

**Executive Summary—Key Findings and Recommendations**

**Canadian Media Concentration Research Project**

**Presented to the Broadcasting and Telecommunications Legislative Review Panel**

**January 2019**

**Summary of Key Findings and Insights:**

**The Growth of the Network Media Economy in Canada, 1984-2017**

• The network media economy has more than quadrupled in size, from $19.4 billion in 1984 to $81.2 billion last year.

• mobile wireless and internet access services continue to grow briskly, with revenues rising to $25.8 billion and $11 billion, respectively, last year; while cable, IPTV and satellite TV continued to slide to $8.5 billion—a decline from all-time highs of $8.9 billion four years earlier. Wireline revenues (e.g. revenues from “plain old telephone service”) continued their long-term fall to $13.1 billion in 2017.

• the adoption and use of wireline internet access is high in Canada relative to other OECD countries, but speeds are mediocre, prices high, data usages slightly below average, and data caps extensively used and set at low levels whereas in most countries that are comparable to Canada they are rare and the cost of exceeding them not as punishingly expensive. This is important because it effects how Canadians use the internet access services available to them, including to access media and culture goods created and distributed in Canada.

• mobile wireless (i.e. the mobile internet) adoption in Canada ranks very poorly against other OECD countries. For example, Canada ranks a lowly 30th out of 36 OECD countries in terms of adoption—a drop in rank compared to other countries over the previous year. Canada also does not fare well in terms of mobile data use, either, ranking 27th out of 36 OECD countries surveyed with an average of 1.9 GB of mobile data usage per subscriber per month—well below, for example, Finland (15.5 GB), Austria (11.2GB), Denmark (5.7 GB), France (3.4GB) and the United States (3 GB). Again, this is important because it constrains how Canadians use the mobile internet access services available to them, including to access media and culture goods created and distributed in Canada.

• nearly one-in-three households in the lowest income quintile do not subscribe to a mobile wireless service, while only one-in-seven of those on the next rung up stand in the same position. By contrast, mobile wireless service is nearly universal for the most well-off in society. As such, affordability and adoption continue to be important issues in terms of a fair, just and inclusive society and such values should be registered in any new legislation that is proposed and adopted.

• the cost of media devices is plunging but the cost of communication services like broadband internet access, mobile phone and cable TV (including IPTV) continue their stubbornly long-term trend of rising briskly relative to the consumer price index.

• advertising spending has been in decline in inflation-adjusted “real dollars”, on a per capita basis, relative to the media economy, and in relation to the gross domestic of Canada for the past half-decade or so, although last year there was a reversal in fortunes. Whether that will continue, however, it is too early to tell. Last year’s reversal aside, however, on a per capita basis, it was $362 per person in 2017—down from $371 a half-decade earlier.

• TV advertising spending also peaked at $112 per capita in 2011 but fell to $86.2 last year in real dollar terms. Across the TV marketplace—broadcast TV, pay and specialty services, and streaming TV services—subscriber fees account for 62% of all revenue (excluding the CBC’s Parliamentary grant). TV remains a pillar of the internet- and mobile wireless-centric media ecology, but the ways in which it is accessed and paid for are changing.

• advertising is in relative decline, but internet advertising soared to an estimated $6.8 billion last year versus $5.5 billion the year before.

• Internet advertising is becoming more concentrated, with the top ten internet companies accounting for 85.2% of all revenue in 2017, up from 77% in 2009.

• Google and Facebook dominate the internet advertising market, with nearly three quarters of the market under their control in 2017—up from 69% a year earlier.

* The fact that Google and Facebook thoroughly dominate the $6.2 billion online advertising market in Canada is beyond dispute, but looking across total advertising spending of $13.5 billion spent across all media in Canada in 2017 reveals a more ambiguous picture. Yes, Google dominates nearly a quarter of advertising revenue spent across all media and is twice the size of the next two biggest players, Bell and Facebook. Combined, Google, Bell and Facebook form a loose advertising oligopoly, with just under half of all revenue going into their coffers and they tower over a second tier of well-known media companies respectively: i.e. Shaw, Rogers, Postmedia, Torstar, Quebecor, CBC, Transcontinental, Cogeco, the Globe and Mail and Newcap Radio. A closer look, however, reveals that the story does not run all to one side. Indeed, the fact that Bell is the second biggest recipient of advertising spending across all media, and that other leading media operators cut a substantial figure in their own right, is one observation that cuts across the grain.
* The panel can expect to hear loudly about the threat that the internet hypergiants pose from many quarters. Some of those claims will be on target. However, others will be self-serving and a distraction from the real issues at hand. For instance, whilst undoubtedly significant within the overall advertising market in Canada, there are differences in the degree of Google and Facebook’s clout in online advertising and the overall advertising market. The two must not be conflated. In fact, the advertising market as a whole is only slightly concentrated by the lights of the CR4, with the top 4 players having a 55% share; by the lights of the HHI, the advertising market is not a concentrated market at all. In most other markets, these results would be cause to celebrate while in several much larger markets where the CR4 and HHI are far higher (e.g. mobile wireless, residential internet access, television, newspapers, etc.), the dominant players brush aside their significance. The panel must remain vigilant with respect to cherry-picked data and consistency of arguments.

