

Cultural Policy in the time of Digital Disruption: the case of Creative Canada

Charles H. Davis (Ryerson University) and Emilia Zboralska (Ryerson University)

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Abstract: How should national cultural policies respond to the digital shift in the culture sector and creative industries? Canada recently undertook a comprehensive review of policies for Canadian content, culminating in the release of the *Creative Canada Policy Framework (CCPF)* in September 2017. In this chapter we analyse this policy framework, comparing the policy toolkit and policy objectives it incorporates with those inherited from the linear broadcasting era. Partition of the Canadian media ecosystem into a regulated domestic 'walled garden' and an unregulated digital sphere has become problematic, but the question of what are the effective political, legal, and operational bases for national jurisdiction over digital cultural content distribution on transnational Internet-based platforms remains unsettled.

Keywords: digital shift, cultural policy, cultural sector, creative industries, Creative Canada.

Introduction

In April 2016, declaring the policy toolkit inherited from the linear era a "broken model" that had become inadequate to address contemporary challenges and opportunities facing Canada's \$37B media and cultural sector, Minister of Canadian Heritage Mélanie Joly announced a comprehensive review of policies for Canadian content, the first such review in a generation. Minister Joly let it be known that "everything is on the table". The review would therefore encompass key legislation for broadcasting, telecommunications, and copyright; regulations requiring expenditures by broadcasters on Canadian content and distribution of Canadian programs on television and radio; funding bodies and programs for the book, periodical, music, and screen media industries; and key public media institutions such as the Canadian Broadcasting Corporation (CBC/Radio-Canada). A nation-wide consultation involving more than 30,000 people took place in 2016 and 2017, culminating in the release of the *Creative Canada Policy Framework* (CCPF) in September 2017 (DCH, 2017).

Insofar as cultural policy must address the production, distribution, and consumption of digital content, it is unavoidably entangled with media and telecommunications policy. Canadian and other national cultural policies that rely on the domestic broadcasting system to accomplish policy objectives are challenged by the rise of the transnational platform economy. Online content distribution is growing by leaps and bounds, audiovisual consumption is shifting away from conventional broadcasting, and foreign digital platform firms have become powerful new gatekeepers in the content distribution space. It has therefore become urgent to revise national cultural policy goals and the instruments to attain them in the context of the digital shift.

As of June 2018, many of the CCPF's policy items are in progress or in the pipeline. But a controversial issue concerning the so-called 'Netflix tax' has cast a shadow over public response to the CCPF, focusing attention on a highly contentious aspect of Canadian cultural policy: partition of the domestic media ecosystem into a regulated conventional sphere and an unregulated digital sphere. In the latter, foreign digital content distribution firms are exempted from the cultural policy responsibilities and sales taxes to which legacy domestic broadcasting firms are subject.

In this chapter we investigate how Canadian cultural policy is responding to the digital shift and its disruptive effects on the Canadian creative and cultural sector, especially the rapid emergence of powerful new foreign incumbents in the distribution of content. We first outline the legacy Canadian cultural policy framework and the policy instruments supporting it, emphasizing the centrality of broadcasting in promotion of Canadian cultural policy's goals and objectives. Second, we describe the new CCPF, comparing the cultural policy objectives and instruments it incorporates with the legacy policy framework. Third, we discuss the reception of the CCPF and the 'Netflix tax' controversy.

The centrality of broadcasting in Canadian cultural policy

Public support of cultural activities usually encompasses social and political objectives which fly the flag of cultural nationalism, notably promotion and protection of cultural identity, democratic practices, social cohesion, diversity and inclusion, community and youth engagement, and external displays of soft power (Bell and Oakley 2014, O'Brien 2013, Throsby 2010). Canadian cultural policy has been shaped especially by the ongoing sense of need to affirm and develop national identity, seeking to ensure availability of Canadian information, stories, images, and experiences in a national context in which competing content (typically American) is readily available, and where questions about the robustness of the popular sense of national identity are a recurrent source of concern (Armstrong 2016, Collins 1990, Edwardson 2008, Grant and Wood 2004, Taras 2015, Vance 2009, Wagman and Winton 2009).

