Legislative Summary **LS-437E**

BILL C-11: AN ACT TO AMEND THE COPYRIGHT ACT

Sam Banks
Monique Hébert
Law and Government Division

10 October 2002
Revised 27 November 2002

Library of Parliament
Bibliothèque du Parlement

Parliamentary Research Branch

LEGISLATIVE HISTORY OF BILL C-11

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	9 October 2002	First Reading:	10 October 2002
Second Reading:	9 October 2002	Second Reading:	30 October 2002
Committee Report:	9 October 2002	Committee Report:	5 December 2002
Report Stage:	9 October 2002	Report Stage:	
Third Reading:	9 October 2002	Third Reading:	9 December 2002

Royal Assent: 12 December 2002

Statutes of Canada 2002, c.26

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

CE DOCUMENT EST AUSSI PUBLIÉ EN FRANÇAIS

TABLE OF CONTENTS

Page

CANADA

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

BILL C-11: AN ACT TO AMEND THE COPYRIGHT ACT*

BACKGROUND

Bill C-11, An Act to Amend the Copyright Act, was introduced in the House of Commons and deemed to have passed all stages on 9 October 2002.(1) Tabled in response to the actions of iCraveTV and JumpTV, the bill, as originally proposed, set forth a framework for non-conventional retransmitters of broadcast programming to operate under the terms of the compulsory retransmission licence established in section 31 of the Act. Regulations would have set the conditions under which this might happen. Amendments passed by the House of Commons Standing Committee on Canadian Heritage, however, have excluded Internet retransmitters from the purview of the compulsory licence, at least for the time being.

A. The Rise of Internet-Based Retransmissions

In December 1999, iCraveTV (a Toronto-based company) began to "stream" broadcast programming over the Internet. The company provided Internet users with access to nine Canadian and eight U.S. over-the-air television signals which it received off-air in the Toronto area, converted into an Internet-compatible format, and then streamed over the Internet.

Reaction to iCraveTV's operation was swift. Alleging copyright infringement, **some** industry **representatives** – including the Canadian Association of Broadcasters, Twentieth

---

* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) The bill was originally introduced in the 1st session of the 37th Parliament as Bill C-48, but died on the *Order Paper* when Parliament was prorogued on 16 September 2002. By motion adopted 7 October 2002, the House of Commons provided for the reintroduction in the 2nd session of legislation that had not received Royal Assent. The bills would be reinstated at the same stage in the legislative process they had reached when the previous session was prorogued.

Century Fox, Disney Enterprises, Paramount Pictures, Time Warner Entertainment Co., and Universal City Studios – threatened or actually took legal action against the company.

In February 2000, a U.S. court issued a preliminary injunction against iCraveTV enjoining it from streaming its signals into the United States. However, the Canadian courts did not have the opportunity to consider the matter because, in late February, the company succumbed to legal pressure and agreed to discontinue its streaming operations in return for the withdrawal of all actions against it. The company also agreed to withdraw its December 1999 request to the Canadian Copyright Board for an interim Internet retransmission tariff for the years 1999 and 2000, with a final tariff to be determined in due course. (The measures enacted in relation to retransmissions are discussed below.)

Several months later, JumpTV (a Canadian company) decided to follow in iCraveTV's footsteps. In contrast to its predecessor, however, JumpTV applied to the Copyright Board to establish a new tariff for Internet transmissions before commencing operations.

B. The Compulsory Licensing Regime Enacted in Relation to Retransmissions

Prior to 1988, Canada's *Copyright Act* conferred on copyright owners the exclusive right to communicate their works by "radio communication." This right was interpreted by the Exchequer Court of Canada (now the Federal Court) to apply only to communications effected by means of "electro-magnetic or Hertzian waves through the ether" (commonly referred to as "over-the-air" signals).[(2)]

Given this decision, communications effected through other means – such as coaxial cable – were not encompassed within the radio communication right. Consequently, cable operators in Canada were free to retransmit broadcast programming to their paying subscribers without infringing copyright or having to pay royalties to the copyright owners whose programming they retransmitted.

As cable became more widespread in Canadian homes, **this benefit** enjoyed by cable operators became a growing concern. American copyright owners were particularly irate because it was mostly their television programming that was being appropriated by Canadian cable operators who captured the over-the-air broadcast signals from U.S. border stations and channelled them **royalty-free** to their paying subscribers in Canada.

---

(2) *Canadian Admiral Corporation, Ltd.* v. *Rediffusion Inc.*, [1954] Ex.C.R. 382.