• Altogether, these observations with respect to advertising are critically important because they mean that the historic role that advertising has played in subsidizing commercial media and, in particular, commercial journalism is waning and will need to be countered by alternative measures given the importance of these forms of media to a democratic society.

* Such trends are also crucial because they mean that advertising-supported media are facing intensifying competition from digital platform giants such as Google and Facebook precisely at the moment when advertising spending across the economy appears to have peaked and, by several measures, is actually in decline. The upshot is that even attempts to rein in the growing consolidation of digital advertising revenue in the hands of the “digital duopoly” will likely do very little to counter these broader trends. The Panel should be leery of the many calls that it will likely hear to do just that without corresponding attention being given to this much larger and more intractable reality.
* As rivalry intensifies for shrinking advertising dollars, Canadian communication and media companies are pushing hard for new rules-of-the-road, not just in relation to concentration but also in relation to personal data protection and privacy rights. Shaw (Corus) has been a particularly vocal advocate in the call to regulators to give media companies more leeway to collect much more data—and more granular data—from audiences and subscribers so that they can better “know the audience” and, consequently, compete with the digital behemoths like Google, Facebook and Netflix. Shaw (Corus), however, is not alone on this front. In fact, all of the TV groups in Canada and, in most cases, their vertically-integrated parent companies, point to falling advertising revenue and intensifying rivalry with Netflix, Google and Facebook to push the CRTC to relax the privacy rules under which they operate, or at least to charitably interpret those rules so that they can harvest massive amounts of sensitive and personal data from people’s cable TV boxes, internet connections and mobile devices. Doing so, they say, will allow them to engage in more finely-tuned and extensive targeted, behavioural advertising, all the better to compete with the “harvest-it-all” business models of the digital platforms. Such efforts have been crystallized in the [Set-Top-Box Industry Working Group](https://crtc.gc.ca/eng/BCASTING/ann_rep/ST_AMSIWG2018.zip) under the auspices of the CRTC.[[1]](#footnote-1)
* The [Office of the Privacy Commissioner](https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2015/pipeda-2015-001/) (OPC) turned back a similar initiative—Bell’s Relevant Ad Program—in 2015. According to the OPC in that instance,

. . . . BCE’s Relevant Advertising Program’ is able to track every website its customers visit, every app they use, every TV show they watch and every call they make using Bell’s network. When that information is combined with account and demographic information—such as age range, gender, average revenue per user, preferred language and postal code – which the company has long collected, the end result is a rich multi-dimensional profile that most people are likely to consider highly sensitive.

Suitable privacy and data protection rules should ensure that what the OPC rejected in 2015 is not allowed to reappear now or in the future under a new guise.

