



Canadian Broadcast Museum Foundation
Fondation du musée canadien de la radiodiffusion



SUBMISSION
FOR CONSIDERATION BY THE
BROADCASTING AND LEGISLATIVE
REVIEW PANEL

January, 2019

**“The world needs to know about Canada ... and
Canadians need to know about Canada too.”**

- **Stompin’ Tom Connors,**
Morningside,
CBC Radio, 1996

**“The world’s audiovisual heritage is endangered
Its disappearance would represent an irremediable
impoverishment of the memory of the world.”**

- Irina Bolovka,
Director General,
UNESCO, 2010.

The CBMF/FMCR was federally incorporated on January 3, 2001. Governed by a Board of Directors drawn from the broadcasting industry and the heritage sector, it is committed to finding the best contemporary solution for the collection, preservation and **celebration of Canada's broadcasting heritage, encompassing radio, television and screen-based services** in French, English, indigenous and other languages, and to ensure public access to this significant cultural record.

We emphasize the following essential elements for your consideration.

- It is imperative to safeguard the essential role of communication within local **communities and across the regions where Canada's vital national culture is** being forged;
- We must ensure that the challenges of geography do not limit our ability to communicate with each other and celebrate the experience of being Canadian, and
- It is essential to address the creation and operation of a National Media Repository for Canada, and enshrine its responsibilities in legislation to ensure long-term preservation of the historic documentary records contained in our analogue and digital media.

The Foundation is convinced that our broadcasting system – the most advanced communications technology of the day – supported the development of a unique Canadian culture in the 20th century. Our interest in legacy radio and television programming is founded in our belief that safeguarding Canadian culture will also depend on our ability to access the past as well as on reliable, predictable communications services that will allow us to engage with and enlighten each other in future.

I The State of Our Communications System: HOW DID WE GET HERE?

In the closing months of 2018 Canada finds itself confronting the greatest communications challenge it has faced in a century of massive technological change.

Decades ago Canadian engineers figured out how to build a transmitter system to deliver radio service to a small population scattered across the **world's second largest** national land-mass. Then we harnessed that system to keep Canadians in touch with the million family and friends soon engaged in the war effort across this country and abroad.

In the 1950s we met the challenge of television – in two languages – tapping into Canadian creativity and imagination to create programs and series that drew millions of viewers each evening and held their own against the blockbuster product of our southern neighbour.

Expanding choices for information and **entertainment, we became the world's most** cabled nation and, with the launch of ANIK in 1972, an early-adopter of satellite signal delivery. Optical fibre replaced coaxial cable, greatly expanding the channel and service **options available in urban Canada ...** and then the game changed.

In the early '90s, Tim Berners-Lee developed the computer-based communications system known as the World Wide Web and, since then, we have scrambled to shore up our broadcasting infrastructure, reluctant to acknowledge the inevitable cultural and industrial implications presented by this new medium.

The opportunities created by the Web - **now renamed 'the Internet'** – leap-frogged over decades of national policies and regulations designed to support creators of Canadian cultural products, be they magazines, books, music, film or the programming provided by our broadcasters.

In 2000, a group of prescient creators and broadcasters recognized that the continued existence of Canadian radio and television media was seriously threatened. The distinctive culture that had evolved north of the 49th parallel was at risk and, in the face of industry consolidation, it became apparent that the decades of recorded programming in station and network libraries and program archives – the **electronic record of Canada's evolution from the 1920s onward** - was in jeopardy.

Research revealed the startling fact that Canada was the only developed nation with no integrated, formal process to preserve its complex radio and television legacy. Neither legislation nor regulation imposed on public or private broadcast licensees requires conservation of this electronic record of our national or regional, social and political evolution, nor was any federal institution – not even Library and Archives Canada - charged with or resourced to undertake this comprehensive cultural responsibility.

Geographic realities meant that extension of service (i.e., bringing radio and television service to communities scattered between the three oceans) had to be the priority – and **it remains a remarkable achievement. But with the future of Canada's broadcasting** system clearly at risk, the CBMF/FMCR was federally incorporated in 2001 to address the issue of long-term preservation of and access to the broadcast record of our national evolution.

