

October 1, 1998

Mrs. Laura M. Talbot-Allan, Secretary General
Canadian Radio-television and
Telecommunications Commission
1 Promenade du Portage – Central Building
Hull, Québec
K1A 0N2

Dear Mrs. Talbot-Allan:

Re: **Broadcasting Public Notice 1998-82 and Telecom Public Notice 98-20
New Media – Call For Comments**

On behalf of its members, IMAT (Interactive Multimedia Arts and Technologies Association) is pleased to submit the attached submission in the above-referenced proceeding.

IMAT represents nearly 700 multimedia practitioners, with membership primarily from Ontario but including members from across Canada, and including solo producers, people who work in small, medium-sized and large corporations who are developers, content providers and other professionals who participate in the interactive multimedia production industry in Canada. IMAT's role is to act as the primary professional association for the multimedia content production industry.

IMAT has appeared before the CRTC on two previous occasions. It respectfully requests that it be invited to appear at the Public Hearing, to further expand on its members' experiences in the multimedia industry in Canada today, and to respond to any questions the Commission may have.

Sincerely,

Aurel Langlois, President, IMAT

**IMAT:
Interactive Multimedia Arts and Technologies Association**

New Media – Call For Comments

Submission to the Canadian Radio-television and Telecommunications Commission

Broadcasting Public Notice 1998-82 and Telecom Public Notice 98-20

October 1, 1998, First Phase Submission

EXECUTIVE SUMMARY

As the oldest and largest professional association representing the multimedia content production industry in Canada, IMAT is dedicated to fostering the growth, promotion and international recognition of the interactive multimedia industry in Canada.

In defining “new media”, the distinguishing factor for IMAT is the involvement of the computer to facilitate user control and interactivity of digitally stored information; this information can be presented using text, graphics, sound, animation and still or motion pictures.

New media products and services are increasingly delivered via the Internet. This has important implications with respect to global competition and considerations with respect to market entry. Canadians have demonstrated their ability to participate in this global market. The structure of the Internet and the interactivity of new media mean that distributors and producers do not have the control that is possible with respect to traditional media. This, in turn, means that regulatory control of new media is not possible according to the regulatory model used for broadcasting.

It is IMAT’s view that regulation of new media would not be effective, nor would it contribute to the cultural objectives of the Broadcasting Act. It would burden an industry at a crucial stage of its development. An enabling framework for new media should include financial support mechanisms combined with a policy focus on new media as an important national industry in a globally-targeted knowledge-based economy. Linkages between industry groups and government bodies are essential and should be strengthened to assist with the development of industry supports for development and for promotion. Industry groups, such as the umbrella group formed by IMAT and APMQ, should be actively involved in ensuring that laws with respect to privacy and offensive content on the Internet are enforced, and that necessary changes are made. New media needs to be recognized and supported as a unique cultural industry.

Currently, new media producers earn most of their revenue from the creation of fee-for-service products, with the result that they cannot earn a continuing stream of income from original content development. There is little financial strength within this fledging industry. Support is needed to ensure that the Canadian new media industry is able to produce works for the Canadian market and also to enter the competitive global markets for new media. Financial support, including tax-based incentives such as those used to support the filmed entertainment industry, to support the Canadian new media industry, is essential. Existing funding mechanisms have been appreciated by the industry, but can be extended and need to be improved.

Focus on the distribution of new media should be on producers of “meta-sites”, “gateways” or “portals” that can assist with the promotion of Canadian-produced content and the development of a Canadian distribution system for CD-ROM titles. However, again, the broadcasting model cannot be applied to the new media realm, as such distributors do not exert control over content and user choice.

Sources of Information

In this submission, IMAT refers to:

- the August 1998 “backgrounder” prepared by Omnia Research for the CRTC in this proceeding (the Omnia backgrounder);
- the March, 1998 Wall Communications Inc. study on new media prepared for Industry Canada, Canadian Heritage and the CRTC (the Wall study); and
- the February 1998 report of the “CanCon New Media Sessions” conducted by Froman and Associates with participation from IMAT, APMQ, New Media West and MediaFusion, sponsored by Stentor Resources Centre (the CanCon Sessions).

IMAT: Interactive Multimedia Arts And Technologies Association

IMAT acts as the primary professional association for the multimedia content production industry in Canada. IMAT’s members include developers, content providers and other professionals who actively participate in the interactive multimedia production industry in Canada or whose business interests give rise to less active involvement. IMAT was formed in January 1995, the result of a merger of the Canadian Computer Graphics Association and the International Multimedia Development Association. Currently representing approximately 700 multimedia practitioners and companies from all 10 provinces within Canada, IMAT is this country’s largest and fastest growing non-profit, member supported association dedicated to fostering the growth, promotion and international recognition of a world-class interactive multimedia industry in Canada.

In September 1998, IMAT and the Association des Producteurs en Multimédia du Québec (APMQ) announced their intention to establish an umbrella organization to unite multimedia producers across the country. This organization will allow the multimedia industry in Canada to represent all stakeholders and to speak with one voice on national issues.

