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## Standing Committee on Canadian Heritage

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EVIDENCE

**Tuesday, May 13, 2008**

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**Chair**

**Mr. Gary Schellenberger**

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• (1535)

[English]

**The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)):** I'll call the meeting to order. I think we'll all be here very shortly.

This is meeting 30 of the Standing Committee on Canadian Heritage, pursuant to Standing Order 108(2), for a study on the request of the CRTC to obtain the power to impose administrative monetary penalties.

We have two issues to deal with here today. That's the first one. The second one, pursuant to Standing Order 108(2), is the study on the Internet content regulations.

We have, from the Canadian Radio-Television and Telecommunications Commission, Konrad W. von Finckenstein, chair; Scott Hutton, executive director, broadcasting; and Namir Anani, executive director, policy development and research.

Welcome, gentlemen.

I understand that Mr. von Finckenstein's presentation will be on both issues, but we can treat them individually as we question.

Mr. von Finckenstein, would you make your presentation, please, sir.

**Mr. Konrad W. von Finckenstein (Chair, Canadian Radio-television and Telecommunications Commission):** Thank you, Mr. Chairman, for inviting us to be here before you.

As you say, there are two points, Internet content and administrative monetary penalties. I will begin by addressing the topic of Internet content.

[Translation]

I am going to talk now about the regulatory background of the new media.

Unlike many other jurisdictions in the world, future technological developments were taken into consideration when drafting our Broadcasting Act. It does not refer to any specific technologies. As such, all types of broadcasting fall within the Commission's mandate.

Ten years ago, we examined new media services that deliver broadcasting content over the Internet. After holding a public hearing, we concluded that these services were not having a discernible impact on conventional radio and television audiences

and that regulation was not necessary to achieve the objectives of the Broadcasting Act.

[English]

Consequently, in 1999 we issued an exemption order for new media services, and in April 2006 we determined that broadcasting services received through cellphones, personal digital assistants and other mobile devices should also be exempted for similar reasons.

Naturally, the world has changed tremendously in the past decade. In particular, the broadcasting and telecommunication industries have converged and there have been significant advances in technologies.

In December 2006 we submitted a report to the government on the future technological environment facing the Canadian broadcasting industry. Our report found that new media services had yet to have an impact on conventional radio and television audiences. However, the report also advised that public policy action would have to be taken in the next three to seven years.

Given the rapid pace of change, we felt it was high time the commission take another look at the impact of new media services on traditional broadcasting systems. When I joined the commission in early 2007, I immediately launched a new media project initiative, the purpose of which was to investigate the social, economic, cultural, and technological issues associated with broadcasting in new media.

In two days we will be issuing a document called *Perspectives on Canadian Broadcasting in New Media*, which is a compilation of the research we have commissioned and views that we have obtained over the past year.

In parenthesis, I didn't know I was going to appear before you today. The document was always timed for Thursday, so it isn't ready. Otherwise I would have brought it with me today.

You will read in the document that recent studies show that Canadians are spending more and more time accessing all types of broadcasting content over the Internet and through mobile devices. The perspectives highlighted in the document also tell us that there are very different opinions on how to promote and support Canadian content in this environment.

Broadcasting in new media is becoming an increasingly important element of the Canadian broadcasting system. It is having an impact on traditional broadcasters. But is it a positive impact or a negative impact? Do the exemptions orders continue to be appropriate?

We have decided to ask the public to help us in answering these questions and in defining the issues related to broadcasting in new media. At the same time as we release *Perspectives on Canadian Broadcasting in New Media*, we will be launching a public consultation on the same day. We're seeking guidance from the public to verify that we have correctly identified the issues and are on the right track, and we want the public to help us structure a framework for public hearings that we plan to hold in early 2009.

[Translation]

I would like to be clear on one point. Our interest primarily lies in the distribution of professionally produced broadcasting content. That is, the same kind of high-quality Canadian content you would normally watch on television or hear on the radio. Our ultimate aim is to ensure that broadcasting in new media contributes to the achievement of the objectives of the Broadcasting Act.

[English]

Once Canadians have had a chance to weigh in with their views, we will issue a notice of the public hearing, probably towards the end of the summer, and we will outline the details of the hearing that we will hold on new media next year.

I would gladly return after our documents have been made public this Thursday to answer any further questions you may have as a result of the issue of those documents.

Now let me turn to the subject of AMPs. I was pleased to learn that your committee recently passed a motion to study our request for the power to impose AMPs or administrative monetary penalties. When I appeared before you in March, when you were studying Bill C-327, I raised the subject. I mentioned that the Telecommunications Act currently provides the commission with such powers, which it can use to enforce its policies in limited areas. In the case of the "do not call" list, we have the power to impose penalties on individuals and companies for each violation of the telemarketing rules. However, the commission does not have AMP powers under the Broadcasting Act. This creates a significant gap in our regulatory toolbox, as we can impose only penalties that are either relatively light or excessively heavy—or as one of your committee members said, we can either use a peashooter or a bomb, but nothing in between.

