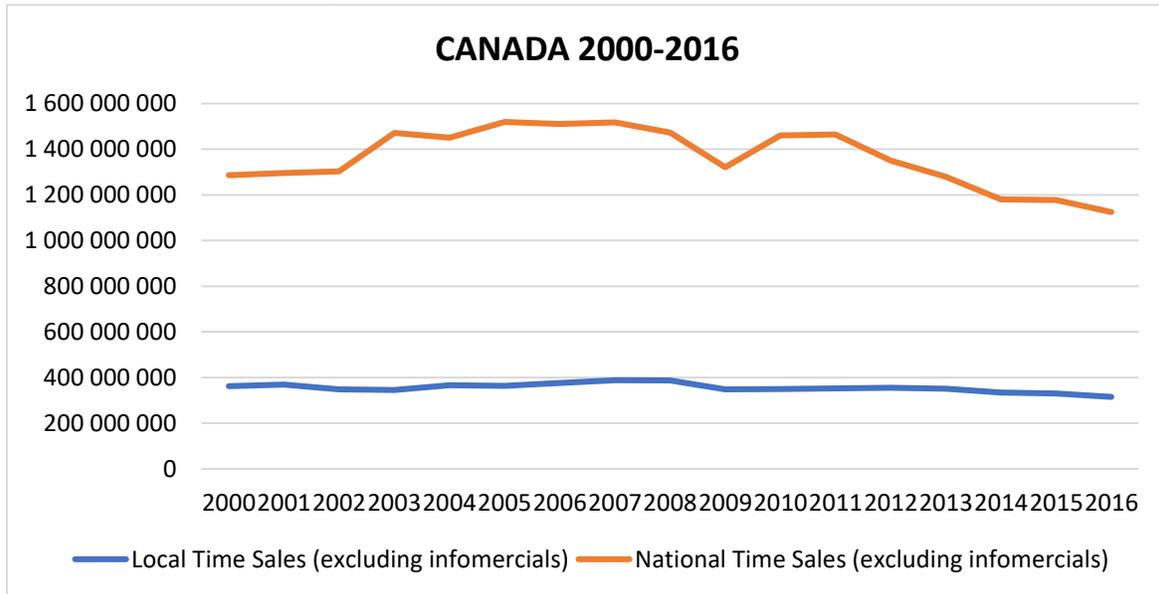


Source: CMF, *2018 Industry Consultation – Focus Groups*, p. 9.

<sup>15</sup> Department of Finance Canada, *Budget 2018: Equality and Growth for a Strong Middle Class*, February 27, 2018, pp. 207-208.

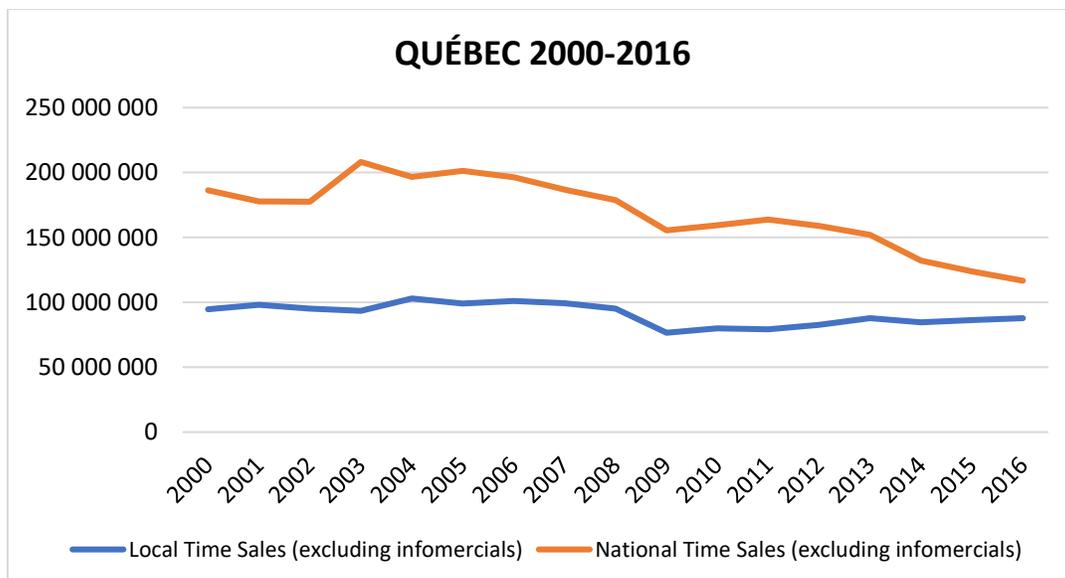
- d) This decline in subscriptions and cross-financing of audiovisual production by BDUs has been accompanied by a sharp drop in national advertising revenues for conventional television since 2011, both in Quebec and the rest of Canada.

**TABLE 5 – Advertising Revenues for Privately-owned Conventional Television**



Source: CRTC *Conventional Television – Statistical and Financial Summaries 2000-2004, 2003-2007, 2008-2012 and 2012-2016.*

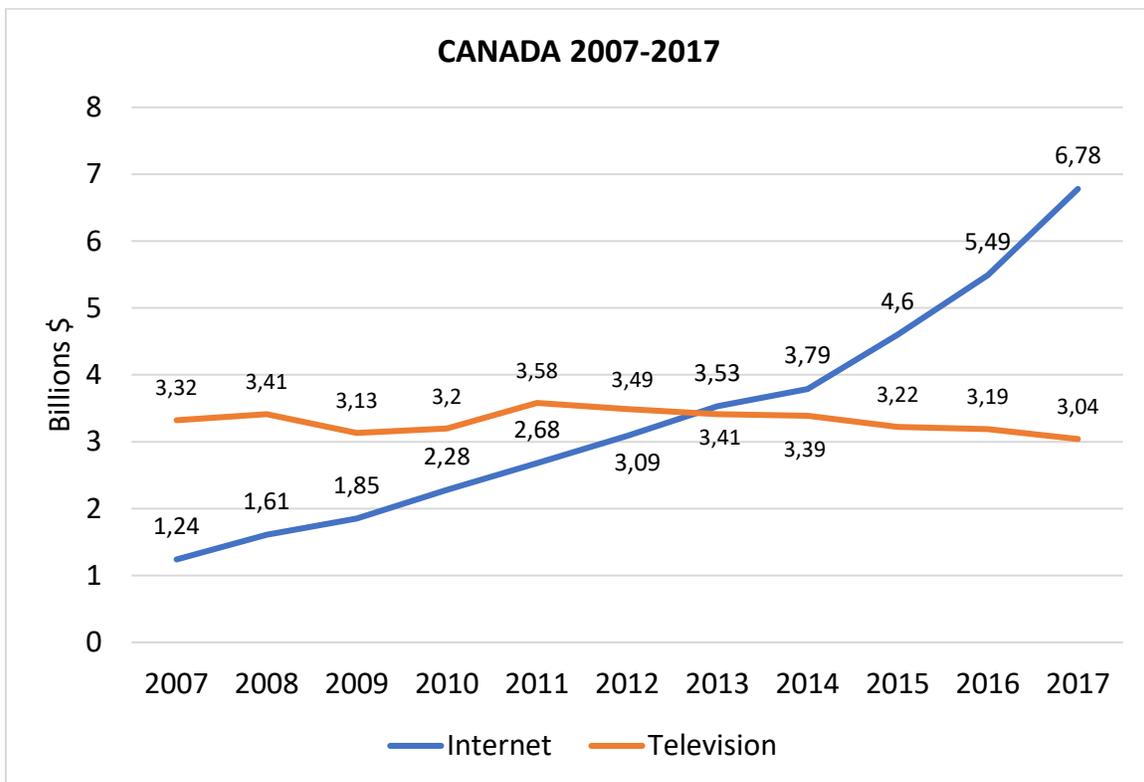
**TABLE 6 – Advertising Revenues for Privately-owned Conventional Television**



Source: CRTC *Conventional Television – Statistical and Financial Summaries 2000-2004, 2003-2007, 2008-2012 and 2012-2016.*

e) Television advertising revenues (like those of newspapers), have shifted mainly to foreign companies offering online advertising. It is estimated that between 75% and 85% of Canadian digital advertising revenues go to Google and Facebook.<sup>16</sup> The Interactive Advertising Bureau of Canada (IAB Canada) estimates online advertising sales reached \$6.8 billion in 2018, up 23% from 2016<sup>17</sup>.

**TABLE 7 – Digital Advertising Expenditures in Canada**



Source: IAB Canada, *Canadian Internet Advertising Revenue Survey, 2016-17*; IAB Canada, *Canadian Internet Advertising Revenue Survey – Executive Summary, 2017-2018*; and Statista, *TV advertising Revenue in Canada from 2003 to 2017*.

