



**Comments of  
OpenMedia Engagement Network  
("OpenMedia")**

**Submitted to Canadian Heritage  
Consultation on Canadian Content in a Digital World**

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*OpenMedia is a community-based organization that works to  
keep the Internet open, affordable, and surveillance free.*

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## Introduction

*“[T]he true promise of abundance was one of creating a world of possibility: a world where everyone’s days are spent dreaming and doing, not scrapping and scraping.”<sup>1</sup>*

The digital world is a world of abundance. Whether through photography, short films, web series, live performances, the written word, music, games, or art, Canadians have created all manner of *magnum opuses* out of the limitlessly renewable resource of bits and bytes of Internet data. Beyond Internet access itself, there is no admission fee, no barrier to entry, no evaluation committee to petition.

The pre-digital broadcasting world, on the other hand, is a world of scarcity. Canada’s broadcasting system, along with the broadcasting policies built into it, rests upon its historical reality of scarce spectrum and other required technology, a strict licensing regime, and centralized, high-barrier admission to key means of cultural production and public messaging.

If there is one thing that Canadian Heritage must keep top of mind in deciding the policy outcomes of this consultation, it is this fundamental distinction between the digital world and the traditional Canadian content world.

The goal of this consultation is to encourage and help “creators and cultural entrepreneurs to adapt”<sup>2</sup> to the digital world. This is a laudable initiative—so long as it does not mutate into bringing the digital world to heel for the sake of Canadian content. An outcome in which everybody wins would see the openness, accessibility, diversity, and abundance of the digital world applied to Canadian content. An outcome in which everybody but for large media conglomerates loses would see the traditionally closed, scarcity mentality of legacy cultural production injected into the digital world, by virtue of overreaching policies or misguided responses to the increasing convergence between telecommunications and broadcasting.

With a view to contributing to Canadian Heritage’s efforts to modernize Canadian cultural production, while ensuring that this modernization does not occur at the expense of connectivity and the open Internet, OpenMedia is pleased to submit its comments to this consultation. The balance of this submission is divided into two parts, as follows.

Part I addresses recent ongoing rumours of a proposed “Internet tax” that may be levied upon Internet service providers to fund Canadian content.<sup>3</sup> This would be a detrimental and short-sighted policy, that would constitute a grave error with far-reaching consequences. Not only does it lead directly into the trap described above—bringing digital access down rather than lifting Canadian cultural production up—but it would undermine or directly work against all three of the overarching principles guiding this consultation.

Part II provides a suite of alternative solutions to funding Canadian content, which would achieve the same aims without the correspondent harms that an Internet tax would bring about. This includes policies such as: applying general sales tax to foreign online services; using wireless spectrum auction proceeds (in conjunction with connectivity and reinvestment into Internet infrastructure); reinvigorating the use of benefit packages from media mergers; drawing from general tax revenues; and improving the current tax credits system. Part II also proposes a number of key ways in which Canadian Heritage can support creators, based on a report that OpenMedia crowdsourced from its extensive pro-Internet community and produced in collaboration with national experts in Internet, telecommunications, copyright, and broadcasting policy: *Our Digital Future: A Crowdsourced Agenda for Free Expression*.

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<sup>1</sup> Peter H Diamandis & Steven Kotler, *Abundance: The Future Is Better Than You Think* (New York: Free Press, 2012), at page 236.

<sup>2</sup> Canadian Content in a Digital World Consultation Paper, at page 3

<sup>3</sup> Michael Geist, “New digital taxes may be the future of Cancon”, *Globe and Mail* (12 October 2016), online: <http://www.theglobeandmail.com/report-on-business/rob-commentary/new-digital-taxes-may-be-the-future-of-cancon/article32320580>.

# Part I: The Internet Tax Is to Be Avoided at All Costs

## A. Taxing Canadian Internet Service Providers Means Taxing Canadians

Imposing a levy on Internet service providers (ISPs) to fund Canadian content would amount to imposing an Internet tax on all Canadians. ISPs will almost certainly pass any additional fees on to their customers, raising the price of what is, for many, already an unaffordable necessity to function in today's digital society.

Internet service providers could and would pass on their levies to consumers because Internet access services at the retail level are not subject to price regulation.<sup>4</sup> In fact, because ISPs have no obligation to absorb the costs of a new tax, they may consider it necessary to pass them onto their subscribers in fulfillment of the duty to their respective shareholders.