As you know, the commission grants licences and there are usually terms and conditions associated with them. If a licensee commits an infraction, we have at our disposal three options.

At the light end of the spectrum, we can wait until the end of the licence term and then impose more stringent conditions of licence during the renewal process. Given that licence terms can extend up to seven years, there can be a significant wait before we are able to act, especially if the infraction occurred early in the term.

At the more severe end of the spectrum, section 12 of the Broadcasting Act allows us to issue mandatory orders that effectively require licensees to abide by the rules, and we can file these in court. If the licensee refuses to abide by the order, we can launch contempt of court proceedings. Of course, contempt of court proceedings are criminal proceedings, and the standard of proof is beyond all reasonable doubt. It's a very difficult thing to pursue, and

it's really not appropriate when we're talking about the violation of the term of a licence.

Finally, if we find that the licensee is still not in compliance we can call a hearing to determine whether we should suspend or revoke the licence—in effect, put the person out of business. That's at the very extreme end of the spectrum.

● (1540)

[Translation]

This is simply not an efficient way to make the system work. We need intermediary civil penalties to induce licensees to abide by the rules, without having to elevate their non-compliance to criminal behaviour. We should only have to resort to the courts in the most extreme of cases. Following my last appearance before you, we submitted a draft of an amended Broadcasting Act. I would encourage you to refer to it as you carry out your study.

[English]

A modern regulator needs AMP powers in all areas under its mandate. If we are to regulate with a lighter hand and provide broadcasters and BDUs with more latitude, then we must have the tools to ensure that licensees live up to their responsibilities.

It is my hope that at the conclusion of your study you will support our request for the power to impose AMPs. I would now be happy to answer any of your questions.

Thank you.

**The Chair:** Thank you for that.

The first person on the docket for questions is Ms. Fry.

**Hon. Hedy Fry (Vancouver Centre, Lib.):** Thank you very much for presenting to us.

I think you make a good and clear case for looking at giving you other powers under AMPs.

I want to focus a little bit on the consultation on broadcasting in new media. It's interesting that you say your report found that "new media services had yet to have an impact on conventional radio and television audiences". I don't think there is a single television station today that doesn't have Internet access to their news, to chat lines, to comments and questions and answers on whatever their topics are. It seems to almost be an extension now of the particular broadcast they did. I think it's important that this behaviour or this method of communicating with people also have some very clear guidelines for how they work.

So when you say you're not going to hold any public hearings until early 2009, that concerns me a little bit, because I think we are way behind all of the other countries in terms of looking at the issue of the digital platforms—all of them.

I want to ask you if you think your decision to wait until 2009 is a good one. Do you not believe you should be holding public hearings sooner, given that, as I said, all the television stations that I know of have various forms of talking to them, on the Internet and on various other platforms, and are reaching out to those platforms?

**Mr. Konrad W. von Finckenstein:** You raised several points. Let me try to address them in order.

You mentioned that in 2006 we said it had yet to have an impact. Those were the views that were imparted to us, and that's what the CRTC reported.

Frankly, like you, I feel that was understating the issue. And therefore, when I became chairman, I immediately said we had to address this issue, this was coming at us, etc.

However, the issue is very complex and has lots of dimensions. There are as many views as there are people who you consult. And we, over the last year, commissioned a whole bunch of studies. We held seminars. We held *colloques*. We have participated in them in order to try to somehow figure out the total dimension of this new media.

Secondly, you asked what our aspect is. We are responsible for broadcasting, so I was very careful throughout my remarks to always say the "broadcasting in new media". I'm looking only at broadcasting. I am not looking at Facebook. I am not looking at how it shapes it. I am looking only at broadcasting in new media.

**Hon. Hedy Fry:** No, no, I understand that.

**Mr. Konrad W. von Finckenstein:** We have now produced this document, which you will see on Thursday, which unfortunately, frankly, is not terribly structured, because the new media isn't structured. It is very complex. We've tried to put it in as systematic a frame as we can. We say, "Here it is. Now, really, what are the questions we should be asking in order to hold a meaningful hearing so we come to the root of it?" The root of it is obviously to what extent the media is another means of distribution of the broadcasting system, and to what extent we can use it to obtain the objectives of the Broadcasting Act. That's clear. That's the key question. But how do you get it, and what are the subjects? Do you look at incentives? Do you look at subsidies? Do you look at regulatory restraints or regulating attempts? All of that is what we are doing.

That's why we did it in two steps. We will get it out first of all to get a verification of whether or not we have it more or less right—our snapshot, you know—and then secondly to help us guide it.

Would I have loved to do it last year? Undoubtedly I would have. I wasn't here, unfortunately, and we had to do the preparatory work first of all to try to delineate the subject.

•(1545)

**Hon. Hedy Fry:** I think this should have been done a long time ago. We're really behind on this, so I was just wondering why you were taking so long. I hear your answers, and I would just urge you to do this sooner rather than later.