According to IAB Canada, the top five digital advertising vendors in the country were responsible for almost all of this increase, as in previous years, which confirms that the growth of the industry primarily benefits the Web giants<sup>18</sup>. This leaves only a few crumbs for Canadian broadcasters who have entered the online advertising market. In 2015, their Internet advertising revenue totalled a paltry \$150 million, which at the time represented barely more than 3% of all Canadian digital advertising sales.<sup>19</sup>

<sup>16</sup> Canadian Media Concentration Research Project, *Broadcasting Notice of Consultation CRTC 2017-359 – Call for comments on the Governor in Council’s request for a report on future programming distribution models*, December 1, 2017, par. 18; and Richard Stursberg, *Cultural Policy for the Digital Age*, November 2016.

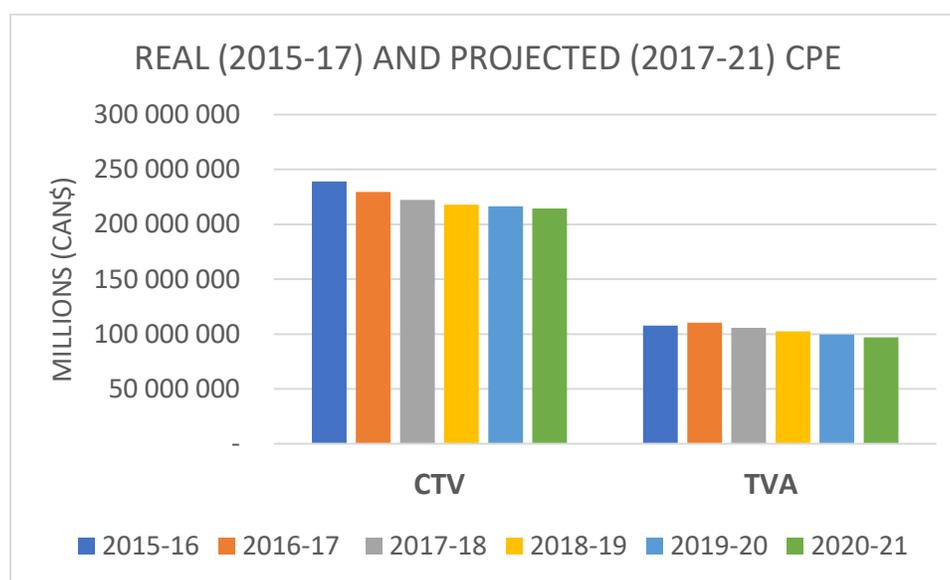
<sup>17</sup> IAB Canada, *Canadian Internet Revenue Survey – Executive Summary, 2017-2018*, p. 3.

<sup>18</sup> *Ibid.*, p. 4.

<sup>19</sup> Public Policy Forum, *The Shattered Mirror: News, Democracy and Trust in the Digital Age*, January 2017, p. 19; and IAB Canada, *Canadian Internet Advertising Revenue Survey, 2015-16*, p. 5.

- f) The change in television advertising revenues has a direct influence on Canadian programming expenditures (CPE) by programming undertakings as their obligations in this regard are determined as a percentage of revenues. We can see below that CTV's actual CPEs decreased between 2015 and 2017, in conjunction with a decline in national advertising revenues, while TVA's rose slightly as broadcaster revenues increased slightly in 2016-17. In addition, when renewing television licenses for large, vertically integrated groups, almost all licensees reported downward projections of their Canadian programming revenues and expenditures for conventional television.

**TABLE 8 – CTV and TVA Expenditures on Canadian Programming**



Source: CRTC *Aggregate Annual Returns of BCE and Quebecor*, years ending August 31, 2016 and 2017; and Bell Media and Quebecor Media, *Financial Projections for Conventional Television*, CRTC 2016-225, July 13, 2016.

The result is a reduction in the ability of creators, workers, producers and broadcasters themselves to offer quality products comparable to foreign programming, which encourages the shift of viewing to unregulated on-line broadcasters with big budgets and no obligation to produce or fund Canadian content.

It is a vicious circle. How can Canadian content compete with what is on offer internationally if its quality declines with decreasing budgets, as do the working conditions of its creators and workers?<sup>20</sup>

Not to mention that the CRTC has deviated from the Canadian broadcasting policy<sup>21</sup> since 2015, requiring the broadcast of Canadian programming during only 17% of the broadcast

<sup>20</sup> Raphaël Gendron-Martin, *Les plateaux de tournage en pleine crise – Des techniciens et réalisateurs se plaignent de leur travail dangereux effectué à un rythme effréné*, Journal de Montréal, 12 décembre 2015 :

<http://www.journaldemontreal.com/2015/12/12/les-plateaux-de-tournage-en-pleine-crise>, p. 5. et Patrick Lagacé, « Les télévisions gèrent la décroissance », estime Martin Matte, La Presse, 8 novembre 2018 :

<https://www.lapresse.ca/arts/television/201811/08/01-5203456-les-tele-gerent-la-decroissance-estime-martin-matte.php>.

<sup>21</sup> *Broadcasting Act*, art. 3(1) f.

day (50% of the six hours in the evening) for most traditional television stations<sup>22</sup> and 35% of the broadcast day for specialty channels.<sup>23</sup> Only mandatory distribution channels<sup>24</sup> and those of the Canadian Broadcasting Corporation<sup>25</sup> are still required to respect the Canadian content levels of 50% of the broadcast day, as specified in the *1987 Television Regulations*.<sup>26</sup>

With decreases in CPE and Canadian content broadcasting requirements and with online programming undertakings having no obligation to fund or present Canadian programming, how can we expect to retain the expertise of Canadian workers in the television production sector?

The Coalition agrees with the panel's statement that digital transformation provides opportunities but also has negative implications and consequences that are equally significant.<sup>27</sup>

### **The Dramatic Decline in Music Revenues**

In the music sector, the increase in the consumption of online music content and music videos has been upending business models for more than 15 years. The ADISQ submission tabled as part of this consultation details the effects of these changes on the community as a whole. The working group is invited to consult it for additional details.

At a glance, the chart below outlines the key milestones responsible for changes in the music industry.

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<sup>22</sup> CRTC *Let's Talk TV: The way forward - Creating compelling and diverse Canadian programming*, Regulatory Policy 2015-86, Ottawa, March 12, 2015, par. 193.

<sup>23</sup> *ibid*, par. 195

<sup>24</sup> *ibid*, par 197.

<sup>25</sup> *ibid*, note 11.

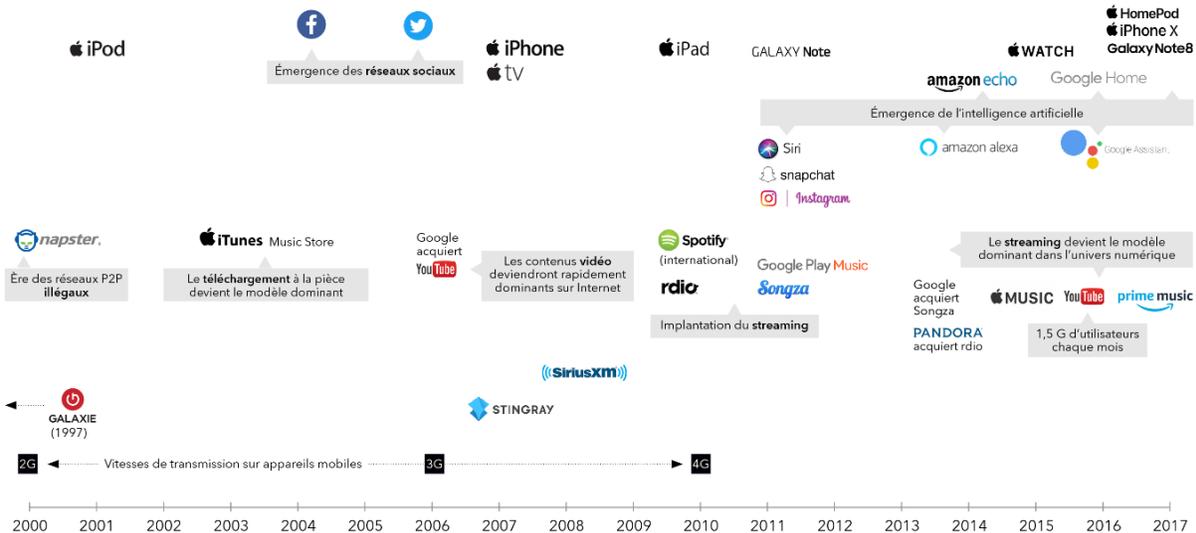
<sup>26</sup> *Television Broadcasting Regulations*, 1987, art. 7

<sup>27</sup> Broadcasting and Telecommunications Legislative Review Panel, *Responding to the New Environment: A Call for Comments*, September 24, 2018, p. 2.