IMAT has participated in previous CRTC proceedings on the Information Highway and on the telephone companies’ broadcasting distribution undertaking license applications. In its work on behalf of its members, IMAT has developed relationships with a number of federal and provincial government departments and has participated in a variety of consultations including those with: Heritage Canada; Industry Canada; the Department of Foreign Affairs and International Trade; Telefilm Canada; the Ontario Ministry of Economic Development; the Ontario Ministry of Trade, Culture, Tourism and Recreation; and the Ontario International Trade Corporation. IMAT is also active internationally, and has participated in discussions with multimedia organizations in the United States, Switzerland, and Britain, and has contributed material to the Geneva meetings of the World Intellectual Property Organization with respect to international copyright agreements.

Defining “New Media”

IMAT notes the working description of new media proposed by the CRTC in its public notice:

“New media can be described as encompassing, singly or in combination, and whether interactive or not, services and products that make use of video, audio, graphics and alphanumeric text; and involving, along with other, more traditional means of distribution, digital delivery over networks interconnected on a local or global scale”.

As noted by the Commission, under this description, “virtually all services found on the Internet could be considered as forms of new media”.

The Wall study referred to new media as having three essential elements: digitization, interactivity and interconnected networks. Omnia’s backgrounder noted that the principal features of new media are that: it is delivered online, typically over the Internet; available in real time or on demand; it may be interactive; and, usually, the content is available in digital form.

IMAT’s working definition for multimedia is:

“A relatively new communications medium that empowers the user by integrating the controlling and processing capabilities of computers with digitally stored information that can be presented using text, graphic, sound, animation, and still or motion pictures. The distinguishing factor for multimedia over other more traditional media is the computer involvement as a controller, manipulator and delivery platform.”

IMAT’s definition includes but is not restricted to new media materials that are delivered via the Internet. A user can interact with “stand-alone” CD-ROM applications delivered via a computer platform as well as with real-time applications delivered via a network of networks. IMAT’s definition has evolved since that used in its Survey of the Multimedia Industry in Canada in 1995:

(Interactive) Multimedia can be defined as an interactive presentation of electronic (digital) information which incorporates two or more media elements (e.g., graphics, text, animation, video or sound) for playback on a computer moderated device, whether delivered by CD-ROM or a network.

IMAT’s current definition places more emphasis than the CRTC’s definition on the elements of delivery by computer and interactivity. From the perspective of content producers, this emphasis is crucial. IMAT suggests that it is important to distinguish new media from traditional media that could otherwise be captured by very broad definitions such as that proposed by the CRTC.

Questions Posed by the CRTC's Public Notice

For the convenience of the Commission and other interested parties, IMAT's views and concerns are presented following the format of the Public Notice.

General

1. *What kinds of new media services are either currently available or can reasonably be expected to emerge in the future?*

New media products are primarily delivered via the Internet, CD-ROM and Digital Video Disc. Participants in the CanCon sessions indicated that the majority of new media producers' revenues originate from fee-for-service work for corporate clients, such as building web sites, developing interactive training programs and creating business presentations. Markets for consumer-directed products are highly developed, but are restricted by control of channels of distribution. These consumer markets include those for information services, education, entertainment and e-commerce.

The trend towards greater storage capacity and bandwidth indicates that the future will bring continued "convergence" of categories of content, as real time, broadcast quality, full motion video and sound is capable of being transmitted via computer networks. Interactive communications and traditional media will be transmitted over the same networks or "pipes", creating new opportunities and challenges for producers of works of all kinds.

These are global trends. The Internet is not constrained by national borders. It is important that the results of this CRTC proceeding and Canadian government policies generally provide support to Canadian new media producers in their efforts to access and compete for business creating interactive products in global markets, as well as to produce Canadian new media products solely for the Canadian market.

2. *How does the current industry structure contribute to the development, production, transmission, distribution and use of new media? What role might the industry play in the future in carrying out these functions?*

Currently, the majority of participants in the new media production are smaller players who are active primarily as creators of new media products and service providers. There are a few larger participants; these tend to be divisions of larger traditional media corporations. These larger players are involved in the new media industry as producers of new media content or as distributors, i.e. as Internet Service Providers (ISPs) and distributors of CD-ROM products.

As noted by Omnia's backgrounder and the CanCon Sessions, costs of providing new media content, or "publishing" on the world wide web are relatively low. This allows for distribution by content creators who would not have access to distribution under

traditional publishing or broadcasting industry models or to retail shelf space for CD-ROMs. Thus smaller companies and individuals, such as IMAT's members, have become active in the development and production of new media for Internet distribution. Encouraged by trends promising increased revenue potential from new media and its distribution, traditional telecommunications and broadcasting firms, and retailers and others interested in electronic commerce, are participating in the distribution or transmission side of the industry. In between these two industry sectors, the increase in sources of new media content has created a need for aggregators and providers of gateways, to assist users in finding information and entertainment products that meet their specific needs.

As with other industries in development phases, the new media industry is experiencing, and will continue to experience mergers and acquisitions among various industry players. As experienced new media companies grow and expand, established firms that have perceived the possibilities afforded by interactive technologies have begun to focus on new media and become more actively involved it.