See Appendix A for a review of the significance of preserving original media.

II PRESERVING OUR CULTURAL HERITAGE AND PROVIDING PUBLIC ACCESS - A CANADIAN SOLUTION

In the years since its creation, the Foundation has explored options for crafting an efficient Canadian preservation process, worked with broadcasters and producers to determine the scale of need and, as keeper of last resort, beginning the assembly of the National Broadcast Collection for Canada.

In the last decade, destruction by electro-magnetic pulse attack has replaced nuclear blast as the principal threat to the electronic documentary record. Digital media are especially vulnerable. Developed nations have begun to focus on subterranean facilities for conservation of their legacy media:

- Britain has redeveloped the underground nuclear warhead storage facility near Gaydon in Warwickshire for preservation of its film and television collection.
- The program archives of Switzerland's **seven public radio and TV** services (SRG and SSR) are safeguarded in tunnels dug deep beneath the Alps and repurposed from their original wartime application.
- In America, PBS preserves its unique programming collection of analog video and film in a decommissioned mine near Kansas City.
- In 2014, New Zealand transferred responsibility for preservation of some 600,000 hours of original NZ radio, television and film dating back to 1895 to **Ngā Taonga Sound & Vision** which had developed secure custom-built vaults.
- The program collections of Germany's **broadcasters are now** preserved in a restored World War II subterranean hospital complex.
- Much of the United States' **early audiovisual record** of radio, film and commercial television is protected in a secure environment beneath a mountain in northern New York State.
- and the Hollywood **majors whose films are now 'born digital' convert those digital masters to analog 35 mm film because it's a** safer. More stable way to protect their long-term investment. Along with much of **America's music masters, they are stored in a former salt mine 22** storeys below Butler County, Pennsylvania.

Earlier this year, this country was faced with an immediate challenge: the preservation of eight decades of radio and television programs paid for by the people of Canada and held in trust for them by the CBC/R-C. The Corporation has begun to digitize much of its French and English-language programming but, unlike Radio-Canada, CBC English Services had no

interest in preserving its analogue program master-recordings post-digitization.

Had the analogue masters not been retained, Canada would have become the first developed nation to systematically destroy the historic record contained in its collection of original program recordings.

The Foundation attempted to negotiate a delay in destruction of these collections to allow time for completion of an alternate plan already underway. When the Corporation refused to consider a postponement, ACTRA and the Friends of Canadian Broadcasting joined the Foundation in a national online campaign that saw in one week more than 19,000 emailed **expressions of concern land on the desks of the CBC's EVP - English Services, the Minister of Canadian Heritage and, later, each member of the CBC's Board of Directors.**

We have now been assured there is a three-year moratorium on destruction **of any of the CBC's archived program masters.**

Section 46 (1)(j) of the 1991 Broadcasting Act requires that the CBC/R-C "publish, distribute *and preserve*, whether for a consideration or otherwise, such audio-visual material, papers, periodicals and other literary matter as may seem conducive to the attainment of the objects of the **Corporation.**"¹ Our renewed public broadcaster must be assigned the same responsibility. As it continues to serve the public interest on all its platforms with news, information and programs that are the product and expression of the creative arts, it must be assigned at least shared responsibility for long-term preservation of this factual and artistic program collection.

It is critical that this vast record of our national evolution be both preserved to international heritage standards and, subject to expiration or negotiation of the applicable rights, be made permanently accessible to Canadians by appropriate digital means.²

III WHERE TO FROM HERE?

This Panel was charged with study of the changes necessary to safeguard Canada's communications system by then Minister of Canadian Heritage, Mélanie Joly, with an expectation that it will report its findings and recommendations by the end of January, 2020.

¹ Italics added.

² For information on broadcast heritage expenditure in other countries, see Appendix B.

There is, in fact, no certainty that Canada's English-language private sector TV networks will remain viable for that long.

