Industry Context

2011–2012: A Multiscreen Audiovisual Universe

It's been a bumper-crop year of new developments in the multimedia industry. Content production, broadcasting and distribution firms have resolutely pursued migration to the digital environment to keep pace with consumer trends.

The TV broadcasting sector is increasingly exploring and improving its integration of various multiplatform production and distribution strategies. The concepts of transmedia production and convergent packages are becoming industry norms. In this context, the stakes related to performance and listening audience measures are critical. Collecting valid data and establishing a standard, industry-wide content measure are expected to top the list of concerns for multimedia firms.

The impressive proliferation of tablets, chiefly the iPad, was without question a defining development of the past months. According to recent OPA data, 85% of Americans now multitask while watching TV. Surveys further confirm that North Americans and Europeans use TV and other screens simultaneously. These findings point to a bright future for Second Screen strategies. Similarly, social media, especially Twitter and Facebook (with penetration rates in Canada of 14.3% and 47%, respectively), are beginning to intertwine with TV content, laying the groundwork for new opportunities to interact with audiences. In fact, with respect to TV-related social media use in prime time, the Second Screen Society reported a 193% increase over the previous year.

The entry of new players in the content production industry has had a major impact on the ecosystem, creating a more global market and not a little uncertainty with respect to future business models. Initiatives announced this year include YouTube's US $100 M investment in original content, the launch of their first original series (*Lilyhammer* and *Battleground*) by both Netflix and Hulu, and Amazon's plans to commission original content to enhance its offering. Although the impact of these initiatives is currently restricted to the US market, the intention of these players to compete in the wider digital distribution space of audiovisual content is clear. For Canadian consumers accessing some of these channels online, the growth in content offerings shows no sign of slowing down in the months ahead. The market influx of connected devices (including Smart TV) will fuel demand even more for content of this nature.

New financing models

Another noteworthy trend is the growth of new funding models, crowdfunding in particular, which has moved from marginal to mainstream for production companies. The US platform Kickstarter made headlines again this year, mainly for enabling video game companies to fund projects that exceed the $1 M threshold. We'll be keeping ongoing tabs on the stance and regulatory framework adopted by Canadian financing agencies and authorities with regard to these new funding mechanisms.

Key Industry Developments

Terms of Trade Agreement

In June 2011, a Terms of Trade Agreement between the Canadian Media Production Association and Astral, Bell Media (CTV), Corus, Rogers and Shaw Media came into effect. The agreement covers many aspects of the relationship between English-language independent producers and the signatory broadcasters. Key areas covered by the deal include development and evaluation, licensing conditions, editorial control, licence term, rights, equity, producer tax credits, and timeframe and administration.

Key Government Policy Developments

In May 2010, the federal government announced its intention to develop a multi-year digital economy strategy for Canada. The CMF was identified as the content arm of this strategy. In 2011–2012, progress was maintained towards the release of the strategy with two significant developments: copyright modernization and the release of a report on federal support to research and development.

Copyright Modernization

In September 2011, Bill C-11, the *Copyright Modernization Act*, was introduced to update and amend the Canadian *Copyright Act* for the first time since 1997. The bill will implement the rights and protections of the World Intellectual Property Organization Internet treaties and update Canada's copyright law for the digital age.

Federal R&D Panel Report

In October 2011, the expert panel leading the review of federal support to R&D released its report, which made a series of recommendations calling for a simplified and more focused approach to the 5 B dollars' worth of R&D funding provided by the federal government annually. Amongst these, the report called for a simplification of the current Scientific Research and Experimental Development (SR&ED) tax credit program. Many of the recommendations were adopted and others will be implemented later in 2012.

Key Regulatory Developments

Group-based licence renewals

In July 2011, the CRTC released its "Group-based licence renewals for English-language television groups" decision. The decision applied to the television services of the following groups: Bell Media Inc., Shaw Media Inc., Corus Entertainment Inc., and Rogers Media Inc.

In it, the CRTC implemented its group-based licensing policy for large private English-language ownership groups. Under the policy, the CRTC reduced its focus on Canadian exhibition and instead concentrated on programming expenditure requirements. The approach requires the ownership groups mentioned above to invest in Canadian programming, including programs of national interest such as drama and comedy series, documentaries and award shows that promote Canadian culture. At the same time, these ownership groups have more flexibility to shift their Canadian content spending requirements between their various television services to meet their regulatory stipulations.

Regulatory framework relating to vertical integration

As noted in last year's Annual Report, 2010–2011 revealed a trend towards consolidation, with Shaw Communications' acquisition of Canwest Global Communications and BCE's acquisition of CTVglobemedia. In September 2011, the CRTC released its approach to vertical integration (i.e., the ownership or control by one entity of both broadcasters and distribution services). The

Commission identified vertically integrated companies as including Rogers Communications Inc., Quebecor Media Inc., Bell Canada and Shaw Communications Inc., and stated its objective of ensuring that consumers continue to benefit from a wide choice of programming in a broadcasting system where programming and distribution have become increasingly integrated.

In its regulatory framework, the CRTC addressed the availability of programming on new platforms such as mobile or retail Internet access services, and determined, among other things, that programming designed primarily for television cannot be offered on an exclusive basis to a mobile or retail Internet access service. The CRTC also requested vertically integrated companies to report on how they provide consumers with more choice and flexibility, while at the same time providing them with the ability to only pay for the services they want to watch. The policy also set out a number of decisions designed to ensure fair treatment for independent broadcasting distribution and programming services in the form of a Code of Conduct for commercial arrangements and interactions.

In March 2012, Bell announced its intention to acquire the Astral Group, one of the few remaining large independent broadcasting companies. With this acquisition, the vertical integration model is confirmed as the dominant competitive business model in Canada.

CRTC conducts fact-finding exercise on Internet and mobile content

In October 2011, the CRTC released the results of its fact-finding exercise on online and mobile programming services and their impact on the Canadian communications system. The Commission suggested that their findings were not conclusive, but indicated that: 1) The traditional broadcasting system continues to support Canadian programming; 2) Consumption of online and mobile programming is growing but current measurement tools are unable to accurately reflect trends in consumer behaviour; 3) There is no clear evidence that Canadians are reducing or cancelling their television subscriptions, and online and mobile programming appears to be complimentary to the content offered by broadcasters; 4) Canadian creators are taking advantage of the opportunities of the digital environment to produce innovative content and reach global audiences; 5) Some online programming services have established viable business models and are competing in the marketplace for viewers; and 6) Internet and wireless networks may encounter capacity constraints in the future.

Prospects for an ISP levy rejected by the Supreme Court of Canada

With distribution and consumption of audiovisual content on the Internet increasing, the CRTC had been asked by some stakeholders to implement an “ISP levy” to require Internet service providers to contribute to the production of Canadian content in the same way that broadcasting distribution undertakings contribute to the CMF. In 2009, the Commission referred to the Federal Court of Appeal the question of whether it was legally permitted to do so under the *Broadcasting Act*. Specifically, the CRTC asked, whether retail ISPs carry on “broadcasting undertakings” subject to the *Broadcasting Act* when, in their role as ISPs, they provide access through the Internet to “broadcasting” requested by end-users.

The Federal Court of Appeal held in 2010 that they do not. This ruling was appealed to the Supreme Court of Canada, which delivered its decision in February 2012 affirming the decision of the Federal Court.