**Mr. Konrad W. von Finckenstein:** I hear you, Mrs. Fry, and if we can do it earlier, we shall.

**Hon. Hedy Fry:** Good.

**The Chair:** Thank you.

Ms. Mourani.

[*Translation*]

**Mrs. Maria Mourani (Ahuntsic, BQ):** Thank you, Mr. Chair.

I will deal first with the matter of administrative penalties, since we are going to talk about the Internet later on. Is that right?

[*English*]

**The Chair:** You can proceed. We're on the subject of the Internet right now. That was the first question.

[*Translation*]

**Mrs. Maria Mourani:** Thank you, Mr. Chair.

About the Internet, I am unfortunately in agreement with Ms. Fry. I think that this should be done quite quickly. You say that it is a very complex issue with lots of dimensions. You are right, it is very complex. This question has many dimensions.

I would like to know something about the consultations you are planning to hold in November. According to an article on the Internet, you were planning to hold these consultations in late 2008. If I understood correctly, the much talked-about report, which according to you will be ready in two days, should have been ready in March 2008. Is that right?

**Mr. Konrad W. von Finckenstein:** Our document will be available on Thursday. At the same time, we will hold a consultation on the matters to be dealt with in connection with this document. Does this document really describe the situation accurately, and if so what are the questions stemming from it? We are going to hold consultations during the summer and, at the end of the summer, we are going to issue a formal notice stating our questions for the hearing on the new media. This hearing will take place next January.

**Mrs. Maria Mourani:** Do you think that the CRTC should regulate matters of content? I am not talking about Canadian content—that is part of the Act—but about hate and pedophile content found on Canadian sites within our jurisdiction? These are not foreign sites. You will say that the Criminal Code is there for pedophilia, but whether we like it or not, children are being exposed half naked in suggestive positions on Canadian sites. Do you think that it is also the role of the CRTC to withdraw licences from this kind of Canadian site? Will this be part of the questions and consultations?

**Mr. Konrad W. von Finckenstein:** As you know, there are criminal cases to which the Criminal Code applies. Even with the new media, there are problems of evidence and jurisdiction. This can be dealt with by amending the Criminal Code. Having said that, it is not our job to deal with behaviours that are not criminal, even though they are not desirable. Children are the responsibility of their parents, who can use mechanical means to block things. There are also agencies that give you... What is the word I am looking for?

• (1550)

**Mrs. Maria Mourani:** You may express yourself in English; that is not a problem for me.

**Mr. Konrad W. von Finckenstein:** No, I must practise my French. If you ask me a question in French, I am going to try and answer it in French.

The new media providers, especially Internet service providers, are common carriers. They have no influence over content, they simply carry the electronic signals from a website to the user. They are prohibited under the law from discriminating or influencing content, unless we allow them to...

**Mrs. Maria Mourani:** Excuse me for interrupting you...

**Mr. Konrad W. von Finckenstein:** Which standards should we set? How do we determine what is acceptable or not?

**Mrs. Maria Mourani:** I am going to give you a very concrete example found on the Internet. Some Canadian sites show children aged 10, 12, 13 or 14, half naked in sexually explicit positions. They escape the Criminal Code. Is this your jurisdiction?

**Mr. Konrad W. von Finckenstein:** If they escape the Criminal Code, then amend the Criminal Code. That is the best thing to do.

**Mrs. Maria Mourani:** The CRTC does not handle that.

[English]

**The Chair:** Okay, another round.

Welcome back, Mr. Angus. I see you're down for the next question.

**Mr. Charlie Angus (Timmins—James Bay, NDP):** Mr. Chair, I'm thrilled to be back. I want to thank my honourable colleague, Bill Siksay, for inviting me so that we can continue with the fascinating discussions we've had with Mr. von Finckenstein.

I'm really interested in the situation with new media in terms of the tool boxes the CRTC has for dealing with the Internet, because certainly the impacts, the pressures on the bandwidth, have changed dramatically in the last few years. I would say that I think—contrary to one of my earlier colleagues—we're not very far behind the times. Western Europe is dealing with this; the FCC is dealing with this. We're dealing with pressures that really didn't exist even three and four years ago. We now have VoIP, video-on-demand, VPN traffic, peer-to-peer. I mean, when CBC is using BitTorrent to transmit television shows, we're in a brand new universe.

I would have loved to have this conversation tomorrow, in the wake of the CAIP relief decision, but I will make do without being able to comment on that. I won't ask you to comment on what's happening with the CAIP-versus-Bell issue. But it's significant, because every time—if you look here or anywhere internationally—

there's been a case of Net throttling, the argument about bandwidth management is always countered with issues of content interference.

I want to question you in terms of the tool box you have to make sure that content isn't being unfairly interfered with. Virgin CEO Neil Berkett called Net neutrality “a load of bollocks”. Excuse the term, but that was the term he used. He said they were already in discussions with content providers that if they were going to access Virgin pipes, they were going to pay more.