For decades, CTV and Global have relied on carriage of popular American TV series in prime time to boost their commercial revenue (through the unique Canadian regulatory tool of simultaneous substitution). But a number of American services are planning to begin streaming their programs in early 2019. That fact may limit the availability of such programs for purchase by Canadian networks as well as significantly decrease their appeal as part of a network TV schedule. It will undoubtedly have a negative affect on Canadian TV audience numbers and on the already declining commercial revenue confronting CTV and Global television.

During the "Let's Talk TV" hearings in 2014, TV executives made the CRTC aware of their willingness to hand back network licences in the face of continuing revenue losses. The Commission's own figures are evidence that, in the intervening few years, this trend has not reversed. Currently, private sector television operations are being subsidized by their parent companies' success as ISPs and, given their fiduciary responsibility to deliver a positive return to investors, it would be foolhardy for them not to consider the option of network closure.

In the long-term, this may in fact be inevitable and for that reason we believe it is now essential to consider the **re-invention of Canada's communication system**

Graham Spry, one of its founders, saw the role of the national public broadcaster as the central nervous system of a country. In an address to the Royal Society of Canada, he pointed out that, **"Without communication there is no society, be it a hive of bees, a troop of boys scouts, a Bar Association or a nation."**³

In the face of global competition and soaring production costs, we must take care to **ensure that Canadians' ability to communicate, to share their concerns and celebrations is not obliterated ... or confined to the individual, un-curated expressions of social media.**

Decades ago, the CRTC's founding Chair, Pierre Juneau, warned us that,

To preserve and develop our ability to create and produce our own imagery is something we simply cannot do without. To enable ourselves to see everything, including ourselves, through our own eyes and our own systems of production and diffusion, will require a long and persevering effort.⁴

³ Culture and Entropy, a Lay View of Broadcasting, Graham Spry, 1969.

⁴ "The Right to See Everything ... Including Ourselves. Pierre Juneau to the Empire Club of Toronto, February 24, 1972.

This is not the time for surrender. Your examination of the legislative infrastructure is setting the stage for the next chapter in **Canada's evolution, a challenging but not impossible task**. It will require no less effort and imagination that did the **Aird Commission's exercise of 1929, and should result in design of a contemporary national communications structure for Canada, the skeleton of which must be based on a revitalized, appropriately resourced national public media service.**

The extent of change likely to affect Canada's broadcasting and telecommunications industries in the next decade means that reconfiguring communications system and the critical responsibilities of the national public broadcasting service in it will involve an uncommon level of complexity, especially in respect to issues of governance and regulation. Given intricacy of current governance issues involved and the need to be nimble enough to respond to rapidly changing circumstances, it may well be time to search the world for models of best practice that can ensure the funding, the management and governance of this key cultural institution are established for success.

In fact, failure to do this is not an option. We respectfully suggest that, well before submitting its final report to government, the Panel undertake or commission a study to assess the applicability of best practices that can be tabled for public discussion before final recommendations are placed before government.

IV CULTURE, **SOVEREIGNTY, DEMOCRACY ... AND COMMUNICATION**

Sometimes looking backward can be instructive.

More than three decades ago, the Caplan-Sauvageau Task Force undertook yet another examination of how our Federal broadcasting policy should be changed to better serve Canadians.

During that process the Minister of Communications, the Hon. Benoit Bouchard confronted the key issue on October 16, 1985:

Just as retaining our territorial sovereignty is essential, if we are to remain an independent nation, so it is true that we must always retain our cultural **sovereignty How could we call ourselves a truly sovereign nation if we were as to relinquish our sovereignty – our undisputed right to act, in those areas which are the essence of a nation: its culture and its means of communicating with itself?**⁵

⁵ Hon. Benoit Bouchard, Opening Remarks to the Conference on the Future of the Canadian Broadcasting System, Canadian Conference of the Arts, Ottawa, 1985.

Later that same day, it was again Pierre Juneau, by now President of the CBC/Radio-Canada, who perhaps best articulated the key relationships between culture, sovereignty and the national broadcasting service.

