

# Intelligence MEMOS



From: Konrad von Finckenstein and James Mitchell  
To: Ministers of Innovation, Science and Economic Development and Canadian Heritage  
Date: September 13, 2019  
Re: **MACHINERY OF GOVERNMENT ISSUES ARISING FROM THE REVIEW OF BROADCASTING AND TELECOMMUNICATIONS**

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In June 2018, the Government of Canada appointed a panel to review three statutes that are central to Canada's economic and cultural life – the *Broadcasting Act*, *Telecommunications Act* and *Radiocommunication Act*.

As we see it, the terms of reference erred in continuing to cast today's issues in terms of the old distinction between 'broadcasting' and 'telecommunications,' a distinction that has framed the policy and regulatory discussion for over 60 years. We believe, however, that the real question at stake here is what to do about the internet and its role in Canada's society and economy.

We believe proper recognition of the nature and importance of the internet requires new approaches to regulation and the institutional machinery for regulation.

The internet is the defining technology of our age – it underpins commerce, finance and a good deal of human interaction. It has become the principal vehicle through which culture finds expression. However, like most countries, Canada has yet to define the tools to regulate this central medium of the digital age.

Ministerial authority for telecommunications, including spectrum management, rests with the Minister of Innovation, Science and Economic Development (ISED), while responsibility for cultural matters (notably broadcasting and Canadian content) lies with the Minister of Canadian Heritage.

As these two ministers have different policy and political focus, this division of responsibilities should continue. Trying to pursue both industrial and cultural objectives from a single portfolio makes no sense.

But by the same token, assigning responsibility for these two very different domains of our national life to a single regulator (the CRTC) is illogical. Experience has shown that, inevitably, issues related to broadcasting will dominate the public agenda and therefore the work of the regulator – they are easy to understand, enjoy huge press coverage and compel attention by politicians. A common regulator means that almost everything that comes before the CRTC is viewed, even implicitly, through a broadcasting lens.

This causes telecommunications issues to receive short shrift in the CRTC as they are highly technical and systemic and not well understood nor well reported in the media. The conceptual/regulatory framework is also lacking. Inevitably the issues of cost, control and keeping out foreign competition come to the forefront, while new issues related to the internet (e.g., net neutrality, market domination through control of data) come forward slowly and timidly.

Accordingly, we propose the following division of regulatory responsibilities between broadcasting and telecommunications:

- One regulator – call it the "Canadian Communications Commission" (CCC) – should be responsible for everything involved in 'regulating' the internet. This should include traditional telecommunications and regulating and licensing the spectrum (as was suggested by the Telecommunications Review Panel in 2006). However, responsibility for policy decisions affecting spectrum (e.g., what wave lengths should be used for what purposes) should remain with the ISED.
- Regulate broadcasting issues with a focus on the funding/subsidization of Canadian content, access and discoverability. What is required for these purposes is a separate regulatory body – call it the "Canadian Media Commission" (CMC) – replacing the CRTC and devoted purely to broadcasting and the production and digital distribution of Canadian media content. A review and simplification of funding rules should be one of its priorities.
- To the extent that control over broadcasting needs to be exercised by way of taxes, contributions, mandatory Canadian content or whatever other tool chosen, this can be done by imposing those obligations on applications (e.g., Netflix) that perform broadcast streaming in Canada. Those cultural obligations need not be imposed on internet service providers that transport the content of the applications. If the apps fail to comply with the requirements imposed on them, the CMC would have the power to demand from the CCC that the apps be blocked.

Finally, there is the interplay among telecommunications, competition and privacy. At present there are three agencies – the CRTC, Competition Bureau and Office of the Privacy Commissioner – each charged with enforcing their respective Acts and subject to strict limitations in terms of data sharing and cooperation. This fragmentation of roles and activities leads to contradictory decisions, lack of cooperation and gamesmanship from affected entities. The three agencies need to cooperate through joint investigations and enforcement of each other's orders. We therefore recommend appropriate amendments to the three statutes to make collaboration possible.

As far as we can see, public debate and submissions to the panel have paid relatively little attention to the institutional machinery required to deal with new issues and with the phenomenon of the internet itself.

In offering the foregoing analysis and recommendations at this stage of the review process, our hope is the panel will look at what needs to be done to equip Canada and Canadians for the new realities of the digital information age.

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