

Update

Communications

June 5, 2009

CRTC Extends Exemption of New Media Broadcasters

Yesterday, the Canadian Radio-television and Telecommunications Commission (CRTC) released Broadcasting Regulatory Policy 2009-329: *Review of broadcasting in new media* (the Decision). Unlike traditional television and radio broadcasting services, broadcasting services that are delivered and accessed over the Internet or received by mobile devices (new media broadcasters) had been exempted by the CRTC from licensing and other regulatory requirements of the *Broadcasting Act*. The CRTC had conducted a proceeding to examine, among other things, whether these exemption orders warranted revision or elimination.

In the Decision, the CRTC concluded that currently, regulatory intervention remains unnecessary; accordingly, it determined that it will continue to exempt new media broadcasters.

In a notice of consultation accompanying the Decision (with comments due July 6), the CRTC published for comment the following proposed amendments to the existing new media exemption order:

- *Wireless providers* - the definition of new media broadcasting undertaking will be expanded to encompass all Internet based and mobile point-to-point broadcasting services.
- *Reporting requirement* - in order to provide the CRTC with the information necessary to

review and develop policy in this area, new media broadcasters will be required to report details of their activities, possibly including broadcasting content usage and offerings, revenues and expenditures (specific reporting requirements and affected undertakings to be determined pending the consultation process).

- *Undue Preference Prohibition* – given that many new media broadcasters have ownership interests in content providers, new media broadcasters will be prohibited from conferring an undue preference on themselves or another person, or subjecting any person to an undue disadvantage in the course of their new media broadcasting activities.

In other key determinations:

- the CRTC declined to impose any levy on Internet service providers (ISPs) to fund the production of Canadian content;
- the CRTC announced that, in order to determine whether ISPs are subject to the exemption orders, including the new conditions, it will refer to the Federal Court of Appeal the question of whether ISPs, when they provide access to broadcasting content, are broadcasting undertakings within the meaning of the *Broadcasting Act*; and
- the CRTC called for a national digital strategy, under which the Federal government would develop a “coordinated approach” to ensure Canada will compete and prosper in a rapidly evolving digital environment.

The CRTC has indicated it expects to conduct its next review of the new media exemption orders within the next five years.

Goodmans^{LLP} Update

If you would like to know more about this matter or have any questions with respect to the foregoing, please do not hesitate to contact any member of our Communications Law Group.

Rob Malcolmson

rmalcolmson@goodmans.ca 416.597.6286

Michael Koch

mkoch@goodmans.ca 416.597.5156

Monique McAlister

mmcalister@goodmans.ca 416.597.4255

Peter Ruby

pruby@goodmans.ca 416.597.4184

Dina Graser

dgraser@goodmans.ca 416.597.6288

Clare Roughneen

croughneen@goodmans.ca 416.597.5921