Culture is how a country plays, rejoices and laughs. It is also how it expresses its dreams and hopes, how it sees and talks about its past and its future.... Like life itself, it is infinitely diverse. Like life, it constantly evolves.... Culture is also innovation, creation. It is inspiration for the present and the future. It is confidence.... It is independence and freedom. It is sovereignty of the mind, what makes one nation equal to another.

Culture is the very heart of sovereignty. There can be no political sovereignty, therefore no authority over our own lives and our own future, without cultural sovereignty.

Broadcasting is not just an element or section of culture. It is the most powerful mirror or manifestation of our culture....It has become the principal theatre, the principal disseminator of news, the principal vehicle for entertainment in this country. It has become the national performance stage and the national forum for information and news.

Broadcasting is the most powerful instrument we have to bring Canadian culture to all Canadians. That is what public broadcasting should be. To a large extent it is what the CBC is. That is what the CBC will be if we as a nation want it to be.⁶

As we approach the end of the second decade in the second millennium, we know that, no matter what their language of choice, the voices of Canadians and the products of their many talents are a minority in North America. Moreover, our advanced technical infrastructure brings to most Canadians an unmatched choice of information and entertainment sources.

But we also know that, despite the similarities we share with other North Americans, we are a distinct people. Culture evolves in ways that reflect the priorities of its civil society. A healthy, predictable system of national communication is the key tool in ensuring Canadians are able to determine - and sustain - those unique cultural elements that will define their nation in the 21st century and beyond.

In the event that private sector carriers are no longer able to support local, regional or national communications, it will remain the responsibility of the Government of Canada

⁶ Broadcasting: an Essential Element of Sovereignty and Democracy, Pierre Juneau, October 16, 1985.

(and a vibrant national public media service) to ensure the operation of all aspects (analogue and digital) of our cultural birthright is maintained.

With that objective in mind, we offer for the Panel’s consideration, suggested wording for the next iteration of Section 3, Broadcasting Policy for Canada.

V REVISING THE BROADCASTING POLICY FOR CANADA

The comments and proposals contained in this submission are premised on continued national support for key principles in existing legislation. Suggested revisions to reflect contemporary cultural and technical Canadian realities are offered below.

I - As modified for application in the contemporary international digital environment, these include:

- that the Canadian communications system shall be effectively owned and controlled by Canadians;
- that the Canadian communications system makes use of radio frequencies in the electromagnetic spectrum that are public property;
- that, taken together, the domestically-owned public and private sector components provided by the Canadian communications system constitute a public system essential to the maintenance and enhancement of national identity and cultural sovereignty;
- that as technology permits, equitable access to service across all regions be developed;
- that the Canadian communications system, operating primarily in the English and French languages, shall provide access to domestic and foreign services in these and other languages as enabled by technology and resources;
- that English and French domestic components of the Canadian communications system share common aspects but operate in different conditions and must be capable of responding to different cultural and other imperatives.

II - Further, the domestic elements of the Canadian communications system shall

- safeguard, enrich and strengthen the social, cultural, political and economic fabric of Canada;
- encourage the development of Canadian expression by providing a wide range of services whose content reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment

- programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view;
- through the content and employment opportunities it provides, serve the needs and interests, and reflect the circumstances and aspirations of all Canadians, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of indigenous peoples within that society;
 - be readily adaptable to scientific and technological change;
 - contribute in an appropriate manner to the creation and presentation of Canadian programming and ensure its accessibility to disabled persons as technology and resources permit,
 - make no less than predominant use of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those domestic resources;
 - be responsible for the content they offer to the public, shall ensure it is of high standard and that, for as long as technologically possible, programming of national and regional significance is preserved in its original format as part of the documentary record of Canada.

III - The programming provided by the Canadian communications system shall

- be varied and comprehensive, providing a balance of information, enlightenment and entertainment for people of all ages, interests and tastes;
- be drawn from local, regional, national and international sources;
- include on all platforms Alert Ready, the national emergency alert service;
- include educational and community services that are acknowledged to be an integral component of Canada's communications system;
- include programming that reflects the indigenous cultures of Canada;
- provide a reasonable opportunity for the expression of differing views on matters of public concern, and
- include a significant contribution from the Canadian independent production sector.