Such flow-through of additional costs to ISPs has occurred as a result of decisions by the Canadian Radio-television and Telecommunications Commission (CRTC). For instance, the *Wireless Code of Conduct* appeared to result in monthly cell phone plan prices rising to compensate for three-year contracts being cut down to two years.<sup>5</sup> In broadcasting, the CRTC's *Let's Talk TV* decision mandated that companies offer a basic cable TV package for \$25 per month; this resulted in thousands of complaints that service providers had not adhered to the law in spirit, through adding additional fees or requiring bundling with other services.<sup>6</sup>

If Canadian Heritage decided to tax Internet service providers, current regulations and past experience indicate that everyday Internet users across Canada would bear the cost, in short order. This would have a number of undesirable consequences, for Canadian Heritage as well as other crucial policies that the federal government is trying to achieve.

For instance, an Internet tax would directly conflict with the Innovation Agenda set out by Innovation, Science, and Economic Development Canada, a central part of which is ensuring affordable high-speed Internet access and the future of digital infrastructure.<sup>7</sup>

However, such a policy would also work against Canadian Heritage's own aims in this consultation, as expressed in its three overarching principles.

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<sup>4</sup> "CRTC requires telephone and cable companies to sell access to their networks to independent Internet service providers (ISPs) at regulated wholesale prices - no regulation of consumer prices." Canadian Radio-television and Telecommunications Commission, "Internet Pricing and the CRTC's Role" (17 April 2015), online: [crtc.gc.ca <http://www.crtc.gc.ca/eng/info\\_sht/t1042.htm>](http://www.crtc.gc.ca/eng/info_sht/t1042.htm).

<sup>5</sup> "CRTC's wireless cancellation policy boosts cost of basic plans: study", *CBC* (14 July 2014), online: [cbc.ca <http://www.cbc.ca/news/business/crtc-s-wireless-cancellation-policy-boosts-cost-of-basic-plans-study-1.2706027>](http://www.cbc.ca/news/business/crtc-s-wireless-cancellation-policy-boosts-cost-of-basic-plans-study-1.2706027).

<sup>6</sup> Aleksandra Sagan, "'Skinny Basic' Cable To Get CRTC Review After Complaints About Cable Companies" (24 May 2016), online: *Huffington Post* <[http://www.huffingtonpost.ca/2016/05/24/crtc-skinny-basic-review\\_n\\_10121708.html](http://www.huffingtonpost.ca/2016/05/24/crtc-skinny-basic-review_n_10121708.html)>.

<sup>7</sup> Innovation, Science and Economic Development Canada, Backgrounder, "Positioning Canada to Lead: An Inclusive Innovation Agenda" (14 June 2016) online: Government of Canada <<http://news.gc.ca/web/article-en.do?nid=1084739>>. See also Michael Geist, "Why Navdeep Bains and Melanie Joly Are on a Collision Course on Digital Policy" (18 November 2016), online: <<http://www.michaelgeist.ca/2016/11/why-navdeep-bains-and-melanie-joly-are-on-a-collision-course-on-digital-policy/>>.

## B. The Internet Tax Violates Principle #1: Focusing on Citizens and Creators

Principle #1 involves two objectives: respecting citizen choice, and supporting Canada's creators. An Internet tax would both undermine citizen choice and do a disservice to Canada's creators.

### 1. Canadian Citizens Will Fight an Internet Tax

First, an Internet tax undermines citizen choice by penalizing use of the cornerstone of unrestricted choice in today's digital world: the open Internet. Canadians will feel this penalty particularly keenly as the country currently ranks first for Internet use globally, deemed the "world's most engaged users" since 2012.<sup>8</sup> Moreover, a 2014 study by Lemay-Yates Associates Inc. made the following key finding: "Canadians state that they want more choice, more flexibility, access to more content from the US and elsewhere, and that extending the current broadcasting regulatory framework or adding new regulations or fees related to new media or online television is not welcome."<sup>9</sup>

Imposing an Internet tax would likely provoke mass public outcry, equal to if not greater than the level of ire that prompted the federal Liberal, Conservative, and NDP parties to repudiate the so-called "Netflix tax" during the 2015 Canadian federal election campaign.<sup>10</sup>

In fact, the battle over proposed Internet taxes already happened in both Hungary and Mexico—a battle that both governments lost. In Hungary, the proposed ISP levy resulted in mass protests involving thousands of citizens demonstrating in the streets, and the government withdrew it in response.<sup>11</sup>

In Mexico, a proposed 3 per cent tax on telecommunications services led to a Twitter campaign under the hashtag #InternetNecesario, spearheaded by the Internet Society Mexico Chapter. The campaign involved thousands of participants and expanded to include a website, physical demonstration, and international media coverage. This led to a live-broadcasted meeting with the Senate, who repealed the Internet portion of the telecommunications tax.<sup>12</sup>

During the usage-based billing controversy of 2011, over half a million Canadians rose up to defend their Internet access.<sup>13</sup> The extent of the outcry and public pressure resulted in then-Industry Minister Tony Clement overriding—via Twitter—the associated CRTC decision.<sup>14</sup>

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<sup>8</sup> "Desktop internet use by Canadians highest in world, comScore says", *CBC* (27 March 2015), online: <http://www.cbc.ca/news/business/desktop-internet-use-by-canadians-highest-in-world-comscore-says-1.3012666>. See also "Canada Digital Future in Focus 2015" (27 March 2015), online: comScore <<https://www.comscore.com/Insights/Presentations-and-Whitepapers/2015/2015-Canada-Digital-Future-in-Focus>>.

