RECENT DEVELOPMENTS IN TELEVISION PROGRAM RIGHTS IN THE CANADIAN MARKET: A SNAPSHOT OF LEGAL OPTIONS AVAILABLE TO CANADIANS TO ACCESS TELEVISION CONTENT

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I. Executive Summary

TELUS commissioned Boon Dog Professional Services Inc. to update the report titled "Current Developments in Television Program Rights in the North American Market" written by Paul Gratton in April 2011 (the "Gratton Report") and submitted by Bell Canada as part of its comments to *Broadcasting Notice of Consultation CRTC 2010-783*, Review of the regulatory framework relating to vertical integration.

Given the rapidly changing global media market, there have been some significant changes in the licensing of television content in North America since the Gratton report was written, primarily due to the growth in the number of platforms and players involved in the rights market.

Rights holders, particularly foreign ones, continue to have all the power when it comes to how they license their content to Canadian broadcasters and media companies. Generally speaking, at this time, the traditional "orderly marketplace" for television program rights remains mostly the same as it has always been. Program rights holders carve out rights according to country or territory and by platform and try to maximize the revenue they earn from those rights.

However, the "orderly marketplace" for television program rights is clearly in flux. And it can change completely on a dime. The explosive growth of online video and streaming options in Canada and around the world is changing the rules of the game, and the number of digital content options available to Canadians will only continue to grow in the years ahead. The significant growth in over-the-top (OTT) video streaming options available to Canadians in recent years, with more expected in the future, is an important development in the program rights market as it means there are more players competing for rights.

With the growth of global behemoth video streaming players such as Netflix and Amazon, selling rights on a global basis, rather than by country or territory, is a new option available to rights holders and increasingly seen as a viable and lucrative one.

The traditional business model of Canadian broadcasters/media companies is contingent on having a separate rights market for Canada. In today's evolving program rights market, this can no longer be assured.

The big concern among all Canadian broadcasters and media companies—and the wider Canadian industry including regulators and policymakers—is, at what point will foreign rights holders decide to take their popular television content directly to Canadian consumers? In other words, how close are we to the tipping point of losing a distinct Canadian program rights market?

In our view, the beginning of the tipping point in maintaining the status quo—i.e., in maintaining a separate Canadian rights market for television programming—was the announcement in August 2017 by CBS that it would launch its CBS All Access video streaming service directly to consumers in Canada beginning in 2018.

There's no denying that intense competition for acquiring the rights to great foreign (mainly U.S.) television content is real and growing. But just as the challenges mount for Canadian broadcasters/media companies in acquiring program rights to foreign content, the evolving program rights market has created new opportunities for Canadian programming.

Experimentation, change, contradiction, and disruption appear to be the new normal in the television program rights market. No clear model has yet to emerge as the standard for the future distribution of television rights in North America.

Given everything we know and have seen to date, one thing seems certain—the amount and pace of change in the television program rights market will only accelerate in the years ahead.

II. Introduction

Background and Notes

TELUS commissioned Boon Dog Professional Services Inc.[1] to update the report titled "Current Developments in Television Program Rights in the North American Market" written by Paul Gratton in April 2011 (the "Gratton Report") and submitted by Bell Canada as part of its comments to *Broadcasting Notice of Consultation CRTC 2010-783*, Review of the regulatory framework relating to vertical integration.

The Gratton Report contains extensive background, history, and developments in the evolution of the North American market for television program rights up to April 2011. Rather than duplicate this information, Boon Dog's report simply highlights new developments in program rights specific to the Canadian market and how Canadians can legally access television content since the Gratton Report was written. This report is not meant to provide an exhaustive list of all program rights or television content options that are available in the Canadian market, just general trends and noteworthy developments. Additionally, this report focuses mainly on developments in program rights for television content, and not short video clips or feature films.

Finally, we note that this report does not address unauthorized or illegal ways in which people can consume television content.

A Summary of Some Recent Developments in the Program Rights Market

Given the rapidly changing global media market, it should not surprise anyone that there have been some significant changes in the licensing of television content in North America since the Gratton report was written, primarily due to the growth in the number of platforms and players involved in the rights market.

Before discussing the rights market in Canada specifically, it is important to remind readers of the significant changes that have occurred in the Canadian broadcasting industry in terms of further consolidation of ownership since 2011. This is important because further consolidation has given Canada's largest broadcasting/media companies greater scale to compete with respect to the acquisition of television program rights (and related digital/mobile rights) in an increasingly competitive market for those rights.

While the CRTC has acknowledged the need for scale in approving various broadcasting acquisitions in recent years, it has also balanced that with safeguards to ensure fair business practices, to protect consumers, and to ensure a diversity of voices in the Canadian broadcasting system.[2] For example, in its regulatory policy relating to vertical integration[3] the CRTC determined that programming designed primarily for television cannot be offered on an exclusive basis to a mobile or retail Internet access service.

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[1] See Appendix 1 for information about Boon Dog Professional Services.

[2] See, for example, the CRTC's Diversity of Voices Policy, http://www.crtc.gc.ca/eng/archive/2008/pb2008-4.htm, and its Regulatory framework relating to vertical integration, http://www.crtc.gc.ca/eng/archive/2011/2011-601.htm.

[3] Vertical integration refers to the ownership or control by one entity of both programming services, such as conventional television stations, or pay and specialty TV services, as well as distribution services, such as cable TV systems or direct-to-home (DTH) satellite services. Vertical integration also includes ownership or control by one entity of both programming undertakings and production companies. The main vertically integrated companies in Canada are Rogers Communications Inc., Quebecor Media Inc., Bell Canada, and Shaw Communications Inc.

Since the Gratton report was written in 2011, Bell Media acquired Astral Media and its important staple of specialty and pay TV assets, including The Movie Network (TMN) and HBO Canada. Corus Entertainment solidified its dominance in the children's and youth programming space with the acquisition of the remaining 50% of Teletoon and its related channels that it did not already own, thereby assuming full ownership and control. Later, it bolstered its national reach with the acquisition of the Global TV national conventional TV network and the popular specialty TV channels from Shaw Media, providing a number of synergies in programming assets with ones it already owned (for example, in lifestyle programing). These acquisitions gave Bell Media and Corus Entertainment additional assets and platforms upon which to amortize and monetize the television programming rights they acquire.

Boon Dog notes that the Gratton report made a number of observations and predictions that have in fact materialized in recent years that are worth discussing, and are likely to continue, including the following comments from the report:

- The power lies with the rights holder, who essentially gains the most out of a market by slicing the pie into as many exploitable pieces as possible in order to maximize revenue (at page 23);
- There will be an explosion of multi-platform digital delivery systems over the next few years, and what we have witnessed so far is but the tip of a paradigm changing iceberg (at page 24);
- Foreign over-the-top (OTT) services such as Netflix and others might soon result in "cord-cutting" from Canadian broadcast distributors (at page 25); and
- If this snapshot of what's currently going in the world of rights acquisitions in Canada seems a bit fragmented and chaotic, at times even contradictory, that's because it is. While some aspects of the "orderly marketplace" are still in place, other sectors, such as video-on-demand (VOD) and multi-platform apps, are simply exploding with possibilities (at page 26).

Rights holders are in control

There is no question that rights holders, particularly foreign ones, continue to have all the power when it comes to how they license their content to Canadian broadcasters and media companies. Rights holders continue to carve up rights into as many pieces as possible to maximize revenue. In some cases, rights holders are selling the same shows to similar, competing platforms on a non-exclusive basis.[4]

While it is becoming harder to do so, for the most part, Canadian broadcasters/media companies have to date been able to continue to acquire the rights to popular foreign television content to fill their linear TV channels and online platforms. And some, knowing full well that foreign rights holders could decide to bypass them and distribute their content directly to Canadian consumers at any time, locked up rights under long-term deals to give them several more years of stability.

For example, in March 2015 Corus Entertainment signed a new long-term agreement with Viacom's Nickelodeon division giving it exclusive rights to all of Nickelodeon's English- and French-language content for its linear TV channels in Canada as well as across existing and emerging digital platforms.[5]

[4] As witnessed, for example, by the fact many TV programs are available for purchase/viewing on the iTunes Store one day after their initial broadcast and in some cases the same titles are available on competing SVOD services, see: http://www.michaelgeist.ca/2015/06/netflix-vs-cravetv-more-than-90-of-cravetv-titles-are-not-available-on-netflix-u-s-or-canada/.

[5] Corus news release, March 31, 2015: "Corus Entertainment secures all programming rights to Nickelodeon content in Canada". http://www.corusent.com/news/corus-entertainment-secures-all-programming-rights-to-nickelodeon-content-in-canada/

Under the terms of the licensing deal, Corus is the sole distributor and rights holder of Nickelodeon's catalogue of current content and library titles in Canada, giving it the ability to exploit Nickelodeon's content across linear and non-linear platforms including OTT, subscription VOD (SVOD), electronic sell-through, games, and mobile apps.