* Rather than pursuing a race-to-the-bottom with the likes of Google, Facebook and Netflix, however, a better approach would be to create functionally equivalent data and privacy protection rules that apply across all domains of the network media economy, i.e. would be included in whatever legislation is adopted to replace the *Telecommunications Act* and *Broadcasting Act*. This would help to raise the bar for all players and would likely have the desired effect helping to level the playing field between digital platforms and other commercial media services. The current *Telecommunications Act* already includes specific language covering privacy, and such values are implicit within the concept of common carriage, but the *Broadcasting Act* does not—although the *PIPEDA* applies all the same.
* An even better approach would be to make the EU General Data Protection Regulation’s values, requirements and conditions--such as algorithmic transparency, privacy by design, depersonalized data, and data portability—applicable across all layers of the internet-centric communications, media and internet apps and services ecology—a point we will return to in our conclusion. Such aims are consistent with suggestions made by the Report of the Standing Committee on Access to Information, Privacy and Ethics (ETHI), [*Democracy Under Threat: Risks and Solutions in the Era of Disinformation and Data-opolies*](http://www.ourcommons.ca/Content/Committee/421/ETHI/Reports/RP10242267/ethirp17/ethirp17-e.pdf)*,* and Privacy Commissioner [Daniel Therrien’s Reply](http://www.ourcommons.ca/content/Committee/421/ETHI/GovResponse/RP9995236/421_ETHI_Rpt12_GR/421_ETHI_Rpt12_GR-e.pdf) to that committee. Such actions would also help to restore and cultivate trust in the emerging communications infrastructure across its full range and which is absolutely central to people’s personal life, society and the economy.
* Ultimately, however, an excessive focus on advertising is akin to looking at the media universe through the wrong end of the telescope. This is because subscriber fees outstripped advertising revenue by more than 5:1 in 2017. Indeed, the “pay-per media” (e.g. mobile phones, internet access, pay and streaming TV services) are massively more significant in terms of sheer economic size than advertising-based media (e.g. broadcast TV, internet advertising, newspapers). As advertising revenue continues to encounter significant headwinds, and even decline on some measures, this chasm will likely widen even further. The Panel’s review and proposed legislation must be firmly and explicitly grounded in this basic fact.

• Bell, Rogers, Telus, Shaw (Corus), Quebecor (Videotron), Google, Facebook, CBC, Cogeco and Sasktel are the ten largest communications and media companies in Canada by revenue, in that order. The “big 4” Canadian companies’ revenues are several times higher than the Canadian revenues of the US internet giants.

• The telcos in Canada own all the major TV services, except the CBC. This arrangement stands in contrast to those in the US, UK and most of Europe. This helps explain why broadcast TV and standalone internet streaming options have fared poorly in Canada relative to those countries.

• While advertising-support broadcast TV in Canada is in dire straits, it is important to ask why conditions are especially bad in Canada relative to other countries where, while not thriving, broadcast TV is surviving. One key reason is that there are no significant stand-alone broadcast TV services left in Canada because nearly all of them have been diagonally-integrated into pay TV service groups and *vertically-integrated* into telecommunications-centric companies. As a result, broadcast TV is compromised by loyalties split between competing as aggressively as possible for audiences and revenue (as is the case, in the US and most EU countries where there are strong, stand-alone commercial *and* public broadcasters who fight aggressively because their very existence is at stake) versus functioning as complementary (subordinate) entities within larger corporate entities whose real bread-and-butter is from specialty and pay TV services and telecommunications services, (e.g. mobile phones and internet access). Moreover, where strong, stand-alone commercial and public service broadcasters exist, the track record shows that they compete more aggressively for program rights, including in important domains like sports and other live events and have a more ambitious and timely approach to making programming available online and seeking digital advertising dollars. Broadcast TV services in Canada lag their US and European counterparts on all of these measures and, therefore, unsurprisingly fare poorly relative to them (except Italy).

* Given these realities, a stronger role for the CBC as a public service broadcaster/media providers is needed. Its funding should be increased to reflect the average of its OECD counterparts while its funding envelope should be subject to renewal every five years, similar to the BBC and other strong, independent public service media operators in the OECD, versus its current one-year funding cycle. With public trust remaining high in the CBC relative to other news, information and entertainment sources, such measures are essential in a time of growing distrust and disinformation.

• Beyond advertising-supported broadcast TV, however, the TV marketplace in Canada has done well and continues to thrive with fundamentally new pay TV sectors added to it over time, including the rapid growth of over-the-top streaming services today. Based on CMCR data, total TV revenues had soared to over $8 billion in 2017 and to an estimated $9.6 billion if we extrapolate from the CRTC’s figures for streaming, transactional video-on-demand (TVOD) and ad-based video-on-demand (AVOD) services last year[[2]](#footnote-2), although this report is skeptical of the value the Commission assigns to Netflix, Youtube and Apple’s iTunes.

• Netflix had an estimated year-over-year average of 6.6 million subscribers and $820.6 million in Canadian revenue in 2017. It is now the fifth largest TV service operator in Canada, and bigger than Quebecor’s TV operations (not including cable). At year’s end, just less than half of all Canadian households subscribed to Netflix (~49%).