TABLE 9 – Evolution of Online Access to Music

## Un secteur en transformation

15 ans qui ont tout changé : quelques repères



Au cours de la dernière décennie, la cadence des changements s'est encore accélérée, et elle ne semble pas près de s'arrêter avec la complexité croissante des algorithmes et la montée en puissance de facteurs comme le blockchain, les métadonnées, les mégadonnées, la réalité augmentée et l'intelligence artificielle.

SOURCE: ADISQ

These numerous services and innovations have led to changes in the way music is consumed, valued, produced, distributed and marketed in Canada, as it is around the world – although each market has its own peculiarities.

As a result, the consumption of music now takes many different forms for the same consumer, often even in a single day.

Online consumption is radically different from the consumption of music in a physical format. Firstly, online, the consumer is led to believe that he no longer needs to pay to access each of the items that interest him. He accesses "for free"<sup>28</sup> or with a monthly subscription an entire current repertoire of more than 40 million songs. Clearly, the way to search for and discover music, as well as the value given to content, have changed.

<sup>28</sup> "Free" is the term generally used to describe access granted by users to foreign platforms that require in return the ability to use their personal data, including exposing them to highly targeted advertising. In addition, any user of these services pays a monthly fee to access the Internet. Most of them pay for home Internet in addition to mobile cellular data. "Free" access never is truly free – so this term will be used in quotation marks in this submission.

Although some services were already present in Canada around 2008 (Deezer, YouTube or Rdio), the practice has really taken off here since 2014, with the arrival of the Swedish giant Spotify, quickly followed by competitors like Apple Music, Google Play, Tidal and, more recently, Amazon.<sup>29</sup>

These platforms differ on various ways, but have several points in common:

- They are exempt from all applicable rules and laws regarding the funding and visibility of content in Canada;
- They evolve in a very opaque manner, revealing few statistics as to their adoption and consumer behaviour;
- They favour market concentration to the detriment of a wider variety of content.

In contrast to Canada's more than 50-year history in the communications sector, the presence of Canadian content on these platforms depends solely on the goodwill of the services – and their knowledge of the markets in which they operate.

Similarly, these companies are not required to disclose considerable important information. For example, streaming services do not indicate how many subscribers they have in the markets where they are located. Nor do they provide, at present, activity data by province. It is impossible to know the market shares of Quebec artists in Quebec on a service like Spotify or YouTube. Similarly, the algorithms they use operate with the greatest opacity.

Canadian citizens and creators have no grasp on these services, which rarely have representatives in our market. There is no doubt that these new ways of consuming music are detrimental to local content, which is drowned in a sea of content.

Consumers who come to the store to buy an album will inevitably be exposed to local content. In stores, they are confronted with displays, listening stations, posters, and strategically placed albums.<sup>30</sup>

The situation is even worse on the Web, whether on streaming services or online sales platforms. The result is unequivocal: in Quebec, for example, the share of Quebec album sales, in physical format, is between 45% and 50%. The share of album sales online, is closer to 30%. And in sales of digital tracks, Quebec products have never been successful: the shares range between 6% and 8%.

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<sup>29</sup> It was not until the fall of 2017 that the American giant gave these Canadian customers access to its various online music services: <http://www.newswire.ca/news-releases/amazon-canada-launches-prime-music-657645113.html>

<sup>30</sup> Of course, in recent years, almost all of the major record retailers who have continued to operate have chosen to grant albums an increasingly limited showcase. Even if local products continue to occupy a prominent place, this window of visibility is also narrowing.

In other words, there is a strong correlation between the fact that a product occupies a significant real space (visual, physical), and its adoption by consumers. Drowning in a vast catalog, works produced by local independent companies and artists are inevitably discovered less by consumers.

It is important to measure the effects of this access, and especially, to resist the hype that these new services enable consumers to finally discover the content that they really like. On the one hand, the "free" or lower cost perceived by the consumer is actually a *transfer*. The consumer continues to spend large sums to access music, but pays them to new intermediaries. On the other hand, the recommendations made by streaming music services are flawed. The concentration of observed listening also leads us to believe that commercial interests are at play. There is no doubt that Canadian citizens who are attached to local content are losing out.

Forty million songs at your fingertips: this apparent gift for music lovers can quickly become a headache. How does one navigate such a vast, virtually infinite catalogue?

Musical recommendation is a complex art – and science. In the world of traditional media, it is usually based on the passion and knowledge of music experts – journalists or programmers. A few individuals develop proposals for a broad audience.

The service offered by the streaming platforms is very different. Some playlists are created by programmers, others by algorithms. Some are based on themes and are intended for a wide audience, others are personalized. The suggested songs never have a context.

The lists produced by algorithms are based on the streaming service users' previous listening as well as listener reactions. For example, the algorithms note when a listener "skips" a song and may avoid suggesting it in future.

In principle, therefore, algorithms promise unprecedented extreme personalization of the recommendation of music content. However, it has been observed that in reality, while relying solely on this mechanism has benefits, it also presents risks. Music recommendation is very complex, simply because music listening is as well. A single individual's music listening differs according to location (car, office, bedroom), activity (sports, an activity that requires concentration, the active listening of music), people accompanying the listener, etc.

The result to date? A handful of albums garner the majority of the listening on streaming services. This effect is noted more and more frequently: rather than widening the horizons of listeners, algorithms can create an effect of confinement.

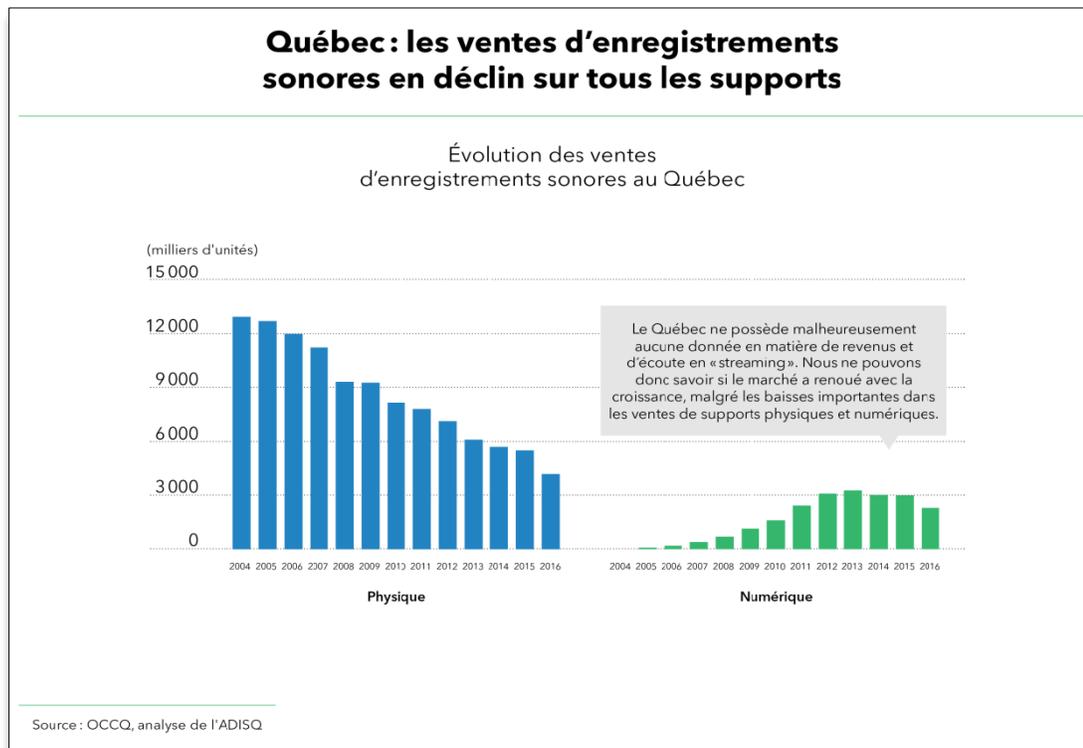
We are not attempting to demonize algorithms. They are undoubtedly a technological advance with the potential to enable works to meet their audience. However, it is important to expose their limitations and the effect on consumers.

One of these limitations: algorithms promise to provide us with interesting discoveries. But these mechanisms now work opaquely. Commercial dynamics are certainly at play here. It would be naïve to believe that only purely artistic considerations guide discoveries, or, as is sometimes said, that a good song will inevitably meet its audience.

The changes in music consumption habits have also had a significant impact on the revenues collected by all players in the content production chain. For nearly 15 years, the music business has gradually moved from a business model based essentially on the sale of sound recordings to a model requiring a great deal of diversification for a fraction of the previous revenues.

It is recognized that the music sector was the first to be dematerialized, and probably the most brutally. But it is sometimes necessary to recall, as supported by the actual numbers, that in 15 years, music industry revenues have been cut in half: a dramatic decline.

