

Intelligence MEMOS



From: Konrad von Finckenstein

To: The Minister of Canadian Heritage and Minister of Innovation, Science and Economic Development

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Re: **MODERNIZING COMMUNICATIONS LEGISLATION**

The recent budget announced the following upcoming legislative review.

“To ensure that Canadians continue to benefit from an open and innovative Internet, the Government proposes to review and modernize the Broadcasting Act and Telecommunications Act.

In this review, the Government will look to examine issues such as telecommunications and content creation in the digital age, net neutrality and cultural diversity, and how to strengthen the future of Canadian media and Canadian content creation.”

The government is to be commended for conducting a review of the broadcasting legislation and telecommunications given that the present legislation stems from the 1980's and 1990's.

There are five points to be considered if you are to achieve legislation appropriate to today's digital reality whilst respecting and furthering Canadian digital content.

1. Any review of communications has to include the *Radiocommunications Act* which presently governs spectrum management and wireless communications. All communications, regardless of mode, should be covered by one communications act. The present division between wireline, wireless and cable communications predates the digital revolution and makes no sense in the age of the internet.
2. The government has been very successful in the past in linking Canadian content to regulatory policies and deliberate subsidies. These policies were successful because spectrum was scarce and cable delivery could be controlled. With optical fiber and the Internet, scarcity is no longer an issue. Access control can no longer be used to subsidize Canadian content.
3. It is essential that any new communication legislation be based on the centrality of the Internet. It is key to our modern digital economy and any legislation should be based on the concepts of net neutrality, seamless interconnection, fair competition, prevention of abuse and protection of privacy. It should be crafted independent of any thought about Canadian content.
4. Legislation regarding Canadian digital content ought to concentrate on funding, promotion, discoverability and fair access by all creators without allowing any entity discretionary power to grant or deny. Essentially a scheme similar to tax deductions ought to be employed. Any thought of regulatory subsidy by tweaking the communication legislation ought to be abandoned. It is mostly likely unenforceable at any reasonable cost and would only undermine the efficient working of the Internet.
5. The existing overlap of ministerial responsibility is no longer required. One Minister should be responsible for content and the other for communications carriage. The only crosswalk of responsibility would be joint determination with the Minister of Finance if, and to what extent, the Internet can and/or should be taxed to support funding Canadian content.

New legislation incorporating these five points would place Canada firmly on the side of the Internet, make governmental actions relevant to the world we find ourselves in, and achieve our cultural policies more effectively.

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