<sup>9</sup> Lemay-Yates Associates Inc., "The Evolution of TV and New Media in Canada" (27 June 2014), online: <<http://alphabeatic.com/wp-content/uploads/2014/09/lemay-report.pdf>>, at page 39 ["Lemay-Yates"].

<sup>10</sup> Tristin Hopper, "Stephen Harper's vow against a Netflix tax seems odd but the idea has been floating around in Canada" (6 August 2016), online: *National Post* <<http://news.nationalpost.com/news/canada/canadian-politics/stephen-harpers-vow-against-a-netflix-tax-seems-odd-but-the-idea-has-been-floating-around-in-canada>>.

<sup>11</sup> BBC News, "Hungary internet tax cancelled after mass protests" (31 October 2014), online: <<http://www.bbc.com/news/world-europe-29846285>>.

<sup>12</sup> Jossette Rivera, "México protesta distinto: en Twitter" (24 October 2009), online: *BBC Mundo* <[http://www.bbc.com/mundo/participe/2009/10/091024\\_0046\\_mexico\\_impuestos\\_twitter\\_jrg.shtml](http://www.bbc.com/mundo/participe/2009/10/091024_0046_mexico_impuestos_twitter_jrg.shtml)>; Chapter Communications, "Internet Society Mexico Chapter uses Twitter to achieve repeal of tax law on telecom services" *Internet Society*, online: [internetsociety.org](http://www.internetsociety.org/chapter-communications) <<http://www.internetsociety.org/chapter-communications>>.

<sup>13</sup> "A look back at our Stop the Meter campaign", online: [openmedia.org](https://openmedia.org/en/ca/look-back-our-stop-meter-campaign) <<https://openmedia.org/en/ca/look-back-our-stop-meter-campaign>>.

<sup>14</sup> *Ibid.*

At time of writing, over 23,000 people have signed a petition against the Internet tax that Minister Mélanie Joly is reportedly considering.<sup>15</sup> Canadians would likely not hesitate to rise up again should they feel their Internet access is once more threatened through policies that are out of touch with how they go about their lives in today's digital world.



*Hungarian citizens protesting against a proposed Internet tax on Elisabeth Bridge in Budapest (Source: Reuters, via BBC)<sup>16</sup>*

## 2. Canadian Creators Depend on Affordable Internet Access

As for supporting Canada's creators, Canadian Heritage would serve them poorly by making even more expensive one of the key and revolutionary tools of their trade: the Internet. Whether for production, distribution, inspiration, collaboration, publication, or any other aspect of creation, there is no question that Canadians who create depend on affordable high-speed Internet access as much and likely more than Canadians who consume (let alone the countless Canadians who do both). Taxing the Internet will harm Canadian creators.

First, the notion that the government could tax Internet access as a way to support Canadian creators wrongly assumes that there are no Canadian creators who operate predominantly or exclusively online. While these creators' work may not fit traditional definitions of "Canadian content" or have been eligible for funding under specific criteria, they are nevertheless creators in Canada who create content that is presumably Canadian at least in some way or form.

During a CRTC fact-finding inquiry into over-the-top programming services, the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC) noted the following:

Canadians as individual and professional producers of video content are actively participating in the digital-information sector. Limiting their access to online tools or websites that assist in their

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<sup>15</sup> OpenMedia, "Stop the Internet Tax", online: act.openmedia.org <<https://act.openmedia.org/internettax>>.

