

The Indigenous Screen Office/Bureau De L'Ecran Autochtone
January 11, 2019

Janet Yale
Chair
Broadcasting and Telecommunications Legislative Review Secretariat
235 Queen Street, 1st Floor
Ottawa, Ontario, K1A0H5

INTRODUCTION

The opening and review of Canada's Broadcast Act presents an extraordinary and essential opportunity to imagine the future of Canada's broadcast sector and plan the legislative supports it will need. The task and considerations are enormous, as the broadcast sector faces a rapidly evolving environment, with shifting technologies and audience access points fundamentally altering traditional sector economies and business models, and on-going social change fueling equally evolving audience tastes.

While it may be coincidental, this review arrives at a moment when the issues facing First Nations, Inuit and Métis have become increasingly central in the national discourse of Canada. Three years after the release of the findings of the Truth and Reconciliation Commission and now two years from the sesquicentennial, it's clear that while much road has been travelled, the longest road remains before us.

The review also arrives in the first year of the Indigenous Screen Office/Bureau de L'Ecran Autochtone (ISO/BEA), which was announced by former Heritage Minister Melanie Joly in fall of 2017, after years of advocacy for its founding. The Indigenous Screen Office's primary mission is to grow the representation of Indigenous peoples in Canada's screen sector, to advocate for increased support and access for Indigenous creators and storytellers, and to ensure opportunities for Indigenous peoples to tell Indigenous stories.

So far the ISO has travelled to numerous locations across Canada to engage with members of the Indigenous screen sector, seeking input on its mission, its goals, and the priorities for the sector when it comes to this review of the Broadcast Act. These are reflected in the comments made here, and this document was crafted with input from the ISO's Advisory Circle of leaders from across the communities.

As Canada and Canadians seek a reinvigorated and reimagined relationship between Indigenous peoples and Canada, it is our belief that Indigenous voices and stories play an essential role in this conversation, a role that should be reinforced with the redrafting

of this act. Indigenous stories remain a defining feature of Canadian culture, one of its elements that is truly distinct in the world and an area that has long been neglected and without the supports shown to the French and English communities of Canada.

The amending of this act must empower the Indigenous screen sector to find its rightful place alongside the French and English broadcast sectors that are already established. It must compel further investment in the creation, support and distribution of Indigenous made content for the benefit of all Canadians. It must compel support for Indigenous languages and cultures, and recognize them for their essential importance to Canadian culture and our shared sense of national identity. It must ensure access to existing and future distribution systems, with commensurate access to the telecommunication systems necessary to ensure that access. It must ensure that there is Indigenous leadership present in funding bodies and public broadcasters meant to serve Canadians, including First Nations, Inuit and Métis, just as it has ensured Canadian leadership in these institutions.

The broadcast sector and Canadians, increasingly agree that this review is needed in this moment to ensure that in a rapidly shifting marketplace, there are equitable contributions from all players in the sector. In order to reach the reconciliation, found in the Truth and Reconciliation Commission's 94 calls to action, including addressing issues of education, language and culture, the ISO-BEA believes the amending of the Broadcast Act can play a key role by ensuring increased access and support for Indigenous made content and to ensure Canadian citizens become more aware and exposed to the stories of this land's First Peoples.

The ISO-BEA Position

The ISO-BEA position starts with the belief that the Broadcasting Act is a necessary and relevant piece of legislation that requires reworking to fully include Indigenous peoples in Canada's broadcast ecosystem. We see the priorities for the reworking of the act as follows:

1. First Nations, Métis and Inuit cultures should have the same position as French and English do in the Broadcasting sector and within the Broadcasting Act, as they are as vital to the origins and creation of Canada, as outlined in Section 35 of the Constitution Act of 1982.
2. Indigenous language productions need to be supported beyond any market driven motive, with communities, APTN, and CBC/Radio-Canada, empowered to invest in the preservation, reclamation and nurturing of languages targeted for erasure through previous policies, such as residential schools and the '60s Scoop.
3. CBC/Radio-Canada and sector funding bodies must be required to have Indigenous leadership overseeing commissioning of Indigenous content.
4. All players in Canada's media and broadcasting sectors – regardless of how they deliver content to audiences – must be subject to the same rules and regulations, including equitable contribution into the creation of Canadian

- content, which must include Indigenous content and Indigenous language content.
5. Indigenous content is to be defined as content created by Indigenous peoples, with Indigenous peoples in creative control and ownership positions.
 6. Access to telecommunications systems must be universal, including remote and Northern communities for any legislation and policies to be applied equitably.
 7. The CRTC must be mandated to have Indigenous representation among its commissioners.