A Sub-committee of the House of Commons[3] – which believed that copyright owners should be compensated for the retransmission of their works – recommended the enactment of a retransmission right in a 1985 report entitled *A Charter of Rights For Creators.* The creation of a retransmission right also became a requirement under the Canada-U.S. Free Trade Agreement (article 2006 of the FTA).

Acting on this obligation, the Canadian government introduced Bill C-2, the Canada-U.S. Free Trade Agreement Implementation Act, to amend the *Copyright Act* (among others). Passed in December 1988, Bill C-2 replaced the narrower radio communication right with a more comprehensive and technology-neutral right to communicate a work to the public "by telecommunication." Bill C-2 also set up a form of compulsory licence (actually cast as an exemption) that would allow the retransmission of broadcast programming under specified conditions, namely, where:

- the communication was a retransmission of a local or distant signal;
- the retransmission was lawful under the *Broadcasting Act*;
- the signal was retransmitted simultaneously and in its entirety, except as otherwise required or permitted by or under the laws of Canada; and
- in the case of the retransmission of a distant signal, the retransmitter paid the requisite royalties and complied with any terms and conditions prescribed under the legislation.

Under this scheme, royalties would be payable only in relation to the retransmission of "distant signals." Royalties did not have to be paid for the retransmission of "local signals," in part because of the following fact: these signals could be received over the air by the broadcaster's normal viewing audience, which could be accounted for in the price paid by the broadcasters to air the programming. In contrast, the "enlarged" viewing audience made possible through the retransmission of distant signals was not accounted for in the price paid for the programming rights. This resulted in the obligation under the compulsory licence to pay royalties in relation to distant signals only, as opposed to the local ones.

Additional amendments were also made to broaden the mandate of the Copyright Board by explicitly requiring it to set the tariff (i.e., the royalty rates) for the retransmission of

(3) The Sub-committee on the Revision of Copyright of the now defunct House of Commons Standing Committee on Communications and Culture.

"distant signals." This tariff would apply not only to cable operators, but also to other broadcasting distribution undertakings (BDUs) engaged in the retransmission of distant signals, such as direct-to-home satellite and multipoint wireless distribution systems.

Had this compulsory licence scheme not been enacted, cable operators and other BDUs would have had to obtain the authorization of all the copyright owners whose programming they proposed to retransmit. As this would have been a near-impossible task to accomplish given the large number of copyright owners involved, it was felt that a compulsory licence of the type enacted was justified in the circumstances.

C. Government Action

When iCraveTV and JumpTV requested the Copyright Board to set an Internet retransmission tariff, questions were raised about whether Internet-based retransmissions were in fact covered by the retransmission regime set out in section 31 of the Act. Questions were also raised about whether such retransmissions ought to be covered by section 31 or whether they should be excluded.

In June 2001, the federal government released a discussion paper entitled *Consultation Paper on the Application of the Copyright Act's Compulsory Retransmission Licence to the Internet* (the Consultation Paper).[4] This paper outlined arguments both for and against extending the compulsory licence in section 31 to Internet retransmissions.

One of the reasons cited for excluding Internet retransmissions from the compulsory licensing regime centred on the concern of copyright owners that to include them might jeopardize the marketing of their programs in other jurisdictions. Because Internet access is worldwide and security measures to restrict access on a territorial basis are not considered to be totally reliable, copyright owners argued that if their programming was imported into a foreign territory via the Internet, the value of the foreign rights for that programming could be undermined.

There was also concern that because Internet retransmitters are not currently subject to regulation under the *Broadcasting Act*, they would have a competitive advantage over the conventional broadcasting distribution undertakings (BDUs), which must comply with the broadcasting requirements. For example, in contrast to the conventional BDUs, Internet

(4) This paper is available online at http://strategis.ic.gc.ca/SSG/rp00008e.html.

retransmitters need not carry specified signals under the "must-carry" rule. They need not carry out simultaneous program substitution in applicable cases. Nor are they required to contribute a percentage of their gross revenues to the creation of Canadian programming, as must the larger conventional BDUs under the *Broadcasting Act*.

The exclusion of Internet retransmitters from the *Broadcasting Act* stems from an Exemption Order issued in 1999 by the Canadian Radio-television and Telecommunications Commission (CRTC). This order – Public Notice CRTC 1999-197 – exempted all "new media broadcasting undertakings" (defined as undertakings that provide broadcasting services delivered and accessed over the Internet) operating in whole or in part in Canada from being regulated or licensed under the *Broadcasting Act*. The Exemption Order is set out in Appendix A.