**TABLE 10 – Music Sales in Physical and Digital Formats**



The decline in sales of sound recordings and the meagre income from streaming are recognized and documented. And so it is not uncommon in recent years to hear that sound recording has become simply a "business card", while live shows are the real artistic product allowing artists to survive. However, live show revenues are not sufficient nor they have the duty to replace sound recording revenues, which are an income tied to a distinct use of a musical work.

Revenue from sales of sound recordings is declining. While revenues from streaming services are on the rise, for now, there is no indication that they will enable the profitability of independent companies with a mission to feed a local market. On the contrary, existing mechanisms favour the big companies and artists working in mainstream markets, to the detriment of independent entrepreneurs and niche or local artists.

Finally, producers must invest time and energy in existing sectors, such as live shows, and others that are making a comeback, such as vinyl, to reap essential income, but not enough to make up for losses. Considerable energy must therefore be deployed to generate smaller revenues in several sectors.

The production of sound recordings has always been a high-risk investment. In 2005, while the sale of sound recordings was still the primary source of income for producers, an OECD working group on the information economy compared music production activity to venture capital investor activity, or even to that of an R&D investor who hopes that one in ten investments will generate enough profit to pay for the expenses incurred on the other nine.<sup>31</sup> It can easily be assumed that the level of risk has increased.

For Canadian music, the immediate challenge is to maintain a critical mass of diverse, professional-level cultural productions, despite the dramatic decline in operating revenues, and to make additional efforts to increase the discoverability and success of these productions.

It is remarkable that some players are completely absent from this system, although they are at the heart of the economic remodeling of the music sector: companies that develop new digital broadcasting platforms, on the one hand, and telecommunications companies, on the other hand. The latter benefit from a partial capture of the economic value of the sector, while having no obligation to contribute. As for the former, they remain exempt from the regulatory and economic obligations that apply to traditional platforms, and even from their tax obligations, since most are foreign-owned companies. What is more, these companies have engaged the entire industry in a streaming model where the

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<sup>31</sup> Directorate for Science, Technology and Innovation, Information, Computer and Communications Policy Committee, Working Party on the Information Economy. *Digital Broadband Content: Music Organisation for Economic Co-operation and Development* (OECD), 2005, pp 45-46

compensation of stakeholders throughout the chain is so minimal that it endangers their survival.

Unlike other cultural sectors, the music industry has already fully assimilated the digital revolution technologically. Today, the industry's battle is on the commercial front and on the recognition and fair remuneration of rights.

Given the entire context, the establishment of a strong and current regulatory and legal framework is essential.

The following subsection provides an overview of the types of data and their use by platforms of all kinds for accessing information, music, movies, and television programs online.

### **Data: The black gold of the 21st century**

Since the advent of the Internet and thanks to technological advances, the amount of data that travels daily across the Web, with the help of mobile applications, smart devices or systems, or through connected latest-generation devices, objects and equipment<sup>32</sup>, has grown exponentially and reached numbers that would have been unimaginable just a few years ago. This trend will be reinforced by the upcoming implementation of 5G cellular transmission technology, whose spectrum auction is projected for 2020<sup>33</sup>, the development of artificial intelligence, and increased server virtualization.

This phenomenal quantity of information, known as “Big Data”, and analytical tools generated \$130.1 billion in 2016, and that number could increase to \$203 billion by 2020. The rise of this lucrative market for data collection and analysis is profoundly disrupting many industries<sup>34</sup>”, including those in the culture and communications sector.

To better understand the functioning of this data economy and its impact on culture and the media, a study was commissioned from two researchers of the Quebec chapter of the Internet Society, (ISOC Quebec), Josée Plamondon and Destiny Tchéhouali (see Appendix 3), several extracts of which are cited here to elucidate the subject.

### **Typological inventory of data**

"There are several approaches to categorizing data. The one we propose here distinguishes three main families of data: descriptive data, usage data, and data that cross-references usage and descriptive data.

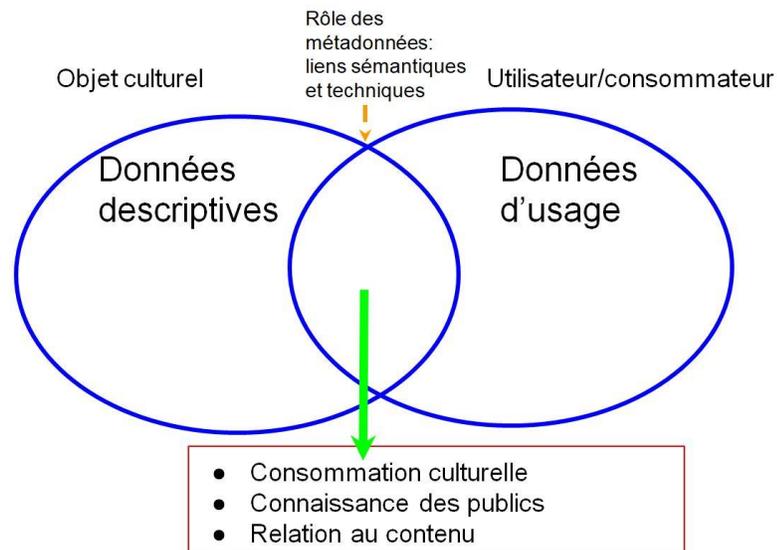
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<sup>32</sup> Tchéhouali, Destiny; Plamondon, Josée (2018), *Données d'usage et usage des données à l'ère des plateformes : De la nécessité d'un encadrement réglementaire pour une meilleure affirmation de notre souveraineté numérique*, Montréal, ISOC Québec for the Coalition for Culture and Media (CCM), p. 6.

<sup>33</sup> Radio-Canada, *Les enchères du spectre 5G auront lieu en 2020, dit le ministre Bains*, 6 juin 2018 : <https://ici.radio-canada.ca/nouvelle/1105476/spectre-5g-encheres-2020-reseaux-mobiles-ministre-bains>.

<sup>34</sup> *Op. cit.*, note 32, p. 7.

**Figure 1: Typology of Data**



Descriptive data is cataloging data that provides information about a **cultural object** (song, video, story, illustration, sculpture, etc.). This information can be of various kinds:

- descriptive (name, title, author, dimensions, characteristics, language, etc.);
- legal (usage rights, rights holders);
- geographical (geolocation coordinates);
- administrative (retention period);
- technical (medium, format, date/time of capture)<sup>35</sup>.

Usage data "... is data that provide information about the user or consumer of the cultural content (while identifying the user, even though the processing of that data may be anonymized<sup>36</sup>). It results from user activity and, more specifically, user interaction with content<sup>37</sup>.

<sup>35</sup> Tchéhouali, Destiny; Plamondon, Josée (2018), *Données d'usage et usage des données à l'ère des plateformes : De la nécessité d'un encadrement réglementaire pour une meilleure affirmation de notre souveraineté numérique*, Montréal, ISOC Québec for the Coalition for Culture and Media (CCM), pp. 8 and 9

<sup>36</sup>Issues related to the anonymization of data depend on the point of view of the company that intends to use the collected data. See also: de Montjoye, Y.-A. et al. (2018). "On the privacy-conscious use of mobile phone data", in *Sci. Data*. <https://www.nature.com/articles/sdata2018286>

<sup>37</sup> It should be noted that most platforms allow their users to download the data that is collected on them. That data is usually accessible from the privacy settings.

Examples of usage data include:

- Nominative, personal or profile data (name, address, user name, etc.);
- Transaction data (method of payment, date, amount, financial institution);
- data on user interests (preferred content, subscriptions);
- behavioral data (selections, searches, consultations, purchases, sharing, etc.);
- data collected by mobile phones, computers and connected objects (calls, activation, location);
- navigation data<sup>38</sup>

"Descriptive and usage data are much more valuable when they can be cross-referenced, because descriptive data provide the **context of the interaction** with content, and usage data characterize the **use** made of the content. The more detailed the descriptive data, the more it is possible to explain choices and identify recurring behaviours."<sup>39</sup>

### **The digital economy and business models**

"Most [of] the Web giants, of which the Big Four are grouped under the acronym FANG, profile the data of their users via their platforms (video and music on demand, search engine, social network, e-commerce site, or buying and selling platform), so as to create value from increased knowledge, prediction and prescription of the tastes and consumption habits of these users or subscribers."<sup>40</sup> This serves to improve the performance of their service as well as to tailor their products and services to customers.

The data can also be sold "to aggregators or analysis operators or directly to end customers (advertising companies for example)..."<sup>41</sup> "The sale of data from direct or indirect data collection on platforms or through any connected device, system or technology has become one of the leading models for funding online services. This economic model is based largely on a free service, the product sold here being the end user. This echoes Andrew Lewis's 2010 observation that became famous for expressing the *modus operandi* of the Web giants: "If you are not paying for it, you're not the customer; you're the product being sold;"<sup>42</sup>

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<sup>38</sup> Tch  houali, Destiny ; Plamondon, Jos  e (2018), *Donn  es d'usage et usage des donn  es    l'  re des plateformes : De la n  cessit   d'un encadrement r  glementaire pour une meilleure affirmation de notre souverainet   num  rique*, Montr  al, ISOC Qu  bec for the Coalition for Culture and Media (CCM), p. 9.