3. *What are the competitive implications arising from the development, production, transmission and distribution of new media in Canada?*

On the Internet, barriers to act as new media creators and producers are low. The accessibility of new media creation and distribution technologies allows individuals and small associations and companies to have almost equal access to compete with publishers, broadcasters and other traditional creators and producers of new media works. Ease of entry into new media markets on the Internet also means that participants in one field of endeavour can transform themselves within the new media world. Manufacturers and retailers have the capability of reaching other businesses and consumers directly, without the intervention of advertising agencies, magazine and newspaper publishers and radio and television broadcasters, or traditional distributors for CD-ROM products.

The global nature of distribution of new media means that small, local participants cannot be protected from international competition by traditional regulatory barriers to competition.

The need for capital intensive transmission and distribution facilities, combined with the prospect of lucrative new markets in new media, means that established firms from the telecommunications, broadcasting and publishing sectors will enter the new media industry and have the capacity to exert market power over firms that participate only in the new media arena.

Firms in new media will tend towards serving specific niche markets, as the overall market for new media product is so diverse.

Technically, creators and producers have the capability to reach astonishing numbers of

individual businesses and consumers around the world directly. However, such access cannot be realized without very significant expenditures on marketing. This situation creates a need for new types of “intervenor”. Distributors and other aggregators of content will create portals or gateways, linking users to content created by diverse creators and available from around the world. Examples of such aggregators already exist, as search engines (e.g. Yahoo), ISPs (e.g. Sympatico) and broadcasters (e.g. the CBC) collect and organize information and entertainment products so as to become more easily accessible to specific niche markets within a mass audience. “Meta-sites” provide links to web sites that are deemed useful for specific purposes. These sites are the new media equivalent of libraries or magazine stores: they offer vast selection and organized access to information, usually combined with some original content. They are created and maintained in the interests of attracting and holding audiences that can be accessed by advertisers. Like broadcasters and publishers, these new distributors and aggregators will exert market power. Although this market power does not extend to precluding access, it could be analogous to the power of broadcasting distribution undertakings over programming undertakings or to large bookstore chains over publishers.

Accessibility to markets may also mean that companies that have traditionally relied on traditional media, such as publishing and broadcasting, in order to reach their markets, will increasingly be afforded direct access to consumers.

4. *What are the current and potential business and economic models for the development, production, transmission and distribution, use and export of new media?*

The current economic model of the new media industry was reviewed in the CanCon sessions. According to those participants, the majority of revenues earned by new media producers currently originates with fee-for-service work, such as the creation of Internet web sites, training programs and business presentations. This work is usually done on the basis that the creator retains no intellectual property rights in the work, and thus has no continuing source of income from the work.

As a “sunrise industry” there is a lack of clarity as to what appropriate business and economic models might be. This lack of clarity is related to the lack of access to capital that currently hinders the development of individual companies and the industry generally.

Although there are few barriers to distribution via the Internet, the challenge is to deploy sufficient marketing resources to ensure visibility of new media products. Access to shelf-space for products on CD-ROM in consumer markets is a difficult challenge, as noted by participants in the CanCon sessions. Many distribution channels for CD-ROMs are controlled by foreign interests rather than by Canadians.

The CanCon sessions also included discussions as to how Canada’s bilingual and multicultural make-up allows its new media industry to have increased access to global

markets for new media.

With respect to future business and economic models, participants in the CanCon sessions predicted that markets for educational products, employee training and tele-medicine training held particular promise for the future. The domestic market for educational and training products has strategic value for the new media industry, as this creates an opportunity to create materials for life-long learning and health-care for export markets as well.

IMAT urges that the lack of certainty with respect to business and economic models for the industry should not be allowed to prevent the creation of enabling frameworks and sources of financial assistance to the new media industry. The creation of original Canadian content for the new media world requires immediate support.

5. *What incentives might prompt existing and new industry participants to develop, produce, promote and distribute Canadian new media?*

As noted under our response to Question 19 below, IMAT's members and other producers of new media already have access to a number of public and private funding sources; these serve as incentives for the development, production, promotion and distribution of new media. However, it is IMAT's hope that at least some of these can become permanent sources of support.

The successful tax-based incentives for the production of Canadian film and television should be reviewed as models for the new media industry. Although direct government funding and regulated contributions by private firms would also be welcomed, IMAT's members recognize that significant assistance to the new media industry depends, in the end, on engaging private investment capital. Tax-based incentives would help to "kick-start" the industry at this crucial stage in its development.

As noted in the CanCon sessions, specific funding is needed for: research and development; prototyping and concept development; promotion and marketing; training; and retention of skilled labour. These are areas for which small, fledgling companies tend to have few internal resources.

Purpose of any Regulatory Framework

6. *Would some form of broad enabling framework serve to stimulate the economic and cultural development of a new media industry?*

In answering this question, it is important to understand that, unlike traditional media that, by their nature, are technologically limited to use for a number of specific purposes, new media serves many functions for a variety of user groups. New media utilizes graphics, alphanumeric text, video and audio and is used to inform, educate and train students and employees, to allow citizen access to various levels of government, to link

businesses and consumers to each other, to provide entertainment services and to conduct research. There is no “scarcity of spectrum”, which informs the regulatory regime in the broadcasting realm. Given the wide variations in the uses to which new media is put, determining specific regulatory goals and objectives, and developing an appropriate regulatory model would be an almost impossible task.