Among the views expressed in support of extending the compulsory licence to Internet retransmissions was the argument that the Internet was simply a new technical means of providing essentially the same type of service that the conventional BDUs provided. Consequently, the same public policy reasons for allowing compulsory licensing in relation to the latter should apply with equal force with respect to the former.

It was also argued that to exclude the Internet from the compulsory licensing regime would favour the older technologies at the expense of the new ones. Excluding the Internet might also inappropriately limit the ability of conventional BDUs to adopt the most effective technologies available to them.

The government invited members of the public to submit comments on the numerous issues raised in the Consultation Paper by 15 September 2001.(5) Several months later, on 12 December, it tabled Bill C-48 (the predecessor to Bill C-11) in the House of Commons.

In the companion news release and backgrounder issued on the date of tabling, the government indicated that Bill C-48 (now Bill C-11) would establish a new regulation-making power under the *Copyright Act* to allow new types of distribution systems, including the Internet, to be used to retransmit broadcast signals if they meet the conditions set out in the regulations. Noting that the amendments would create an even playing field for current as well as future players in the broadcasting system, it added that the proposed changes would create new opportunities for Canadians in the knowledge-based economy and would stimulate entrepreneurship and innovation.

---

(5) The comments received were posted online at http://strategis.ic.gc.ca/SSG/rp01100e.html.

The government also pointed out that Bill C-48 (now Bill C-11) would not be proclaimed in force until the first set of regulations was ready. These regulations, it was stated, would be drafted according to principles that would ensure that:

- Canadians continue to have access to a vibrant broadcasting system;
- equitable balance is maintained among current stakeholders and potential new entrants;
- technological neutrality is respected and innovation is enhanced; and
- there is certainty with respect to the rules of retransmission.

D. Hearings of the House of Commons Standing Committee on Canadian Heritage

Bill C-48 (now Bill C-11) was referred to the House of Commons Standing Committee on Canadian Heritage, which held hearings in May and June 2002.

Most of the witnesses who appeared before the Committee were critical of the bill and opposed its passage. The following are some of the concerns raised:

- there is currently no foolproof technology to ensure that retransmissions via the Internet would be contained within Canada and not spill over into other markets;
- extending the compulsory licence to Internet retransmissions would pre-empt the developing market for the direct exploitation of works on-line;
- the advertising revenues of local broadcasters would be seriously compromised since the programming for which they acquired exclusive broadcasting rights would be undermined by, and have to compete with, the programming retransmitted over the Internet at possibly different times of the day given Canada's six separate time zones (i.e., the "time-shifting" problem);
- the integrity of the broadcast signals and underlying programming would be at greater risk since retransmissions over the Internet could be more readily manipulated and altered due to their digital format;
- passing the bill would be akin to signing a blank cheque since the conditions under which Internet retransmissions could be effected under the compulsory licence would be set out in the regulations, as opposed to the legislation.

Witnesses in support of Internet retransmission, including JumpTV, also appeared before the Committee to voice their support of the bill and its provisions. The following are some of the points raised in the evidence given by these witnesses:

- **retransmission of programs over the Internet is one area where Canada could play a leadership role in encouraging technological development, the creation of new partnerships and business models, and eventually new content;**

- **Internet retransmission as envisioned by JumpTV provides a fourth means of receiving television broadcast signals beyond the better-established means of over-the-air, cable and satellite;**

- **JumpTV gave assurances that as a proposed Internet retransmitter, it would pay whatever royalty tariff applied to retransmitters in general under the compulsory licence scheme provided by section 31 of the *Copyright Act*;**

- **in every respect, JumpTV would be willing to live by the same rules and regulations as suppliers of other forms of retransmission, including the rule of simultaneous substitution so as to protect Canadian advertising revenues, the payment of applicable Canadian licence fees, and contributions to the Canadian Television Fund;**

- **if regulations were put in place that clearly require Internet retransmitters to maintain their retransmission within Canada, JumpTV would be obliged to obey those regulations and would indeed obey them; and**

- **technology exists to restrict Internet transmissions to specific times and geographical locations, so as to protect the commercial value of the broadcast material.**

Most witnesses opposed to the bill recommended the enactment of an Internet "carve-out" that would specifically exclude Internet retransmissions from the compulsory licence in section 31 of the Act. The House Committee acted in part on this recommendation by amending the bill in such a way as to shut out Internet retransmissions from the purview of the compulsory licence, at least for the time being. The House of Commons passed the amended bill without modifying it further, on 18 June 2002.