Section 36 gives you the right to ensure that no carrier shall “control the content or influence the meaning or purpose” of content, but it doesn't say anything about interfering with the speed of that content, interfering with accessibility of that content. Would you see a situation if a telecom starts telling customers that if they pay more money, they will get access to the Internet customers, and if they don't pay any fees, then they'll be in the slow lane? Is that an area where section 36 would come into play?

• (1555)

**Mr. Konrad W. von Finckenstein:** As you said in the introductory portion, this is a difficult subject for me to address because I have a real complaint before us, the CAIP complaint. As you seem to be very well informed on indeed, we're issuing the interim decision tomorrow. Then we will have the hearing on the merit in the fall. I apologize if I seem to be avoiding your question, but I'm trying to be very careful not to in any way jeopardize the due process of that proceeding.

Clearly, Net neutrality is a big issue. What does it mean? How do you address it? Everybody is struggling with it. When Internet service providers throttle, as you called it, traffic by some function or other, the justification normally is that the Internet is used for various purposes—your voice over Internet, the telephone Rogers provides you comes over the Internet, as does your e-mail, as does downloading, as does the uploading.

If you don't manage the traffic, it could be that your telephone conversation will be s.u.d.d.e.n.l.y t.h.i.s s.l.o.w, just because there's too much traffic. The Internet service provider is trying to make sure that the VoIP is uninterrupted and that e-mails go at a regular pace. To the extent that something can be slowed down without affecting the user, they try to do it.

Obviously they have to do this on a non-discriminatory basis. They obviously can't do it by favouring some users over others, etc. What do they actually do? What is the complaint? In the one case you mentioned, the Canadian Association of Internet Providers versus Bell, there's a specific complaint. I will be hearing the issues and we will be pronouncing on this. Other than enunciating the principles, really, I can't do more in answer to your question.

**Mr. Charlie Angus:** I understand your complaint, but theirs really right now is on the gateway access charge, so I'm not really interested in going there.

**Mr. Konrad W. von Finckenstein:** Unfortunately, they go further. They manage—

**Mr. Charlie Angus:** They do, but your decision tomorrow will be on the relief.

If I could just continue—I only have a few minutes here—at the time that Bell announced it was having a problem with bandwidth capacity and it was needing to throttle, it also opened up offers to its customers for unlimited downloads per month, if they paid a fee. The question I have to you—and I'm not asking you about Bell specifically—is whether in the tool box of subsection 27(2) or section 36 you have the tools necessary to deal with the fact that the telecoms are also content providers who are actually in competition with VoIP, with other VPN services. Do you have the tools necessary to ensure that Net neutrality will be maintained on the Internet?

**Mr. Konrad W. von Finckenstein:** I was going to answer you, before you made that last comment, on the Net neutrality.

Both acts, the Broadcasting Act and the Telecommunications Act, do not by and large provide AMPs. The only portion where it is in the Telecommunications Act is when Parliament enacted the “do not call” list, they also provided AMP. It is something we need in our tool box.

As you know, in telecom we went from an *ex ante* regulation to an *ex post* regulation. Take your hands off, let the market operate, and only step in when there's market failure. It also means, if there's market failure, you want to repair, and you should also have meaningful.... We don't have that. I would love to have AMPs on both the broadcasting side and the telecom side.

One way to do it is rather than amending the Broadcasting Act, you would put it in the CRTC Act. The CRTC, with respect to all the acts where there are ministers, which are only two, may have the power to administer monetary penalties. That will indeed enhance our tool box and could be used both on the telecom side and on the broadcasting side.

**Mr. Charlie Angus:** Thank you very much.

**The Chair:** We now move to Mr. Abbott.

**Hon. Jim Abbott (Kootenay—Columbia, CPC):** Commissioner, thank you for being here.

I wonder if you would be able to make some suggestions to the committee. Recognizing that you are not doing this without my personal invitation to you, could you provide us with a list of entities that you believe would have meaningful input into our AMP study?

In other words, I think all of us around here want to do a good job. We want to make sure we are exhaustive and that we hear from all the people who would have a position on this and have something they could add to it. I would like to invite you to provide a list of those entities to the clerk. It would be very helpful to the committee.

● (1600)

**Mr. Konrad W. von Finckenstein:** We'll gladly do that. There are basically three groups. There are the broadcasters and BDUs on one side, the telecom companies. There are the various law societies

or bar societies. There's also the user groups. Those are the three categories. I can give you names for each one of them.

**Hon. Jim Abbott:** Thank you very much. I'm sure that would be a big help.

I wonder if you could give us your expert opinion on the technological constraints. Mr. Angus raised a couple of interesting issues where Bell and other service providers have gone into bandwidth management and so on and so forth. Some may see some of that activity as being nefarious, trying to squeeze the best they can out of the resource. Others would see it as the sheer reality that there is a finite volume, and until we get to more and more new technology of compression and other ways of managing things, then in fact to be able to broadcast on Internet at this point is relatively constrained, realistically speaking. I don't know if you would agree with that assessment or not.