In addition to cultural nationalism, cultural policy in Canada and in many other countries has developed a growing (some would say preponderant) interest in leveraging the creative and cultural industries to produce economic value. In Canada, this policy interest in the economic potential of the cultural and creative industries – what Edwardson (2008) calls cultural industrialism – emerged in the 1970s, manifesting itself in strategies and initiatives to grow employment in, and exports of, cultural goods and services. Canadian broadcasters and creative content producers have never been entirely sure whether economic or cultural objectives, or some combination of the two, meet the country's cultural policy requirements.

The Canadian broadcasting and telecommunications industry is dominated by five groups – Bell, Quebecor, Rogers, Shaw, and TELUS –, which control 83% of total combined industry revenues (CRTC 2017a). These five groups are small conglomerates with holdings in sectors such as broadcasting, telecommunications and publishing. Service bundling, restrained competition, high prices, and customer service issues have been outcomes of this high degree of market concentration and vertical integration. Revenues from telecommunications services represent about 73% of industry revenues; broadcasting accounts for most of the remainder. Growth areas are in provision of Internet and wireless services, while broadcasting revenue is largely flat. A long-standing issue in the Canadian English-language television market is the relative economic riskiness of production of domestic content in higher-cost categories, especially drama, comedy, and documentary, where it is much more expensive to produce original content than to import licensed content (especially from USA), which more reliably attracts audiences and advertising dollars.¹ It is unusual for Canadian English-language television programs to attract domestic audiences exceeding one million viewers, while imported television programs regularly do (CMPA 2018). The situation is different in French-speaking Canada, where domestic programs regularly attract audiences of two million or more in a linguistic population that is around one-third the size of the English-speaking population of Canada (Ibid.).

Canadian broadcasting policy employs a 'walled garden' policy model in which domestic firms are afforded protections, support, and privileges in return for delivery of specific cultural and social goods and services which otherwise probably would not be produced. Cultural policy objectives are spelled out in the Broadcasting Act, which considers broadcasting "a public service essential to the maintenance and enhancement of national identity and cultural sovereignty". The Broadcasting Act makes it clear that broadcasting should strengthen and develop the Canadian nation by promoting democracy, diversity, national cultural identity, and economic development through programming that reflects Canadian opinions, displays Canadian talent, and serves "the needs and interests, and reflect(s) 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 the special place of aboriginal peoples within that society" (CANADA 1991: s.3.1 d.iii). The Broadcasting Act furthermore states that the Canadian broadcasting system is to be understood as a single system in which each

element is expected to make an appropriate contribution to the overall policy objectives, and which is regulated by a single authority.

Developed from the 1970s onwards, the Canadian cultural toolkit contains a variety of policy instruments (Grant and Wood 2004). Subsidies and tax incentives are provided for production of various cultural products, and export promotion (of which film and television receive the lion's share). Broadcasters must spend a specified portion of revenue on Canadian content and air a specified amount of this content during specified periods. Furthermore, a specified portion of production expenditures must be directed to arm's length independent production firms.

Eligibility for tax credits and subsidies is determined by a points system that takes into account the nationality of key creative personnel and the location of production. A public broadcaster (CBC/Radio Canada) provides programming that is "predominantly and distinctively Canadian" across the country. In a unique policy accommodation known as "simultaneous substitution", Canadian broadcasters substitute their own local identical signals for foreign signals when both programs are being broadcast simultaneously, thereby creating a separate Canadian market for advertising. Ownership of broadcasting and telecommunications firms must remain in Canadian hands, and rules apply to foreign investments in book and periodical publishing and distribution and film distribution. Competition is managed and anti-competitive practices are frowned on. In the context of the Broadcasting Act, rules and regulations for broadcasters are made and administered by the Canadian Radio-television and Telecommunications Commission (CRTC), the arm's-length regulatory agency that reports to Parliament through the Minister of Canadian Heritage (Salter and Odarty-Wellington, 2008).