* Rather than seeing Netflix as a threat to Canadian culture, however, it should be considered as making a significant contribution to the range of audiovisual choices available to Canadians. Crucially, Netflix and other internet streaming TV and transactional video-on-demand services such as Amazon Prime and Apple are also behind a massive surge of investment in the production of TV and film in Canada. Such investment has soared from $5.8 billion in 2012 to $8.4 billion in 2016—the last year for which data is publicly available. While some may demur that this is not “Canadian content”, the reality is that investment in production infrastructure and talent in Canadian cities is cultivated by such activities and becomes “fixed capital”, so to speak, that can produce audiovisual media for Canadians and the world over the long run. One of the great failings of the vertical integration experiment of the past decade is the utter failure of the resulting big four—Bell, Rogers, Shaw and Quebecor—to translate their expanded clout into new investment in original audiovisual media.

• New means of audiovisual media distribution have finally taken hold and are accelerating. Telus, Bell and SaskTel, for instance, had nearly 2.8 million IPTV subscribers between them at the end of 2017 and accounted for roughly a quarter of all cable TV subscribers and revenues. Competition between the telcos’ and cable companies’ video distribution platforms has intensified in recent years.

• Cable “cord-cutting” is real but remains modest. Total subscribers fell from 11.5 million in 2012 to 10.7 million last year. Accounting for population growth, 76% of all households subscribed to a cable television service last year--down from 85.6% in 2011.

• Fibre-based broadband infrastructure is under-developed by international standards, and access for end-users is expensive. Penetration levels are roughly half the OECD average. Canada ranked 27th out of 36 OECD countries in 2017 in terms of fibre-to-the-doorstep—the internet infrastructure of the 21st Century.

• The CRTC’s actions over the past few years responded appropriately to reality and matched those of regulators in the EU and the FCC in the US—although this has changed under the direction of the Commission’s new chair and as the regulatory framework in the US is hastily dismantled by the Trump administration’s appointed chair to the FCC, Ajit Pai.

• The impact of cord-cutting, Netflix, Google, etc. on the “broadcasting system” is real but exaggerated. Framing these factors as threats to the “broadcasting system” biases how these issues are framed, and in so doing constrains the range of media and cultural policy options on the table and how they are discussed. However, making such providers unequivocally subject to the authority of the CRTC, OPC, Canada Revenue Agency, respectively and for example, when they are engaged in “functionally equivalent” activities should be a priority. The main objectives in this regard would be not so much to further anachronistic concepts of “Canadian content” and sovereignty but, instead, pursued with an eye to ensuring the proper remittance of GST/HST, disclosing information that policy-makers, regulators, scholars, journalists and the general public need to adequately know about the scope of these companies and where they fit within Canada, and to ensure that privacy and data protection rules unambiguously apply to their operations.

• Appeals to policy makers and the CRTC to adopt an “internet levy” and to require that ISPs and mobile operators selectively use data caps and zero-rating to promote Canadian content should be treated skeptically. First, this is because there is no general crisis that needs to be responded to but rather severe woes affecting specific and important media sectors (i.e. mostly advertising-supported ones) and functions like original and professional journalism and news. The Liberal Government’s November budget announcement of $600 million in support for journalism is a step in the right direction, as was the restoration of funding to the CBC in late 2015 when the then-new Government took office (although more is needed in this respect to bring the CBC in line with its international peers, as noted earlier). Second, and most crucially, internet access and mobile wireless infrastructure are not dedicated to the distribution of TV. Instead, they are general purpose communications and information infrastructures that serve as the basis for a wide, heterogeneous and increasingly diverse range of activities across the economy, society, government and the most intimate details of our personal lives. Suggestions that TV-like content at “peak hours” now accounts for the overwhelming majority of internet traffic and that this justifies the internet levy are fundamentally misleading and should be rejected. This is because what takes place at “peak time” is not true of the day as a whole; second, there is a wide variety of audiovisual media covered by this measure, including, for example, pay TV and film content, video gaming, pornography, foreign audiovisual content, personal video content uploaded to digital platforms, etc, that having nothing to do with what is covered by the *Broadcasting Act* and which falls well outside the underlying assumptions about Canadian content and culture that inform the existing provisions in the Act. Third, there is *no* correspondence between the *volume* of traffic and the *value* of what people may be using the internet connection for. A web browser with dozens of tabs open on a wide variety of sites being used for academic purposes, to search for health information, fulfil government obligations (e.g. file taxes, apply for a passport), personal pleasure, etc.), to speak with ones friends, family, spouse or lover may have enormous value to the people involved but be dwarfed by a single Youtube video or a live CBC broadcast covering breaking news from Parliament, for example. An internet levy is a blunt tool that does not correspond to these realities or the nature of the internet.