What else has to happen, in your judgment? If you were in a science fiction movie and you could create whatever you wanted, what else has to happen for it to be practical for us to be able to telecast, virtually, on the Internet?

**Mr. Konrad W. von Finckenstein:** You can telecast on the Internet now. You can subscribe to some services. You pay a fee and you can watch programs online just the same as you can on your TV. As you quite rightly put it, there are constraints. Our whole broadcasting system right now has close to 500 channels that you can get over your cable system. If everybody watched that over the Internet, it would be an impossible overload. There are clear constraints regardless. You need more pipes, better compression facilities, and technology. Will we get that? Probably at some point, but I don't know how far out. It's clear that right now it is best used for short episodes or a complimentary run. It's ideal for marketing or for test marketing, etc. To have a full-scale service solely on new media, that capacity isn't there.

When and how will it come? I have no better crystal ball than you. All I know is that in all the developments on this, everybody who forecast the regular development and was audacious enough to outline it by way of a timetable was usually wrong. I am not going to hazard a guess here, but I think it will come and it will come quickly. It is not a slow progression. All the developments have been more or less breakthroughs and completely changed the paradigm. I would not be surprised at all if the same thing happened here.

**Hon. Jim Abbott:** Good. Thank you.

**The Chair:** Mr. Bélanger.

**Hon. Mauril Bélanger (Ottawa—Vanier, Lib.):** Thank you, Mr. Chairman.

Mr. von Finckenstein, on the matter of the AMPs, you reminded us that when you appeared before the committee in March, as we were looking at Bill C-327...which I gather we might be disposing of today, perhaps, in the House if the recommendation is carried. You put on the table the matter of AMPs. I recall asking you at the time if the CRTC had ever presented such a request to the government and was turned down.

I don't know whether you recall that.

**Mr. Konrad W. von Finckenstein:** Yes. It was not during my tenure; that's all I can say. The subject of AMP has come up, but I do not recall this specific initiative. I don't believe they have—

**Hon. Mauril Bélanger:** I was told at the time that, no, the CRTC had never tried, never asked for, and therefore never obtained that. My first question, therefore, is why wouldn't the CRTC ask?

You stated it yourself, that in other cases, and in the case of the Telecommunications Act with the “do not call” list, these tools were given to the CRTC as the act was being approved in Parliament. It's a matter of process, I suppose. Why wouldn't the CRTC put that request to the government?

• (1605)

**Mr. Konrad W. von Finckenstein:** There is absolutely no reason. I guess, indirectly, if I was appearing before you and suggesting this, I'm also putting it before the government. We have not had a session with the government to speak about legislative amendments, first, because there are enough very difficult issues on the agenda that the government is presently addressing. Copyright, for instance, is one of them. Secondly, I would rather present a comprehensive picture to them.

I raised this issue with that bill because it clearly was not there. The solution, as suggested by Mr. Bigras, in my view didn't work. But if you want to do something, it seems to me that this the logical thing.

**Hon. Mauril Bélanger:** The reason I bring it up is that I think we all know that committees do not have the authority or power to propose legislation. It either comes from private members or the government. So if indeed there is a desire, and there might be, at the CRTC and around the community, to have this extra tool in your tool box—to use someone else's words—then I will ask whether it is the intent of the CRTC to make such a proposal to the government.

**Mr. Konrad W. von Finckenstein:** Mr. Bélanger, the short answer is yes. The question of when is a different one. I've been in my job for one year. It has been a rather hectic year, full of things that had to be addressed, and we haven't been able to develop a comprehensive legislative program to present to the government.

**Hon. Mauril Bélanger:** Fair enough. That's good. So we could expect that there would be such a request at some point in the future. If it's turned down at that point, a committee of Parliament could perhaps look into that.

On the matter of the new media, is the CRTC familiar with recommendation 2.9 of the committee's report on CBC/Radio-Canada, which was issued at the end of February of this year? I can read it to you. It said:

The Standing Committee on Canadian Heritage recommends that the CRTC, as part of its New Media Project Initiative, consider the need to protect the neutrality

of carriage of Canadian public broadcasting content, and of CBC/Radio-Canada content specifically, over new media platforms.

Has the CRTC had a chance to look at that?

**Mr. Konrad W. von Finckenstein:** As I mentioned, on Thursday we are issuing our document on new media. We will then be hearing from the public as to the questions that should be asked as part of a full-scale hearing on new media.

Undoubtedly people will make reference to your committee report and suggest that one issue you have to address in this context is the CBC and neutrality of its broadcasting, or whatever the wording you were using. I'm sure we will then, in that context, decide this is how we're going to address it. Or perhaps we will say this is really something we should address in the context of the CBC licence renewal.

**Hon. Mauril Bélanger:** The reason I bring it up is that the committee is expecting a response from the government by the end of June. From your answer I infer that thus far the government has not sought the CRTC's comments on this particular recommendation. I suppose all we can expect, then, as a response—when we get it—is, “We're looking into it and we'll have to keep you posted.”

That's unfortunate, because there are some things going on now in the marketplace that would have demanded perhaps a bit more reaction to this particular recommendation.