With the rights to Nickelodeon's content securely in hand, Corus later signed a deal with Netflix to stream Nickelodeon content in Canada.[6]

In January 2015 Bell Media announced a long-term, content licensing and trademark agreement with CBS for its premium television channel SHOWTIME in Canada. The exclusive deal brought the SHOWTIME brand to Canada for the first time, with hundreds of hours of past, present, and future SHOWTIME programming being made available across Bell Media's platforms in English and French, including its OTT video streaming service CraveTV, as well as its pay television service TMN.[7] Over the course of the new agreement, CraveTV and TMN will become Canada's exclusive home of SHOWTIME-owned first-run programming as well as almost its entire catalog of scripted and unscripted series, documentaries, and specials.

Going further, Bell Media announced in November 2015 an agreement with Corus Entertainment to take TMN national and become the sole owner and operator of HBO Canada, with Corus winding down operations of its Movie Central and Encore Avenue pay TV services in Western and Northern Canada officially in March 2016 to focus on its core national media brands.

Alongside the announcement, Bell Media revealed an unprecedented agreement in which it became the exclusive Canadian home of all HBO programming on all subscription platforms into the next decade. Bell Media described the agreement with HBO as follows:

> Under the comprehensive, long-term agreement, the first of its kind for HBO in Canada, Bell Media will have the ability to deliver current-season, past-season, and library HBO programming exclusively on its linear, on-demand, and over-the-top (OTT) platforms in English and French. The agreement also marks the first time HBO has granted exclusive subscription video on demand (SVOD) rights for first-run programming throughout Canada. As a result, Bell Media will have the flexibility to provide current HBO content such as GAME OF THRONES, GIRLS, and VEEP over-the-top in Canada on its platforms.[8]

While the exact length of and financial terms of the SHOWTIME and HBO deals were not disclosed, one can imagine that Bell Media paid a premium for the extensive rights outlined above. In so doing, it bought itself several years of the "status quo" in terms of its traditional business model. Of course, Bell Media's (and all broadcasters') traditional business model, if there is such a thing anymore in the evolving global media market, is contingent on having a separate rights market for Canada. And as this report attempts to demonstrate, that can no longer be assured.

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[6] Corus news release, April 13, 2016: "Corus Entertainment lands new deal with Netflix for Nickelodeon content to stream in Canada". http://www.corusent.com/news/corus-entertainment-lands-new-deal-netflix-nickelodeon-content-stream-canada/

[7] Bell Media / CBS news release, January 29, 2015: "Bell Media and CBS Corporation Announce Long-Term Content Licensing and Trademark Agreement for SHOWTIME® in Canada". http://www.bellmedia.ca/pr/press/bell-media-cbs-corporation-announce-long-term-content-licensing-trademark-agreement-showtime-canada/

[8] Bell Media / HBO news release, November 19, 2015: "Bell Media and HBO Sign Historic Agreement Bringing Canadians Unprecedented Access to HBO Programming". http://www.newswire.ca/news-releases/bell-media-and-hbo-sign-historic-agreement-bringing-canadians-unprecedented-access-to-hbo-programming-551893451.html

While noting that so far it has been "reasonably economically viable" to continue to acquire the rights it needs, then-Bell Media President Mary Ann Turcke described Bell's rights acquisition strategy as follows while speaking at a CRTC hearing in November 2016:

> …[F]rom a defensive perspective, entering into deep licensing arrangements with ongoing producers of great foreign content is really important. Obviously, if I have the exclusive rights to HBO and SHOWTIME and Comedy [in Canada], then Netflix, Amazon, Hulu can't have it… and that's been the strategy for a few years now.[9]

In Boon Dog's and other commentators'[10] view, however, the beginning of the tipping point in maintaining the status quo—i.e., in maintaining a separate Canadian rights market for television programming—was the announcement in August 2017 by CBS that it would launch its CBS All Access video streaming service directly to consumers in Canada beginning in 2018.

The news rocked the Canadian broadcasting and media industry.

Representatives from the creative industries used the announcement to warn Canadian broadcasters (and indirectly the CRTC and policymakers) that it was time Canadian broadcasters made Canadian programming their number one priority. The pipeline to relatively affordable, high-quality U.S. television content was about to run dry, they warned.[11]

Canadian broadcasters/media companies were largely silent on the news.

Growth in the number of digital content options

Gratton also predicted an explosion of multi-platform digital delivery systems for content over the next few years. The explosion has not been in delivery systems *per se*, as the Internet *is* the digital delivery system, but in the number of "TV Everywhere" / "GO" apps and OTT services available to Canadians.

TV Everywhere or GO apps from Canadian broadcasters were non-existent in 2011. Today, almost every major Canadian broadcaster offers one for each or most of their channels to allow viewers to watch their content where they want, when they want, on portable devices such as tablets or smartphones.

Moreover, not only has Netflix grown by leaps and bounds in this country since 2011, both in terms of subscribers and in the volume and variety of content it offers, the introduction of CraveTV, Club illico, Amazon Prime Video, and an estimated 20+ niche OTT services in Canada has given Canadians an unprecedented amount of choice for television content.

The number of digital content options available to Canadians will only continue to grow in the years ahead.

"Cord-cutting" is the new reality

The explosion in ways that Canadians can access television content legally in recent years has resulted in "cord-cutting" from traditional subscription TV services (cable TV, IPTV, and satellite TV) in Canada. Boon Dog's own research shows cord-cutting began to surpass new TV subscriptions in late

[9] Transcript, CRTC Hearing, November 29, 2016, at line 2449. http://crtc.gc.ca/eng/transcripts/2016/tb1129.htm

[10] Cartt.ca, Analysis by Greg O'Brien: "Why CBS All Access moving north is a big deal (corrected)," August 10, 2017. https://cartt.ca/article/analysis-why-cbs-all-access-moving-north-big-deal-corrected

[11] Cartt.ca, Commentary by Maureen Parker: "Canadian broadcasters are on the road to extinction if they don't adapt," August 9, 2017. https://cartt.ca/article/commentary-canadian-broadcasters-are-road-extinction-if-they-don't-adapt

2012 and the number of cord-cutting households has been gradually accelerating since 2014 and hit a record 220,000 households in 2016.[12]

While cord-cutting is on track to slow in 2017, according to Boon Dog's research[13], it will no doubt continue in the years ahead and is the new normal facing traditional TV distributors and the regulated Canadian broadcasting industry as a whole. In other words, in Boon Dog's view, traditional TV distribution is in permanent decline. The only unknown is the pace of that decline.

Other changes

There have been other noteworthy developments in the program rights market since the Gratton Report was written.

The continued growth of VOD services and the emergence, evolution, and growth of digital rental options such as iTunes, Apple TV, Google Play, and others have gutted the DVD rental business in Canada, leaving only limited neighbourhood convenience store options and Quebecor's SuperClub and Jumbo Video chains.

Blockbuster shut down the last of its 400 stores across the country in September 2011 while Rogers Communications stopped offering DVD rentals and sales in its stores in April 2012,[14] leaving SuperClub and Jumbo together as Canada's largest remaining video rental chain.

Zip.ca, the Ottawa-based DVD rental via mail and later kiosk service, closed shop in August 2014[15], while Redbox, operator of DVD rental kiosks across the country, shut down its Canadian operations in February 2015.[16]

Below, we discuss some of the recent developments in television program rights related to specific platforms in more detail.

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[12] Boon Dog news release, March 15, 2017: "'Cord-cutting' in Canadian traditional TV service market reaches new record level in 2016, according to new research". http://www.boondog.ca/News_files/Boon%20Dog%20News%20Release_Record%20TV%20Subcriber%20Decline%20in%202016_March%2015-2017.pdf

[13] Boon Dog news release, August 14, 2017: "TV 'cord-cutting' in Canada bucks the trend, slows in the first half of 2017 compared to the previous year, according to new research". http://www.boondog.ca/News_files/Boon%20Dog%20News%20Release_TV%20Subcriber%20Decline%20Slows%20in%201st%20half%20of%202017_August%2014-2017.pdf

[14] CBC.ca, "Rogers exists video store business; Company to shutter remaining locations," April 17, 2012. http://www.cbc.ca/news/business/rogers-exits-video-store-business-1.1211282

[15] The Ottawa Citizen, "Zip.ca video rental service shuts down," August 18, 2014. http://ottawacitizen.com/business/local-business/zip-ca-video-rental-service-shuts-down

[16] The Globe and Mail, "Redbox shutting down Canadian operation, moving kiosks to U.S.," February 5, 2015. https://www.theglobeandmail.com/report-on-business/redbox-shutting-down-canadian-operation-moving-kiosks-to-us/article22819779/

III. Television Content Distribution Options Available to Canadians

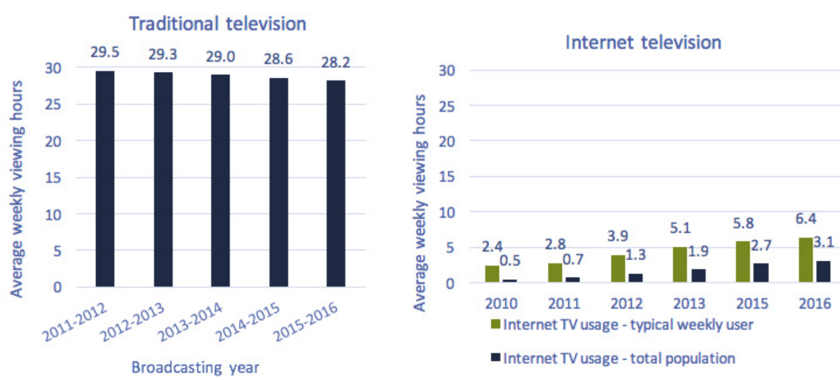
Linear TV

Linear TV, or traditional TV, generally continues to hold its own among Canadians as the preferred way of watching television programming.