<sup>39</sup> *ibid*, p. 10.

<sup>40</sup> *ibid*, pp. 6 and 7.

<sup>41</sup> *ibid*, pp. 15 and 16.

<sup>42</sup> Andrew Lewis, Twitter, September 13, 2010: <https://twitter.com/andlewis/status/24380177712>.

***“Table 1 Examples of prices for different types of market data”<sup>43</sup>***

<b>Company</b>	<b>Data types</b>	<b>Valuation</b>
<b>Axiom</b>	Email addresses (possibly accompanied by a profile)	<b>2 to 5 cents per contact</b>
<b>RTB and AdExchange platforms</b>	Navigation profiles (without identification)	<b>0 to 1 dollar per 1000 posts in Europe</b>
<b>Facebook</b>	Market valuation of a profile	<b>\$102.30</b>
<b>Federico Zannier</b>	Navigation data, mouse pointer location, GPS, webcam, log files	<b>2 dollars for a day, 5 for a week</b>
<b>DataSift</b>	Tweets and analyses (rate is a function of load calculation; price of the Data Processing Unit: 20 cents per hour)	<b>10 cents for 1000 tweets plus a treatment cost expressed in DPUs</b>
<b>Datacoup</b>	Aggregated profile data (navigation, social networks, credit card transactions) panel type	<b>\$8 per month to each panel member</b>
<b>Appannie.com Intelligence</b>	Download data to mobile apps and eBooks by platform and country	<b>Free for the publisher of an application; \$15,000 per year for access to all data</b>
<b>Datamarket.com</b>	Data offered for sale by companies that own or create them	<b>Price set by the seller</b>

As shown in the table above, the market valuation of a single Facebook profile (comprising a lot of data and personal information) represents the sales revenue of 2,000 to 5,000 e-mail contacts or the sale of 100 (anonymized) unidentified navigation profiles.”<sup>44</sup>

"Data, especially cultural personal data that reflects our tastes and part of our identity and personality, are the focus of the new value chain resulting from the digital transformation and the "platformization" of cultural industries. The platformization phenomenon is characterized by the integration of large technology companies both vertically and horizontally."<sup>45</sup>

In the face of these findings, "it has become necessary to question the implications of this trend for usage data relating to cultural content in Canada, in terms of both the protection of the private lives and personal data of Canadians, and the capacity of public and governmental authorities to force the platforms to communicate this data, at least those of public interest, in the interest of transparency."<sup>46</sup>

<sup>43</sup> Willart, S.; Crié D. (2016). "Création de valeur par les données massives", in *Statistique et société*, vol. 4, n° 3, December 2016, p. 22.

<sup>44</sup> Tchéhouali, Destiny ; Plamondon, Josée (2018), *Données d'usage et usage des données à l'ère des plateformes : De la nécessité d'un encadrement réglementaire pour une meilleure affirmation de notre souveraineté numérique*, Montréal, ISOC Québec for the Coalition for Culture and Media (CCM), p. 18.

<sup>45</sup> *Ibid.*, p. 12.

<sup>46</sup> *ibid*, p. 7.

This data is, in effect, the property of the various platforms providing access to Canadian content, be it music, news or audio-visual productions. By jealously guarding it, online platforms and businesses deprive governments and regulators of information vital to economic development from different sectors, including culture and media.<sup>47</sup> Funding agencies such as the CMF – whose allocation of funds is largely based on audience statistics – also lack information to adjust their funding criteria to the digital environment.<sup>48</sup>

The members of the Coalition want to be part of a technological evolution that fosters Canadian content of every kind, rather than continuing to be subjected to the current uncontrolled digital revolution. **To achieve this, we need systemic solutions to a structural problem** through legislation and regulation.

Without adequate legislative support, the Canadian music industry and the audiovisual sector will continue their downward spiral. There is an urgent need for action to restore equity among all communications stakeholders and to create a framework that is conducive to the success of Canadian culture and media companies.

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<sup>47</sup> CSA, *Refonder la régulation audiovisuelle*, September 2018, p. 7.

<sup>48</sup> "There is no standard measurement system commonly used to track audiences of non-linear platforms that would have the same reputation and credibility as Numeris." In FMC, *Groupe de travail sur les mécanismes de financements*, October 19, 2018, p. 2.

## INTERIM MEASURES

To achieve this, the Coalition for Culture and Media believes that interim measures must be adopted to ensure the achievement of Canadian broadcasting policy objectives until the laws are revised. An observer with experience in Canadian politics and telecommunications has estimated that the new broadcasting, telecommunications and radiocommunications laws will not see the light of day until 2024-2025.<sup>49</sup>

We believe that such a delay, to which must be added several years for the relevant regulatory modifications, is unsustainable for the music industry, which has already been affected by the digital transformation for more than 20 years.

This delay is also too long for the Canadian audiovisual industry, broadcasters and online programming companies faced with competition from unregulated global giants leveraging the power of artificial intelligence and data (see Background). As broadcasters are still the biggest contributors to Canadian programming<sup>50</sup>, the disappearance of some of them or the decline in their financial capacity could have tragic consequences, particularly in the French-language market. The contribution of Canadian distributors and foreign financing to French-language programming is virtually nil (less than 2% of total funding<sup>51</sup>) compared to the English-language market (36% of the total funding of programming<sup>52</sup>).

In short, given the rapid growth of foreign online programming companies and the significant Canadian subscription to these services<sup>53</sup>, there is an urgent need to restore fairness by adopting interim measures ensuring that:

- All companies involved in the distribution of audiovisual or music content in Canada should be required to contribute to the broadcasting system. This includes Internet service providers, mobile providers and providers of any other technology or device that allows access to content (smart TVs, set-top boxes, etc.);
- All national or foreign companies that engage in programming activities in Canada, beyond a certain subscriber or revenue threshold, should be required to contribute to the broadcasting system. This includes online programming companies:
  - i. currently covered by the Exemption order for new media broadcasting undertakings (CRTC 2009-660) or by the Governor in Council (GIC) Direction on Ineligibility of Non-Canadians<sup>54</sup>;

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<sup>49</sup> Douglas Barrett, *Analysis: Why we're still seven years away from new Acts*, CARTT, 20 September 2018.

<sup>50</sup> They contributed a total of 26% of funding for English-language and French-language Canadian programming in 2016-17, according to CMPA, AQPM, Canadian Heritage and Telefilm Canada. *Profile 2017: Economic Report on the Screen-based Media Production Industry in Canada*, February 2018, p. 54.

<sup>51</sup> CMPA, AQPM, Canadian Heritage and Telefilm Canada, *Profile 2017: Economic Report on the Screen-based Media Production Industry in Canada*, February 2018, p. 56.

<sup>52</sup> *Ibid.*, p. 55.

<sup>53</sup> CÉFRIO, *Portrait numérique des foyers québécois*, volume 8, n° 1, NETtendances 2017, p. 16 and CRTC, *Communications Monitoring Report 2017*, p. 210.

<sup>54</sup> Government of Canada, *Direction to the CRTC (Ineligibility of non-Canadians)* SOR/97-192.

- ii. either offered by subscription or free (with advertising), including social media, as long as they engage in content publishing or data use (depending on a threshold to be determined), such as YouTube or Spotify which recommend certain content (YouTube Premium) or offer it to subscribers according to their profile.

The CCM therefore joins the CDCE in proposing to the review panel to proceed in stages and to recommend to the government – as a first step – measures to be established prior to the elections next fall. These interim measures are described in the recommendations below. They are primarily intended to ensure that telecommunications service providers (TSPs)<sup>55</sup> participate in the funding of Canadian content and that the Exemption Order for New Media Broadcasting Undertakings (CRTC 2009-660) and the Direction on Ineligibility of Non-Canadians<sup>56</sup> be modified to restore a degree of balance between domestic and foreign programming undertakings.

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### **Recommendation 1<sup>57</sup>**

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*That the Canadian Broadcasting and Telecommunications Legislative Review Panel provide a status report with recommendations for interim measures to the Government of Canada by the end of April 2019 to allow for the implementation of these measures before the federal election.<sup>58</sup>*

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### **Recommendation 2<sup>59</sup>**

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*That the Governor in Council issue directions to the CRTC under the Telecommunications Act<sup>60</sup>, for the latter to adopt and implement measures ensuring a financial contribution from telecommunications companies to the existing Canadian Content Development (CCD) funds, thereby "contributing to the safeguarding, enrichment and strengthening of the social and economic structure of Canadian content of Canada and its regions,"<sup>61</sup> thus reaffirming "the essential nature of telecommunications for Canadian identity and sovereignty."<sup>62</sup>*

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<sup>55</sup> TSPs include Internet Service Providers (ISPs) and Wireless Service Providers (WSPs).