Telecommunications Act and Radiocommunication Act

1. Universal Access and Deployment

Currently remote and Northern Indigenous communities struggle to have equitable access to Canada's information networks. This hinders their ability to be fully engaged with Canada's broadcasting sectors as either creators or consumers. As stated in the Terms of Reference:

“Universal access and deployment also play a role in achieving the objectives of the Broadcasting Act. As more and more cultural content becomes available via the Internet, ensuring that Canadians in all regions have access to high-quality and affordable telecommunications services becomes helpful in enabling cultural expression and diversity.”

The ISO-BEA fully supports that statement and asks that this review address the inequities of access currently present in the system.

- 1.1 Clearly, given the lack of equitable access in remote and Northern Indigenous communities, the current legislative framework is either insufficient to compel universal access, or it is simply not being implemented to ensure that access for all is achieved.
- 1.2 Soft assets are vitally important as are exploring new delivery technologies for high-speed internet access. We think it important that the governance of soft assets permit the expansion of universal high-speed internet, not restrict it, even if that means nationalizing all such assets or a portion of them, or creating more public-private partnerships that encourage innovation and investments in a fully connected Canada with universal high-speed internet for all. The ISO-BEA would also encourage the support of Indigenous-led and owned initiatives that would allow Indigenous ownership and innovation of such soft assets, to empower communities to engage in the creation and profits from such infrastructure.

2. Competition, Innovation, and Affordability

2.1 The Terms of Reference state the following:

“Given the integrated nature of many Canadian carriers and the high degree of concentration in the sector, barriers to dynamic competition need to be considered in the context of convergence. However, it should be made clear that the Government is not interested in a proposal that reduces Canadian ownership of broadcasting.”

The ISO-BEA believes Canadian ownership remains a vital part of our broadcast and telecommunications sector. To diminish domestic ownership for either broadcasters or telecommunication companies would cede power and control to foreign interests over Canadian broadcast culture. In a globalized content marketplace and distribution ecosystem, the need for national identity is not diminished but rather strengthened, and indeed, becomes a marketable commodity on the global stage. Likewise, Indigenous ownership of Indigenous media companies is also vital, for the same reasons that Canadian control of Canadian stories is. This is ultimately an issue of sovereignty for all communities.

Maintaining Canadian ownership and control of both content and assets underlying telecommunications infrastructure is essential to sustaining a competitive marketplace for consumers, although more competition is needed to ensure fair pricing.

The ISO-BEA opposes measures that would allow for greater foreign control of telecommunications sector and in the vertically integrated BDU's that dominate it. Strategies for further domestic competition are needed. We believe that foreign broadcasters operating in Canada, including those that broadcast using the internet, such as Netflix and Amazon, must be made to contribute to the system financially, and by designating space for Canadian made content and this would include Indigenous made content.

3. Net Neutrality

3.1 Net neutrality is a vital concept and should be retained. Any universal access initiatives would be undone or prove worthless if the principals of net neutrality are lost. It represents the true democracy of access that has been promised by the internet, and should not be allowed to be lost as part of a strategy to seek greater profits or influence audience behavior. ISPs should be able to manage their traffic in a non-discriminatory manner, as is currently outlined in Section 36 of the Act, which requires CRTC approval for any changes to the way they manage the telecommunications they carry, but they should be restricted from self-interested funneling of traffic or variances in

access speed. As broadcasting increasingly moves on-line, the need for net neutrality will only deepen, as consumers and creators increasingly rely on the internet as their primary distribution and exhibition venue. For remote and Northern Indigenous communities, this issue only becomes exacerbated by the already existing issue of unequal high-speed access.

Broadcasting Act Review Questions

8.1 In the view of the ISO-BEA, the concept of broadcasting remains largely unchanged, what has evolved is the delivery systems used to broadcast content. So, the question becomes how to ensure that all entities involved in broadcasting are subject to equitable regulations and obligations, including contributing to the Canadian and Indigenous broadcast sectors. We believe continuing a technology neutral approach to defining broadcasting remains the best approach.

8.2 To answer the question of how Canadian voices can gain access to the internet, first the ISO-BEA suggests that this question should not be limited to the current definition of both “official languages”. Limiting the discussion to French and English, excludes the vast array of Indigenous languages that predate even the concept of Canada, let alone notions of broadcasting. These languages have been forcibly stolen from generations of Indigenous peoples through oppressive, violent, and assimilationist policy and ideologies. They must be included in questions like these, and in any consideration of languages in Canada and how to disseminate and support language. The internet presents an enormous opportunity to use technology to help preserve, restore and revitalize Indigenous languages.