The CRTC's *2017 Communications Monitoring Report*[17], published in November 2017, notes that Canadians aged 2+ watched an average of 26.6 hours of traditional television weekly, down slightly from 28.2 hours in 2011-2012. Not surprisingly, the biggest drop in traditional television viewing is occurring among younger Canadians, specially teens and those between 18 and 49 years old.

At the same time, Canadians are increasingly turning to platforms and devices connected to the Internet for their television and video content. According to the CRTC report, Canadians aged 18 years or older watched 3.1 hours of Internet TV per week in 2016, compared to 0.7 hours in 2011. Canadians aged 18-34 years old are leading the trend with 23% watching TV exclusively online. Nationally, 13% of Anglophones watch TV exclusively online. Overall, Canadians aged 18 years or older watched 3.1 hours of Internet TV per week in 2016, compared to 2.7 hours in 2015.

Figure 1: Average number of hours Canadians 18+ watched traditional television (2011-2012 through 2015-2016 broadcast years) and Internet television (2010 to 2016)



Source: CRTC *2017 Communications Monitoring Report*, Figure 4.2.16

While cord-cutting is the new reality in the Canadian traditional TV distribution market (cable TV, IPTV, and satellite TV), Boon Dog has repeatedly noted that the cord-cutting numbers are fairly small relative to the size of the market. More than 11 million Canadian households still pay to subscribe to a traditional TV service, which means traditional TV is holding its own, sort of.

We say "sort of" because the cord-cutting numbers do not factor in the approximate 200,000 housing starts in Canada annually. That means the traditional TV service providers are losing pace with household growth in the country and therefore TV subscription penetration is declining at a greater level than simply the cord-cutting numbers suggest. The latest CRTC figures show the continuing decline in the penetration of traditional TV distribution services, which reached 76.2% in 2016 (at Aug. 31), compared to 82.8% in 2012.[18]

[17] See http://www.crtc.gc.ca/eng/publications/reports/policymonitoring/2017/index.htm.

[18] See Table 4.3.6 in the CRTC's *2017 Communications Monitoring Report*, http://crtc.gc.ca/eng/publications/reports/policymonitoring/2017/cmr4.htm#t436.

Additionally, it is important to note that the cord-cutting numbers do not take into account what many observers consider to be an even greater threat to the traditional TV system—"cord-nevers"—defined as those people who have never subscribed to a traditional TV system.[19]

Given that traditional television viewing and traditional TV distribution continue to be the preferred way of watching and accessing television content for the majority of Canadian households, it's not surprising that Canadian broadcasters/media companies continue to license content primarily for these traditional platforms. That does not mean they are ignoring the winds of change. For the most part, Canadian broadcasters/media companies continue to acquire all the rights to television programming available to them—linear, digital, and mobile—when possible.

With respect to linear TV rights, we've seen some experimentation as a way to squeeze as much revenue out of those rights as possible and/or promote viewership for future seasons of television series or subscriptions to related linear TV channels or digital platforms.

For example, Bell Media aired Season 1 of HBO's *Game of Thrones* on CTV (and also made it available on the CTV GO app) in a 10-episode programming marathon in August 2016 as a "centerpiece" of its Summer 2016 programming strategy.[20] It was the first time the global hit show aired on network television in North America. Bell Media was able to do this because of its comprehensive, long-term rights deal with HBO noted above.

Another interesting experiment/development in television program rights strategy this fall worth noting was local independent Hamilton, Ontario conventional TV station CHCH acquiring the rights to broadcast the hit Netflix original series *House of Cards*.[21] Airing for the first time on North American broadcast television, CHCH launched an extensive media campaign in the Toronto market to promote the show.

Things did not turn out as planned, however. On November 15, 2017, the broadcaster posted a note on its Facebook page stating that it was immediately removing *House of Cards* from its schedule due to the sexual misconduct allegations against the show's star Kevin Spacey. Some viewers and at least one media critic questioned CHCH's motives, however, pointing out the show's abysmal ratings.[22]

Similarly, Canadian pay TV channel Super Channel will premiere Season 1 of Amazon original series *American Gods* on its service in Spring 2018 after acquiring the exclusive Canadian broadcast rights to the show from FremantleMedia International.[23] Season 1 is already available to Canadians on the Amazon Prime Video OTT service.

While the experiments cited above brought mixed results, it's likely we will continue to see Canadian broadcasters/media companies try these and other kinds of strategies in an attempt to find new audiences or to drive viewers to other platforms and services with the ultimate goal of maximizing revenue out of the linear TV and ancillary rights they own.

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[19] Cartt.ca, Kaan Yigit, Letter to the Editor: "How cord-cutters are just the visible tip of the iceberg". https://cartt.ca/article/letter-editor-how-cord-cutters-are-just-visible-tip-iceberg (subscription required)

[20] Bell Media news release, July 7. 2016: "Winter is Coming – CTV to Broadcast GAME OF THRONES Season 1 in Historic Network Marathon Beginning August 8". http://www.bellmedia.ca/pr/press/winter-is-coming/

[21] CHCH news release, September 6, 2017: "CHCH Presents 2017 Fall Schedule and Premiere Dates". http://www.chch.com/chch-presents-2017-fall-schedule/

[22] Brioux.TV, "CHCH quickly folds on House of Cards," November 17, 2017. https://brioux.tv/2017/11/chch-quickly-folds-on-house-of-cards/

[23] Super Channel news release, October 16, 2017: "Super Channel acquires American Gods from FremantleMedia International". https://www.superchannel.ca/pressreleases/super-channel-acquires-american-gods-fremantlemedia-international

A great example of this involves the critically acclaimed and multi-Emmy Award-winning TV series *Breaking Bad*. David Sims, a senior consulting editor who writes about culture at *The Atlantic*, observed in a fascinating roundtable discussion about the state of television published in 2015, that the show only found its audience when earlier seasons of the series were made available on Netflix.[24] Being on Netflix allowed viewers previously unfamiliar with the show (or those who had missed the first season and needed a way to catch up) to discover it, view the series from the beginning with catch up viewing (many likely binge watched), and then tune into AMC to watch the final few seasons.

VOD

VOD continues to be an important choice offered by Canadian broadcasters/media companies to allow viewers to catch up on recently aired programming and so they continue to acquire the VOD rights to the programs they license, where available and where economically feasible. All of the major broadcasters offer most of the programs they license to viewers on-demand on their respective websites, free of charge (but with commercials), as long as users subscribe to the channel on which the program they wish to view was aired.

Most broadcasters also have agreements with Canada's largest and medium-sized (and many small) broadcast distributors to offer their programs, free of charge (but increasingly with commercials), on the distributors' VOD services via subscriber set-top boxes. Again, users must subscribe to a channel in order to watch content on-demand from that channel.

Transactional VOD, whereby users rent a movie for a period of time (usually 24 or 48 hours), is available to Canadians via online services like the Cineplex Store, iTunes, Google Play, or the VOD services of broadcast distributors.

For television content, the iTunes Store and Google Play, are forms of transactional VOD, although users purchase and own the digital content following a transaction rather than just rent it. The iTunes Store, for example, has past television seasons and episodes available for purchase. Additionally, many shows have a "Season Pass" available, which allows users to follow along with a TV season that is currently airing on broadcast TV by purchasing an entire season in advance rather than individual episodes, which would cost more. Episodes are typically available to purchase/view the day after the original broadcast. Google Play offers similar full-season purchase options.

Canadian broadcasters/media companies also offer much of the programming they license on a subscription VOD basis, via dedicated channels on the VOD services of broadcast distributors, with the number of SVOD options growing significantly in recent years.[25] These are considered subscription VOD channels because users must subscribe to a linear TV channel in order to watch that channel's SVOD offering.

While Netflix, CraveTV, Club illico, and other OTT services are technically SVOD services, they are discussed in the OTT section below.

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[24] The Atlantic, "Have We Reached Peak TV?" August 12, 2015. https://www.theatlantic.com/entertainment/archive/2015/08/have-we-reached-peak-tv/401009/

[25] Rogers Cable, for example, offers dozens of SVOD channels from premium TV channels such as TMN On Demand, HBO Canada On Demand, and Super Channel On Demand, to specialty channels such as YTV On Demand, Showcase On Demand, and HGTV On Demand.