* There are important goals related to Canadian content and culture that are the proper goal of new legislation but the Panel should focus only on targeted measures—the easiest of which is direct subsidies to the CBC, original journalism and program genres that are desired, funded by increased public dollars in line with international norms and by, for example, hypothecating the revenue raised from HST/GST and corporate income tax collected from *all* digital media companies and online platforms operating in Canada to such purposes. This will also help level the playing field between Canadian and foreign media companies and digital platforms operating in Canada but *without* tying such processes to nationalistic assumptions.

• Newspapers are in turmoil with revenue plunging from a high of $4.7 billion in 2008 to under $2.6 billion last year. Laying the blame for this state of affairs at the feet of Google and Facebook is common but ignores how self-inflicted wounds and the decline in total advertising revenue, have contributed greatly to this state of affairs.

• The number of full-time journalists has grown modestly over the long run (i.e. since 1987) but stayed fairly steady at ~11,500 for the past five years. The ratio of public relations, advertising and marketing professionals to journalists, however, has soared from four-to-one in 1987 to eleven-to-one at present. The massive disruption and woes affecting journalism are real but often exaggerated and whatever remedies are sought must by targeted and have a clear sight of the problems to be solved

• Canadians consult a wide-range of “old” and “new” as well as “domestic” and “foreign” news sources online: e.g. the CBC, Postmedia, Torstar, CTV, Globe and Mail, Huffington Post, CNN, the New York Times, Washington Post, The Guardian, the BBC, Yahoo!-ABC, etc. However, there are no “digital native” Canadian news organizations such as iPolitics on the list of the top 50 internet news sites visited by Canadians.

• The steady decline of advertising over the past half-decade or so reveals the fact that people have never paid the full-cost of a general news service. Such services have long been subsidized by wealthy patrons, advertising, or the public purse. It’s time to figure out who will pay what all over again, and while the “pay-per” model will pick up some of the slack, it won’t be enough and comes with the additional problem that it aggravates information inequality.

• Thus far, analogies to broadcasting, publishing and media companies have driven the agenda when it comes to proposing regulatory remedies to the dominance of digital platforms. This report suggests that we should think of digital platforms as being more like banks that store a new source of wealth—data, who have **a fiduciary obligation** to protect the sanctity of their users’ privacy, and whose complex machinery should be subject to regular and **regulated algorithmic and general corporate audits** to ensure accountability and that they operate in the public interest. In addition to drawing **analogies between online platforms and banks** not broadcasters, publishers or media companies to seek the above goals, we suggest two other regulatory steps based on the idea of **“functional equivalency”**: first, in the context of federal, provincial and municipal elections, existing and recently adopted **election rules apply** to broadcasters and the digital platforms alike; second, shared regulatory responsibility could be furthered by promoting the use of **Advertising Whitelists** wherein, for example, the top 10 to 100 advertisers in Canada, including all levels of government could be required to use regularly updated “whitelists” of URLs to determine where their ad dollars go instead of relinquishing control to Facebook and Google’s algorithms.

**Summary of Key Findings and Insights:**

**Media and Internet Concentration in Canada, 1984-2017**

• the top five companies—Bell, Telus, Rogers, Shaw and Quebecor—accounted for 72.5% of the $81.2 billion network media economy last year, up from 72.1% the year before;

• Bell is the biggest player in Canada by far—nearly twice the size of its closest rivals, Telus and Rogers—and it single-handedly accounted for 28% of all revenue last year—up by one percent from a year earlier;

• TELUS emerged as the second largest communications and media company in Canada for the first time last year;

• mobile wireless is very highly concentrated with Rogers, Telus and Bell accounting for 92.3% of the sector’s revenue in 2017—up slightly from the year before and reflecting Bell’s acquisition of MTS;

• new entrants Shaw (Freedom) and Videotron’s share of the market ticked upwards to 4.7% in 2017—up from 4.1% the year before;

• the least concentrated mobile wireless market in Canada is in Quebec, where Videotron had 13% market share by revenue and 15% based on subscribers at the end of 2017—which is up by a 1.3% on the basis of revenue and steady based on subscriber share;

• incumbent telephone and cable companies accounted for 87% of the residential retail internet access market in 2017 (i.e. Bell, Rogers, Shaw, Telus, Videotron, Cogeco, Eastlink and SaskTel).