DESCRIPTION AND ANALYSIS

Bill C-11 is a short bill containing only five clauses.

A. Clause 1: Reference to Retransmitter

Current section 2.4(3) of the *Copyright Act* specifies that a work is not communicated to the public by telecommunication when the signal carrying the work is retransmitted to a retransmitter to whom section 31 applies.

Clause 1 of the bill amends this section by replacing the words "to whom section 31 applies" with the words "within the meaning of subsection 31(1)." This change is consequential to the amendment proposed in clause 2(1) to specifically define the term "retransmitter" under section 31(1) of the Act.

B. Clauses 2(1) and 2(2): Definition of Retransmitter and New Media Retransmitter

Current section 31(1) of the Act does not define the term "retransmitter." It merely sets out who is *not* a "retransmitter" for the purposes of section 31.

Clause 2(1), as originally proposed, would have changed this by providing a specific definition of "retransmitter" that would have included Internet retransmitters who met the qualifying conditions set out in the regulations. As part of the Internet carve-out, however, a new definition was adopted by the House Committee, which redefines "retransmitter" as "a person who performs a function comparable to that of a cable retransmission system, but does not include a new media retransmitter."

A companion amendment was made to define the term "new media retransmitter," introduced under the above-noted revised definition of "retransmitter." New clause 2(2) defines a "new media retransmitter" as:

> a person whose retransmission is lawful under the *Broadcasting Act* only by reason of the *Exemption Order for New Media Broadcasting Undertakings* issued by the Canadian Radio-television and Telecommunications Commission as Appendix A to Public Notice CRTC 1999-197, as amended from time to time.

C. Clause 2(3): Compulsory Licence Conditions

Clause 2(3) amends current section 31(2) of the Act by adding a new condition under which retransmissions would be allowed under the compulsory licence created by that section. The new condition requires a retransmitter to comply with any applicable conditions prescribed by regulations made under new section 31(3)(*b*) of the Act. This condition is in addition to the four existing conditions, discussed earlier, which are set out in section 31(2) of the Act and which would be retained in their current form, except for the third condition which the House Committee amended by replacing the words "in its entirety" with the words "without alteration." As amended, section 31(2) of the Act would, therefore, require the following five conditions to be met in order to qualify for the compulsory retransmission licence:

- the communication must be a retransmission of a local or distant signal;
- the retransmission must be lawful under the *Broadcasting Act*;
- the signal must be retransmitted simultaneously and without alteration, except as otherwise required or permitted by or under the laws of Canada;
- in the case of the retransmission of a distant signal, the retransmitter must have paid the requisite royalties and must comply with any terms and conditions prescribed under the legislation; and
- the retransmitter must comply with the applicable conditions, if any, referred to in paragraph 31(3)(*b*).

Clause 2(3) also brings the French text of current section 31(2) into line with the English text by setting out each condition under a separate paragraph. In the current Act, the French text sets out all of the conditions under a single paragraph.

Finally, clause 2(3) broadens the regulation-making authority under current section 31(3) by also allowing regulations to be made in relation to the conditions that a retransmitter has to meet in order to benefit from the compulsory licence (proposed new section 31(3)(*b*)). Conditions prescribed under this section could be made to apply to all restransmitters or to only a class of retransmitters.

D. Clauses 3 and 4: Consequential Amendments

Clauses 3 and 4 respectively amend current sections 72(1) and 73(1)(*a*)(i) of the Act to specify that the retransmitters referred to in these sections are retransmitters "within the meaning of subsection 31(1)." The insertion of the words "within the meaning of subsection 31(1)" is consequential to the amendment proposed in clause 2(1) of the bill to provide a specific definition of the term "retransmitter" under section 31(1) of the Act.

E. Clause 5: Coming Into Force

Clause 5 stipulates that the Act comes into force on a day fixed by order of the Governor in Council.

COMMENTARY

By tabling Bill C-48 (now Bill C-11), the Canadian government had signalled that it was open to allowing Internet-based retransmissions under compulsory licence; but due to the opposition of **several** interested parties, the bill was amended to preclude this from happening. The "Internet carve-out" that is currently proposed in the bill, however, does not shut the door entirely. Internet retransmissions might yet qualify for the compulsory licence if, having regard to the definition of "new media retransmitter" in clause 2(2) of the bill, such retransmissions become lawful under the *Broadcasting Act* by means *other than* the CRTC's 1999 Exemption Order, as amended from time to time.