Portable Devices, TV Everywhere / "GO" Apps, Mobile

As noted above, every major Canadian broadcaster now offers TV Everywhere or "GO" apps for each or most of their TV channels to allow viewers to watch their content where they want, when they want, on portable devices such as laptops, tablets, or smartphones. A user has to be a subscriber to the linear TV channel in order to access the related GO app.

In order to offer TV Everywhere services to subscribers, broadcasters have had to acquire those rights as part of its larger rights deals with rights holders (linear TV, on-demand/digital, mobile). And they've done so without any additional subscription revenue attached as GO apps are offered as free digital extensions of the linear TV channel. Offering a TV Everywhere product has pretty much become a cost of doing business in today's "where I want, when I want" consumer culture.

Another significant advancement in the rights market for television content since the Gratton Report was written is the significant growth of mobile video distribution. Ericsson, the Swedish-based global communication technology company, predicts that by 2020, half of all TV and video viewing will be done on a mobile screen, an 85% increase since 2010.[26]

In the Canadian market specifically, as an example, Bell's wireless service offers smartphone users the Bell Mobile TV offering that includes more than 40 live and on-demand TV channels for $8/month.

A recent development in the mobile video market saw Vidéotron, Quebec's largest broadcast distributor and one of the province's leading communications companies, in November 2017 begin offering the mobile version of its SVOD/OTT service Club illico with every new mobile plan subscription, which it says gives it an advantage in the highly competitive mobile market.[27] Club illico offers unlimited access to French-language movies, exclusive and original television series, children's programs, documentaries, concerts, with the content available updated weekly.

In making the announcement, Vidéotron cited recent surveys that show that 20% of Quebec consumers watch videos, TV series, or movies on their smartphones. Among Canadian Francophone smartphone owners aged 18 to 34 that number jumps to 85%.

Netflix and Other OTT Video Streaming Services

The explosive growth of online video and streaming is nothing short of astounding. Sandvine, the Canadian-based global leader in network intelligence, says streaming audio and video now accounts for 71% of evening traffic on North American fixed access networks. According to Sandvine's 2016 Global Internet Phenomena report, the company expects this figure will reach 80% by 2020.[28]

Initially relegated to computers and gaming consoles, the launch in recent years of designated streaming devices and USB-like "sticks" with a variety of price points (such as Apple TV, Roku, Slingbox, Amazon Fire, Google Chromecast, to name a few) and Smart TVs with integrated streaming functionality have fueled OTT usage in Canada.

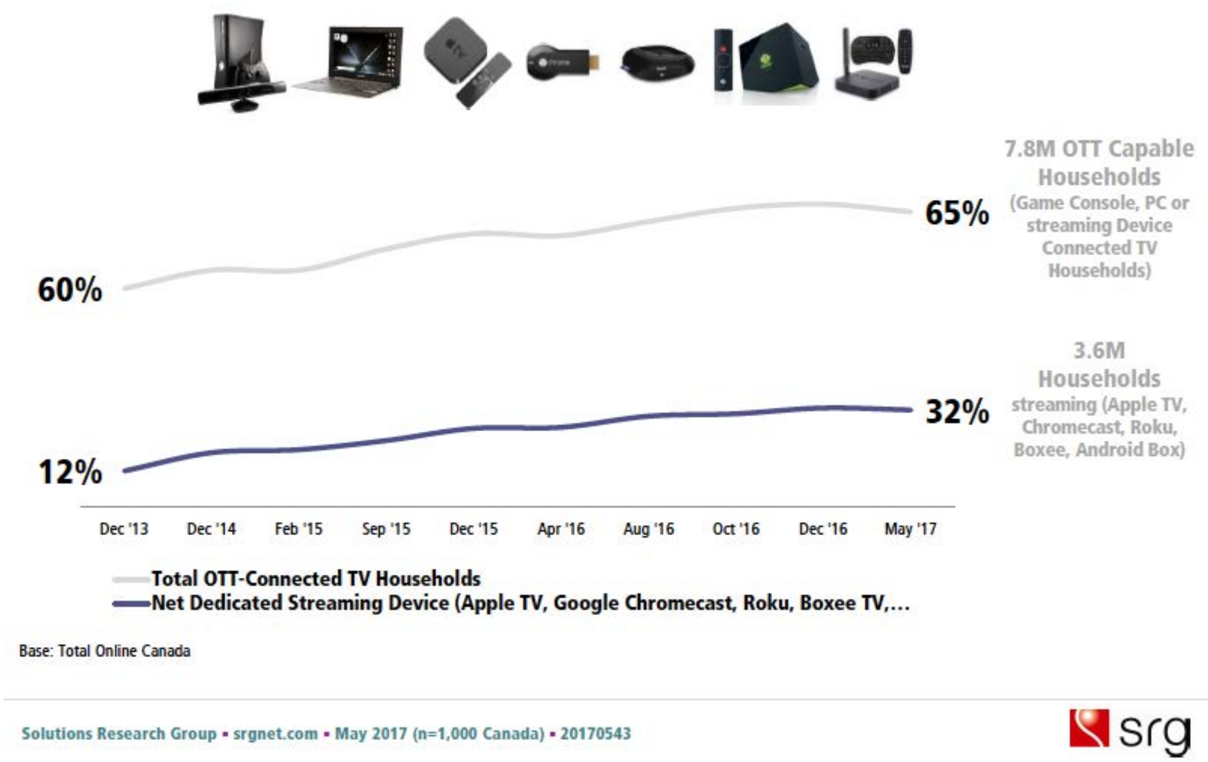
[26] 2017 Ericsson ConsumerLab TV and Media report, https://www.ericsson.com/en/networked-society/trends-and-insights/consumerlab/consumer-insights/reports/tv-and-media-2017?utm_source=Twitter&utm_medium=social_organic&utm_campaign=CL_TVMedia2017&utm_content=ZGLOBAL&hootPostID=22c92b38def55868d969e512318b0732#tvin2020andbeyond.

[27] Vidéotron news release, November 15, 2017: "The best in entertainment: Club illico now included in Videotron mobile plans". http://corpo.videotron.com/site/press-room/press-release/953

[28] See https://www.sandvine.com/resources/global-internet-phenomena/2016/north-america-and-latin-america.html.

According to the latest research from Toronto-based Solutions Research Group's Digital Life Canada Quarterly Tracking survey (May 2017), 32% of all Canadian online households (or some 3.6 million households) had a dedicated streaming device attached to a TV set, almost triple the number (12%) in December 2013.

Figure 2: Over-the-Top Capability and Dedicated Streaming Devices in Canadian Households



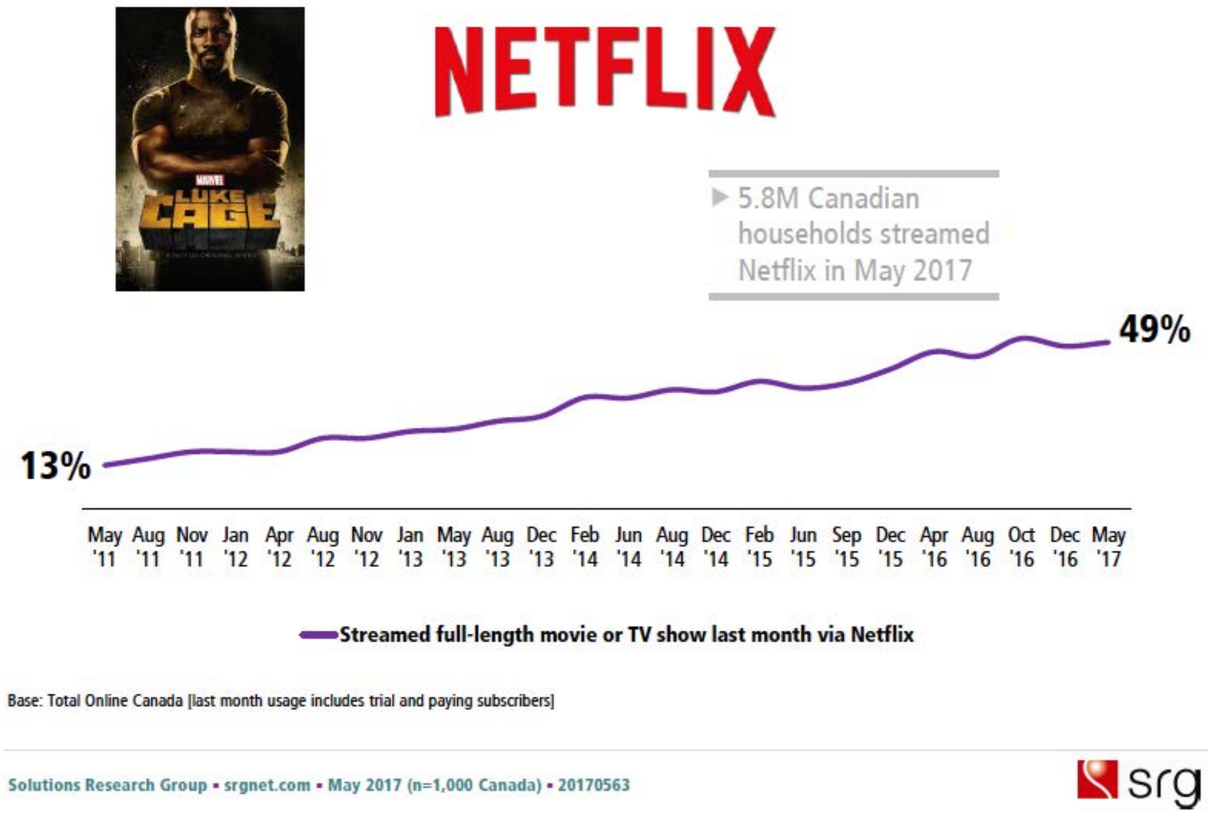
Netflix is unquestionably the dominant video streaming service in Canada and globally, with 109 million subscribers in more than 190 countries as of October 2017. In Canada, Netflix has grown significantly from an estimated 900,000 subscribers in 2011 as cited in the Gratton Report to an estimated 6 million today.