<sup>56</sup> *Idem*.

<sup>57</sup> CDEC, *Brief by the Coalition for the Diversity of Cultural Expression in the context of the Broadcasting and Telecommunications Legislative Review submitted to the Broadcasting and Telecommunications Legislative Review Panel*, January 11, 2019, recommendation 14.

<sup>58</sup> Elections Canada: <http://www.elections.ca/content.aspx?section=vot&dir=faq&document=fagelec&lang=f#a10>.

<sup>59</sup> CDEC, *Brief by the Coalition for the Diversity of Cultural Expression in the context of the Broadcasting and Telecommunications Legislative Review submitted to the Broadcasting and Telecommunications Legislative Review Panel*, January 11, 2019, recommendation 2.

<sup>60</sup> *Telecommunications Act*, art. 8.

<sup>61</sup> *Telecommunications Act*, art. 7a).

<sup>62</sup> *Ibid*, art. 7.

### Recommendation 3<sup>63</sup>

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*That the GIC issue instructions to the CRTC, under the Broadcasting Act, to amend the Exemption order for new media broadcasting undertakings<sup>64</sup>, the relevant regulations, and that it adopt any other regulations, if necessary, in order to impose on all online programming undertakings contributions to CCD, the valuation of Canadian content, the collection of information and the obligation to register with the CRTC even if they are not eligible to become licensees in accordance with the instructions.<sup>65</sup> The LRP must also ask the CRTC to harmonize its information demands for all programming undertakings.*

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The CCM agrees with the arguments presented by the CDCE in support of recommendations 1 to 3 above<sup>66</sup> and adds that the instructions of the Governor in Council to the CRTC (recommendations 2 and 3) should ask the CRTC:

- to act quickly<sup>67</sup>
- to hold one or more public hearings to determine:
  - the appropriate methodology for setting contributions to the Canadian content of TSPs and online programming undertakings operated wholly or partly in Canada<sup>68</sup>; and
  - the information and data to be required by regulation<sup>69</sup> of all online programming undertakings operated in whole or in part in Canada<sup>70</sup> dealing with the online consumption of audio-visual and music programming by Canadians in order to fulfill its regulatory and oversight role<sup>71</sup> (see CDCE recommendation 8 and the associated argument);
- to take into account the specificities of the economic environment of music and television and to adopt, as needed, ways to validate Canadian content adapted to each sector.

All these measures can be taken quickly without legislative changes. They all could have been implemented several years ago by the CRTC on its own initiative. The proposed instruction orders are necessary to impel the CRTC to deal quickly with important issues related to the implementation of Canadian broadcasting policy.

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<sup>63</sup> *Op. cit.*, note 59, recommendation 5.

<sup>64</sup> CRTC, Amendment to exemption order for new media broadcasting undertakings (Appendix A to CRTC Public Notice 1999-197), Revocation of the Exemption Order Respecting Mobile Television Broadcasting Undertakings, Ottawa, October 22, 2009.

<sup>65</sup> Government of Canada, *Direction to the CRTC (Ineligibility of non-Canadians)* SOR/97-192.

<sup>66</sup> CDCE recommendations 14, 2 and 5 respectively.

<sup>67</sup> In April 1995, the *Working Group on Direct Broadcast Satellites* recommended the issuance of instruction orders to the CRTC by the Governor in Council, and it took only a few months for a CRTC Instruction Order (Direct-to-Home (DTH) Satellite Distribution Undertakings) to be issued on 6 July 1995: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-95-319/page-1.html>. The Commission initiated the process leading to the licensing of DTH BDUs only five days after the issuance of the Order-in-Council on July 11, 1995, and licenses were issued on December 20 of the same year: CRTC, *Introductory statement - Licensing of new direct-to-home (DTH) satellite distribution undertakings, and new DTH pay-per-view (PPV) television programming undertakings*, Public Notice CRTC 1995-217, Ottawa, 20 December 1995.

<sup>68</sup> *Broadcasting Act*, art. 4(2).

<sup>69</sup> *Ibid.*, art. 10k).

<sup>70</sup> *Ibid.*, art. 4(2).

<sup>71</sup> *Ibid.*, art. 5(1).

## LEGISLATIVE CHANGES

That being said, the proposed interim measures are only provisional solutions that must be confirmed by legislative amendments, which will also enhance the CRTC's enforcement power to protect, strengthen and promote Canadian cultural identity and sovereignty in the long term.

The Coalition for Culture and Media proposes that the two current laws be retained but that their areas of application be better defined. Currently, both the *Broadcasting Act* and the *Telecommunications Act* give the CRTC powers over specific types of companies that are mutually exclusive in the application of each of these acts. This makes it impossible to impel telecommunication service providers to contribute to the creation of Canadian content<sup>72</sup> even though they transmit audiovisual and music content.

One way to solve this problem permanently would be to redefine the fields of application of the two laws in order to dissociate the cultural objectives of the *Broadcasting Act* from a specific mode of transmission. In this way, any undertaking involved in the distribution or transmission of cultural or information content (TSP, WSP, BDU, etc.) would have obligations regarding the development of Canadian content. Such a provision would also limit the impact of technological change on the protection and promotion of cultural sovereignty in the future.

The CRTC also needs various new powers to enable it to achieve the social objectives of the *Broadcasting Act*.

The Coalition for Culture and Media therefore proposes the following recommendations and invites the Review Panel to take note of the CDCE submission, which provides more detailed explanations of the recommendations that the two coalitions share (see footnotes for the corresponding CDCE recommendations).

### **Recommendation 4**<sup>73</sup>

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*That the necessary adjustments be made to the *Broadcasting Act* and the *Telecommunications Act* in order to clearly distinguish the regulation of modes of transmission and telecommunication activities from the regulation of cultural content and information that may be routed through various means of telecommunication.*

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<sup>72</sup> Reference re *Broadcasting Act*, 2012 SCC 4.

<sup>73</sup> CDEC, *Brief by the Coalition for the Diversity of Cultural Expression in the context of the Broadcasting and Telecommunications Legislative Review* submitted to the Broadcasting and Telecommunications Legislative Review Panel, January 11, 2019, recommendation 1

## **Recommendation 5<sup>74</sup>**

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*That the Broadcasting Act be amended to give the CRTC the power to impose administrative monetary penalties on programming undertakings, a power that it already holds under the Telecommunications Act.<sup>75</sup>*

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The CRTC itself is seeking authority to impose administrative monetary penalties to enforce the *Broadcasting Act*:

" The Broadcasting Act, as it's currently written, does not allow the CRTC to impose administrative monetary penalties when broadcasters do not respect their obligations. We can revoke a broadcaster's license for non-conformity or oblige it to appear before us. However, these processes take time and cost taxpayers money.

Administrative monetary penalties would be an easy-to-implement tool that could address non-compliance more quickly and efficiently. Given our experience in enforcing the telemarketing rules over the past decade, we can confidently state that such penalties are a real deterrent to non-compliance when used with other enforcement methods."<sup>76</sup>

## **Recommendation 6<sup>77</sup>**

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*That amendments be made to the Broadcasting Act to ensure and regulate the contribution of TSPs to the development of Canadian content.*

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The CCM agrees with the CDCE that only Canadians and Canadian businesses should have access to the production funds that TSPs contribute in addition to BDUs, Canadian Heritage and radio stations. It is a matter of protecting and promoting our national identity in a world where content distribution is being globalized.

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<sup>74</sup> CDEC, *Brief by the Coalition for the Diversity of Cultural Expression in the context of the Broadcasting and Telecommunications Legislative Review submitted to the Broadcasting and Telecommunications Legislative Review Panel*, January 11, 2019, recommendation 11.

<sup>75</sup> *Telecommunications Act*, art. 72.001.

<sup>76</sup> CRTC, Ian Scott to the annual conference of the Canadian Chapter of the International Institute of Communications, 1 November 2018: <https://www.canada.ca/en/radio-television-telecommunications/news/2018/11/ian-scott-to-the-annual-conference-of-the-canadian-chapter-of-the-international-institute-of-communications.html>.

<sup>77</sup> *Op. cit.*, note 74, recommendation 3.