In its regulatory capacity, the CRTC monitors and tweaks the domestic broadcasting and telecommunications system. The CRTC's comprehensive annual report of the system provides a very detailed look at this walled garden, reporting trends in household expenditures on Internet and wireless services, prices, availability of broadband services, consumer behaviour such as cord-cutting and complaints, numbers of viewing hours in English-language and French-language services by genre, and the composition, financial performance, number of subscribers, expenditures on programming by ownership group, and growth rates and profit margins by subsector or even specialty channel (CRTC 2017a). In 2017, CRTC began to include information

about online television and video services.

Canadian content and the digital shift

The Broadcasting Act stipulates that the Canadian broadcasting system should be "readily adaptable to scientific and technological change". Over time, policy measures have shaped the adaptation of the Canadian broadcasting system to the waves of new distribution technologies: radio, over-the-air television, cable, satellite, broadband, and wireless (Armstrong 2016). Policy has ensured investment in production and carriage of Canadian content, and Canadian control over the domestic telecommunications system no matter what the current communication technologies.

The arrival of broadband Internet distribution severely challenges the cultural policy framework that relies, for its execution, on a regulated or walled garden domestic broadcasting system. Multipurpose transnational cloud-based digital platform services encompassing storage, processing, databases, software, and networks have emerged very quickly in a 'big bang' (Downes and Nunes 2014). These providers in the online media system tend to be "tech companies that have morphed into media, such as Google or Apple, or... hybrid 'tech-media' firms such as Netflix or Amazon" (Noam 2014: 688). Platform providers that distribute content are able to attract customers away from domestic broadcasters, cable, and satellite services on the basis of cost, choice, convenience, and personalized recommendations of playlists (Evens and Donders 2018). Cunningham and Silver (2013) call these firms "the new King Kongs" of online audiovisual distribution. Competition with them is only possible "ecosystemically, or, in other words, with a similar group of related activities" (Miguel and Casado 2016: 128), a model that national broadcaster-telecommunications firms cannot easily imitate.

The practical significance of the shift to platform power is only recently becoming apparent. Alphabet (Google), Facebook, Microsoft, Apple, and Amazon are among the top ten most valuable companies in the world by market capitalization. Google, Facebook, Apple, Amazon, Microsoft, YouTube, and Netflix are among the ten most influential brands in Canada in 2017 in terms of perceived trustworthiness, presence, being leading edge, and corporate citizenship and engagement (Ipsos 2018). Google and Facebook now capture an estimated 72% of Canada's

\$4.2B annual digital advertising market (Winseck 2017). It is forecast that in Canada by 2020, there will be more subscribers to OTT services than TV subscribers (Chhabra 2018). Although hundreds of OTT streaming services have emerged around the world, most are local, marginal, or niche players (Evens and Donders 2018). The success of Netflix has shown that a large market footprint and a catalog of premium original content are necessary ingredients in commercial success, leading to competition in high-quality OTT programming by large providers such as Amazon, DAZN, Hulu, and Netflix, with Disney, Google, Apple, CBS, and Facebook on the runway. Bidding for quality original content is expected to drive up the Canadian exhibition rights costs for Canadian broadcasters.

Few foresaw the extent to which media and content delivery industries would be disrupted and displaced by the IT industry in the space of scarcely a decade, producing a transnational media-technology system dominated by a small handful of huge, highly capitalized US-based media-technology platform firms enjoying very considerable economies of scope and scale, yielding a multitude of business opportunities as multisided markets, and offering extraordinary new capabilities that make their products and services highly attractive to consumers and advertisers. It is unlikely that digitisation of a domestic broadcaster could have produced firms such as these. Only IT-intensive firms with relentless dedication to scalability, and investment capabilities to match, could have captured this high ground (Barwise and Watkins 2018). These are "exponential" organizations in the sense advocated by Silicon Valley exponentialism – the principle that new organizations must be designed for high scalability, with a potential customer base in the hundreds of millions or more (Ismail 2014).