According to the latest Media Technology Monitor survey, conducted by CBC/Radio-Canada Research and Analysis, 53% of Anglophone Canadians now subscribe to Netflix and 57% have at least one video streaming service (free trial or full subscription).[29] The research shows that Netflix is by far the most popular video streaming service in Canada, miles ahead of CraveTV (9% penetration), Amazon Prime Video (5% penetration), and Sportsnet Now (5% penetration).[30]

[29] The Globe and Mail, "Netflix leads streaming services in Canada," October 20, 2017. https://mtm-otm.ca/Download.ashx?file=Files/News/6.NETFLIX%20LEADS%20STREAMING%20SERVICES%20IN%20CANADA.pdf

[30] Huffington Post, "Canadians Lead World In 'Binge-Racing' TV Shows, Netflix Says," October 23, 2017. http://www.huffingtonpost.ca/2017/10/23/canadians-lead-world-in-binge-racing-tv-shows-netflix-says_a_23252741/

Figure 3: Growth in Netflix Usage in Canada



The number of original series offered by Netflix has also grown exponentially, and its programming budget continues to rise and will top $6 billion in 2018.[31]

Beyond Netflix, there has been a significant increase in the number of OTT services available to Canadians.[32] While many of these are and will continue to be niche services with much, much smaller subscriber bases than Netflix, the exponential growth in OTT options available to Canadians in recent years, with more expected in the future, is an important development in the program rights market as it means there are more players competing for rights.

The launch of national Canadian-owned OTT services[33] was an important milestone. Shomi, a joint venture of Rogers Communications and Shaw Communications, and CraveTV, owned by Bell Media, launched in late 2014, with mixed results.

Shomi, which launched in November 2014 with 11,000 hours of popular TV shows, was initially available to only Rogers and Shaw Internet and TV subscribers. In Boon Dog's view, that strategy,

[31] CNBC.com, "Netflix plans to spend $6 billion on new shows, blowing away all but one of its rivals," October 17, 2017. https://www.cnbc.com/2016/10/17/netflixs-6-billion-content-budget-in-2017-makes-it-one-of-the-top-spenders.html

[32] Including, for example, Acorn TV, Fandor, Tubitv, Crackle, Mubi, Crunchyroll, Shudder, Spuul.com, OUTtvGo, Sundance Now, Dramafever, Tou.TV, and beIN Sports Connect.

[33] They were actually more like subscription video-on-demand services when they first launched since they were available only to Rogers and Shaw Internet and TV subscribers (in the case of Shomi) and all TV subscribers (in the case of CraveTV). In other words, they were not initially available over-the-top.

while protecting Rogers and Shaw's TV distribution business, was a flawed approach and doomed from the start. Shomi faced criticism for that approach and was later made available to all Canadians as an OTT service, but it was likely too little too late. Various commentators, including Boon Dog, offered their opinions in this article[34] as to why Shomi was unable to succeed.

In deciding to shut down the service, Shomi's senior VP and general manager stated the business was more challenging to operate than its owners expected and cited a changing business climate and online video market as reasons for shuttering the service.[35] Shomi had approximately 900,000 subscribers when it was officially shut down in November 2016.

Bell's CraveTV launched in December 2014 with more than 10,000 hours of content.[36] The service was initially priced at a mere $4/month (it's now $7.99/month) and was available to all broadcast distributors, not just Bell's TV subscribers. The service became a true OTT service (i.e., available to all Internet-connected Canadians) in January 2016. At launch, nearly 65% of the entire CraveTV catalogue was exclusive to the service. Original Canadian productions exclusive to the service, such as the cult hit *Letterkenny*[37] as the first, have been gradually added to the service, with more and more originals being announced.

Bell announced in November 2016 as part of its release of its Q3 2016 financial results that CraveTV had surpassed one million subscribers but Bell has not disclosed subscriber results since.

CraveTV has had the advantage of having the entire library of premium HBO scripted content, albeit HBO's back catalogue, and SHOWTIME's premium library as part of its service from the start, thanks to Bell Media's program rights deals with HBO and SHOWTIME noted above. With respect to HBO content specifically, this includes shows like *The Sopranos*, *Six Feet Under*, *Sex and the City*, and *Curb Your Enthusiasm* that are not available legally to Canadians anywhere else, except for purchase on iTunes and Google Play.

Canadian TV cord-cutters and cord-nevers have long expressed their dissatisfaction on chat sites and elsewhere with their inability to legally access current HBO content without a traditional TV subscription. Under the Bell Media-HBO rights deal, there's nothing stopping Bell Media from launching its own HBO NOW[38] OTT service for the Canadian market or adding current HBO titles to CraveTV, except of course economics. While Bell Media has repeatedly said it continues to assess the market, it's clearly in Bell's business interests (as the country's largest broadcast distributor) to allow only customers with a TV subscription to get access to current HBO content via a subscription to TMN/HBO Canada. At least for now.

Amazon Prime Video launched in Canada in December 2016 after months of speculation as part of a global expansion to more than 200 countries and territories. The service is available for free in Canada to Amazon Prime members. Amazon Prime costs $79 a year.

It's difficult to assess the long-term impact that Amazon Prime Video will have on the program rights market in Canada. That's because many of the titles (especially movies) currently available on the

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[34] CBC.ca, "Shomi hadn't much hope with Netflix already in the living room," September 28, 2016. http://www.cbc.ca/news/business/shomi-netflix-streaming-cravetv-1.3781427

[35] CBC.ca, "Web streaming service Shomi to shut down as of Nov. 30; Rogers and Shaw launched online service in November 2014," September 26, 2016. http://www.cbc.ca/news/entertainment/shomi-shut-down-1.3779675

[36] Bell Media news release, December 3, 2014: "Introducing CraveTV: All You Can Watch for $4/month". http://www.bellmedia.ca/pr/press/introducing-cravetv/

[37] The producers of *Letterkenny* are now shopping the show internationally to platforms and networks, according to this column in The Globe and Mail: https://www.theglobeandmail.com/arts/television/is-the-world-ready-for-letterkenny/article36750954/

[38] Similar to the HBO NOW OTT service available in the U.S. market.

service are also available in Canada on linear TV or other platforms, including TV series *Mr. Robot* (Showcase, Amazon Prime Video, iTunes, Google Play), *Preacher* (AMC, iTunes), *Fear the Walking Dead* (AMC, iTunes), and *The Walking Dead* (AMC, Netflix, iTunes). The Amazon original series *Bosch*, produced by Amazon Studios and Fabrik Entertainment, is an interesting test case for discussion.

The Emmy Award-nominated police procedural was licensed by Bell Media for the Canadian market and has been an exclusive on CraveTV since its debut on the service in February 2015. In announcing Season 2 of *Bosch* on CraveTV in March 2016, Bell Media said the series had become one of the streaming service's most-watched dramas in terms of number of views since the debut of its first season.

Bell Media even aired Season 1 of the show in prime time on CTV in the summer of 2016, its North American network debut, as part of its strategy aimed at attracting new audiences to its subscriber-based channels and services.[39]

CTV and CraveTV's senior VP of programming described the strategy as follows:

> BOSCH continues to be a success for us on CraveTV. The addition to the CTV schedule provides a tremendous sampling opportunity for CTV viewers and a great opportunity to drive new interest in Season 2, which remains exclusively available to CraveTV subscribers.[40]

But here's the interesting thing. *Bosch* is also currently available on the Amazon Prime Video service in Canada. (Although, interestingly, the show was not initially available on Amazon Prime Video in Canada after its launch here.[41] We assume that's because Bell Media's CraveTV had the exclusive streaming rights for Canada at the time and those rights later expired. *Bosch* appeared on Amazon Prime Video's Canadian offering in July 2017, some seven months after the launch of the service in this country.)