## **Recommendation 7<sup>78</sup>**

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*That a new article on the development of Canadian content be added to the Broadcasting Act to specify that only Canadians can access funds for CCD.*

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In connection with the previous recommendation, as well as for the protection of Canadian cultural sovereignty during the current and future digital transformation, it is suggested that the licensing system for Canadian broadcasting undertakings be maintained. To ensure this, it is recommended that the GIC Instruction Order Concerning the Ineligibility of Non-Canadians, which also contains Canadian Ownership Principles, be included in the *Broadcasting Act*.<sup>79</sup> This initiative would not set a precedent since Canadian ownership and control provisions are already included in the *Telecommunications Act*.<sup>80</sup>

## **Recommendation 8**

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*That the Broadcasting Act be amended to include Canadian ownership and control requirements for all broadcasting undertakings<sup>81</sup> to which the CRTC may grant a license.*

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Although this provision could permit the licensing of Canadian online broadcasting undertakings, it is proposed that a new power be created for the CRTC specifically for all online broadcasting undertakings, Canadian or foreign, that are "... exploited – even partially – in Canada."<sup>82</sup> This new power would recognize the importance of online broadcasting companies and their impact on the achievement of the social goals of the *Broadcasting Act*.<sup>83</sup> It would also provide the CRTC with the necessary tools to effectively monitor and regulate the entire broadcasting system. The proposed power would replace the exemption order for new media broadcasting undertakings (see recommendation 3) for any online programming undertaking, whether or not it qualifies as a licensee.<sup>84</sup>

It should also apply to social media and other platforms providing access, in whole or in part, to audiovisual entertainment, information, or music productions where they are engaged in content publishing operations or where they exploit data for commercial purposes beyond a threshold to be determined. In the Report of the Standing Committee on Access to Information, Privacy and Ethics on the scandal involving Facebook and

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<sup>78</sup> CDEC, *Brief by the Coalition for the Diversity of Cultural Expression in the context of the Broadcasting and Telecommunications Legislative Review submitted to the Broadcasting and Telecommunications Legislative Review Panel*, January 11, 2019, recommendation 11.

<sup>79</sup> Government of Canada, *Direction to the CRTC (Ineligibility of non-Canadians)* SOR/97-192.

<sup>80</sup> *Telecommunications Act*, art. 16.

<sup>81</sup> See the definition of broadcasting undertaking in article 2(1) of the *Broadcasting Act*.

<sup>82</sup> *Broadcasting Act*, art. 4 (2) and CRTC, *Addition of QVC to the List of non-Canadian programming services and stations authorized for distribution*, Broadcasting Decision CRTC 2016-122, Ottawa, 4 April 2016, para. 18 and 19.

<sup>83</sup> CRTC *New media*, Public Notice CRTC 1999-84, Ottawa, 17 May 1999, in particular par. 23, 93, 98, 108 and 109.

<sup>84</sup> Government of Canada, *Direction to the CRTC (Ineligibility of non-Canadians)* SOR/97-192.

Cambridge Analytica last year, the CRTC itself stated that social media should be subject to the *Broadcasting Act*:

“The CRTC therefore believes that all parties that benefit from operating in Canada should live up to the social responsibilities. That includes social media platforms.”<sup>85</sup>

## **Recommendation 9**

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*That the required provisions be added to the Broadcasting Act in order to give the CRTC a new power that prolongs the effects of the GIC decree requested in recommendation 3. This power should include the ability to require all online programming undertakings, subject to penalties, to provide information and data on the online consumption of audiovisual or music programming by Canadians<sup>86</sup> with due regard to personal information and privacy.*

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It is important to ensure that all data collected by the CRTC in its oversight and regulatory role is in the public domain, with some exceptions, to allow stakeholders, citizens and researchers to better grasp the environment of Canadian programming undertakings and content. Moreover, the ISOC Quebec researchers recommend:

**"Making public for the sake of transparency** (and with due regard to the confidentiality accorded uniformly to all broadcasting undertakings) reports on the information transmitted about online behaviour, in particular the cultural consumption habits of Canadian customers and subscribers (while respecting their privacy).”<sup>87</sup>

The *Telecommunications Act* already provides for the disclosure of all information collected by the CRTC, subject to exception.<sup>88</sup> Since the public interest takes precedence over private interests in matters of cultural identity and sovereignty, the CRTC's current practice of aggregating data should be preferred where confidentiality is required, in order to strike a balance between the respect for privacy and confidentiality on the one hand and the disclosure of information on the other.

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<sup>85</sup> ETHI, *Democracy under threat: risks and solutions in the era of disinformation and data monopoly*, December 2018, pp. 50 and 51.

<sup>86</sup> See recommendation 1 in Tch  houali, Destiny; Plamondon, Jos  e (2018), *Donn  es d'usage et usage des donn  es    l'  re des plateformes : De la n  cessit   d'un encadrement r  glementaire pour une meilleure affirmation de notre souverainet   num  rique*, Montr  al, ISOC Qu  bec for the Coalition for Culture and Media (CCM), p. 28.

<sup>87</sup> Tch  houali, Destiny; Plamondon, Jos  e (2018), *Donn  es d'usage et usage des donn  es    l'  re des plateformes : De la n  cessit   d'un encadrement r  glementaire pour une meilleure affirmation de notre souverainet   num  rique*, Montr  al, ISOC Qu  bec for the Coalition for Culture and Media (CCM), p. 29.

<sup>88</sup> *Telecommunications Act*, art. 37-39

## **Recommendation 10**

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*That the Broadcasting Act be amended to ensure that all data collected by the CRTC is published, separately or in aggregate form.*

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In order to establish the importance of the public interest, the CCM recommends that this principle be enshrined in Canadian broadcasting policy<sup>89</sup> and in Canadian telecommunications policy.<sup>90</sup> Although the CRTC frequently invokes the public interest in its policies, decisions and orders, this concept does not appear in the Canadian broadcasting policy and is mentioned only five times in four different clauses of the law. These deal with specific topics (CBC, the holding of public hearings and the application of the *Expropriation Act*<sup>91</sup>) rather than with the general interpretation of the law. Recognition of the public interest in the *Telecommunications Act* is also limited.

## **Recommendation 11**

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*That a new section be added to the Canadian broadcasting policy and the Canadian telecommunications policy to make the public interest a priority in the application of the law.*

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The public interest should also serve as the basis of the reshaping of the collaboration between the CRTC and the Office of the Privacy Commissioner of Canada regarding information sharing that involves the use of personal data by platforms, social media and other online broadcasting undertakings subject to the *Broadcasting Act*. Privacy Commissioner Daniel Therrien made it a request to a Senate committee last fall to better protect Canadians.<sup>92</sup>

## **Recommendation 12**

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*That the Broadcasting Act and the Telecommunications Act provide for closer cooperation between the CRTC and the Office of the Privacy Commissioner of Canada regarding the use and protection of the personal information of Canadians by the businesses subject to these laws.*

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<sup>89</sup> *Broadcasting Act*, art. 3(1).

<sup>90</sup> *Telecommunications Act*, art. 7.

<sup>91</sup> *Broadcasting Act*, art. 3(1) (n), 18(2), 18(3) and 49(2).

<sup>92</sup> Wire Report, *OPC asks for more flexibility on info sharing with CRTC*, October 16, 2018.

## Cultural Diversity

### Recommendation 13<sup>93</sup>

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*That a new objective on the protection and promotion of the diversity of cultural expressions be added to the Canadian broadcasting policy and that there be a more thorough revision of the objectives of the policy following the publication of the progress report on the review of broadcasting and telecommunications legislation.*

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This new objective of protecting and promoting the diversity of cultural expressions will be consistent with Canada's obligations under the UNESCO (2005) Convention on the Protection and Promotion of the Diversity of Cultural Expressions. The plurality of Canadian voices and Canada's cultural diversity constitute both a human right and a competitive advantage of the Canadian system that must be preserved, just like Canada's linguistic duality.

### Governance of the public broadcaster and the CRTC

With regard to the public broadcaster and the CRTC, the CCM believes that their governance needs to be strengthened to better shield them from political interference. In this regard, we propose changing the way in which CBC board members and CRTC commissioners are appointed to ensure that these nominations, whether proposed by the Prime Minister or the GIC, are approved by two-thirds of the elected members of the House of Commons.

The Québec National Assembly already follows a similar procedure for a number of public office holders: "We are talking here about two-thirds of the members of the Assembly and not of members present at the time of the vote."<sup>94</sup> The purpose of such a system is to distance the people responsible for these bodies from political influence in order to give them greater latitude and freedom in their decision-making and to ensure that they are acting in the public interest.

In the case of the CBC, this could also contribute to ensuring greater stability of its funding in order to achieve the objectives entrusted to it in the Canadian broadcasting policy.

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<sup>93</sup> CDEC, *Brief by the Coalition for the Diversity of Cultural Expression in the context of the Broadcasting and Telecommunications Legislative Review submitted to the Broadcasting and Telecommunications Legislative Review Panel*, January 11, 2019, recommendation 10.

<sup>94</sup> Quebec National Assembly, *Majorité qualifiée exigée par des lois du Québec* : <http://www.assnat.qc.ca/fr/patrimoine/lexique/majorite-qualifiee.html>.