• the quick pace of IPTV growth over the past half-decade means that the “cable monopoly” is long gone. A tight duopoly persists, however, and local markets are extremely concentrated by the standards of the HHI;

• the number of Canadian households with a cable TV subscription fell to 76.1% last year, down from 85.6% at its high point six years ago, but those losses have been largely offset by price increases for cable TV and broadband internet access that have outpaced the consumer price index by large margins;

• combined, Bell and Shaw (Corus) accounted for nearly half of the entire television universe (e.g. television distribution and services) by revenue and possessed a total of 130 television stations and services between themselves in 2017;

• there was a steep rise in TV concentration between 2010 and 2014 but the spin-off of some pay TV services by Bell and Shaw (Corus) and the rise of Netflix and other OTT services has helped turn the tide. The “big 5” TV operators’ took 82% of all TV revenue (including internet streaming) last year—down from 86.3% in 2014 and with a very big change insofar that Netflix has replaced Quebecor as the 5th largest TV operator in the country;

• Netflix’s had estimated revenue of $820.6 million in Canada last year—up sharply from $635 million the year before. It now accounts for 10% of the $8.1 billion TV marketplace in Canada (although just 1% of total revenue across the network media economy as a whole);

• smaller TV operators such as DHX, Stingray, Blue Ant, Channel Zero, APN, V Interactions and CHEK have benefitted from some new openings as well as the divestiture of TV services by bigger players like Bell and Shaw (Corus) However, their combined market share in 207 was far less than Astral Media’s share alone on the eve of its take-over by Bell in 2013 (7.6%);

• Canadians get their news from a wide plurality of internet news sources, both old (CBC, Postmedia, Toronto Star, CTV) and new (Huffington Post, Buzzfeed), as well as domestic and foreign (BBC, Yahoo!-ABC, Guardian, New York Times);

• The scale of vertical integration amongst the “big 4” vertically-integrated giants in Canada more than doubled from 2010 to 2013—and stayed at the very high level ever since. In 2017, Bell, Rogers, Shaw (Corus) and Quebecor accounted for 56% of the $81.2 billion industry—in the US, in contrast, after the AT&T take-over of Time Warner earlier this year, four vertically integrated companies’ accounted for just over a third of that country’s $1,405 billion (CDN) network media economy;

• diagonal integration is where mobile wireless, wireline, ISPs and BDUs are owned by one and the same player, and is extensive in Canada as well, whereas in many countries there are stand-alone mobile network operators (MNOs), such as T-Mobile or Sprint in the US, or 3 in the UK, and Vodafone in many countries. The last standalone mobile wireless company in Canada–Wind Mobile–was acquired by Shaw in 2016;

• vertical and diagonal integration tend to dampen competition between different ‘modes of communication’, raise prices, limit the size of monthly data caps, promote the use of zero-rating schemes that challenge the precepts of net neutrality (i.e. common carriage), etc. The use of data caps and zero-rating turns carriers into editors, or gatekeepers, and tilts the ‘model’ of the evermore internet- and mobile wireless-centric media universe towards a logic of integration, control and “walled gardens” vs “the open internet”;

• in recent years, the CRTC had rediscovered media concentration and taken steps to do something about it in a series of landmark rulings: e.g. its Mobile TV, Talk TV, regulated wholesale mobile wireless and wireline decisions, and the “zero-rating” decision in 2016 that girded the already strong “Net Neutrality” framework in Canada. Common carriage (or “net neutrality”) is crucial in a context where high levels of vertical integration obtain, although it does not turn on the point. The key question today is about the direction of the Commission under its current chair, Ian Scott, but already evidence is mounting that the Commission will take a far less assertive stance under its new chair than it did under the last one.

**Summary of Key Recommendations:**

**Presentation to the Senate Standing Committee on Transport and Communications**

1. Rather than adopting a single “convergence” act, separate acts should be kept for common carrier services like mobile wireless and internet access, on the one side, and another act created that combines audiovisual media and, to a limited extent, internet content services and digital platforms, on the other. Harmonizing the two existing laws risks putting the incompatible aims of each act at war with one another inside one act. The centerpiece of the Telecommunications Act – common carrier principles – for example, aims to prevent carriers from discriminating between different sources of content of the same type and from exercising editorial control over content while the Broadcasting Act explicitly requires BDUs to do both in order to give preference to Canadian content and the goals of section 3 of the Act.