The big question is, will Amazon/Fabrik stop licensing future seasons (production of Season 4 is currently underway in Los Angeles) of *Bosch* to Bell Media for streaming on CraveTV and/or broadcast on its linear TV channels and instead keep the show exclusively for the Amazon streaming service? And will past seasons of the show soon disappear from CraveTV, meaning the service would lose one of its most-watched shows?

This would seem to be the most logical scenario, especially if Amazon wants to drive subscriptions to Amazon Prime Video in Canada. But if Amazon/Fabrik can earn additional revenue by selling non-exclusive rights for *Bosch* to Bell Media or another Canadian broadcaster while still keeping the show on Amazon Prime Video, would it not at least consider this option, assuming a Canadian broadcaster was even interested in this scenario? Only Amazon knows the answer to this question, and the answer can change on a dime as Amazon's business strategy adapts to the changing video marketplace.

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[39] Media in Canada, "From streamer to CTV: Bell Media moves Bosch," July 11, 2016. http://mediaincanada.com/2016/07/11/from-streamer-to-ctv-bell-media-moves-bosch/

[40] Bell Media news release, July 11, 2016: "Critically Acclaimed Crime Drama BOSCH Makes its Network Debut on CTV This Thursday, July 14". http://www.bellmedia.ca/pr/press/critically-acclaimed-crime-drama-bosch-makes-its-network-debut-on-ctv-this-thursday-july-14/

[41] See Mobile Syrup, "Bosch and Catastrophe are now available on Amazon Prime Video Canada," July 18, 2017, https://mobilesyrup.com/2017/07/18/series-coming-to-amazon-prime-video-in-july/; and The Toronto Star, "Amazon launches Prime Video in Canada," December 14, 2016. https://www.thestar.com/business/tech_news/2016/12/14/amazon-prime-video-now-available-in-canada.html

Perhaps the most talked about recent OTT service launch announcement is CBS' plan to expand its streaming service CBS All Access to international markets. The expansion will begin with a launch in Canada in the first half of 2018, with other global markets to follow.

"CBS All Access is growing faster than we anticipated domestically, and now represents a whole new opportunity internationally as well," Leslie Moonves, Chairman and CEO of CBS, said in a statement announcing the expansion. "By going direct-to-consumer around the world, we will facilitate new connections between the global audience and our industry-leading premium content."[42]

It's too early to say exactly how CBS All Access will affect the Canadian rights market since rights for certain shows on the streaming service are currently locked up by Canadian broadcasters for the Canadian market and by other players internationally. For example, the rights to one of CBS All Access' flagship shows, *Star Trek: Discovery*, are owned by Bell Media for the Canadian market (Space and CraveTV) and by Netflix for most other markets in which it operates internationally. *Star Trek: Discovery* has been a major hit on Space and CraveTV since its debut.[43]

But again, the big question is, when current rights deals expire, will CBS snub existing longstanding partners and keep all CBS All Access content for all international markets, or will rights holders pay dearly in order to continue business as usual. CBS has certainly signaled that it would like to deliver more of its premium content directly to consumers internationally.[44]

The big concern among all Canadian broadcasters and media companies (and the wider Canadian industry including policymakers) is, at what point will CBS decide to take Showtime's OTT service, or Time Warner decide to take the HBO NOW OTT service (or name any other foreign OTT service) directly to Canadian consumers once current rights deals expire, leaving current Canadian broadcast rights holders with large gaps in their linear TV schedules or streaming service libraries to fill.

That, of course, is the million-dollar question. In other words, how close are we to the tipping point of losing a distinct Canadian program rights market?

The issue of a disappearing separate Canadian program rights market was addressed succinctly in a 2016 paper by lawyers Jay Kerr-Wilson and Ariel Thomas, as follows:

> The threat posed by OTT services to the Canadian program rights market is different from the threats that have gone before in one very important aspect: OTT services are operating within the regulatory tent in Canada despite having no significant regulatory requirements or obligations. The barbarians are no longer at the gate; they have moved in and taken up residence. If foreign OTT services can acquire, without restriction, Canadian program rights as part of their global licensing deals, and can freely operate in Canada without any of the Canadian ownership or Canadian content obligations imposed on traditional broadcasters, have we finally given up on protecting and promoting a distinctly Canadian rights market?[45]

[42] CBS news release, August 7, 2017: "CBS All Access to Expand Globally."
http://investors.cbscorporation.com/phoenix.zhtml?c=99462&p=irol-newsArticle&ID=2292376

[43] Space news release, September 29, 2017: "Star Trek: Discovery Sets Audience Record in Canada".
http://www.newswire.ca/news-releases/star-trek-discovery-sets-audience-record-in-canada-648679773.html

[44] See footnote 10 above.

[45] Jay Kerr-Wilson and Ariel Thomas, "The Canadian Rights Market Under Siege: The 'end of times' or merely another link in the evolutionary chain?" Presented at the Law Society of Upper Canada conference, April 21, 2016, at page 26.
http://www.fasken.com/files/Publication/0ade5da6-4349-4903-92a7-cad0748047ae/Presentation/PublicationAttachment/97b817d6-31aa-4bb0-bc90-ccf20b54a4c4/93180878_v(6)_The%20Canadian%20Rights%20Market%20Under%20Siege.pdf

Given the popularity and importance of live sports programming in the media business we would be remiss not to at least briefly mention developments with respect to sports-based OTT services.

In April 2016 Rogers launched Sportsnet Now as a standalone streaming service that holds exclusive rights to Toronto Blue Jays, National Hockey League (NHL), and some Toronto Raptor's games.[46] In announcing the launch, Rogers claimed that Sportsnet is the first major sports network in North America to offer its content live over the Internet to paying subscribers.

One development that caused a bit of a stir was UK-based DAZN's (pronounced Da Zone) announcement in July 2017 that it had secured exclusive streaming rights for Canada to all National Football League (NFL) games starting with the 2017/2018 season.[47] The deal essentially replaced the premium subscription TV service previously offered by Canadian broadcast distributors known as *NFL Sunday Ticket*, which gave subscribers access to all NFL games including out-of-market games, and *NFL Game Pass*, the league's streaming service.

DAZN had a rocky start to its launch in Canada, to say the least, with various technical issues plaguing the service after launch that left many subscribers frustrated with the on-demand sports streaming service.[48]

In response to subscriber complaints, which included for example the Twitter account @DAZNSucks created to unite unhappy customers, in October 2017 the NFL and DAZN reached agreements allowing several Canadian broadcast distributors to resume selling *NFL Sunday Ticket* to their TV subscribers via set-top boxes.[49]

Social Media Platforms

Another new development in the program rights market since the Gratton Report was written is the emergence of social media platforms as distributors of live and original video content. In recent years leading social media platforms such as Facebook (via Facebook Live) and Twitter have seen live sports content streamed on their platforms.[50]

One of the deals that created the most buzz was Twitter's one-year deal with the NFL, announced in April 2016, to stream 10 of the 16 NFL *Thursday Night Football* games that aired in the 2016/2017 football season.[51] While Twitter won the global streaming rights to these games as part of the deal, for which it reportedly paid about $10 million, the deal specifically excluded the Canadian market as

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[46] The Globe and Mail, "Rogers launches direct-to-consumers Sportsnet Now streaming service," March 31, 2016. https://www.theglobeandmail.com/report-on-business/rogers-launches-direct-to-consumers-sportsnet-now-streaming-service/article29471799/

[47] CBC.ca, "Sports streaming app DAZN launches in Canada with all NFL games for $20 a month; Will launch with NFL digital rights, company says more will be added," July 21, 2017. http://www.cbc.ca/news/business/dazn-streaming-nfl-1.4214428

[48] CBC.ca, "'It's ruining my NFL experience': Canadians fume about new streaming service; Canadians who want to have access to all NFL games must use DAZN, which has had hiccups since launching," September 15, 2017. http://www.cbc.ca/news/canada/nova-scotia/dazn-canada-nfl-football-streaming-problems-1.4289869

[49] The Toronto Star, "NFL reattaches cable as streaming service falters; DAZN no longer exclusive provider of league's Sunday Ticket package," October 22, 2017. https://www.thestar.com/sports/2017/10/22/nfl-reattaches-cable-as-streaming-service-falters.html

[50] Rapid TV News, "Live sports streaming on social media gains ground," May 15, 2017. https://www.rapidtvnews.com/2017051547210/live-sports-streaming-on-social-media-gains-ground.html#axzz4zIXRmtMj

[51] NFL news release, April 5, 2016: "National Football League and Twitter Announce Streaming Partnership for Thursday Night Football; Twitter to stream 10 Thursday Night Football games globally". https://nflcommunications.com/Pages/National-Football-League-and-Twitter-Announce-Streaming-Partnership-for-Thursday-Night-Football.aspx

Rogers' Sportsnet owned exclusive rights to *Thursday Night Football* (TV and online) for the 2016/2017 season. The games aired on Sportsnet via simulcast of CBS, NBC, and the NFL Network's linear TV channels, as well as on their respective websites. CBS.com, NBC.com, etc. had the right to stream domestically but not worldwide.

