

# Intelligence MEMOS



From: Konrad von Finckenstein  
To: The Minister of Canadian Heritage  
Date: January 5, 2017  
Re: **BYPASSING EXISTING LEGISLATION TO CREATE SUPPORT FOR CANADIAN CONTENT IN A DIGITAL WORLD**

---

Our present regime for regulating communications is based on three statutes stemming from the 80s when the concept of broadband was unheard of. Under those statutes the primary lever for furthering Canadian content is access control, a tool that is no longer meaningful or practical in the age of broadband. Subsidization and promotion of Canadian content is the only meaningful way for government to support Canadian content.

The source for Canadian content support on broadband could be a tax levied on all ISP, regardless of whether they deliver access over cable, telephone lines, wirelessly or by satellite. The tax would be on a per capita basis and not on a usage basis as the marginal costs do not increase with use but with the number of users. This will of course be passed on to users, but as the content is created for their benefit, it seems logical that they would bear the cost.

As suggested by Richard Stursberg, in “Cultural Policy for the Digital Age” the funds should be distributed in a manner that is content, producer, and platform agnostic. It would work as follows:

- Monies raised through an ISP tax go into a special fund dedicated to subsidizing or promoting Canadian digital content.
- Any producer of content delivered by broadband could apply and would receive support provided they meet objective criteria; that is, criteria that can be established by facts without the requirement for any qualitative judgment, e.g. the work was produced in Canada.
- Support would be on a point basis; the more criteria a work meets, the higher the percentage of support.
- The fund would be administered by a new agency whose task would be to establish the objective criteria (subject to approval by Order in Council) and administer the fund by the point system.
- The support would only be granted once a work is completed. This could be done by way of tax credits or tax remission.

Canadians will decide whether they like the digital content produced in Canada or by consuming it with their digital devices. Thus the tax system will reward those producers who successfully meet Canadian digital content demands.

The beauty of this approach lies in the fact that;

- the present communications regime legislation, particularly the Broadcasting Act and the Canadian support mechanisms established so far, need not be amended or dismantled;
- only one statute creating the fund, setting up the new agency and the terms of distribution is needed;
- the existing system for content support can continue as it is. It may atrophy or continue depending how quickly the distribution by broadband becomes universal;
- effectively a new system of support for digital content is established, bypassing existing legislation, institutions and support systems.

An ISP tax coupled with the distribution approach suggested above might be the way to overcome present legislative and jurisdictional hurdles respecting new approaches for Canadian content support in the digital age.

*The Hon. Konrad W. von Finckenstein, Q.C., is a Senior Fellow at the C.D. Howe Institute, and was formerly the Chair of the Canadian Radio and Telecommunications Commission, a Federal Justice, and Commissioner of Competition.*