2. Eliminate section 28 of the Telecommunications Act so that it cannot be made subordinate to the objectives of the Broadcasting Act.

3. Breathe new and vigorous life into section 36 of the Telecommunications Act by firmly separating control over the infrastructure from influence over the messages/content flowing through the pipes/ether, and people’s uses of carrier services. The line between carriage and content should be sharpened and hardened. Proposals to put a levy on ISPs and mobile phones to fund Canadian content should also be rejected. While the entrenched clients of broadcasting system never cease to promote “the ISP tax”, this proposal clashes with the idea that the internet is a general purpose communications infrastructure that supports many activities that go well beyond the distribution of audiovisual media. It also clashes with the 2012 Supreme Court of Canada ruling that rejected the idea that internet access service providers can be treated as BDUs under the Broadcasting Act. Attempts to do otherwise, as in the CRTC’s recent Harnessing the Future of Television Distribution cut against these realities and, if adopted, would serve to prolong “a systems” view of the world that conceals a labyrinth of cultural policy funds flowing from one pocket to another, often between divisions within the vertically-integrated companies, and which independent audiovisual media providers find so troublesome. Three values should animate the idea of common carriage: First, don’t discriminate: telcos and ISPs are carriers not editors or broadcasters, a principle also endorsed by Supreme Court. Second, limit the extent to which internet access is leveraged to pursue other goals, i.e. don’t use internet access as a chokepoint through which broadcasting policy goals are sought (e.g. Fairplay). Third, respect people’s privacy since, historically, common carriage has simultaneously functioned as a check against gate-keeping power while maintaining strict privacy for the correspondence flowing through such networks.

4. Impose vertical separation along functional lines between carriage and content, and between wholesale access to passive network infrastructure and network operators and retail telecoms service providers. While the CRTC has already adopted a Vertical Integration Code, it is limited in scope, and it is riddled with other short-comings: first, the fact that it takes an ex post stance means that the burden is on those typically in a weaker position having to lay a complaint against the party to whom they will still be dependent on for distribution. Second, bringing complaints to the CRTC is expensive and time consuming. Third, the rules of disclosure are weak, with would-be rivals and the Commission dependent on the VI firms for the information needed to effectively regulate those firms.

In fact, the outsized role played by vertically integrated firms in Canadian communications markets—the extent of the situation is unique to Canada—should warrant specific consideration as the legislation is reviewed. Vertically integrated firms may act in ways and according to incentives that cause conflict between competing policy goals, as is the case with the ongoing attempts to institute website blocking to further copyright aims. Perhaps the most important thing to do in light of conditions in Canada is to ensure that control over distribution networks and programming services is not used to kill or otherwise stifle rivals, or competition more broadly. The tools needed to do this are already in sections 27, 28, 35 and 36 of the Telecommunications Act (1993), but regulatory hesitancy needs to be overcome to realize their full potential.

5. Transfer authority over spectrum from ISED to CRTC; take advantage of the CRTC’s expertise in communications regulation and reject proposals to transfer jurisdiction to the Competition Bureau and all-purpose competition policy because the Bureau acts with a view to relatively narrow economic considerations rather than those of communication, culture and democracy that are essential to this area (although continue to have the two agencies work closely together).

6. Eliminate the category of broadcast distribution undertakings (BDUs) upon which the cable, satellite and IPTV sector rests. It’s all telecom-internet access and carriage now. The equivalent amount of funds now funneled into the CMF by the BDUs should be taken directly out of the general treasury.