<sup>16</sup> BBC News, *supra* note 11.

production of content through rigorous regulation will not only harm online innovation, but will have the counterproductive effect of inhibiting the development of this industry.<sup>17</sup>

In 2015, the Media Technology Monitor surveyed more than 4000 Canadians, and found that one in eight who watched videos on YouTube had also contributed content to YouTube.<sup>18</sup> Unlike traditional members of the Canadian content industry, however, creators who are primarily digital—often individuals or small groups unaffiliated with any larger cultural institution—do not receive meaningful public funding compared to their film, television, and music counterparts. As Richard Stursberg stated:

[C]urrent measures are also focused almost completely on traditional platforms (TV screens and movie theatres). They fail to acknowledge that content is now much more likely to be consumed on new platforms. For younger people, YouTube, Facebook, Snapchat and other popular apps are the platforms of preference, and support should be available for Canadian content built on them. [...] For Canada's content industries to survive and thrive in the future, it is essential that the government's support measures be broadened beyond film and TV. They need to embrace all kinds of content and all the new platforms. *In the digital age, it is unwise for the government to pick cultural winners and losers.*<sup>19</sup>

Second, taxing ISPs, and thus making Internet access less affordable, will also harm traditional Canadian content and traditional creators. The web provides a platform on which to expand and build upon creators' central works on film or television, promote their work through social media,<sup>20</sup> enable goodwill and a committed base through fan art and fandom communities, or connect directly with viewers and fans. However, none of this can happen if the audience cannot afford Internet access to begin with, or has only enough data to check email but not participate in an interactive session online.<sup>21</sup>

### **C. The Internet Tax Violates Principle #2: Reflecting Canadian Identities and Promoting Sound Democracy**

Principle #2 involves ensuring that Canadian content reflects "Canada's diverse and multicultural makeup" and meets the needs of contemporary Canada. Unfortunately, the proposed Internet tax would only make this less likely to happen, by exacerbating the digital divide and entrenching the marginalization of vulnerable groups throughout the country. This would in turn weaken Canada's democracy by continuing to concentrate Canadian content, media, and cultural production in the hands of those who already have power, while high barriers remain for marginalized and under-represented voices to contribute to Canadian culture and public discourse.

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<sup>17</sup> CIPPIC Fact-Finding, Submission, Fact-Finding Exercise on the Over-the-Top Programming Services in the Canadian Broadcasting System, Broadcasting and Telecom Notice of Consultation CRTC 2011-344 (Comments of Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic), [CIPPIC Fact-Finding]. at page 4.

<sup>18</sup> Chris Powell, "Nearly 70% of Canadians Watch Youtube Monthly (Report)" (11 November 2015), online: *Marketing* <<http://www.marketingmag.ca/media/nearly-70-of-canadians-watch-youtube-monthly-report-161240>>.

<sup>19</sup> Richard Stursberg, "Cultural Policy for the Digital Age", online: [techlaw.uottawa.ca](http://techlaw.uottawa.ca) <<https://techlaw.uottawa.ca/sites/techlaw.uottawa.ca/files/culturalpolicyforthedigitalage.pdf>>, at pages 13, 26 (emphasis added).

<sup>20</sup> Lemay-Yates, *supra* note 9 at page 20.

<sup>21</sup> See also: "International online distribution is not only a nice add-on for Canadian content: in some cases, it may be critical to its success and growth. We note comments made by industry executives Leonard Asper of The Fight Network and Jay Bennet of Smokebomb regarding the importance of international online distribution. ... Asper sees the likes of YouTube, video on demand and other non-traditional content carriers as a lifesaver for a channel that might be swamped in the mainstream Canadian market. ... Three-quarters of the Fight Network's YouTube views come from outside Canada, he says – amazing considering that the channel is available in only six other countries (Turkey, Belgium, Portugal, Angola, Mozambique and on a very limited basis in the U.S. after the purchase of a fledgling fight channel there earlier this year). That allows Asper to overcome the challenges raised by what he says is a restrictive Canadian broadcasting system that favours the big players, most of whom own cable and satellite companies." *Ibid.*, at page 35.

Affordable Internet access has increasingly played a front-and-centre role in Canadian digital policy.<sup>22</sup> While 95% of the highest income quintile of Canadians have broadband Internet access, only 60 per cent of the lowest income quintile does.<sup>23</sup> Canada has some of the highest prices for wireline and wireless Internet when compared to global peers, as a recent Nordicity report demonstrated.<sup>24</sup> Meanwhile, the price of Internet access continues to rise nearly five times faster than inflation.<sup>25</sup> The Public Interest Advocacy Centre found the following in its Internet access affordability report:

About one-half of low-income respondents had to trade off other household goods or services in order to pay their communications bills—almost 1 in 5 (17%) indicated they went without other essential goods, such as food, medicine or clothing in order to pay a communications bill.

About 20% of low-income subscribers struggled to pay off their communications bills in the past year, having to make partial payments, suspend or disconnect the service, commit to a payment plan, or be referred to debt collectors.<sup>26</sup>

Adding a levy on top of the high prices that Canadians already pay for Internet access could put connectivity out of reach entirely for those who are already struggling to afford Internet service as it is.