Thank you.

**The Chair:** Thank you.

Go ahead, Mr. Malo.

[Translation]

**Mr. Luc Malo (Verchères—Les Patriotes, BQ):** Thank you, Mr. Chair.

Mr. von Finckenstein, if I understand correctly, you wish to regulate the Internet, but you are in the process of determining how you are going to do so and how broad a mandate you are going to have. So, you are defining the way in which you are going to follow a process that will enable you to regulate the Internet.

Have I understood correctly?

• (1610)

**Mr. Konrad W. von Finckenstein:** If that is what you have understood, then you have misunderstood. That is not at all the case. We want to know whether these new phenomena have an impact on our broadcasting system, what this impact is, whether it is positive, whether we can use the new media to improve our system and achieve broadcasting objectives. Should there be a system of subsidies in order to have sufficient resources?

If it were a matter of adopting regulations, they would be quite different from those now governing broadcasting. I do not know the answer to this question; I only know that we must examine it. One thing is certain: we absolutely do not wish to transfer our regulations from the old broadcasting system to the new one. If we do something—and I do say if—it will be completely different.



**Mr. Luc Malo:** Okay. In other words, all the stir around this issue will not necessarily lead to regulation, but you are examining the question so as not to transfer to the Internet an exact copy of the model you use in broadcasting.

**Mr. Konrad W. von Finckenstein:** Yes. Our starting point is still the same, that is, the way in which we can achieve the objectives of the Broadcasting Act.

**Mr. Luc Malo:** About the AMPs, the national “do not call list” now entitles you to charge fines. Would you like the two acts governing you to be harmonized so that you had a similar power in broadcasting? Is that sort of what you are saying?

**Mr. Konrad W. von Finckenstein:** Essentially, yes. The same type of AMP that figures in the Telecommunications Act and covers a very limited aspect, namely the “do not call” list, is used for all broadcasting issues.

**Mr. Luc Malo:** When you submit your request to the government—at least that is what I understand further to the question asked by Mr. Bélanger—this is the model you are going to follow.

**Mr. Konrad W. von Finckenstein:** As I said, the best way to proceed may perhaps be to amend the Canadian Radio-television and Telecommunications Commission Act, which governs us as an agency and stipulates that we can use this kind of power under each of the acts that we regulate or administer, without there being a need to amend the Broadcasting Act or the Telecommunications Act.

**Mr. Luc Malo:** Do I still have some time, Mr. Chair?

Ms. Mourani, do you wish to say something?

**Mrs. Maria Mourani:** Yes, I would. Thank you, my dear colleague.

I would like to know, Mr. von Finckenstein, why you asked lawyers to produce this big report or study on regulation. Why did you not begin with consultations? Why did you ask them to do a review of the regulatory framework and how much did all that cost?

**Mr. Konrad W. von Finckenstein:** I could send you this figure. I do not know it offhand.

As to why I had this study done, the reason is very simple. Everyone is taking a position on what should be done to amend the Broadcasting Act, and naturally everyone does so in order to advance their own cause. So I asked these two lawyers to do a study. They are experts on the Broadcasting Act who have been advising a large number of clients for over 30 years, both small and large companies. I asked them to tell me, as experts, their opinion on the best way of amending the act in order to make it more flexible. I did not order the results. In English, I would say I commissioned the study, I did not dictate the outcome. This is their opinion.

•(1615)

**Mrs. Maria Mourani:** What do you think...

**Mr. Konrad W. von Finckenstein:** This is the opinion of two of the most neutral experts to be found.

**Mrs. Maria Mourani:** What do you think of this report?

**Mr. Konrad W. von Finckenstein:** I think that it contains some excellent ideas, some of which I do not share. We held hearings, consultations. In fact there was a major three-week consultation on the [*Editor's Note: Inaudible*]. We are now in the process of making

our decision. You will see which ideas were kept and which ones were rejected.

[*English*]

**The Chair:** Okay.

Thank you very much.

Mr. Chong.

**Hon. Michael Chong (Wellington—Halton Hills, CPC):** Thank you, Mr. Chair.

I want to ask the commissioner about the upcoming study entitled *Perspectives on Canadian Broadcasting in New Media*. I have a few questions, but not specifically about what's in the report. I want to make some comments and then seek his views on my comments.

I think in some ways the train has left the station concerning new media, and we're beyond the point where studies and actions that may flow from those studies are going to make any difference. The technologies exist today, are in use today in Canada allowing people to completely bypass—legally bypass—CRTC rules with respect to Canadian content, with respect to the regulation of Canadian radio stations and the like.

For example, I have friends who have gone out and bought Internet radio devices. They just plug them into the wall and they get automatically on their receiver thousands and thousands of stations that aren't Canadian, that aren't Canadian-regulated, that aren't CRTC-regulated. There are products such as Philips Streamium, or there's a product by a company called Roku. You can go into any Future Shop and buy these products. You simply plug them into the wall, plug them into an Ethernet connection, and boom, you have 2,000 stations for free.