Disruption of core media technologies inevitably disrupts regulatory processes (Downes and Mayo 2014). Prior researchers, including ourselves (Zboralska and Davis 2017), have emphasized the uncertainty that disruption introduces when “the old [policy] instruments, like existing national mechanisms for direct support and domestic content regulations, may no longer work,” but there is lack of a “clear idea about what to replace them with” (O'Regan and Goldsmith 2006: 82). It is now clear that disruption of the regulated sphere involves introduction of a platform-based de facto regulatory regime:

Far more than with most previous industries, digital platforms are regulatory structures. Even

more than in natural monopolies (such as electric and water utilities), today's digital platforms deeply structure the rules and parameters of action available to users.

(Zysman and Kenney 2016: 62).

The major digital firms

are no longer market participants. Rather, in their fields, they are market makers, able to exert regulatory control over the terms on which others can sell goods and services. Moreover, they aspire to displace more government roles over time, replacing the logic of territorial sovereignty with functional sovereignty. In functional arenas from room-letting to transportation to commerce, persons will be increasingly subject to corporate, rather than democratic, control.

(Pasquale 2018).

As Pasquale (2018) observes, "when state authority contracts, private parties fill the gap," thereby allowing territorial governance of a policy domain to be replaced by the "functional governance" exercised by platforms, a not unlikely outcome of the eclipse of broadcast-based cultural policy by unregulated platform-based digital services.

The creation of an unregulated space for digital media originated two decades ago in Canadian cultural policy with the best of intentions. The CRTC may exempt licensees from regulations or requirements if it considers that the objectives of policy are being met without regulation. In 1998 the CRTC held extensive public consultations on what was at the time called "new media" to determine if regulation was warranted. The CRTC examined the factors that later became problematic: how to ensure investment in Canadian content in digital media? How to ensure visibility of content? What is the impact on conventional broadcasters? What are the implications for advertising revenues? It concluded that Canadian new media was flourishing and appeared to offer growth opportunities to conventional broadcasters. Therefore, there was no need to "impose any regulatory measures to support the development, production, promotion and distribution of Canadian new media content and services". The CRTC issued an Exemption Order for New Media Broadcasting Undertakings in 1999 (CRTC 1999).

In 2008, the CRTC conducted public hearings to review the new media exemption order as well as a more recent exemption order for mobile television. It sought evidence that digital media was adversely affecting conventional media industries and audiences in Canada. According to the CRTC (2009), "the majority of the parties in the Proceeding, whether content creators, broadcasters, or broadcasting distribution undertakings (BDUs), were optimistic about new

media's positive potential to affect their respective businesses, stating that new media is more of an opportunity than a threat and that it currently complements traditional broadcasting by promoting programs and services, and building audiences". Because business models were uncertain, the CRTC preferred not to levy contribution quotas on new media broadcasters. Considerable interest was expressed by participants in making Internet Service Providers (ISPs) responsible for financially contributing to Canadian content development, and by requiring ISPs to guarantee shelf space for Canadian content. ISPs resisted on the grounds that they are not broadcasters but merely transmission pipelines, an interpretation that was subsequently confirmed by the Supreme Court. Finally, the operational complexity of monitoring content on the Internet from the standpoint of the cultural and social objectives of the Broadcasting Act was apparent. The CRTC concluded it would maintain its exemption for digital broadcasting over the Internet and review the situation in five years.

In 2011 the CRTC launched a fact-finding exercise on OTT programming services in the Canadian broadcasting system. A pattern of stakeholder preferences emerged. Broadcasters argued that a level playing field required correcting the policy asymmetry that exempted OTTs from contributing to cultural policy objectives. Creator groups warned that the growth of OTT services did not justify the reduction of cultural responsibilities among licensed broadcasters, but required appropriate contributions from OTT players. In their briefs, Netflix and Google argued against regulation of OTTs. Google noted that it did not enjoy the regulatory "benefits that are handed out in the walled garden world of traditional media" – such as genre protection and simultaneous substitution – and should not be required to contribute (as cited in Anderson 2016). In 2012, the CRTC introduced some amendments to the Digital Media Exemption Order, including the requirement that digital media broadcast undertakings provide information from time to time upon request to enable the CRTC to monitor the development of digital media broadcasting.