In April 2017 Twitter lost the deal to stream the NFL's Thursday night games for the 2017/2018 season to Amazon, which reportedly paid $50 million[52] under a one-year deal for the right to do so.[53] Although not mentioned in the announcement, the Amazon agreement specifically excluded Canada, as the Twitter deal did, because DAZN has the exclusive streaming rights for Canada for all NFL games, as noted above.

Bell Media and the NFL announced in June 2017 that all *Thursday Night Football* games would air on TSN and CTV Two for the first time, and return to RDS, beginning with the 2017/2018 season as part of a multi-year rights agreement extension that makes Bell Media the exclusive television broadcast partner of the NFL in Canada.[54] We emphasize the word "broadcast" in the preceding sentence because, as noted above, DAZN and not Bell Media has the streaming rights to all NFL games in Canada.

If this sounds complicated and confusing, that's because it is. Welcome to today's program rights market.

The NFL has called its approach to licensing the rights to *Thursday Night Football* as a "tri-cast" model: broadcast (NBC/CBS in the U.S.; CTV and CTV Two in Canada), cable (NFL Network in the U.S., and TSN/RDS in Canada, and digital distribution (Amazon Prime Video in the U.S. and DAZN in Canada).

The NFL's approach to do short-term streaming deals (i.e., one year) for *Thursday Night Football* is in sharp contrast to the NHL's 12-year, $5.2-billion deal signed in November 2013 with Rogers for exclusive Canadian linear TV and digital rights to NHL games.[55] The deal began with the 2014/2015 season and runs through the 2025/2026 season.

A number of Canadian broadcasters have had a presence for a few years on Snapchat, a mobile-focused social media platform/app, owned by California-based Snap Inc. But in November 2017 it was reported that the CBC and Bell Media would be the first Canadian broadcasters to provide Snapchat with original Canadian content for Snap's Discover and Our Stories features.[56] Earlier this year, Snapchat revealed plans to move into scripted content.[57]

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[52] The Wall Street Journal, "NFL and Amazon Reach One-Year Streaming Deal for About $50 Million; Deal for 10 Thursday night games will be available only to Amazon Prime members," April 4, 2017. https://www.wsj.com/articles/nfl-and-amazon-reach-one-year-streaming-deal-for-about-50-million-1491347701

[53] NFL news release, April 19, 2017: "National Football League and Amazon Prime announce streaming partnership for Thursday Night Football; Amazon Prime to stream 10 Thursday Night Football games globally". https://nflcommunications.com/Pages/NATIONAL-FOOTBALL-LEAGUE-AND-AMAZON-PRIME-ANNOUNCE-STREAMING-PARTNERSHIP-FOR-THURSDAY-NIGHT-FOOTBALL.aspx

[54] Bell Media news release, June 7, 2017: "Thursday Night Football Comes to TSN, CTV, CTV Two, and RDS". http://www.bellmedia.ca/pr/press/thursday-night-football-comes-to-tsn-ctv-ctv-two-and-rds/

[55] NHL.com, "NHL, Rogers announce landmark 12-year deal," November 26, 2013. https://www.nhl.com/news/nhl-rogers-announce-landmark-12-year-deal/c-693152

[56] See https://www.linkedin.com/pulse/welcome-snapchat-bell-media-cbc-joe-strolz/.

[57] Variety, "Snapchat to Move into Scripted Content by Year's End," August 23, 2017. http://variety.com/2017/digital/news/snapchat-shows-move-scripted-content-by-years-end-1202536733/

Boon Dog expects more social media platforms to try streaming live/original video content in the years ahead. Not all will stick, like the Twitter/NFL pact, but experimentation will no doubt continue as rights holders and social media platforms try to find a winning formula.

Theatrical Distribution

While not explicitly addressed in the Gratton Report, some rights holders have turned to theatrical distribution as an additional window for the distribution of their content. Most recently, the NFL (that's right, a pattern seems to be developing here with the NFL in experimenting with new distribution models) announced a three-year "sponsorship agreement" with Cineplex that is bringing *Sunday Night Football* and the Super Bowl live to Cineplex theatres across Canada.[58] "NFL Sundays at Cineplex" premiered in-theatre on November 12, 2017, with NFL games broadcast live to 15 theatres across Canada initially and will expand to 50 locations for Super Bowl LII. Tickets to "NFL Sundays at Cineplex" are just $5 each.

As noted above, Bell Media now holds the Canadian broadcast rights (TSN/CTV Two/RDS) to *Sunday Night Football* and the Super Bowl so this deal will eat into its audience for these games, albeit, in our view, in a limited way. It's worth noting that "NFL Sundays at Cineplex" uses the Bell Media broadcast feed including Canadian commercials thanks to a deal with Bell Media, a Cineplex spokesperson confirmed to Boon Dog.

While the Cineplex-NFL deal gives the NFL another slice of pie (revenue) over and above its existing program rights agreements, would other rights holders try the same approach for other live, big-event type programming, such as the Academy Awards, Golden Globe Awards, or the Grammy Awards—some of the most-watched shows in Canada on linear TV?

IV. Opportunities for Canadian TV Producers and Rights Holders

Thus far in this report the discussion has focused on the changing market for television program rights related to foreign (mainly U.S.) content and how that is affecting, or will affect, Canadian broadcasters/media companies. But what about Canadian television programming?

Just as it has for foreign rights holders, the evolving market for television program rights (new platforms, new players, the growth of OTT) is creating new opportunities for Canadian programming and those who hold the rights to that programming.

Canadian television content creators and rights holders have a love-hate relationship with OTT players, particularly Netflix. While many in the creative industry have called for OTT providers to be required to contribute to the creation of Canadian programming, many are also (sometimes quietly) happy to have these "new doors to knock on" to sell Canadian programming. This is especially true since the massive amount of consolidation that has occurred in Canada in recent years has reduced the number of Canadian doors to knock on, and given large Canadian broadcast groups' enormous negotiating power over television producers, which in turn allows them to demand all or significant

[58] Cineplex news release, November 3, 2017: "Cineplex Quarterbacks Exclusive Canadian Sponsorship to Bring the NFL to the Big Screen; Fans Can Enjoy Sunday Night Football and the Super Bowl at Theatres Across Canada". https://mediafiles.cineplex.com/press-releases/Cineplex%20NFL%20Canada%20Partnership%20Release%20FINAL_20171103130455_0.pdf

rights in exchange for a broadcast licence fee (and other compensation), which is still a trigger required for television producers to access certain funding.[59]

Netflix has emerged as an important distribution and financing partner for Canada's public broadcaster, particularly its English-language TV network. With limited second-window distribution opportunities due to its lack of entertainment-based specialty TV channels, the CBC turned to Netflix not long after its launch in Canada to essentially be its "second-viewing" or catch-up viewing platform.[60] That relationship has evolved to being co-financers of high-quality and big-budget drama series such as *Anne* and *Alias Grace*. Without Netflix's participation, it's possible the CBC would not have been able to commission these shows—certainly not at their high budget levels—and, therefore, quite possibly, the shows may never have been made. *Anne* and *Alias Grace* are broadcast on CBC and available on-demand on CBC.ca, and streamed globally on Netflix outside of Canada.

The following excerpt from a *Playback* article highlights the love-hate relationship that private Canadian broadcasters/media companies have with Netflix:

> "Netflix is a very, very, very powerful force in this country, never mind the world, from a content point of view. And [partnering with it to create content] is sleeping with the enemy. And they are the enemy," Williams [Barb Williams, EVP and COO, Corus Entertainment], said.
>
> She added that while Corus will partner with Netflix again on season two of *Travelers*, and perhaps other series in the future, the media company is trying to figure out the right balance to financing premium quality content.
>
> "We're all acknowledging that we can make [great content] if we get the money to do it. But who are the right partners and what are the right terms? What is a win in the short term but might be very damaging in the long term?" she said. "Maybe you could do one or two [shows] with them, but you don't want your whole slate with [Netflix]."[61]

Perhaps the best example of the new program rights market being a boon for Canadian programming is the *Trailer Park Boys* franchise. Years after finishing its successful cult-following run on the Showcase specialty TV channel in Canada, the show found a new life on Netflix in the fall of 2014 and a new global fan base.[62] Season 8 of *Trailer Park Boys*, which consists of 10 all-new episodes, premiered exclusively on Netflix that year and Seasons 1-7 and various specials were eventually made available to Netflix subscribers worldwide.

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[59] Concerns of Canadian independent producers in English Canada can be summarized in this CMPA news release, which was issued following the CRTC's approval of the Shaw-Corus transaction in March 2016, http://cmpa.ca/news-events/news-releases/crtc-approval-corus-shaw-deal-puts-canada's-independent-producers-risk.