One way to contribute to this effort would be to ensure that the CRTC’s jurisdiction applies to all broadcasting services, including those that are internet based, and that they be subject to the same Canadian Programming contributions as traditional licensed broadcasters are. This would include ISPs, WSPs, and VBDUs. We believe that as part of this shift in enforcement, that a specified portion of the contributions be put aside to fund Indigenous language content, with a goal of nurturing Indigenous languages within Indigenous communities, and exposing all Canadians to more Indigenous language content. We believe that this can be a key mechanism to achieve any policy goals around Indigenous languages.

Broadcasting Act Principles

9.1 The ISO-BEA supports two key objectives for the maintaining the relevance of the Broadcasting Act.

1. The rights and choices of Indigenous peoples should be explicitly recognized. The current reference to “when resources become

available” is wholly unacceptable, especially in an era of reconciliation. It is time for resources to be made available, for both commercial Indigenous production and for specific supports for Indigenous language content. Almost all references to French and English should now also include Indigenous peoples. As the legislation has compelled the creation and support of Canadian content, made by Canadians, for Canadians, it must also compel the creation of Indigenous content, made by Indigenous people, for audiences of all communities. Reporting on the rate of production and distribution of Indigenous content must be collected in order to track growth of the Indigenous sector and investments into the sector.

2. Apply equal regulation to internet broadcasters including contribution to Canadian content production. This includes ISPs, WSPs, and VBDUs. A portion of these contributions, 6-8%, should be specified for Indigenous content creation to be administered by Indigenous peoples.

9.2 On June 21, 2017, Prime Minister Justin Trudeau stated:

“No relationship is more important to Canada than the relationship with Indigenous Peoples”

This is fundamentally true, as Section 35 of the Constitution Act of 1982 reminds, Canada is a nation born from the treaties with Indigenous peoples. The relationship between Canada and Indigenous peoples is in fact inseparable from the very notion of Canada. And yet, the existing Broadcasting Act offers little mention or support for this most vital and important relationship. The revised Act must make this a priority, in the form of equal representation of Indigenous peoples with French and English, and for specific legislation empowering Indigenous creators and communities to preserve, restore and nurture Indigenous languages. Within Indigenous languages lies the culture and world view of Indigenous peoples. The theft of these languages is a theft of language, philosophy, economics, governance and sovereignty.

This is why the ISO-BEA believes that, while the shifting broadcasting and telecommunication ecosystems must be addressed and updated to reflect the broadcasting and consumption patterns of today and the future, the largest priority for this legislative review is the equitable inclusion of Indigenous peoples in the Act. Without this, any other revisions will fail to honour this most important relationship, and in fact, broadcasting and telecommunications, as systems that support and disseminate storytelling and create shared sense of national identity and unity, are an integral part of honouring that relationship and making it stronger.

The second priority, one that can support the equitable recognition of Indigenous peoples in the Act, is to ensure equal contributions from all players, foreign and Canadian, conventional or digital. This would bring significantly more funding into the system, a portion of which must be directed to specifically support the growth of Indigenous content and Indigenous language content. Equitable contributions are not necessarily equal, and the value of Canadian and Indigenous owned media should be recognized.

Support for Canadian Content and Creative Industries

- 10.2 The support of Indigenous, French and English languages and cultures in Canada must remain the primary requirement of Canadian media, regardless of platform or distribution network. While foreign players should support Canadian content, this does not reduce the need for a vital Canadian based sector, inclusive of Indigenous peoples. Players such as Netflix and Amazon should be directed to the licensing of independently produced Canadian and Indigenous programming.

- 10.3 The ISO-BEA supports the idea of a minimum exhibition threshold of Indigenous content on OTT and streaming services, and that this minimum guards against dumping Indigenous content in off-hours or little traveled digital spaces. Indigenous content must be offered the same considerations as French and English content, and would satisfy Canadian content regulations.

Cultural Diversity

- 12.1 The ISO-BEA affirms that these lands, which are often called Canada now, have always been culturally diverse and remain so now. The history of First Nations on these lands is a story of rich cultural diversity, reflected in languages, cultural beliefs and practices and approaches to governance, economics and health. Thus, the ISO-BEA believes that equitable enforcement of Canadian content regulations across broadcast platforms, including foreign internet based services, is a crucial step in achieving diversity within the broadcast sector.