This matters to Canadian cultural policy because such a digital divide would hit already-marginalized and under-represented groups the hardest, such as people with disabilities, Indigenous communities, and those who live in rural and remote communities. An Internet tax would make the Internet itself yet another barrier to media representation, influencing public or political discourse, contributing to Canadian culture, and otherwise activities that would make Canadian content more democratic and reflective of Canada's diversity.

For example, *Digital Technology Adoption in Remote and Northern Indigenous Communities in Canada*, described as “the most comprehensive review and analysis to date of the adoption and use of digital technologies in remote and northern Indigenous communities in Canada,” details a number of ways that these communities rely on the Internet for critical purposes. This includes activism and civic engagement such as the Idle No More movement, as well as making the rest of the country aware of the severity of food insecurity in the North.<sup>27</sup>

Despite its function as an essential service, Internet access is priced exorbitantly in northern communities, as a result of the difficulty and expense of building adequate infrastructure in the region. Some users pay up to \$500 per month for 5 mbps.<sup>28</sup> The issue of Internet affordability worsens when situated in the

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<sup>22</sup> Laurie Monsebraaten, “Anti-poverty advocates call for affordable Internet,” (2 February 2016), online: *Toronto Star* <<https://www.thestar.com/news/gta/2016/02/02/anti-poverty-advocates-call-for-affordable-internet.html>>.

<sup>23</sup> Reza Rajabiun, David Ellis & Catherine Middleton, “Literature Review: Affordability of Communications Services”, online: ryerson.ca <<http://www.ryerson.ca/~cmiddlet/ourresearch/lit-review-for-crtc-2016-affordability-rajabiun-ellis-middleton.pdf>>, at page 25.

<sup>24</sup> Canadian Radio-television and Telecommunications Commission, “5.3 International Fixed Broadband Internet Service Prices” and “6.3 International Mobile Wireless Internet Service Prices”, *2016 Price Comparison Study of Telecommunications Services in Canada and Select Foreign Jurisdictions* (11 August 2016), online: [crgc.gc.ca <http://www.crtc.gc.ca/eng/publications/reports/compar/compar2016.htm>](http://www.crtc.gc.ca/eng/publications/reports/compar/compar2016.htm).

<sup>25</sup> “As measured by the CPI [Consumer Price Index], average annual inflation in Canada was 1.1% in 2015. In comparison, from 2014 to 2015, the prices of key communication services increased by [...] 5.0% (Internet).” Canadian Radio-television and Telecommunications Commission, *Communications Monitoring Report* (8 November 2016), online: [crtc.ca.ca <http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2016/cmr.htm>](http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2016/cmr.htm), at page 12.

<sup>26</sup> Jonathan Bishop & Alysia Lau, *No Consumer Left Behind Part II: Is there a Communications Affordability Problem in Canada?* (July 2016) Public Interest Advocacy Centre, online: [piac.ca <http://www.piac.ca/wp-content/uploads/2016/09/PIAC\\_No-Consumer-Left-Behind-Part-II-Website-Version.pdf>](http://www.piac.ca/wp-content/uploads/2016/09/PIAC_No-Consumer-Left-Behind-Part-II-Website-Version.pdf), at page v.

<sup>27</sup> Susan O'Donnell, *et al.*, “Digital Technology Adoption in Remote and Northern Indigenous Communities in Canada” (Paper delivered at the Canadian Sociological Association 2016 Annual Conference, June 2016), at page 15.

<sup>28</sup> “Rural customers in the Yukon pay \$90 per month (where service is available), compared to \$63 per month for urban residents, while rural Northwest Territories residents can pay up to \$500 per month! Similarly, rural Nunavut residents

context of ongoing food insecurity in Nunavut, where a can of orange juice can cost \$26.<sup>29</sup> Adding an additional tax to Internet services on top of these frankly astonishing prices can only do harm.

As for Canadians with disabilities, affordability as well as accessibility pose major challenges when it comes to using the Internet, and by extension, viewing, creating, participating in, or being represented in Canadian content and cultural production. The CRTC recently commissioned its own Internet affordability report, which noted:

There are two main reasons for the sharp interest of the disabilities community in affordability, which helps demonstrate the complexity of the problem. On one hand, the development of accessible ICTs opens a wide range of opportunities for persons with different types of disabilities to engage in social and economic activities. Nevertheless, having a disability is itself a major factor in unemployment and low income. Individuals with severe and very severe disabilities report median incomes that are only about half of those reported by individuals with moderate disabilities or without a disability. Persons with disabilities may be more willing to pay for higher quality services because of the value these services provide, but having low (or no) disposable income makes it challenging to afford these services.<sup>30</sup> (footnotes omitted)

If Canadian Heritage is committed to Principle #2, then an Internet tax is no answer. It would most penalize marginalized Canadians who are under-represented or struggling to begin with, while simultaneously making it even more difficult for them to leverage the power of the Internet to produce Canadian content that is reflective of their interests and communities (let alone other for other purposes beyond cultural policy).