It's just like a radio: you have a remote control; you can surf through about a thousand stations, pick any station you want, and play it on your system. That's coming to television. It's coming to a whole range of devices that, if not there already, are coming onto the market in the next couple of years.

I know that, for example, when you buy a Denon or Yamaha receiver now, you actually can buy this Internet-streaming radio built into the product. If you go to a high-end shop in Ottawa to purchase a Denon receiver, you have the option of buying a Denon product that, in addition to being a receiver and receiving conventional FM and AM signals, actually will receive Internet radio too. You just plug in the Ethernet connection and suddenly you have a whole third spectrum of a couple of thousand Internet radio stations that fall outside the purview of the CRTC.

I think it's only a matter of a couple of years before you're going to see that shift to Internet TV and IPTV. In some ways, I think we're entering a new era here, in which it's going to be almost a moot point to discuss whether or in what context new media fits into the old construct, before the age of the Internet.

I put this on the table because I think it's coming fast and furious, and I already see out there right now that people are using this stuff.

**Mr. Konrad W. von Finckenstein:** Let's assume your prognosis is right, that happens. That still begs two questions. Number one, your mindset is control, but that's not mine. Mine is what does it mean? How can we take advantage? How can we use it to further the objective of the Broadcasting Act?

Now, assume it's going the way you are doing it. Canadian radio stations can stream too. But are they streaming? Are there regulatory impediments for them to stream? Are there things that we do in the way we set ourselves up with regulators that actually prevent them from exploiting this opportunity? Then let's get rid of them because they're going that way.

Secondly, you find that notwithstanding globalization, people are actually mostly interested in what's happening locally. They want to know what has happened locally, etc. If you are from Calgary and you're sitting in an airport in Halifax or in Singapore, you want to know what's happening in Calgary. So what are you going to do? You're going to stream the station from Calgary. Now, can you do that? Let's make sure you can do that so the Calgary station gets the benefit of that.

So it opens a whole new panorama. How can we best exploit it to make sure that we obtain the objectives? That's how I'm looking at it—assuming they're going in the way you're suggesting.

• (1620)

**Hon. Michael Chong:** I don't disagree with you. I just really put the point that instead of looking at it from the CRTC's end, maybe the other perspective is to say that we're moving into a very different era here with respect to broadcast policy. International formats, international stations—radio and television, movies and the like—are going to be ubiquitous in Canada because of the Internet, and maybe the solution then is to say we're not going to attack it from a regulatory point of view, as you suggested. Instead we're going to maybe take a look at putting more resources into the public broadcaster as a way to counteract the flood of foreign content that I think will be inevitable.

**Mr. Konrad W. von Finckenstein:** It could very well be. Mr. Abbott asked me about technological constraints and so on. And while that's your prognosis, I think most people suggest that it may go that way but will take quite a bit of time, because right now there are severe technological constraints for that to happen. They may disappear, but I don't know when.

At least for the medium term, I think you might have a complementary system. You might have both. You may have the traditional system and you have the new media, which fills up the gaps that the traditional system doesn't fulfill. And then maybe someday we will wind up where you suggest, or maybe not. Maybe the two will, in effect, reinforce each other and you will play on both. Most of the operators in the field are betting on both sides—investing in the traditional broadcasting and in the new media, covering both places.

**The Chair:** Okay, thank you for that.

We're going to split a question here, I think, between Mr. Pacetti and Mr. Scarpaleggia.

**Mr. Massimo Pacetti (Saint-Léonard—Saint-Michel, Lib.):** Thank you, Mr. Chairman.

Thank you, Mr. von Finckenstein.

I want to continue the conversation you just had with Mr. Chong. I think I agree with Mr. Chong that we're already there. I don't think it's *going* to be, I think we're there already. There will have to be decisions made on what the CRTC is going to have to stand for.

I would assume that part of your mandate is to control or to monitor or to police Canadian content. I just don't see how you can do that for all broadcasters who are Canadian-owned, because there's going to be a global competition. Sure there are going to be people interested in Calgary news, like they are for Montreal news and Toronto news, but that's just a fraction of the market. Once you get your half-hour news clip and your newspaper on the Internet, I'm not sure if there's much more demand than that.

Maybe this is simplistic, but how are you going to continue to regulate the Canadian content?

**Mr. Konrad W. von Finckenstein:** Obviously we can't make people watch things. All we can make sure is that there is an offering that reflects Canada in all its richness, in all its diversity. People will decide what they watch. If in the world that you picture, with a superabundance of content from various places, and people don't want to watch it, then no matter what we do, they won't.

So far I think the experience has shown that if Canadian content is offered and it's good content, it will be watched, and it has a great and loyal following.