Stated differently, for so long as Internet retransmissions are lawful by reason of the 1999 Exemption Order and this order remains in place – whether in its original form or "as amended from time to time" – such retransmissions would not qualify for the compulsory licence since they would be excluded from the definition of "retransmitter" in clause 2(1) of the bill. However, should the Exemption Order be replaced by a new order or should it be eliminated in favour of broadcasting regulations applying to some or all aspects of Internet retransmissions, the "definitional" impediment in the bill would be removed. Internet retransmissions might thus become eligible for the compulsory licence, provided, of course, the five conditions for eligibility under new section 31(2) were satisfied.

On 12 June, the federal Cabinet issued Order in Council P.C. 2002-1043 requesting the CRTC to seek public comment and report on the following matters no later than 17 January 2003:

a) the broadcasting regulatory framework for persons who retransmit, by the Internet, the signals of over-the-air television or radio programming undertakings;

b) the appropriateness of amending the *Exemption Order for New Media Broadcasting Undertakings* published in Appendix A to Public Notice CRTC 1999-197, 17 December 1999, regarding persons who retransmit by the Internet, the signals of over-the-air television or radio programming undertakings; and

c) any other measures the Commission considers appropriate in this regard.

In a notice issued on 19 July 2002 (Public Notice CRTC 2002-38), the CRTC invited the public to comment on the matters raised in the Order in Council. It also sought feedback on 16 specific questions that it had formulated on Internet retransmissions. The CRTC

set 6 September 2002 as the deadline for submitting comments and 4 October 2002 as the deadline for submitting reply comments. Public Notice CRTC 2002-38 is set out in Appendix B.

For the time being, the ball is therefore in the CRTC's court. Depending on what action, if any, this body eventually takes, Internet retransmissions may either be brought within the scope of the compulsory licence under section 31 of the Act, or they may be blocked therefrom for some time to come. Everything hangs on the fate of the CRTC's 1999 *Exemption Order for New Media Broadcasting Undertakings*, that is, on whether the Exemption Order is retained as is, amended, or rescinded with or without a replacement order.

APPENDIX A

Public Notice CRTC 1999-197

Ottawa, 17 December 1999

Exemption order for new media broadcasting undertakings

Summary

The Commission is issuing an order that exempts from regulation, without terms or conditions, all new media broadcasting undertakings that operate in whole or in part in Canada. New media broadcasting undertakings are those undertakings that provide broadcasting services delivered and accessed over the Internet.

This means that new media broadcasting undertakings are not subject to licensing by the Commission. The Commission wishes to emphasize that the exemption order does not apply to the licensed broadcasting activities (e.g. over-the-air radio and television broadcasting) of a company that also operates a new media broadcasting undertaking.

Introduction

1. In Public Notice CRTC 1999-118 "*Call for comments on a proposed exemption order for new media broadcasting undertakings*" dated 19 July 1999, the Commission set out the proposed text of an order to exempt new media broadcasting undertakings from regulation under Part II of the *Broadcasting Act* (the Act). In response, the Commission received 26 submissions from a variety of individuals and from the broadcasting, telecommunications and new media industries.

2. The Commission acknowledges the comments and suggestions contained in these submissions, and has taken them into account in developing modifications to the text of the exemption order proposed in Public Notice 1999-118. These modifications are reflected in the *Exemption order for new media broadcasting undertakings* (the Order), which is attached as Appendix A to this Notice.

Comments

3. The majority of those who made submissions agreed that the decision to exempt new media broadcasting undertakings satisfies all the requirements of the Act in that regulation of these undertakings would not contribute in a material manner to the implementation of the broadcasting policy set out in section 3(1) of the Act.

4. Several parties expressed concern that, while the exemption from regulation of this class of undertakings may be appropriate at this time, the conditions under which they operate and their impact on the broadcasting sector generally may change radically in the near future. These parties argued that the Commission's policy of reviewing exemption orders within five years of their issuance should be altered in this case to require a review of the Order within a shorter period of time.

5. The Canadian Cable Television Association (CCTA) and others argued that the creation of a distinct class of services known as the new media broadcasting undertaking is unnecessary and could create confusion. Others supported the creation of this distinct class.

6. Several parties expressed concern that undertakings providing both new media broadcasting services and conventional broadcasting services, which are currently subject to regulation, might assume that they are therefore considered exclusively as a new media broadcasting undertaking, and hence exempt from regulation in respect of all of their services.