In addition, and perhaps most important, the global nature of the Internet which is an important transmission vehicle for new media, means that any national regulatory model would be of limited efficacy. As noted in the CanCon sessions, regulatory control has traditionally been exerted through controlling the distribution of or access to content, such as television programming. Such control is not possible with respect to products delivered via the Internet. Assuming that there would always be some differences in regulatory treatment between nations, even international efforts would not be assured of attaining any specific regulatory objectives that could be agreed to.

These considerations inform IMAT’s view that an “enabling framework” consisting of goals and objectives for the new media industry, and specifically targeted financial support mechanisms and incentives are required to build a vibrant new media industry in Canada. IMAT hopes that this is the result of the current proceeding.

It is IMAT’s view that the CRTC should not attempt to create a regulatory framework, even a broad one, for new media. Instead, IMAT suggests that the cultural policy objectives of the CRTC and of federal government generally with respect to new media could best be served broad-based incentive measures that promote new media production in both the predominant fee-for-service activities and in the creation of works for the Canadian market. To provide economic incentives for private companies to engage Canadian companies in fee-for-service work would go a long way to securing the revenue streams of emerging industry players. With secure revenue streams, companies could afford to develop products that hold promise of producing revenue on an ongoing basis, through the ownership of copyright in the works. Due to the small market for such products at this early stage of the industry’s development, private investment funding is difficult to obtain; without some additional support, Canadian new media products will only slowly be developed and made accessible to Canadians.

7. *If so, what are the elements of any such enabling framework for Canadian new media that would best ensure the continued growth and development of the sector and, at the same time, achieve the social, cultural and economic objectives of the Broadcasting Act?*

IMAT suggests that an enabling framework for new media should acknowledge two of its concerns:

- Incentives for companies to grow and prosper through the creation and distribution of new media products and services by Canadians. This includes promoting access to capital and access to markets.
- Links between industry groups across the country and between governments and

the private sector should be strengthened and supported. Policies that promote the value of interactive new media within Canada and underline its importance within a knowledge-based economy.

Existing private and public funding mechanisms need to be expanded to support the development, creation, distribution and promotion of Canadian-created new media products. As noted elsewhere in this submission, IMAT supports the use of tax-based incentives, as these serve to leverage private investment activity and to make use of the knowledge-base of those who are active in the industry, know it best, and are making their own investments of time and money.

IMAT has supported the creation and strengthening of linkages by its “national association” initiative with AMPQ and its active participation in various consultations coordinated by federal and provincial governments. IMAT has been encouraged by the financial support it received from the federal department of Human Resources Development Canada in 1997.

As noted above, it is IMAT’s view that an enabling framework for new media should not include regulation.

Some parties to this proceeding may argue that new media is capable of being “captured” by the Broadcasting Act, by virtue of technologically neutral, broadly worded definitions in s. 2 of the Act:

“broadcasting” “means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place:”

“program” “means sounds or visual images, or a combination of sounds and visual images that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text;”

“broadcasting receiving apparatus” “means a device, or combination of devices, intended for or capable of being used for the reception of broadcasting;”

If the Commission deems that this is the case, new media products would be expected to support at least some of the broadcasting policy objectives of the Act, which include: effective ownership and control by Canadians (s. 3(1)(a)), providing a public service that is essential to the maintenance and enhancement of national identity and cultural sovereignty (s. 3(1)(b)), recognition that the English and French language services operate under different conditions and may have different requirements (s. 3(1)(c)), and that it should serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada and encourage the development of Canadian expression and reflect the circumstances and aspirations of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society, and be readily adaptable to scientific and technological change (s. 3(1)(d)(i) – (iv)). It is IMAT’s view that such requirements of new media would impose a

heavy regulatory burden on a small industry in its infancy.

In the event that the CRTC decides that regulation is required with respect to new media, IMAT notes that new media is better suited to treatment under the telecommunications model rather than the broadcasting model. This is the case as much of new media is distributed in an on-demand or interactive mode of communication, between individuals or entities on an unscheduled basis. Over 80% of traffic on the World Wide Web is electronic mail that is “private conversation” equivalent to telecommunications voice traffic; as such it should be subject to analogous regulatory treatment.

8. *Would regulation of the undertakings providing these services contribute materially to, or detract from, the attainment of the objectives set out in the Broadcasting Act?*

As noted above, IMAT does not believe that regulation of new media is required for the attainment of the objectives of the Broadcasting Act or in the best interests of the industry.

Given the nature of the new media industry, both in Canada and on a global basis, it is IMAT’s view that regulation would not contribute to the attainment of Broadcasting Act objectives. Regulation would detract from such objectives by squandering scarce resources in an attempt to achieve goals that are technically impossible. Any additional administrative costs imposed on new media companies as a result of regulation would serve as a disincentive to producers of new media products and services.

Two elements of the environment for new media means that it cannot be regulated in the same way as traditional broadcasting undertakings. Interactivity means that new media consumers are not bound by program choices and schedules. Global access means that Canadian regulators cannot control user’s access to information sources.