7. Make the European Union’s General Data Protection Regulation-like values, requirements and conditions--such as algorithmic transparency, privacy by design, depersonalized data, and data portability—applicable across all layers of the internet-centric communications, media and internet apps and services ecology. GDPR style regulations would enhance protection and control of personal information and align Canada with its EU trading partner. Increased audit powers for the Office of the Privacy Commissioner would put it in a position similar to that of the UK Privacy Commissioner who had the power to obtain a warrant that allowed it to seize the servers and audit the business records of Cambridge Analytica. Such enhanced powers would also include greater enforcement powers and AMPs (Monetary Penalties) for the OPC. A national data strategy aligned across the layers of the internet-centric media ecology would enhances the use of data by Canadians for Canadians, too, rather than allow such data to be controlled by a few vertically integrated providers and dominant internet platforms that are able to exploit unlimited data harvesting and their data holdings to buttress their existing positions of power/dominance. These actions would help to restore and cultivate trust in the emerging communications infrastructure across its full range and which is absolutely central to people’s personal life, society and the economy. The goal is to flesh out and update the privacy aspects of common carriers to match current realities; apply broadly similar values and regulatory standards to broadcasting, which currently remains silent on privacy; and apply such standards to “content aware” internet platforms like Facebook, Google and other internet intermediaries along the lines suggested by the Report of the Standing Committee on Access to Information, Privacy and Ethics (ETHI) [*Democracy Under Threat: Risks and Solutions in the Era of Disinformation and Data-opolies*](http://www.ourcommons.ca/Content/Committee/421/ETHI/Reports/RP10242267/ethirp17/ethirp17-e.pdf) and Privacy Commissioner [Daniel Therrien’s Reply](http://www.ourcommons.ca/content/Committee/421/ETHI/GovResponse/RP9995236/421_ETHI_Rpt12_GR/421_ETHI_Rpt12_GR-e.pdf) to the ETHI Committee’s Review of the Personal Information Protection and Electronic Documents Act (see p. 7, in particular).

8. Subsidies: We need to bring subsidies for broadband connectivity into line with funding for the CBC and Canadian content. The CBC receives $36 per person per year, or $1.1 billion. About three-quarters of that amount again is earmarked to meet broader arts and culture policy objectives through other national institutions. Broadband subsidies, by contrast, are a comparative pittance at roughly $2.25 per person per year. It is doubtful that Canadian citizens would chafe at upping that amount to somewhere between what Sweden spends on broadband subsidies ($5 per person per year) and the CBC ($36 per person per year).

Any bid to pare back the CBC and other arts and culture funding should be dismissed out of hand. At a time of growing distrust and disinformation, a strong, independent and well-resourced public service media operator like the CBC is needed more than ever. People have never paid the full costs of news and culture, and this is why it has been sustained by subsidies from advertising, governments and wealthy patrons throughout modern history. We need to consider subsidizing independent journalism in ways that do not just go directly into the pockets of the existing broadcasting and newspaper groups that have driven the press into the ground through endless consolidation, inflated asset values, unsustainable debts and faulty visions of the future that imagined them at the centre of the internet universe, while failing to anticipate the rise of entities like Google, Facebook and so forth. How this can be done effectively is hard to say, but for starters, we can take some cues from a recent study by the Reuters Institute and Oxford and Yale universities that concludes that tax laws in Canada are amongst the poorest they studied when it comes to mobilizing philanthropic support for the press. The Liberal Government’s November budget announcement of $600 million in support for journalism is a step in the right direction, as was the restoration of funding to the CBC in late 2015 when the then new Government took office. In simple terms, the CBC’s annual funding should be brought in line with, at least, the average of its international peers. Currently, CBC annual funding is roughly $36 per Canadian per year compared to $113 in the UK, $126 in Sweden, $143 in Germany and, at the high of the scale, $180 in Norway. The average is around $90 across the OECD countries. In addition, the CBC’s funding envelope should be granted in multi-year installments, for example, five years, as is the case in the UK to aid its mid-term planning capacity and to increase its political autonomy from the government of the day.

**Conclusion**

The findings and recommendations provided above stem from the CMCRP’s comprehensive, historical, and systematic analysis of the Canadian network media economy. The reports that underpin these observations have been submitted to the Panel, and it is our hope that they will assist in the development of concrete and progressive recommendations. The empirical datasets that serve as the foundation for our research and analysis are open-source, and can be found online at http://www.cmcrp.org/media-industry-data/.

1. The group consists of Shaw (Corus), Bell, Rogers, Quebecor, Sasktel, Telus, TekSavvy, the CBC, Blue Ant Media, Cogeco, Eastlink, Pelmorex, the Canadian Cable Systems Association and Independent Broadcasters Group. While this gives the appearance that the effort levels the playing field, the obvious exclusion of Netflix, for example, gives the lie to that and, thus, smacks of protectionism—if in fact, the group and its goals were desirable to begin with it, which is a questionable proposition to say the least. [↑](#footnote-ref-1)
2. Which, unfortunately, is necessitated by the fact the CRTC has yet to publish this data for 2017 despite this being early 2019 and, moreover, has yet to publish a unified and coherent *Communications Monitoring Report*—a first in the twenty or so years that this report and its predecessors have existed. [↑](#footnote-ref-2)