IV - The national public media service (NPM) shall be available for reception by all Canadians on radio (audio), television (video) and digital platforms and, to the greatest extent possible, capitalize on new and emerging technologies to provide a wide-range of programming that informs, engages and enlightens audiences.

The programming provided by this service shall

- be predominantly and distinctively Canadian;
- be available for reception by all Canadians;
- be non-commercial and delivered free of advertising content except where acknowledgement or sponsorship is required to enable carriage of significant programs;
- to the greatest degree possible make all its video services available in both official languages; its audio and digital services shall be in English and in French, with all services reflecting the different needs and circumstances of each official language community, including those of English and French linguistic minorities;
- ensure, in its provision of factual programming, public access to insightful, impartial and accurate news and current affairs coverage of domestic and global issues to facilitate public **participation in Canada's** democratic process;
- contribute to shared national consciousness and identity,⁷ and reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,
- actively contribute to the flow and exchange of cultural expression and reflect the multicultural and multiracial nature of Canada, and
- strive to be of equivalent quality in English and in French.

VI NATIONAL RESPONSIBILITY FOR PRESERVATION OF LEGACY PROGRAMS

With agreement-in-principle that Canada too must address the need to preserve and provide public access to its ever-expanding inventory of programming (now mostly born

⁷ Note that national preservation responsibilities of which the national public media service must retain its share, are addressed in Subsection II above.

digital) that constitutes the audiovisual record of our national development, comes the requirement to assign responsibility and define jurisdictions.

Decades of investment have built for this country one of the world's most effective legacy institutions, Library and Archives Canada (LAC/BAC). Already charged with responsibility for legal deposit of film and video material when independently produced with support from Telefilm Canada or the Canadian Media Fund, its current resources are stretched to the limit and clearly insufficient to permit wholesale transfer to it of a national undertaking of this scale. For this reason, the CBMF/FMCR has proposed to the Government of Canada a public/private partnership that would permit multiple levels of participation and investment in a comprehensive Canadian media repository, with LAC/BAC as the Federal lead.

Little change to LAC/BAC's enabling legislation would be required.

It already provides that **“documentary heritage means publications and records of interest to Canada”** and **“record means any documentary material other than a publication, regardless of medium or form.”**⁸ Taken together, these definitions will simplify extending LAC/BAC's institutional responsibility to the development and operation of a national media repository.

With support from the Department of National Defence and the Department of Canadian Heritage, the CBMF/FMCR is developing a proposal to transform the mothballed underground former NORAD headquarters in North Bay, Ontario into a world-class media preservation facility. An engineering assessment to determine the scope of remediation required will be undertaken this winter. If findings indicate this site is a practical option, its development could take Canada from the back of the pack to substantive leadership with a state-of-the-art media preservation facility that will safeguard the audio-visual record of our shared history. The next step will be to harness contemporary technology to ensure Canadians have permanent online access to this unique and historic national collection.

Additional background on this plan is attached in Appendix C.

VII CONCLUSION

This panel has been charged with recommending to Government the changes required to provide the legislative infrastructure on which can be constructed a contemporary communications system responsive to Canadian needs. It is a complex and challenging task that must address present day requirements as well as being readily

⁸ Interpretation section, Library and Archives of Canada Act, found at <https://laws-lois.justice.gc.ca/eng/acts/l-7.7/page-1.html#h-4>

adaptable to those unknown technological and social imperatives that will surely arise in future.

Re-**thinking details of the system's structure and the legislative changes required to** reflect 21st century realities must constantly be assessed against the fundamental role of communications in sustaining our unique culture, identity and existence as a sovereign nation in a globalized world.

In that context we have attempted to document here relevant elements of our media history, in the hope that this opportunity will allow Canada to remedy a critical gap in heritage policy as it relates to our unique system of broadcasting and communications.

The CBMF/FMCR appreciates the opportunity to participate in this process and would be pleased to provide additional information, should that be helpful.

A handwritten signature in black ink, appearing to read 'D. Thompson', with a stylized flourish at the end.

Douglas Thompson
Chair, CMMF/FMCR