#### **D. The Internet Tax Violates Principle #3: Catalyzing Economic and Social Innovation**

Principle #3 indicates that the outcome of this consultation should, among other things, support Canada's artists, content creators, and cultural entrepreneurs in a way that encourages enterprise, contributes to Canada's Innovation Agenda, and benefits growth of the middle class. If economic and social innovation are a priority, then robust buildout and investment in high-quality, high-speed, affordable broadband Internet *must* be a priority.

It is worth noting that over \$1 billion of public funding went towards Canadian content in 2014-2015 alone.<sup>31</sup> In contrast, a mere \$500 million over the next five years was considered sufficient for broadband rollout, as indicated in the federal government's 2016 budget.<sup>32</sup> This, despite Internet access today being integral to schooling, education, research, health care, government services, socializing and connection, building relationships and communities, finances, politics, business, technological innovation, scientific discovery and academic inquiry, community or political organizing, and otherwise meaningful participation in today's digital society and economy—in addition to Canadian content and cultural creation. An Internet

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are asked to pay \$370 per month – even more than their urban counterparts in Iqaluit who already pay an astronomical \$180." Intervention of the First Mile Connectivity Consortium, TNC CRTC 2015-134, *Review of basic telecommunications services* (14 July 2015), online: <<https://openmedia.org/sites/default/files/fmcc-firstintervention-crtc2015-134.pdf>>.

<sup>29</sup> Steve Rennie, "Nunavut's food problems prompt intense scrutiny, hopes for change" *CBC* (14 December 2014), online: <http://www.cbc.ca/news/canada/north/nunavut-s-food-problems-prompt-intense-scrutiny-hopes-for-change-1.2872977>>.

<sup>30</sup> Rajabiun, Ellis & Middleton, *supra* note 23 at page 28.

<sup>31</sup> Michael Geist, "The Billion Dollar Question: How to Pay for Melanie Joly's Digital Cancon Plans" (15 November 2016), online: <http://www.michaelgeist.ca/2016/11/the-billion-dollar-question-how-to-pay-for-melanie-jolys-digital-cancon-plans/>>.

<sup>32</sup> Department of Finance Canada, "Minister Morneau Announces New Investments in Rural Broadband", News Release (29 March 2016) *Government of Canada*, online: [fin.gc.ca <http://www.fin.gc.ca/n16/16-034-eng.asp>](http://www.fin.gc.ca/n16/16-034-eng.asp).

tax would negatively impact people's ability to do all of the above, hindering growth of the middle class, creators or not.

As Canada Research Chair in Internet and E-Commerce Law Michael Geist writes,

Given its importance to virtually all aspects of modern day life, there are few policy goals more essential than ensuring that all Canadians have affordable access to the network. That goal would be badly undermined by an Internet tax that would increase consumer costs and stymie Canadian innovation.<sup>33</sup>

The Lemay-Yates study echoes this:

We believe that CRTC "got it right" in not regulating new media activities over the years and that this approach has fulfilled the objectives of the Canadian *Broadcasting Act*. Extending the current framework to new media would likely have negative impact on innovation in online content in Canada, potentially stifling the emerging activities of various organizations and initiatives, whether they are active in media now or not.<sup>34</sup>

As for economic innovation and global competitiveness, an Internet tax would hinder business growth domestically and internationally, particularly for small and medium enterprises as well as innovative start-ups. A June 2016 report by the Canadian Internet Registration Authority (CIRA) declared:

It's largely agreed that broadband access is critical, not only to the digital economy, but to the economy overall. The OECD has found that "no business today is run without the help of information and communication technologies (ICTs) and that in 2014, almost 95 per cent of enterprises in the OECD had a broadband connection." Moreover, accessibility is essential to maintaining Canada's competitive place in the global economy. "An open and accessible Internet, with high fixed and mobile bandwidth, is essential for innovation in the 21st century," the OECD has stated.

Broadband is being widely recognized as a foundational element of the digital economy. ... In its 2015 annual report card, the Conference Board of Canada recently awarded Canada a "C" grade, and ranked it ninth out of 16 countries in the OECD in the innovation category. ICT investment and connectivity are two key indicators where the majority of the country is falling behind.