In late 2013, at the request of the government to find ways to ensure greater choice in media, the CRTC launched the high-profile Let's Talk TV policy consultation. This consultation aimed especially to challenge the broadcasters' practice of requiring consumers to purchase bundles of specialty channels. The 2014 Let's Talk TV hearings were highly publicized, with thousands of

individuals and organized stakeholders seeking to make their views known. The national public broadcaster, the creative production community, the trade unions, and the governments of Ontario and Quebec argued in favour of adding Canadian program funding obligations and Canadian inventory obligations to OTTs. The private broadcasters questioned the digital broadcasters' exemption from cultural policy obligations, and tended to advocate reduction of cultural policy obligations on domestic broadcasters (Anderson 2016). The Let's Talk TV hearings resulted in the elimination of Canadian content quotas for daytime television, and introduced an exempt hybrid video-on-demand category to encourage the development of Canadian streaming services. The issue of governance of digital broadcasting in Canada exploded in a dramatic televised confrontation between the CRTC and the Netflix spokesperson, when the latter claimed that Netflix was not under the jurisdiction of the Broadcasting Act and declined to provide information to the regulatory agency about its Canadian audiences, revenues, or programming. Google similarly declined to provide requested information, causing the Commission to strike the written submissions of both from the public record (Zboralska and Davis 2017).

To summarize, since 1999 it is established policy in Canada to exempt digital media broadcasting from cultural policy obligations and protections. This exemption is based on the CRTC's assessment that digital media broadcasting has not materially harmed the conventional domestic broadcasting industry or prevented it from achieving the cultural policy goals set out in the Broadcasting Act; that online broadcasting and consumption of online content complement conventional broadcasting rather than substitute for it; and that digital media broadcasting therefore represents more of an opportunity than a threat.

The Creative Canada Policy Framework (CCPF): continuity and change

The consultation document, *Canadian Content in a Digital World: Focusing the Conversation* (DCH 2016), positions the emerging cultural policy as dedicated to promoting, not protecting, Canadian culture; as platform agnostic, i.e. not primarily embedded in the broadcasting system; as a driver of economic growth, not as "a social phenomenon"; as an investment in creators and cultural entrepreneurs, not a subsidy; and as outward-oriented, to capture more global market share. It proposes three principles, derived from a pre-consultation in which 10,000 Canadians

participated, as the foundation of a sort of social contract on Canadian digital content.

The first principle, focusing on citizens and creators, interprets citizenship in terms of unfettered access to digital content, leading to expression of commitment for net neutrality and an unregulated Internet:

The way forward is not attempting to regulate content on the Internet, but focusing on how to best support Canada's creators and cultural entrepreneurs in creating great content and in competing globally for both Canadian and international audiences. Grabbing a bigger piece of the global pie is critical to building a strong and viable creative sector.

(DCH 2016).

This requires finding ways to nurture and showcase Canadian creative content, and make it discoverable in the digital ecosystem through partnerships, without recourse to content quotas or spending requirements, two key instruments in the legacy cultural policy toolkit.

The second principle, "reflecting Canadian identities and promoting sound democracy," is reminiscent of the cultural-sovereignty language and cultural policy objectives expressed in the Broadcasting Act. It recognizes that diversity, inclusion, local and regional information, and Canadian perspectives are valued by Canadians as citizens. It sets a bold challenge: "a new model must incentivize viable business models that support the production of news information and local content that is credible and reliable".

The third principle, "catalyzing social and economic innovation", attributes numerous social benefits and spillovers to the domestic creative and cultural sectors, and predicts significant growth for the cultural economy: "Thirty years from now, the arts and culture will be an even bigger part of all successful economies". Once again, the solution to problems is not in domestic consumption of Canadian cultural content but in "export and international audiences [which] will be critical to the future sustainability of Canada's cultural sector and its economy".