In the CRTC’s 1995 Information Highway proceeding, IMAT stated that a transitional regulatory policy should have the following objectives:

- Avoid imposing regulatory burdens that will severely disadvantage independent developers, who are already taking high-risks in an immature and unproven market.
- Recognize the great diversity of interactive multimedia applications.
- Take a broad view of Canadian content.
- Encourage fair and equitable access to distribution networks and facilities (i.e. telephone and cable lines and the media servers that will store the content) while allowing for a competitive environment.
- Promote universal access to key information sources.
- Protect the privacy of individuals as they access information and conduct

transactions over a global network of networks.

These objectives are still important to producers of new media in Canada. IMAT hopes that they can be incorporated into an enabling framework for new media and assist in the attainment of the objectives set out in the Broadcasting Act without the regulating new media.

9. *Would the issuance of an exemption order, under the Broadcasting Act, in respect of some or all broadcasting undertakings engaged in the provision of new media products and services facilitate or hinder the achievement of the Act's policy objectives?*

As noted, it is IMAT's view that new media should not be regulated by the CRTC.

In the event that new media is deemed to consist of "broadcasting", and that accordingly, regulation is required under the Broadcasting Act, detailed regulation could be replaced with "broader" or "lighter" regulation by the mechanism of an exemption order. The Commission's policy with respect to the use of Exemption Orders is set out in Public Notice CRTC 1996-59, dated April 26, 1996. At that time, the CRTC stated that it would:

"consider issuing exemption orders for classes of distribution and network undertakings, where they will have no significant impact on the Canadian broadcasting system. In addition ... the Commission will consider issuing exemption orders applicable to those conducting technical or marketing trials of distribution and network undertakings."

With respect to programming undertakings, the Commission's policy is to exempt classes of programming undertakings where:

- (i) "it is evident to the Commission that the licensing and regulation of the class of undertaking will not result in significantly greater contribution to the Canadian broadcasting system ... and"
- (ii) it is evident to the Commission that the undertakings operating under the exemption order will not have an undue impact on the ability of licensed undertakings to fulfil their regulatory requirements."

IMAT submits that, in the event the Commission deems new media to come within the jurisdiction of the Broadcasting Act, an exemption order could be issued with respect to new media. This can be justified under the CRTC's existing policies, on the basis that: new media players "do not have a significant impact on the Canadian broadcasting system"; the regulation of new media would not "result in significantly greater contribution to the broadcasting system"; and new media creators would "not have an undue impact on the ability of licensed undertakings to fulfil their regulatory requirements."

However, see IMAT's discussion below, with respect to the difficulties inherent in crafting such an order.

10. If an exemption order would facilitate the achievement of these policy objectives, what would be the appropriate scope of such an exemption order?

Ensuring that they come within the parameters of an exemption order imposes a regulatory burden on small players who have minimal administrative resources.

Given the early stage of development of the new media industry and the difficulties inherent in defining its parameters, the appropriate scope for an exemption order would be difficult to determine at this time, and is susceptible to change in the very near future.

If the CRTC deemed that an exemption order was appropriate, a new media exemption order should exclude from the consideration as "broadcasting" products or works that are distributed via an interconnected global computer network and can be retrieved by an individual "on-demand" and have an interactive component.

11. Are there forms of Canadian new media content for which some degree of regulation would be appropriate with respect, for example, to privacy issues, offensive content (e.g. obscenity, hate propaganda, and discriminatory material), violence and gender portrayal, and advertising to children?

IMAT is aware that Canadians have become increasingly concerned about a perceived lack of privacy protection and about offensive content on the Internet. IMAT agrees that these issues should be addressed.

However, it appears to IMAT that existing laws and regulations, perhaps with modifications with respect to enforcement in the context of the Internet, are sufficient to deal with such concerns. The authors of the February 1997, Industry Canada-sponsored study, The Cyberspace is Not a No-Law Land: A Study of the Issues of Liability for Content Circulating on the Internet concluded that, although enforcement issues become more complex with respect to works distributed by the Internet, laws with respect to obscenity and pornography, hate propaganda, intellectual property protection and defamation can all be applied to new media content. It is IMAT's view that additional regulation of new media content, *per se*, is not desirable.

With respect to privacy, IMAT notes that legislation that would protect personal information in the private sector is being contemplated by Industry Canada and the Department of Justice. The two departments have established the Task Force on Electronic Commerce, which has recently consulted with consumer and industry groups. Its report, The Protection of Personal Information: Building Canada's Information Economy and Society was issued in January 1998, with comments filed in March 1998.

As noted below, industry codes, combined with enforcement of existing laws, may be sufficient to deal with problems related to offensive content on the Internet.

12. Are there issues of concern related to the production and distribution of Canadian new media that could be appropriately dealt with through self-regulatory initiatives? If so, what forms should such initiatives take?

Self-regulation could be used to assist in maximizing the production of distinctively Canadian new media through an “Alliance of Canadian Content New Media Creators” that would co-operate with private funding agencies and government bodies.

Self-regulation could address distribution issues such as violence in video-games or the “spamming” of e-mail, just as the Canadian Broadcast Standards Council and the Association of Canadian Advertisers have developed guidelines with respect to violence in programming and unsolicited advertising.

IMAT and its members are available to assist the Commission and other bodies in working to develop standards, guidelines and other mechanisms to ensure that existing laws can be better complied with in the new media context.