Nearly two-thirds of those surveyed by CIRA and the Strategic Counsel agreed with the statement, "The Canadian government should make universal broadband Internet access a priority," noting that Internet services should be accessible to all. More than 75 per cent of respondents said, "It is critical to Canada's economic success that rural areas have fast and affordable Internet access."<sup>35</sup>

While it is not necessarily the role of this consultation nor Canadian Heritage to address innovation, economic growth, or global competitiveness outside the scope of Canadian content and cultural policy—that is exactly why the purported Internet tax would be such a disastrous approach. The tax would have consequences far beyond Canadian content, and will not even benefit Canadian content itself in the long run, nor constitute the truly adaptive and visionary reform that Canadian cultural policy needs.

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<sup>33</sup> Geist, *supra* note 31.

<sup>34</sup> Lemay-Yates, *supra* note 9 at page 2. The study also states, "Innovation and technology have always been at the centre of television broadcasting and its distribution since its inception." *Ibid.*, at page 13.

<sup>35</sup> Canadian Internet Registration Authority, *From Broadband Access to Smart Economies: Technology, skills and Canada's future* (June 2016), online: <<https://cira.ca/sites/default/files/public/Broadband-Internet-access-across-Canada-en.pdf>>, at pages 1-2.

## Part II: Solutions for Canadian Content in a Digital World

This section provides a series of recommendations for Canadian Heritage to consider implementing as a result of this consultation. They are in part drawn from the work of Michael Geist<sup>36</sup> as well as Richard Stursberg,<sup>37</sup> in addition to OpenMedia's own work in telecommunications, broadcasting, and media advocacy. This includes a signature report that OpenMedia crowdsourced from its extensive pro-Internet community and collaborated with national experts on to complete, *Our Digital Future: A Crowdsourced Agenda for Free Expression*.<sup>38</sup>

### A. Funding Canadian Content

Section A consists of alternative ways in which Canadian Heritage might fund Canadian content, that would not involve taxing the Internet—or otherwise burdening new, democratizing, and empowering digital infrastructure to subsidize an increasingly outdated or exclusionary cultural production model. Each of these options would require further research and inquiry, and are offered to demonstrate that more effective and less harmful alternatives to an Internet tax are available.

#### 1. General Sales Tax (GST and HST)

Apply the general sales tax to foreign online services operating in Canada, and direct those revenues into Canadian content. Stursberg notes that other jurisdictions have already begun doing this: "Along with the European Union, New Zealand, Australia, Norway, South Korea, Japan, Switzerland and South Africa have introduced measures to begin collecting GST or HST equivalents (VAT) on digital on-line services."<sup>39</sup> This measure would resolve a legitimate inconsistency between foreign online services and their domestic equivalents, while bringing in additional funding for Canadian content.

#### 2. Merger & Change in Control Benefits Packages

Geist states: "An oft-overlooked source of revenue, benefits packages are created where there is a change in control/merger in the communications sector. Given the number of transactions in recent years, there is a considerable amount of money currently in the system. According to some estimates, benefits packages have already provided hundreds of millions of dollars and will provide \$420 million more over the next five years. Any calculation of cultural revenues should take this source into account."<sup>40</sup>

Not only should benefits packages be taken into account, but there could be a new policy that mandates more vigorous leveraging of such mergers or changes in control to provide additional funding, particularly among large or vertically integrated media companies. Funding from such benefits should go to independent, under-served, or under-represented creators. This would redirect resources from concentrated and powerful media to more diverse and alternative creators (whether in terms of platform, community, or subject matter), which would go towards diversifying and democratizing the Canadian content system and Canadian cultural policy.

#### 3. Wireless Spectrum Auction Proceeds

Direct part of the proceeds from wireless spectrum auctions to fund Canadian content. These revenues ideally would go towards funding improved connectivity, such as rural fibre broadband. However, perhaps Canadian Heritage and ISED could create a joint connectivity and cultural production fund aimed at rural and remote communities, for instance, where a community that gets connected then also receives

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<sup>36</sup> Geist, *supra* note 31.

<sup>37</sup> Stursberg, *supra* note 19.

<sup>38</sup> [https://connectedfuture.org/sites/default/files/campaign/OpenMedia\\_OurDigitalFuture.pdf](https://connectedfuture.org/sites/default/files/campaign/OpenMedia_OurDigitalFuture.pdf)

<sup>39</sup> RSP 17

<sup>40</sup> Geist, *supra* note 31.

funding to create Canadian content, using their newly built access. This would benefit underserved communities in rural and remote regions, and advance policy objectives under both this consultation and the Innovation Agenda.

#### **4. General Tax Revenues**

Canadian Heritage could perhaps fund Canadian content out of a small portion of the general tax base. However, the success or advisability of this alternative may depend on how relevant and reflective of their experiences and communities Canadians find the ultimately reformed Canadian content system and its cultural outputs to be.