Conclusion

7. The Commission acknowledges that conditions in the new media market change at a rapid rate. In the Commission's view, however, a shorter review period could create regulatory uncertainty that may stifle the growth of new media markets and thereby limit the access of Canadians to such services.

8. The Order attached as Appendix A to this Notice exempts from regulation, under Part II of the Act and any applicable regulations made thereunder, new media broadcasting undertakings which offer broadcasting services accessed and delivered over the Internet.

9. The Commission expects that the exemption of these services will enable continued growth and development of the new media industries in Canada, thereby contributing to the achievement of the broadcasting policy objectives, including access to these services by Canadians.

10. The Commission has modified the description of a new media broadcasting undertaking from that which was originally proposed. The exemption order now states: "New media broadcasting undertakings provide broadcasting services delivered and accessed over the Internet, in accordance with the interpretation of 'broadcasting' set out in Broadcasting Public Notice CRTC 1999-84 / Telecom Public Notice CRTC 99-14, *Report on New Media*, 17 May 1999." The addition of the words "accessed and delivered" to the definition that was proposed in Public Notice 1999-118 is intended to more clearly describe the class of exempt undertakings.

11. The Commission wishes to clarify that, for the purpose of the Act, a single corporate entity (or other person) may carry on more than one distinct broadcasting undertaking. It considers that the new media activities of a company (or any person) involve a separate undertaking from any other type of broadcasting undertaking that the company or person is licensed to operate. For example, the same company may be the licensee of both a television programming undertaking and a separately licensed specialty service programming undertaking and also operate an exempt new media broadcasting undertaking. Another example would be a company licensed to carry on a distribution undertaking and a separately licensed video-on-demand programming undertaking that also operates an exempt new media broadcasting undertaking.

12. The Order does not affect or alter the existing regulatory obligations imposed on any licensee.

Secretary General

This notice is available in alternative format upon request, and may also be viewed at the following Internet site: http://www.crtc.gc.ca

Appendix A to Public Notice 1999-197

Exemption order for new media broadcasting undertakings

The Commission is satisfied that compliance with Part II of the *Broadcasting Act* (the Act) and applicable regulations made thereunder by the class of broadcasting undertakings described below will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1) of the Act.

Therefore, pursuant to subsection 9(4) of the Act, the Commission exempts persons who carry on, in whole or in part in Canada, broadcasting undertakings of the class consisting of new media broadcasting undertakings, from any or all of the requirements of Part II of the Act or of a regulation thereunder. New media broadcasting undertakings provide broadcasting services delivered and accessed over the Internet, in accordance with the interpretation of "broadcasting" set out in Broadcasting Public Notice CRTC 1999-84 / Telecom Public Notice CRTC 99-14, *Report on New Media*, 17 May 1999.

APPENDIX B

Broadcasting Public Notice CRTC 2002-38

Ottawa, 19 July 2002-08-26

Call for comments concerning Internet Retransmission
(Order in Council P.C. 2002-1043)

The Commission seeks public input for a report to the Governor in Council on the broadcasting regulatory framework for Internet retransmission of over-the-air television and radio signals.

The Order in Council

1. On 12 June 2002, the Governor in Council issued Order in Council P.C. 2002-1043, a copy of which is appended to this notice. The Order in Council (OIC) was issued pursuant to section 15 of the *Broadcasting Act* (the Act) which provides that the Governor in Council may request that the Commission hold hearings or make reports on any matter within its jurisdiction under the Act.

2. The OIC requests that the Commission seek comment from the public and report no later than 17 January 2003, on:

    a) the broadcasting regulatory framework for persons who retransmit, by the Internet, the signals of over-the-air television or radio programming undertakings,

    b) the appropriateness of amending the *Exemption Order for New Media Broadcasting Undertakings* published in Appendix A to Public Notice CRTC 1999-197, 17 December 1999, regarding persons who retransmit by the Internet, the signals of over-the-air television or radio programming undertakings, and

    c) any other measures the Commission considers appropriate in this regard

    in order to meet the objectives of the broadcasting policy set out in the *Broadcasting Act.*

Scope of the call for comments

3. For the purposes of this notice, the term "Internet retransmission" is defined as the act of retransmitting, via the Internet, the signals of over-the-air television or radio programming undertakings. The Commission is seeking comments on the Internet retransmission of broadcasting services that are originally transmitted over the air, which excludes the Internet retransmission of specialty services, for example.

4. In addition, the Commission notes that certain programming undertakings may already be transmitting their own services via the Internet. Given that these programming undertakings originate a portion of their own programming and/or purchase specific rights for the balance of their programming, these activities constitute transmission, rather than retransmission. The Commission requests that parties focus their comments on Internet retransmission by third parties of the signals of over-the-air programming undertakings.