[60] CBC.ca, "Netflix beefs up Canadian content," December 13, 2010. http://www.cbc.ca/news/netflix-beefs-up-canadian-content-1.965001

[61] Playback, "Media execs weigh in on working with Netflix," March 10, 2017. http://playbackonline.ca/2017/03/10/is-netflix-the-enemy/

[62] Netflix and Entertainment One news release, March 5, 2014: "Only On Netflix: Canada's Incomparably-Entertaining Trailer Park Boys Return For Seasons 8 & 9 Beginning This Fall". http://www.newswire.ca/news-releases/only-on-netflix-canadas-incomparably-entertaining-trailer-park-boys-return-for-seasons-8--9-beginning-this-fall-513866151.html

In October 2017, Netflix revealed that *Trailer Park Boys* was the 7th most "Binge Raced"[63] show on its service globally since 2012.[64] Any Canadian producer would be thrilled to make such a list.

V. Conclusion

As this report has attempted to show, there have been some significant changes in the licensing of television content in North America in recent years, with the number of platforms and players in the mix growing exponentially. Yet, at the same, it can be said that much has remained the same, at least so far.

Generally speaking, the traditional "orderly marketplace" for television program rights remains mostly the same as it has always been. Program rights holders carve out rights according to country or territory and by platform and try to maximize the revenue they earn from those rights.

At the same time, however, the "orderly marketplace" for television program rights is clearly in flux. As Gratton noted in his report in 2011, the program rights market in Canada continues to appear "fragmented and chaotic, at times even contradictory". How else can one explain why a show like *Mr. Robot* is available to Canadians in a number of ways (on the Showcase specialty TV channel, on the Amazon Prime Video OTT service, and on iTunes and Google Play)? Or, why on the one hand Canadian broadcasters/media companies see Netflix as a major global threat, and on the other hand have partnered with the company for the distribution of their content (CBC and Corus with Nickelodeon content, for example) or to commission original programming (CBC with *Anne* and *Alias Grace*, Bell Media with *Frontier*, and Corus Entertainment with *Travelers*, for example).

With the growth of global streaming players such as Netflix and Amazon, selling rights on a global basis, rather than by country or territory, is a new option available to rights holders and increasingly seen as a viable and lucrative one. Netflix has made clear its desire to acquire global rights to the content it licenses as much as possible. CBS has indicated its desire to distribute more of its content directly to consumers outside of the United States, via its CBS All Access streaming service. Indeed, for Canadian broadcasters/media companies the "orderly marketplace" for television program rights can change on a dime.

Experimentation, change, contradiction, and disruption appear to be the new normal in the television program rights market. No clear model has yet to emerge as the standard for the future distribution of television rights in North America.

There's no denying, however, that intense competition for acquiring the rights to great foreign (mainly U.S.) television content is real and growing.

During a CRTC hearing in November 2016, then-Bell Media President Mary Ann Turcke spoke about the new reality now facing Canadian broadcasters/media companies in acquiring rights from foreign (mainly U.S.) rights holders for the Canadian market. Her remarks came just days before Amazon Prime Video launched in the Canadian market.

> Now, a new global OTT competitor—Amazon Prime—is entering the Canadian market in two days. So, it's not just our fellow Canadian broadcasters who will try to outbid us for

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[63] Netflix defined "Binge Racers" as members who completed a season of a TV show within 24 hours of its release on Netflix. Data accommodates for time zones and is reflective of a show's launch within 24 hours of a country's release. Netflix's binge racing ranking has no relation to overall viewership.

[64] Netflix news release, October 17, 2017: "Ready, Set, Binge: More Than 8 Million Viewers 'Binge Race' Their Favorite Series". https://media.netflix.com/en/press-releases/ready-set-binge-more-than-8-million-viewers-binge-race-their-favorite-series

> first-run original programming, but it's Netflix and now Amazon, two entities that are not subject to the same regulatory requirements as us and that have astronomically more buying power than we do.
>
> And Amazon is just the next one in a potential universe of six worldwide brands that we will have to compete against.
>
> Let me give you a real-world example. Last May, we were in Los Angeles buying our foreign television content. There were three shows that we were bidding on and Netflix was the competitor, a competitor who put a global, first-run and SVOD rights deal on the table even though these are shows that are coming into Canada on the U.S. networks. We were fortunate to take two of the three shows; however, we paid a significant premium.
>
> The conclusion, therefore, is that Netflix was willing to pay more for the content even in a non-ad supported world. The global scale of these players fundamentally alters the monetization model in this country. It also begs the question whether the "product" we currently buy that is known as "Canadian rights" is going to become obsolete.
>
> Consider a world where Netflix, or another global OTT player, acquires the majority of the top prime time network television shows. The consequences are broad and can be bucketed into two scenarios.
>
> First, Canadians will watch this popular television content on a U.S. network, taking away Canadian broadcasters' viewers and reducing our ability to monetize our prime-time schedule, not to mention taking away the opportunity for Canadian businesses to advertise to these viewers. We must remember that the revenue earned from popular foreign programming is still the prime support for Canadian production, including local news.
>
> Even worse for the existing ecosystem though, is the second scenario where Canadians decide they don't need any TV subscription at all because the best of prime-time television is dropped day and date on Netflix. In this instance, broadcast revenue is falling and BDU [broadcasting distribution undertaking] revenue is falling. The functional relationship between BDU revenue, CMF [Canada Media Fund] contributions, advertising revenue, and Canadian production is so inter-related that negative motion in any of these components results in an exponential decline in the system.[65]

More recently, a Rogers Media executive noted that Rogers won't be overpaying for U.S. television programming to fill its linear TV channel schedules and digital platforms against the likes of Netflix or Amazon. "They aren't making money. But they're spending a lot of money," Colette Watson, Senior VP of Television and Broadcast Operations at Rogers Media, said of Netflix and Amazon at this year's Los Angeles Screenings. "It will be careful, it will be strategic, but yes you would do that (buy all rights), but we can't afford to do that on everything we do."[66]

As current, long-term television program rights agreements approach their expiry date many will be watching whether Canadian broadcasters/media companies will be able to extend those rights agreements at a reasonable cost, or will they be outbid by the new global behemoths like Netflix and Amazon (and potentially others)?

One thing is for sure, given everything we know and have seen to date, the amount and pace of change in the television program rights market will only accelerate in the years ahead.

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[65] Transcript, CRTC Hearing, November 29, 2016, at line 1905-1912. http://crtc.gc.ca/eng/transcripts/2016/tb1129.htm

[66] Cartt.ca, "Upfronts 2017: Rogers Media set to get back into streaming TV after Shomi," June 6, 2017. https://cartt.ca/article/upfronts-2017-rogers-media-set-get-back-streaming-tv-after-shomi

APPENDIX 1

About Boon Dog Professional Services Inc.

Boon Dog Professional Services Inc. is an Ottawa-based research and consulting firm offering a range of professional services and research studies to clients in a number of sectors, with an expertise in the broadcasting and media sectors. Services provided include the following:

- strategic business and market intelligence;
- strategic marketing communications and public relations;
- writing and editing; and
- communications/broadcasting regulatory consulting and analytics.

Boon Dog Co-founder and Partner Mario Mota has extensive knowledge of the Canadian broadcasting and communications industries and CRTC regulatory processes. From 1999 to 2000, Mario served as Director of Policy and Regulatory Affairs at the Specialty and Premium Television Association (SPTV), which represented licensed Canadian specialty, pay, and third-language TV services. Mario assumed the position of Director of Specialty and Pay Television Policy at the Canadian Association of Broadcasters (CAB) following SPTV's merger with the CAB in December 2000. From April 2006 to November 2010, Mario oversaw broadcasting policy and regulatory matters for the Canadian Media Producers Association (CMPA) (then the Canadian Film and Television Production Association and later the Canadian Media Production Association), first as Senior Director of Broadcast Relations & Research and then as Vice-President, Broadcasting Policy & Regulatory Affairs.

Prior to co-founding Boon Dog Professional Services in 2006, Mario was Vice-President of Broadcast/Media Research at Decima Research Inc. (now Harris/Decima) where he managed the company's growing broadcast and media research practice.

Mario first joined the Decima group in July 2001 as President and Publisher of Decima Reports Inc. (then Decima Publishing but now The Wire Report and published by The Hill Times). One of Mario's key mandates in this leadership position was to increase Decima Research's exposure and credibility in the broadcasting sector. He achieved this by coordinating research projects on broadcasting industry topics such as digital television and HDTV. During his time at Decima Reports, Mario developed and managed Decima's successful THE DIGITAL DOMAIN research series, Canada's most comprehensive independent research series on the digital TV market. Mario continued to manage this highly regarded research product when he joined Decima Research in June 2004. Boon Dog Professional Services continues to produce this report series today under the name ***Canadian Digital TV Market Monitor***.

Mario and Boon Dog also produce the ***Canadian Television Benefits Monitor***, an annual syndicated research study that tracks spending for all current television tangible public benefits packages, using data contained in reports filed annually with the CRTC.

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