After extensive consultations, including six regional consultative meetings across Canada, the CCPF was released in September 2017. This is a 38-page document that builds on and extends the familiar cultural industrialism strategy (Edwardson 2008) of the past, presenting itself, however, as "a new vision and approach to creative industries and to growing the creative

economy” and positioning creative and cultural activities as fundamentally linked to “the economy of the future” (DCH 2017: 5).

The CCPF is organized around the three central pillars already proposed in the consultation document, namely: investing in Canadian creators and cultural entrepreneurs, promoting the discovery and distribution of Canadian content domestically and internationally, and strengthening the Canadian public broadcaster and local news.

With respect to the first pillar – investment in creators and cultural entrepreneurs –, the new policy increases direct funding for the programs and supports that creators rely on, including the Canada Media Fund and the Canada Council for the Arts, and it also expands the media sector's access to technology-oriented programs via the Strategic Innovation Fund. Under the CCPF, the government also promises to work with Canada’s national cultural agencies to allocate more funding to Indigenous and minority language creators and programming, to programming led by women, and to digital experimentation and innovation. The government indicates that over the long term, it will also be aiming to modernize the Canada Media Fund – the principal national audiovisual programming fund, which is supported by levies on broadcasters and federal contributions – to ensure that it “has the tools and the flexibility it needs to adapt its support for the screen-based sector given the rapidly changing environment” (DCH 2017: 15).

The CCPF also aims to offer creators support through the creation of new cultural spaces, “(...) creative hubs that will help nurture and incubate the next generation of creative entrepreneurs and small business start-ups”. These hubs will encourage creators to help themselves by providing them spaces where they can “build their entrepreneurial skills, create, collaborate and innovate, and help generate new markets for Canadian creativity” (DCH 2017: 16). As regards this pillar, the CCPF also announces that the government will engage in a review of the Copyright Act.

Under the second pillar – promotion of discovery and distribution of Canadian content –, the CCPF promises to undertake a review of both the Broadcasting and Telecommunications Acts, including examining “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 reviews will also “address the digital shift and will aim to support diverse quality content and information for Canadians, as well as affordability and access to telecommunications services” (DCH 2017: 26).

The CCPF introduces a new tool into the Canadian cultural policy toolkit: partnerships with global platform firms. According to the document, the government “will seek commitments from, and pursue agreements with, global Internet companies that provide services to Canadians”. Furthermore, the government notes that it expects “these companies will be partners in, and contribute to our objectives (...) helping grow our creative industries with investments in production and distribution”. The CCPF takes a stance against imposing “new taxes on online services that will increase the cost of these services to Canadians” (DCH 2017: 26), but it is unclear whether the taxes to which it refers are cultural levies, or sales taxes (neither of which currently apply to non Canadian-owned online audiovisual services).

The CCPF makes the export of Canadian content a national priority by setting out several key initiatives, including the hiring of new trade officers, as well as devoting new funding to export-related endeavors. Under the export strategy, the government aims to “work with partners to strengthen Canada’s creative brand and its creators on the international stage” (DCH 2017: 28). The government will also be aiming to expand audiovisual co-production treaties around the world.

Under the third pillar – strengthening of public broadcasting and local news –, the government promises to update the mandate of the public broadcaster in conjunction with its review of the Broadcasting Act and Telecommunications Act, and has already made financial investments to help stabilize its funding over a five year period. On the issue of local news, the CCPF announces that the government will engage in a review and modernization of the Canada Periodical Fund which supports magazines and paid community newspapers, to “ensure that it (...) responds to industry needs”, including the possibility of funding digital-only content, which is not currently supported (DCH 2017: 33).

Regarding this third pillar, the government again invokes the use of partnerships as a cultural policy tool, announcing that it “will work with Internet companies to help jumpstart digital news innovation so Canadian journalists and news organizations are better positioned to succeed in offering Canadians local and regional news in the years ahead”. The government notes further that its “expectation is that these platforms are partners and must do more to support the creation and distribution of essential news and information” and that they “hold an important responsibility in promoting informed digital citizenship” (DCH 2017: 34).