#### **Recommendation 14**

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*That the Broadcasting Act and the Canadian Radio-television and Telecommunications Commission Act be amended to ensure that the members of the Board of Directors of the Canadian Broadcasting Corporation and the CRTC commissioners are confirmed in their positions by approval of a 2/3 majority of elected members in the House of Commons, rather than by the Governor in Council.*

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In addition, the Board of Directors of the Canadian Broadcasting Corporation (CBC) has been renewed in recent years and currently includes a number of men and women experienced in the field of communications; however, this has not always been the case.

Article 38(1) of the *Broadcasting Act* does not require any other qualifications than being a Canadian citizen and not having a conflict of interest by involvement in a broadcasting undertaking or in the production of programs for the directors of the CBC. The same type of requirement applies to CRTC commissioners under section 5 of the *Canadian Radio-television and Telecommunications Commission Act*.

Relevant experience must become a prerequisite for the appointment of directors of the Canadian Broadcasting Corporation and CRTC commissioners. Gender parity and diversity also should be included in the selection criteria.

#### **Recommendation 15**

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That relevant experience, gender balance and diversity be added to the qualifications or criteria considered in the selection of CBC directors in the *Broadcasting Act* and of CRTC commissioners in the *Canadian Radio-television and Telecommunications Commission Act*.

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It would also be advantageous to include the CBC's accountability obligations in the *Broadcasting Act* in order to enable taxpayers to understand the use made of the monies entrusted to it by the government.

#### **Recommendation 16**

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*That the Broadcasting Act be amended to include a requirement to report on the capital and operating budgets of the Canadian Broadcasting Corporation for the preceding fiscal year and that these reports be made public.*

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## CONCLUSION

As mentioned in the introduction, the comments and suggestions of the Coalition for Culture and Media are limited to issues of support for the creation, production and discoverability of Canadian content. The Coalition also makes some general recommendations as well as several others on the legislative framework required for the improvement of digital consumer rights and governance of the public broadcaster.

The 16 recommendations contained in this submission offer relevant, practical and applicable solutions allowing the timely implementation of the legislative and regulatory tools necessary for fostering a robust communications sector able to respond to the opportunities and challenges associated with the digital revolution. These proposals are intended to provide Canadians with access to a variety of Canadian content for the years to come.

However, until changes are made to the *Broadcasting Act* and the *Telecommunications Act*, there is an urgent need for interim measures to ensure that all undertakings involved in the distribution or programming of audiovisual or music content in Canada are required to contribute to the broadcasting system and the development of Canadian content. This includes notably ISPs and WSPs. It will then be essential for the new legislation to clearly confer on the CRTC the powers required to protect, strengthen and promote Canadian identity and cultural sovereignty.

The incorporation of the proposed legislative amendments are considered essential to achieving these objectives. Starting from these proposals, the experts on the review panel will be able to determine whether these changes require the introduction of other adaptations to the legal texts. However, the Coalition reiterates its opposition to agreements being concluded between foreign platforms and the government behind closed doors. The obligations imposed on all components of the Canadian broadcasting system must be subject to a public consultation process by the CRTC, regardless of the vehicle chosen by the legislator to impose these obligations.

The Coalition for Culture and Media is confident that the review panel will guide the federal government in the vital role it must play in order to support and promote our culture and media in the digital age.

## APPENDIX 1 - Members of the Coalition for Culture and Media

*Alliance des producteurs francophones du Canada (APFC)*  
*Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)*  
*Alliance Québec Animation (AQA)*  
*Alliance québécoise des techniciens et techniciennes de l'image et du son (AQTIS)*  
*ARTISTI*  
*Association acadienne des artistes professionnel.le.s du Nouveau-Brunswick (AAAPNB)*  
*Association des professionnels de l'édition musicale (APEM)*  
*Association des propriétaires de cinémas du Québec (APCQ)*  
*Association des réalisateurs et réalisatrices du Québec (ARRQ)*  
*Association nationale des éditeurs de livres (ANEL)*  
*Association québécoise de la production médiatique (AQPM)*  
*Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ)*  
*Association québécoise des cinémas d'art et d'essai (AQCAE)*  
*Canadian Media Producers Association (CMPA)*  
*Canadian union of public employees (CUPE) and its communications sector (CPSC)*  
*Conseil québécois des arts médiatiques (CQAM)*  
*Copibec*  
*Directors Guild of Canada (DGC)*  
*Documentary Organization of Canada and its Québec Chapter*  
*Fédération culturelle canadienne-française (FCCF)*  
*Fédération des travailleurs et travailleuses du Québec (FTQ)*  
*Fédération nationale des communications (FNC-CSN)*  
*Friends of Canadian Broadcasting*  
*Front des réalisateurs indépendants du Canada (FRIC)*  
*Forum for Research and Policy in Communications (FRPC)*  
*Guilde des musiciens et musiciennes du Québec (GMMQ)*  
*L'Observatoire du documentaire*  
*Michèle Rioux, directrice du Centre d'études sur l'intégration et la mondialisation (CEIM)*  
*Observatoire des réseaux et interconnexions de la société numérique (ORISON) - UQAM*  
*On Screen Manitoba*  
*Québec Cinéma*  
*Quebec English-language Production Council (QEPC)*  
*Regroupement des artisans de la musique (RAM)*  
*SOCAN*  
*Société civile des auteurs multimédia (SCAM)*  
*Société de gestion collective des droits des producteurs de phonogrammes et de vidéogrammes du Québec (SOPROQ)*  
*Société des auteurs de radio, télévision et cinéma (SARTEC)*  
*Société des auteurs et compositeurs dramatiques (SACD)*  
*Internet Society Québec (ISOC – Québec)*  
*Société professionnelle des auteurs et compositeurs du Québec (SPACQ)*  
*Syndicat des employées et employés professionnels-les et de bureau (SEPB)*  
*Table de concertation de l'industrie du cinéma et de la télévision de la Capitale-Nationale*  
*Unifor*  
*Union des artistes (UDA)*  
*Union des écrivaines et des écrivains québécois (UNEQ)*

## APPENDIX 2 – List of Recommendations

### **Recommendation 1**

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*That the Canadian Broadcasting and Telecommunications Legislative Review Panel provide a status report with recommendations for interim measures to the Government of Canada by the end of April 2019 to allow for the implementation of these measures before the federal election.*

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### **Recommendation 2**

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*That the Governor in Council issue directions to the CRTC under the Telecommunications Act, for the latter to adopt and implement measures ensuring a financial contribution from telecommunications companies to the existing Canadian Content Development (CCD) funds, thereby "contributing to the safeguarding, enrichment and strengthening of the social and economic structure of Canadian content of Canada and its regions," thus reaffirming "the essential nature of telecommunications for Canadian identity and sovereignty."*

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### **Recommendation 3**

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*That the GIC issue instructions to the CRTC, under the Broadcasting Act, to amend the Exemption order for new media broadcasting undertakings, the relevant regulations, and that it adopt any other regulations, if necessary, in order to impose on all online programming undertakings contributions to CCD, the valuation of Canadian content, the collection of information and the obligation to register with the CRTC even if they are not eligible to become licensees in accordance with the instructions. The LRP must also ask the CRTC to harmonize its information demands for all programming undertakings.*

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### **Recommendation 4**

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*That the necessary adjustments be made to the Broadcasting Act and the Telecommunications Act in order to clearly distinguish the regulation of modes of transmission and telecommunication activities from the regulation of cultural content and information that may be routed through various means of telecommunication.*

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### **Recommendation 5**

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*That the Broadcasting Act be amended to give the CRTC the power to impose administrative monetary penalties on programming undertakings, a power that it already holds under the Telecommunications Act.*

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### **Recommendation 6**

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*That amendments be made to the Broadcasting Act to ensure and regulate the contribution of TSPs to the development of Canadian content.*

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**Recommendation 7**

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*That a new article on the development of Canadian content be added to the Broadcasting Act to specify that only Canadians can access funds for CCD.*

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**Recommendation 8**

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*That the Broadcasting Act be amended to include Canadian ownership and control requirements for all broadcasting undertakings to which the CRTC may grant a license.*

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**Recommendation 9**

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*That the required provisions be added to the Broadcasting Act in order to give the CRTC a new power that prolongs the effects of the GIC decree requested in recommendation 3. This power should include the ability to require all online programming undertakings, subject to penalties, to provide information and data on the online consumption of audiovisual or music programming by Canadians with due regard to personal information and privacy.*

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**Recommendation 10**

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*That the Broadcasting Act be amended to ensure that all data collected by the CRTC is published, separately or in aggregate form.*

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**Recommendation 11**

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*That a new section be added to the Canadian broadcasting policy and the Canadian telecommunications policy to make the public interest a priority in the application of the law.*

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**Recommendation 13**

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**Recommendation 14**

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