Questions

5. The Commission seeks comments on the matters raised in the OIC. In order to assist interested parties in developing their submissions, but without limiting the scope of the comments, except as set out above, the Commission raises a number of questions for parties to address. In preparing their submissions, the Commission requests that interested parties highlight any significant differences that should be addressed between the retransmission of radio signals and of television signals on the Internet.

    a) What activities constitute Internet retransmission? What are the defining characteristics of these activities?

    b) Should Internet retransmission be seen as a substitute for, or a complement to, the activities of existing licensed over-the-air broadcasting and distribution undertakings?

    c) To the extent that Internet retransmission is now, or may reasonably be, expected to become complementary or substitutable for existing over-the-air broadcasting undertakings and/or distribution undertakings, what is its potential impact on the existing regulatory framework?

    d) What could be the potential impact of Internet retransmission on the broadcasting system, including, among others, viewers, subscribers, advertisers, producers and broadcasters?

    e) What are the current and potential business and economic models for Internet retransmission? What impact would the use of typical Internet advertising methods, such as banner ads and pop-up advertisements, have on advertisers and over-the-air broadcasters? What impact would a subscription model have on advertisers and over-the-air broadcasters?

    f) Given the significant bandwidth demands that the large-scale distribution of Internet retransmission could impose, in particular for video retransmission, is capacity generally available to support the Internet retransmission model? Are there any capacity bottlenecks? What are the mechanisms currently or potentially available that would address any concerns raised with respect to capacity?

g) What impact could Internet retransmission have on the creation of Canadian content and the protection of program rights? Is it necessary to impose conditions on Internet retransmission to address any such impacts? If so, what conditions?

h) What are the mechanisms currently or potentially available that would ensure the protection of program rights? In particular, how could the territorial reach of Internet retransmission of programming be restricted to a particular region or to particular customers? Similarly, how could such programming not be repropagated by customers to other Internet users?

i) What are the mechanisms currently or potentially available that would ensure that the programming rights holders receive appropriate compensation and protection for the Internet retransmission of their programming?

j) Are there mechanisms currently or potentially available that would ensure that the integrity of the signals was maintained (i.e., no alteration or deletion)?

k) Should an Internet retransmitter assume any additional obligations when delivering over-the-air broadcast signals containing interactive elements?

l) Would regulation of undertakings providing Internet retransmission of the signals of over-the-air programming undertakings contribute materially to, or detract from, the attainment of the objectives set out in the Act?

m) If the Commission were to decide that licensing of Internet retransmission undertakings is appropriate under the Act, what conditions, if any should be imposed on these undertakings? Should these conditions mirror those generally imposed on broadcasting distribution undertakings, pursuant to the *Broadcasting Distribution Regulations,* and individual licences? Are there practical impediments to the imposition of such conditions, in light of the technological differences between traditional distribution methods and Internet retransmission?

n) Would the issuance of an exemption order, under the Act, specific to Internet retransmission of the signals of over-the-air programming undertakings facilitate or hinder the achievement of the Act's policy objectives?

o) If an exemption order would facilitate the achievement of these policy objectives, what would be the appropriate scope of such an exemption order? Are there specific conditions that should be applied for exemption?

p) How has the issue of Internet retransmission been approached in other countries? Which of these approaches would or would not be appropriate in the Canadian context, and why?

Call for comments

6. The Commission invites written comments from the public on the matters raised in this public notice. The Commission will hold a two-phase process for the submission of written comments. In the first phase, the Commission will accept comments that it receives no later than **6 September 2002**.

7. Interested parties, whether they have made submissions or not during the first phase, may then file reply comments no later than **4 October 2002**. The reply comments must address matters raised by any of the comments submitted during the first phase.

8. The comments received in response to *Fact finding inquiry on interactivity*, Public Notice CRTC 2001-113, 2 November 2001, form part of the record of this proceeding.

9. The Commission will not formally acknowledge comments. It will, however, fully consider all comments and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

Procedures for filing comments

10. Interested parties can file their comments on paper, on diskette or by email. Submissions longer than five pages should include a summary.

11. Parties wishing to file their comments on paper or on diskette should send them to the Secretary General, CRTC, Ottawa, K1A 0N2.

12. Parties wishing to file their comments by email can do so by sending them to procedure@crtc.gc.ca.

13. Electronic submissions should be in the HTML format. As an alternative, those making submissions may use "Microsoft Word" for text and "Microsoft Excel" for spreadsheets.