In summary, the CCPF encompasses much of the existing cultural toolkit and promises review of the major legislative instruments, support programs, and cultural institutions. This work is ongoing. The government makes commitments to maintain or increase funding to certain key programs or institutions, notably the Canada Media Fund and CBC-Radio Canada. Organization of policy intervention into the afore-mentioned three pillars is new. Inclusion of news within the cultural policy ambit is completely new. The emphasis on cultural exports makes official what was unofficial for decades. The suggestion that partnerships, not regulation, provide the appropriate approach to transnational distributors of audiovisual content is a novel and untested approach to policy. No commitment is made to reclaim domestic market share for any genre, nor is attention given to telecom issues: access, pricing, or quality.

The reception of the *Creative Canada Policy Framework (CCPF)*

In conjunction with the release of the CCPF in September 2017, Minister Joly made a stunning announcement: Netflix had agreed to establish a production facility in Canada and committed to spending 385 million dollars on content production in Canada over five years, but without Canadian cultural policy conditions attached. This would be Netflix's first production facility outside the USA, and the first agreement of its kind. The announcement made clear that the policy story was not about regulating OTT content distributors, but of partnering with them.

Stakeholder reactions to the CCPF were mixed. Even when some responses were positive, they were restrained, owing to what was viewed as a lack of details or clear path to implementation. Two aspects of the framework generated significant controversy: the deal with Netflix, and the lack of clear support for the financially troubled traditional news media.

On the issue of Netflix, creator groups generally embraced the notion of additional spending on content made in Canada and the establishment of a physical Netflix studio on Canadian soil, but wanted to know more. According to the Directors Guild of Canada (DGC), for example, while the deal can generally be seen as a positive development because it can be taken as a signal that the government has embraced “the principle that every player in Canada has to be producing Canadian content and investing in Canadian creative talent” (DGC 2018), crucial questions still remain, namely —

Are we talking about Canadian programming, or American shows shot in Canada with American talent in all the top creative functions? How much will be in French? Is this Netflix announcement a one-off, or the first step towards a real policy?”

(DGC 2018).

Broadcaster Bell pointed out that its “total annual investment in Canadian content in 2017/18 is nine times the average amount that Netflix would contribute yearly” (Behar 2017). French-Canadian stakeholders were infuriated by the deal’s lack of clarity with respect to what proportion of the promised investment would be spent on French-language programming. Québec Minister of Culture and Communications, Luc Fortin, was “angry” and “speechless”, arguing that the federal government “abdicated” its responsibility to protect Francophone-Canadian culture, and that “we can’t rely on the invisible hand of the market to ensure that French will have its place on digital platforms,” (Fortin, as quoted in Watters and Cullen 2017).

In addition, in her speech announcing the new policy, Minister Joly (2017) commented that the government would not increase the cost of broadband services to Canadians by imposing a new tax. Whether the Minister was in that moment referring to a cultural levy or a sales tax is open for interpretation. Most creator groups and major broadcasters were angered by what they viewed as the maintenance of a two-tiered system that confers advantages on foreign businesses, keeping them exempt from cultural regulation and sales tax (Coalition for Culture and Media 2018; Lloyd 2017). The province of Québec announced that it would impose the collection of sales tax on all foreign-owned online suppliers of goods and services, including Netflix, and that it expects to recover 119 million dollars in lost revenue over five years (Tomesco and Rastello 2018). Québec is the only province to have made such an announcement. Responding to the

controversy, Minister Joly commented that sales tax is outside her jurisdiction—she is “in charge of culture” and it is the finance minister who “is in charge of taxation” (Minister Joly, as quoted in *The Canadian Press* 2017).

As mentioned above, the other aspect of the CCPF that generated substantial controversy was its lack of support for the traditional news media. While the policy recognizes local news as a pillar of its plan, Minister Joly (2017), in her announcement of the document, said that her “approach will not be to bail out industry models that are no longer viable”. Instead, the CCPF introduced a partnership between Ryerson University and Facebook to incubate digital solutions for journalism.