A variety of industry codes of conduct which could be adapted to the new media context, including those of the Canadian Association of Broadcasters (e.g. respecting sex role stereotyping and violence in television programming) and the Association of Canadian Broadcasters (respecting automatic telephone soliciting and direct mail advertising).

IMAT notes that the Canadian Association of Internet Service Providers (CAIP) has adopted a code of conduct in which members undertake to: (1) co-operate with government officials and law enforcement agencies; (2) comply with all applicable laws; (3) become involved in public education about Internet issues and technology; (4) respect and protect the privacy of their users; (5) refuse to knowingly host illegal content; (6) make reasonable efforts to investigate legitimate complaints about alleged illegal content or network abuse and take appropriate action; (7) which will involve conducting an internal review, consulting with legal counsel and outside authorities and notifying the content provider of the complaint and requesting a response within seven days. This code could serve as a model for a more broadly based new media code of conduct.

13. To the extent that new media are now, or may reasonably be expected to become, complementary or substitutable for existing broadcasting services and their distribution systems, what is the potential impact of this on the existing regulatory and policy framework, and what mechanisms could be developed that would be fair and equitable to all parties?

At this stage of the industry’s development and for the foreseeable future, new media can have little impact on traditional broadcasters and distribution undertakings. As such, no additional regulatory mechanisms need to be developed to ensure fairness and equity.

IMAT notes the considerable market power and experience of traditional broadcasters, distributors, large retailers and others who are increasingly becoming interested in participating in the new media realm. It is IMAT's view that, to the extent new media becomes complementary or substitutable for existing broadcasting programming and distribution, any concerns should be to assist smaller players that operate solely in the new media market from such market power. Players who are active solely in new media, even if they create works that are considered substitutes for traditional programming broadcast by television or radio, have such little market power that there is no need for mechanisms to ensure that broadcasters are treated fairly and equitably.

New media producers need only the opportunity to succeed in the medium that they understand. IMAT's members and other producers have mastered change and technological evolution within their industry. Given the global nature of markets for new media, support for Canadian new media in its efforts to develop a strong presence in global markets, at this crucial stage of its development, is warranted.

As noted above, the scarcity of spectrum that forms the foundation of much of the policy and regulatory perspective on broadcasting, does not exist with respect to new media. This means that any impact of new media on traditional broadcasters cannot be of the same magnitude or prompt the same regulatory approach as does competition between broadcasters in the arena of traditional television and radio broadcasting. Traditional broadcasters will have to consider the implications of this new reality as they enter new media markets and, as have new media creators and distributors, adapt to this new environment.

Support for Access by Canadian New Media Producers to Distribution

14. If access by producers of Canadian new media to distribution channels and content aggregators is an existing or potential problem that needs to be addressed, how should this be accomplished?

With respect to Internet distribution, the Omnia backgrounder refers to difficulties in distinguishing among huge numbers of web sites and the fact that this has led to the implementation of a commercial strategy, by a number of large web sites, of becoming "meta-sites", "portals" or "gateways" to the World Wide Web. This strategy can be profitable: although these sites account for 15% of Internet traffic, it earns almost 60% of revenues. It is possible that, as they gain popularity and market power, these sites could serve as gate-keepers that could either assist or exert control over individual sites and sources of new media content.

A number of Canadian sites have been active in this regard. Noteworthy among these are: Canoe; Yahoo Canada; Sympatico; Toronto Star City Search.

IMAT notes that it appears that none of the Canadian sites are yet profitable. To the extent that such sites are successful, there is a risk that they will dominate the market

and gain the ability to act as gate-keepers, thus limiting the access of smaller players to their audiences. To the detriment of independent producers of content, much of the content on these sites is developed in-house.

The global nature of the Internet, and the dominance of the world wide web by U.S.-based sites, underlies the concerns of Canadian new media producers with respect to access to distribution channels. These concerns need to be addressed in the context of the new media "world". In IMAT's view, this context requires that support for Canadian content producers be structured as tax-based incentives and other support specifically for Canadian creators, rather than by supports and regulations directed at distributors. It would be impossible to create rules analogous to the broadcasting distribution regulations, and carriage and linkage rules, or to replicate supports for simultaneous substitution, in the new media environment.

Discussions at the CanCon sessions included comments that large domestic distributors of new media (such as the Wave, Sympatico and AOL) do not sufficiently support the content services they distribute. However, Sympatico's commitment with respect to "Canadian" product, by the creation of a distinctively Canadian distribution channel was recognized.

Distribution of CD-ROM products, as noted in the CanCon sessions, is problematic for at least two reasons. First, a number of marketing problems are caused by the small size of the domestic market. Second, foreign companies control distribution channels for retail markets. Decisions with respect to titles that are stocked in many retail chain stores and included in product catalogues are often made in the United States, not in Canada. Canadian creators are thus required to develop contacts with U.S. distributors in order to gain access to the Canadian market.

15. *Are there issues of access to distribution by new media present in other countries that might impact on Canadian producers?*

The global nature of the Internet means that "national" distribution systems do not exist, and cannot be created. As such, Canadian producers of new media are forced to enter and must compete in a global market.

