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NEW CRTC REPORTING REQUIREMENTS FOR NEW MEDIA BROADCASTING

BY MARGOT PATTERSON

The Canadian Radio-television and Telecommunications Commission (CRTC) has taken an important step forward to monitor new media broadcasting operations.

On Friday August 13, 2010, the CRTC issued *Reporting Requirements for New Media Broadcasting Undertakings*, Broadcasting Regulatory Policy CRTC 2010-582. New Media Broadcasting Undertakings (“NMBU”s) provide broadcasting services¹ that are delivered and accessed over the Internet. The CRTC will be expanding this to include broadcasting services received on mobile devices using point-to-point technology; the related consultation process was initiated last year in Broadcasting Notice of Consultation 2009-330 and is ongoing.

The new reporting requirements are intended to allow the CRTC to monitor the development of broadcasting in new media. They will apply “as a starting point” to NMBUs that are affiliates of broadcasting licensees. “Affiliation” is not defined in the CRTC’s recent reporting policy, but is defined in subsection 21(2) of the *Broadcasting Distribution Regulations*, SOR/97-555 to mean a person who is controlled by the licensee. The affiliated NMBUs will be required to report on certain revenues and expenditures relating to new media broadcasting. Reporting will begin next year, for the current broadcast year 2009-2010.

The Commission foresees that it may extend the requirements to **unaffiliated** NMBUs in the future.

A New Media Reporting Working Group will be struck this fall to allow interested parties to collaborate on the development of specific new media reporting standards and measures. The reporting requirements will inevitably change NMBUs’ data collection and management processes relating to their online presence, in order to comply with the CRTC’s standards.

Background

In its Regulatory Policy, *Review of Broadcasting in New Media* (Broadcasting Regulatory Policy CRTC 2009-329, June 4, 2009, the “2009 Regulatory Policy”), the CRTC maintained the status of NMBUs, which had been exempt from licensing since 1999. The CRTC had decided that some new media services were “broadcasting” within the meaning of the *Broadcasting Act*, but that regulating them would not contribute materially to the broadcasting policy objectives set out in the Act (see *New Media*, Broadcasting Public Notice 1999-84/Telecom Public Notice 99-14, May 17, 1999). In the 2009 Regulatory Policy, however, the CRTC amended the exemption order for NMBUs to impose reporting requirements as a new condition of exemption.

The CRTC then initiated *Call for comments on the reporting requirements for new media broadcasting undertakings*, Broadcasting Notice of Consultation CRTC 2010-97, February 18, 2010. A number of companies operating conventional and new media broadcasting undertakings, and industry associations representing creators, among others, participated in the consultations. Parties commented on the type and scope of the information to be provided, which undertakings would be targeted, and confidentiality issues.

What Type of Information and Who Must Provide It

Content creators and NMBU operators differed on the required type and scope of information to be reported. The Commission considered that “the ability to follow revenue trends and identify industry investment is critical in evaluating the importance of broadcasting in new media within the Canadian broadcasting system.” The Commission announced that it would therefore establish “baseline metrics” relating to revenues, for example, advertising, subscription and other revenues; and expenditures, for example, administration, general and technical costs, and costs relating to program rights and production.

All NMBUs that are affiliates of licensed broadcasting undertakings will be required to report the above revenues and expenditures annually. A data form will be sent to these NMBUs in the first quarter of 2011 for the 2009-2010 broadcast year. To address confidentiality concerns raised during the consultation, the CRTC will publicly report information only on an industry aggregate level.

Potential Future Requirements

The Commission anticipates that it may become necessary in the future for NMBUs to report on the availability and consumption of new media broadcasting content, in addition to annual revenues and expenditures. Also, as noted above, the Commission may extend reporting requirements to **unaffiliated** NMBUs, "as the new media environment evolves."

Next Steps: Launch of a New Media Reporting Working Group

The CRTC has announced that it will strike a New Media Reporting Working Group to:

- reach common agreement on the components of the NMBU revenue and expenditure definitions, in order to create the data collection form; and
- contribute to the development of metrics to monitor the consumption and availability of broadcasting content in new media.

The Working Group will convene for a period of up to one year. Those interested in participating must submit a written request to the CRTC Secretary General by August 31, 2010, explaining their interest in developing NMBU reporting requirements. The Commission will then extend invitations this fall.

Comment

The contributions of the Working Group to the reporting requirement standards and measures will be very important. The data form will need to be developed by reference to existing operational and accounting practices and available information. Once the reporting requirements are in place in 2011, affiliated NMBUs will

likely find they must adjust the ways they collect and organize revenue and expense information relating to their online operations, to meet the CRTC's data requirements. As the 2007 Internet royalty proceeding before the Copyright Board of Canada demonstrated (SOCAN Tariff 22, *Internet*, 1996-2006), accounting and data management practices vary considerably among broadcasters and others who post content online. Among other issues, the revenues and expenses attributable to "broadcasting," as opposed to other online activities, will very likely need to be addressed by the Working Group.

Organizations that will be subject to the reporting requirements, including those planning to launch services that will be affected, should consider participating in the NMWG. Given the intention of the CRTC to extend the reporting requirements more broadly in the future, those organizations that are not currently affected would be well served by monitoring developments.

CONTACT US

For further information, please contact [Margot Patterson](#), or a member of our [Communications Group](#).

¹ The CRTC interpreted "broadcasting" in the new media context in its 1999 *New Media* decision, Broadcasting Public Notice CRTC 1999-84/Telecom Public Notice CRTC 99-14, May 17, 1999.



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