14. Please number each paragraph of your submission. In addition, please enter the line ***End of document*** following the last paragraph. This will help the Commission verify that the document has not been damaged during transmission.

15. The Commission will make comments filed in electronic form available on its web site at www.crtc.gc.ca in the official language and format in which they are submitted. All comments, whether filed on paper or in electronic form, will be available in the public examination file.

16. The Commission encourages interested parties to monitor the public examination file (and/or the Commission's web site) for additional information that they may find useful when preparing their comments.

Examination of public comments and related documents
at the following Commission offices during normal business hours

Central Building
Les Terrasses de la Chaudière
1 Promenade du Portage, Room G-5
Hull, Quebec K1A 0N2
Tel: (819) 997-2429 – TDD: 994-0423
Fax: (819) 994-0218

Bank of Commerce Building
1809 Barrington Street
Suite 1007
Halifax, Nova Scotia B3J 3K8
Tel: (902) 426-7997 – TDD: 426-6997
Fax: (902) 426-2721

405 de Maisonneuve Blvd. East
2nd Floor, Suite B2300
Montréal, Quebec H2L 4J5
Tel: (514) 283-6607 – TDD: 283-8316
Fax: (514) 283-3689

55 St. Clair Avenue East
Suite 624
Toronto, Ontario M4T 1M2
Tel: (416) 952-9096
Fax: (416) 954-6343

Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba R3B 2B3
Tel: (204) 983-6306 – TDD: 983-8274
Fax: (204) 983-6317

Cornwall Professional Building
2125 – 11th Avenue
Room 103
Regina, Saskatchewan S4P 3X3
Tel: (306) 780-3422
Fax: (306) 780-3319

10405 Jasper Avenue
Suite 520
Edmonton, Alberta T5J 3N4
Tel: (780) 495-3224
Fax: (780) 495-3214

530-580 Hornby Street
Vancouver, British Columbia V6C 3B6
Tel: (604) 666-2111 – TDD: 666-0778
Fax: (604) 666-8322

Secretary General

This document is available in alternate format upon request and may also be examined at the following Internet site: http://www.crtc.gc.ca.

P.C. 2002-1043
12 June 2002

Whereas subsection 3(1) of the *Broadcasting Act* sets out the broadcasting policy for Canada;

Whereas section 5 of the *Broadcasting Act* provides that the Canadian Radio-Television and Telecommunications Commission is responsible for regulating and supervising all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) of the Broadcasting Act;

Whereas the *Exemption Order for New Media Broadcasting Undertakings,* published in Appendix A to Public Notice CRTC 1999-197, 17 December 1999, exempts persons who engage in the retransmission of broadcasting signals over the Internet from all of the requirements of Part II of the *Broadcasting Act* and of any regulations made under that Part;

Whereas the exemption Order imposes no terms or conditions upon persons operating under it;

Whereas, since the exemption Order came into force, new media broadcasting undertakings have emerged who may wish to avail themselves of the existing provisions of the *Copyright Act* to retransmit the signals of over-the-air radio or television programming undertakings;

Whereas other broadcasting distribution undertakings are subject to obligations related to the retransmission of the signals of television or radio programming undertakings, including measures limiting the alteration or deletion of programming service and the protection of program rights;

Whereas subsection 15(1) of the *Broadcasting Act* provides that the Commission shall, on the request of the Governor in Council, hold hearings or make reports on any matter within the jurisdiction of the Commission;

Whereas, in accordance with subsection 15(2) of the *Broadca[s]ting Act*, the Minister of Canadian Heritage has consulted with the Commission with regard to the proposed request;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Canadian Heritage, pursuant to subsection 15(1) of the *Broadcasting Act,* hereby requests the Canadian Radio-television and Telecommunications Commission to seek

comments from the public and to report at the earliest time practicable, and in any event not later than 17 January 2003, on

(a) the broadcasting regulatory framework for persons who retransmit, by the Internet, the signals of over-the-air television or radio programming undertakings,

(b) the appropriateness of amending the *Exemption Order for New Media Broadcasting Undertakings* published in Appendix A to Public Notice CRTC 1999-197, 17 December 1999, regarding persons who retransmit by the Internet, the signals of over-the-air television or radio programming undertakings, and

(c) any other measures the Commission considers appropriate in this regard

in order to meet the objectives of the broadcasting policy set out in the *Broadcasting Act*.

Date Modified: 2002-07-19