The Omnia backgrounder refers to the June 1998 proposal by the U.S. government to reform the Internet Domain Name System, and to concerns, internationally, with respect to the amount of control of the Internet that would remain in American hands if this proposal is accepted. IMAT shares the concerns of other owners of intellectual property that the current system of Internet Domain Names results in difficulties in enforcing rights to trade-marks and other intellectual property. In this respect, reforms would be welcomed. IMAT members share the view that the market for new media content is a global one. However, its members would encourage the development of naming and access mechanisms that assure access to the World Wide Web and the Internet generally from a Canadian perspective.

The market power of U.S.-based firms in the software industry effects Canadian producers and distributors, as American Internet search software and reference materials (such as American English-language dictionaries and encyclopaedias) are routinely made available to Canadians who purchase new hardware or upgrades. These practices disadvantage producers of equivalent Canadian software, as they must compete with “free” products that have been provided “automatically” to the consumer. Concerns with respect to the cultural implications of such practices justify that financial support be given to the distribution of Canadian-created materials.

16. What approaches to these issues might be appropriate in the Canadian context, and why?

Support for Canadian producers and distributors can come from meta-sites, aggregators and portals, as discussed above. Through such access points, Canadian consumers can be made aware of Canadian content that is available within the context of the global distribution system.

Support for producers of Canadian software and reference materials could come in the form of guidelines or financial assistance such that Canadian new media products would be provided when possible, particularly where hardware and software purchases are publicly funded, as is the case for schools and libraries.

Additional assistance could come in the form of support for increased advertising and promotion of new media products by government bodies and industry associations, such as is done to support Canadian books, magazines, television productions and films.

17. Should on-line distributors of new media in Canada be required to contribute to the production of Canadian new media products and services? If so, what impact would such a requirement have on the development of the industry generally, and on the deployment of infrastructure?

Contributions by distributors to the creation of new media works should not be addressed on the basis of the traditional broadcasting model. Although the Canadian Television Fund is a much-needed incentive to support the production of Canadian television programming, this model is not easily adaptable to the new media world, in a way that would be enforceable, given the global and interconnected nature of the Internet. Any mechanism to require or encourage distributors to contribute to the production of Canadian new media products and services would have to be formulated with the recognition that distributors of new media do not control access by users in the same way that broadcasting distributors do. However, some credit could be given to distributors of Canadian new media, with respect to their regulatory requirements for Canadian content. Any such support for the creation of new media would assist the industry at this early stage of development.

18. *Can the promotion and prominence, within Canada, of Canadian new media product be ensured? If so, how could the development and production of Canadian new media (in English, French and other languages) best be achieved, both domestically and internationally?*

Difficulties with respect to access to funding arose as a major issue of concern in the CanCon sessions. In particular, participants noted that increased funding is needed for marketing and promotion of new media services and content. This included recognition of the role of industry associations with respect to promotion; an analogy was made with the promotional activities of dairy producers. This needs to be combined with government-sponsored activity, in a way that acknowledges the important contribution of new media in a knowledge-based society.

The support of Canadian meta-sites, portals and gateways, noted above would serve to give prominence to Canadian new media products, in English and in French, in the context of the global marketplace for new media.

Financial or Other Support for the Development and Production of Canadian New Media Services

19. *What forms of support for the development and production of Canadian new media currently exist?*

A number of funds have been created specifically to support the development and production of Canadian media:

- BC Tel
- Bell New Media Fund
- Canada Council
- Canadian Independent Film and Video Fund
- MT&T Fund
- National Research Council
- Ontario
- Quebec fund
- SaskTel New Media Fund
- Stentor New Media Fund
- Telefilm Multimedia Production Assistance Fund

IMAT members have assisted with the development of criteria for the evaluation of projects for a number of these funds, and have had experience in accessing them. These funds have contributed to the development of new media products and of the industry generally. However, as always, there is room for improvement. Producers who participated in the CanCon sessions noted their appreciation of these funds, but are concerned that administrative costs serve to reduce their efficacy.

Among the many federal programs administered by Telefilm, its Multimedia Production and Publishing Assistance Fund provides assistance specifically to producers of new

media. This fund was discussed with appreciation by participants in the CanCon sessions, for its intent and general qualification criteria.

In Quebec, two of the film and television programs are available to new media producers. The Multimedia Production Tax Credit is available for 45% of eligible labour expenditures, up to a maximum of 25% of production expenses (up to 35% for multimedia titles designed for broad commercialization and available in French). The Computer Animation and Special Effects Tax Credit is available with respect to eligible labour expenditures relating to the making of computer animation and special effects which results in an increase in the rate of the tax credit for productions and film or television production services.

The Ontario Film Development Corporation administers the Ontario Film and Television Tax Credit program as well as programs targeting skills development and marketing, location and marketing services. The Ontario Computer Animation and Special Effects Tax Credit (OCASE) is a 20% refundable tax credit available for qualifying corporations on Ontario labour expenditures in respect of the production of digital animation and digital special effects to be used in film and television productions. This program does not require that the applicant be a Canadian-controlled corporation, only that a Canadian or foreign-controlled corporation has a permanent establishment in Ontario. The OCASE tax credit may be claimed in addition to tax credits received under the Ontario Film and Television Tax Credit (OFTTC), which provides assistance to film and television Canadian-controlled productions that have a permanent establishment in Ontario or the Ontario Film and Television Production Services Tax Credit (OPSTC), which is available to Canadian or foreign-controlled corporations that have a permanent establishment in Ontario. In addition, an Ontario Interactive Digital Media Tax Credit was announced in the 1998 Ontario budget. This program would provide a 20% refundable tax credit for qualifying Ontario labour expenditures incurred to create interactive digital media products in Ontario developed by a Canadian corporation that has a permanent establishment in Ontario and assets of less than \$5 million.