However, simply relying on Canada's inherent diversity has proven to be inadequate in creating meaningful representation for groups systemically marginalized here. Canadian broadcasting has made strides in diversity and recent initiatives to greater improve gender parity are certainly welcome, but the sector remains less diverse than the citizenry that make up its audience. There remains a lack of diverse leadership in the executive offices of much of the sector and in the board rooms that govern

them. Efforts must be made to diversify these spaces, especially when it comes to Indigenous peoples. Guidelines, supports and funding earmarked to support Indigenous peoples and other systemically marginalized groups must be administered and led by those communities for those initiatives to be successful and for them to further goals of diversity and inclusion. This means funders and public broadcasters especially, must have diversity and inclusion goals and metrics and be held accountable for meeting them.

National Public Broadcaster

- 13.5 The ISO-BEA recognizes the value and necessity of the CBC/Radio-Canada in a globalized broadcasting industry. Public broadcasting plays a vital role in the shaping of national discourse and shared national identity and in the creation and distribution of Canadian content. CBC/Radio-Canada has a specific role, as the national public broadcaster in the reconciliation between Indigenous peoples and Canadians. We believe this is an obligation highlighted by CBC/Radio-Canada, was one of only two broadcasters named in the Truth and Reconciliation Commission's 94 calls to action:

84. We call upon the federal government to restore and increase funding to the CBC/Radio-Canada, to enable Canada's national public broadcaster to support reconciliation, and be properly reflective of the diverse cultures, languages, and perspectives of Aboriginal peoples, including, but not limited to:

- i. Increasing Aboriginal programming, including Aboriginal-language speakers*
- ii. Increasing equitable access for Aboriginal peoples to jobs, leadership positions, and professional development opportunities within the organization.*
- iii. Continuing to provide desiccated news coverage and online public information resources on issues of concern to Aboriginal peoples and all Canadians, including the history and legacy of residential schools and the reconciliation process.*

The ISO-BEA supports these recommendations.

To further these recommendations, the ISO-BEA also recommends the following:

1. The CBC/Radio-Canada must have Indigenous leadership at the executive, managerial and editorial levels overseeing the

- commissioning, creation and dissemination of Indigenous content.
2. CBC/Radio-Canada must treat Indigenous languages in the same manner they service French and English.
 3. There must be greater transparency in CBC's accounting for Indigenous content.
 4. CBC/Radio-Canada must work much more closely with Indigenous broadcasters such as APTN, to both produce and distribute Indigenous content.

The ISO-BEA's believes Indigenous content and Indigenous language content must be among the top priorities for CBC/Radio-Canada in recognition of its distinct place with Canada's broadcast sector and the lives of Canadians.

Governance and Effective Administration

In regards to the CRTC, the ISO-BEA believes the commission must be able to enforce minimum Indigenous and Indigenous language content requirements as part of the license renewal process. These requirements would also satisfy Canadian content requirements. The determination of minimum threshold requirements must be determined in consultation with the Indigenous screen sector. Indigenous content must be defined as being created and owned by Indigenous peoples or Indigenous owned companies.

The ISO-BEA supports amendments to existing, correlated legislation, such as the Public Services Act, to ensure that Indigenous representation across sectors and throughout public and crown corporation and organizations is fully supported in both legislation and policy.

Conclusion

The updating of the Broadcasting Act and the Telecommunication Act arrives at a pivotal moment, where it can be revised to better reflect both the history of Canada as well as prepare it for the future. By updating Canadian content regulations and applying them equitably to all broadcasters in Canada, regardless of their method of broadcasting deliver, and enforcing contributions into the system, millions more could be raised for the production of Canadian and Indigenous content. This would address the existing acts support of Indigenous broadcasting "when funds become available".

This panel must ensure those funds become available now, to be administered by Indigenous peoples and that those commitments are enforced by the CRTC. To miss this opportunity would be to make reconciliation harder, to make diversity and inclusion initiatives more difficult to achieve, and to keep Indigenous peoples and Canadians further apart. The Canadian broadcast and telecommunications sectors are a source of national pride, and for them to be fully inclusive of Indigenous peoples would only strengthen them and make them among the world's leaders. This land deserves nothing less.

Further Information:

The ISO-BEA conducted consultations with members of the Indigenous broadcasting and screen sectors in the following locations to inform this submission:

Montreal (in French and English)
Iqaluit (in English and Inuktitut)
Winnipeg
Vancouver
Toronto

Please find further information and research attached:

Appendix A: Summary of At the Crossroads Report
Appendix B: Supporting and Developing the Indigenous Screen Based Media in Canada: A Strategy
Appendix C: Pathways to the International Market for Indigenous Screen Content
EMBARGOED until January 31