#### **5. Tax Credits**

Reform the current tax credits system for Canadian cultural production. Geist writes:

CMPTA data indicates that last year the value of federal and provincial tax credits for film and television production was over \$500 million. Tax credit programs similarly sit at the heart of support for the video game industry, where provinces compete with other jurisdictions to attract companies based on generous tax credit programs. Looking ahead, a rationalization of the tax credit system for the cultural sector is long overdue and would provide a far better sense of the full scope of taxpayer support for the industry.<sup>41</sup>

### **B. Supporting Canadian Creators**

Section B offers a list of recommendations that specifically go towards supporting creators.

#### **Recommendation #1: Support Digital, Independent, and Marginalized Creators**

Give greater institutional support to digital media and online creators, as well as independent producers and marginalized voices. This could include, for instance: funding community media centres, which would be used for both production and training; revisiting the idea of community television licenses, and giving community stations who request it more independence, with power and funding redirected accordingly from BDUs; and redirecting more funding to rural, remote, and indigenous communities, as well as any other communities who are marginalized, under-served, or under-represented in the Canadian content system or in Canadian cultural production.

#### **Recommendation #2: Creative Commons Licensing**

This recommendation would support potential creators, by taking away the fear that they may incur legal liability through incorporating another person's work. Creativity and innovation often involve remixing of raw or found materials as often as it involves creating something from whole cloth. However, lack of clarity on the legality of certain activities may result in a chilling effect on creators, particularly in a climate of increasingly strong intellectual property rights and aggressive or abusive copyright enforcement.

Creative Commons provides an internationally known set of free licenses that are accepted to have certain rights attached to them. Creators may choose one of several licenses to attach to their own work, so that upon the work being disseminated, others know precisely what they are allowed to do with the work in their own creations. Creative Commons describes its initiative as follow:

The Creative Commons copyright licenses and tools forge a balance inside the traditional "all rights reserved" setting that copyright law creates. Our tools give everyone from individual creators to large companies and institutions a simple, standardized way to grant copyright permissions to their creative work. The combination of our tools and our users is a vast and growing digital commons, a pool of

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<sup>41</sup> *Ibid.*

content that can be copied, distributed, edited, remixed, and built upon, all within the boundaries of copyright law.<sup>42</sup>

To promote innovation and encourage risk-taking in would-be creators, a new Canadian content system should require that all productions that receive public funding attach a Creative Commons license of the creator's choice to the work. This would facilitate innovative use of pre-existing material, contribute to keeping a robust and healthy public domain, and help to integrate the openness, abundance, and innovative spirit of digital media into Canadian content.

### **Recommendation #3: *Our Digital Future: Respect Creators***

In 2014, OpenMedia published *Our Digital Future: A Crowdsourced Agenda for Free Expression*. The report was a result of approximately two years of policy crowdsourcing, community engagement, digital campaigning, collaborative writing, and peer and expert review. Over 40,079 people from 155 countries participated in OpenMedia's campaign to "crowdsource a vision for sharing and creativity online". This resulted in three key recommendations: Respect Creators; Prioritize Free Expression; and Embrace Democratic Processes.

The first key recommendation, Respect Creators, breaks down into the following policy objectives:

1. Ensure creators can access new ways to share their work.
2. Promote approaches to copyright that allow creators broad scope for sharing and fair use/ fair dealing.
3. Ensure reasonable penalties for copyright infringement—those that prioritize compensation for creators.
4. Favour a rich public domain over a limited one.

The entire 68-page report is attached to the end of these comments, for completion, and in light of the fact that all three key recommendations may inform this consultation broadly. However, this recommendation would direct attention specifically to the Respect Creators chapter and the four policy objectives described above (while acknowledging that there is a *Copyright Act* review set for 2017, though also in recognition of the fact that copyright is part of the cultural policy toolbox). Together, these policies cultivate respect for creators and facilitate creation while simultaneously promoting discoverability and innovation without fear, which may result in greater risk-taking among Canadian creators.

## Conclusion

This consultation has tasked Canadian Heritage with the formidable challenge of reconciling two very different worlds: the closed, concentrated, high-barrier industry of the legacy Canadian content model; and the open, decentralized, diverse, low-barrier laboratory of the Internet and digital platforms. An Internet tax would only harm Canadians, directly conflict with at least one key ISED mandate, and hinder much of the good that the Internet enables, without benefiting Canadian content in the long run. However, there are many other options on the table, and OpenMedia encourages Canadian Heritage to move boldly into a future where everyday individual Canadians have the access, tools, and environment that enables them to be creators as well as consumers of Canadian culture and content.

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<sup>42</sup> Creative Commons, "About The Licenses: What our licenses do", online: <<https://creativecommons.org/licenses/>>.