Ultimately, the success of such funds will be determined by their ability to engage private capital.

Grants are particularly important to ensure the production of culturally important new media products that tell Canadian stories and inform Canadians about each other, but might not be produced until they could be produced with some expectation of profit.

20. *What further forms of support, if any, for the development and production of Canadian new media might be required?*

Financial support and policy-level support from government to national new media associations (such as the new umbrella group created by IMAT and AMPQ) would assist the industry as it develops. Support for research and development and market research would be particularly welcome, as these activities are often under-funded by

small, start-up new media firms. Information that is critical to the industry and to policy makers is currently not available; the IMAT study of 1995 serves as an example of the type of information that is needed. Support for the Canadian new media industry is a strategic undertaking. The effects and uses of interactive new media affect every aspect of Canadian society. Support for the development of this industry needs to be calculated but swift.

The list of private funding bodies noted above emphasizes the involvement of telecommunications firms, and underlines the lack of support to date from traditional broadcasters. The latter should be encouraged to support the production of new media, as they become more active in this market in the future.

21. *If financial support is required, what might be the most appropriate mechanisms for delivering that support?*

As noted above, tax-based incentives that leverage private investment will be most effective. Producers who participated in the CanCon sessions noted the importance of avoiding the mistakes made with respect to tax shelter programs designed to assist Canadian film production and the R&D support program that was available with respect to software development.

Targeted support for the purchase of interactive new media products by educational and other publicly-funded institutional users of new media has been suggested as being particularly useful with respect to Canadian new media products.

Accelerated capital cost allowance depreciation could be allowed with respect to computer hardware; this would be a more indirect form of support for the new media industry.

As noted under our response to Question 19, tax credit programs in Ontario and Quebec that allow for credit and refunds for labour costs currently can be accessed by new media producers. It would be useful if those programs that are more focused on traditional media and are not currently accessible in respect of new media productions could be extended to cover new media productions.

Government loan and grant programs were supported by participants in the CanCon sessions. These could serve to provide project development "seed money" which could then be supplemented by traditional financing through equity and bank loans.

Participants in the CanCon sessions stressed the importance of having project proposals evaluated by people who have experience in the new media industry and understand how its production and distribution differs from traditional media. It is IMAT's view that this type of direct consultation with industry will continue to be crucial to the success of any initiatives directed towards new media.

22. *How have the broad issues of new media funding been approached in other countries?*
23. *Which of these approaches would or would not be appropriate in the Canadian context, and why?*

IMAT does not have special expertise with respect to approaches to new media funding in other countries and the appropriateness of such approaches in the Canadian context. It will seek out such information in preparation for the next phases of this proceeding.

24. *Is it necessary to define what constitutes a Canadian new media product or service for funding and support purposes and, if yes, what criteria should be used for doing so?*

To the extent that special financial and regulatory supports are deemed required to stimulate the production and distribution of Canadian new media products that are of cultural significance, “Canadian new media” will have to be defined. A major criterion should be that Canadian residents should have ownership of the copyright in the new media product. IMAT suggests that criteria currently used by Telefilm, CAVCO and the Canadian Television Fund could be adapted for application to the new media environment.

25. *What role, if any, should the Commission play in encouraging or requiring the provision of support for the development and production of Canadian new media?*

It is IMAT’s view that the nature of new media and the fact that it is still in its early stages of development lead to the conclusion that financial and other incentives are required and appropriate to encourage the development and production of new media.

At the present stage of its development, regulation of new media is not advisable and would serve to distract policy-makers and the industry from efforts that are needed to support Canadian new media in the context of the global competition faced by producers and distributors.

It is IMAT’s hope that the current proceeding results in an informed discussion of the new media industry as it enters a stage of expansion and maturity. This discussion should include a clear statement by the Commission that new media is not subject to the requirements of the Broadcasting Act, but is a unique new field of creative and commercial endeavour, requiring specific new mechanisms for its support.

It is IMAT’s submission that the report on the current proceeding by the CRTC should signal to the Departments of Canadian Heritage and Industry that new media is deserving of support from federal and provincial governments, industry groups and private investors. Specific mechanisms, such as tax-based incentives for new media productions and support for industry-led associations (such as the national association sponsored by IMAT and AMPQ) should be clarified in a way that they can be acted upon in the very near future, without additional examination and study by other agencies. As they have since government / industry consultations began, members of

IMAT urge the CRTC to appreciate the unique nature of the new media industry, and support it as it seeks to create products and services specifically for Canadian markets and to access the global markets that are essential to the continued success of the industry. IMAT hopes that its vision for the future of the industry is one that is shared by the Commission and asks for its assistance in realizing that vision.

IMAT wishes to thank the Commission for its interest in and support of new media, and for the opportunity to submit its comments on the Commission's questions. IMAT looks forward participating in the next stages of this proceeding.

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