Generally speaking, citizen groups and journalists were outraged. Many felt the government had fatally misunderstood the predicament facing the news media. According to some commentators, traditional news media outlets have not been resistant to online transformation, rather, it is that good journalism delivered online is not sustainable due to the realities of the digital economy. As one veteran journalist, Dan Lett, pointed out, not one of global online players like Huffington Post, Snapchat, Amazon or BuzzFeed “make money” (Lett 2017). Digital advertising, “a game designed to benefit mammoth near-monopolies that control hundreds of millions of unique visitors,” could never solve the problems facing local news given the scale required to generate revenue (Ibid.).

Minister Joly later scaled down expectations around the extent of outcomes of the *Creative Canada* consultations, stating: “the reality is that we always thought that this [Creative Canada] was our transition plan... We don’t have the tools in our system right now to have a way to protect our culture on the web”, arguing that the most important work must be done at the legislative level, with the review of the Broadcasting and Telecommunications Acts (Minister Joly, as quoted in Bailey 2018).

Some industry analysts felt that the “dangerous stuff” was being pushed too far into the future (Loyd 2017), and that “there is precious little to show for the minister’s endless talk”, noting that it is unlikely that any hard decisions will be made prior to the next federal election (O’Brien

2018).

Conclusions: the new reality of cultural policymaking

The digital shift in the cultural sector, manifesting itself especially in disruption of legacy content distribution systems and associated business models, introduces a new reality into cultural policymaking. The suitability of the domestic broadcasting system as the principal vehicle for attainment of Canadian cultural policy goals is waning. But to extend the rationales and goals of legacy cultural policy to the digital realm is not straightforward. The partition of the Canadian media ecosystem into a regulated domestic 'walled garden' and an unregulated digital sphere has become problematic, but the question of what are the effective political, legal, and operational bases for national jurisdiction over digital cultural content distribution on transnational platforms remains unsettled.

The CCPF charts several imaginative new directions. Developing international demand for Canadian cultural products, providing stronger support for cultural entrepreneurs, the beginnings of a strategy to save the struggling domestic news industry, platform-agnosticism (which in Canada means unhooking the funding mechanisms from the broadcasting system), and a commitment to deliberative democracy in the extensive policy consultations that led up to the development of the policy framework – these are all positive elements. Nevertheless, they have been eclipsed by the Netflix tax issue, making cultural policy reform more of a political liability than the asset it was intended to become.

The entanglement of many policy issues makes policy agility difficult. New issues – data privacy, regulation of programmatic advertising, taxation, competition and antitrust law, and enforcement of compliance – are arising in many countries and are arguably more urgent than traditional cultural policy concerns with representation and identity, given the platforms' affordances that lend themselves to weaponization of culture. Governments' reluctance to regulate apparently diminishes when social media giants are found to have been complicit in attempted political subversion, representing an existential threat to democratic states. Privacy and disruption of elections seem to be the two new cultural policy red lines, constituting a cultural policy shift as enormous as the digital shift.

Regulatory processes, which are intended to guide the development of the market, have difficulty accommodating high-velocity change. Review of fundamental legislation such as the Broadcasting Act can take years. OTTs profit from regulatory fragmentation and accumulate political clout through their brand salience and consumer friendliness. Possible political blowback may explain why federal politicians in Canada are not eager to provoke these giants or their allies, Canadian consumer-customer-citizens.

However, in an apparent major reversal of two decades of policy, in response to an official request to examine the future of programming distribution in Canada and following another major consultative process, in late May 2018 the CRTC released a report advocating regulatory and contractual measures to induce transnational digital content distributors to embrace Canadian cultural policy objectives (CRTC 2018), thereby opening a new chapter in Canada's search for cultural sovereignty in the digital age.

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Endnotes

¹ The CRTC (2017b, chart 26) indicates that the only genres of Canadian content that produce an aggregate surplus are Sports, Lifestyle, and Reality programming in English-language services, and none in French-language services. Canadian News, Fiction, and Children's programming are consistent money-losers.