**Mr. Massimo Pacetti:** How do we make sure it's there so people know that it's there?

**Mr. Konrad W. von Finckenstein:** Well, that's part of our job. It's partially through the regulations we have, maybe partially through incentives too—

**Mr. Massimo Pacetti:** So you are open to almost anything.

**Mr. Konrad W. von Finckenstein:** For instance, you mentioned streaming. Not all radio stations in Canada stream right now. Why? That is because there is a big question of what is a copyright tariff that you have to pay. It's outstanding. It's before the copyright board, etc. It may be very substantial and it may be an inhibition to streaming. If, indeed, that turns out to be the case, maybe that's something that has to be addressed. That happens to be not my responsibility. It would have to be the Department of Canadian Heritage changing the copyright laws, but that may be one way we have to address it in order to allow Canadian radio stations to stream. There are all sorts of aspects.

**Mr. Massimo Pacetti:** So you are open to almost anything—I don't mean to interrupt you, but we have limited time—in terms of what's out there.

My question is more in terms of media. What are you able to control, and what can you not control or regulate? I'm thinking, for example, of YouTube. You said you wouldn't be able or you don't think you're going to touch Facebook.

I assume you'll be able to still continue to police the traditional broadcasters, but I look at something like *Têtes à claques*, which is sponsored by BCE, so they'll be able to get around the rules, I think, if they want to get away from Canadian content.

• (1625)

**Mr. Konrad W. von Finckenstein:** It starts, first of all, with the definition. We are in charge of broadcasting, and by broadcasting I'm talking about professionally produced content. I'm not talking about user-generated content, which is YouTube, etc. I couldn't care less; do what you want. It's not broadcasting. It's not part of our mandate. Our mandate is broadcasting.

I look at that Broadcasting Act and see the objectives and the purposes, but everything basically comes down to two things. Number one, there has to be Canadian content. Number two, there has to be access to that content by Canadians, be it as watchers or be it as participants, producers, or players in the broadcasting system. Those are the twin goals that we have to promote and achieve. We'll do it by whatever means, whether they are regulatory, whether they are incentives, or whatever. That's our task.

Clearly the environment is changing. It may be changing much faster, as you suggest. Part of the reason why we undertook this new media initiative is, first of all, to try to scope a little bit what the universe is, and now we are saying, what are the questions we should ask? What are the answers? You are asking me, and I will tell you this next year at this time. I can't—

**Mr. Massimo Pacetti:** That's the next question I am going to get to—

**The Chair:** You're splitting your time, and we have four and a half minutes almost gone here.

**Mr. Massimo Pacetti:** All right.

**An hon. member:** Let's be nice to Francis.

**The Chair:** Yes, go ahead.

**Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.):** Does that mean I only have 30 seconds left?

**The Chair:** No, I'm going to give you a minute.

**Mr. Francis Scarpaleggia:** Oh, thank you, Chair. Thank you very much.

I have a question that is perhaps a little off the beaten track. In 1999, when the CRTC was renewing the CBC's mandate, it held public hearings across the country. I believe that's correct, and I believe the mandate will be up for renewal in 2009. Is that correct?

**Mr. Konrad W. von Finckenstein:** Yes.

**Mr. Francis Scarpaleggia:** So you will have the benefit of the results of the new media project initiative when you go into the CBC licence renewal process, I imagine. Will you be holding public hearings across the country for the renewal of the CBC licence, or will you simply say you've gained enough information from the hearings on which you are about to embark?

**Mr. Konrad W. von Finckenstein:** We will finish the hearings on new media before we deal with the CBC licence. When we will have rendered a decision on that, I can't tell you right now. That depends very much on other things.

Secondly, will have hearings on the CBC renewal definitely. I'm a strong believer in public hearings. That is the only way in which you can gauge public reaction, the needs of producers, the challenges they face etc. Whether that will be in one locale or across the country, I honestly can't tell you at this point in time.

**Mr. Francis Scarpaleggia:** I suppose my time is up, Chair.

**The Chair:** It is.

Mr. Fast.

**Mr. Ed Fast (Abbotsford, CPC):** Thank you, Mr. Chair.

Perhaps I could start off with a question on regulating the Internet. Mr. Angus referred to neutrality of carriage as being a critical issue that we're grappling with. Has the CRTC taken any position on that?

**Mr. Konrad W. von Finckenstein:** No. As I mentioned in answer to a question from your peer from the NDP, we have a case before the CRTC that deals with that.

**Mr. Ed Fast:** That's the Bell case.

**Mr. Konrad W. von Finckenstein:** How you define that neutrality is a big issue. Different people use the word to mean quite different things. Second, a comprehensive approach to it we have never enunciated, nor has anybody else, other than that of... The Internet providers, as common carriers, should treat their Internet clients without discrimination and should not have any say over the content they are carrying.

**Mr. Ed Fast:** The order you'll be issuing tomorrow is only an interim order.

**Mr. Konrad W. von Finckenstein:** They asked for interim relief. After the interim relief ruling, the hearing on the substance will be at the end of the summer.

• (1630)

**Mr. Ed Fast:** When the final decision is made, do you expect that decision will actually define for Canadians your position on neutrality of carriage?

**Mr. Konrad W. von Finckenstein:** I'd be surprised. I think this is a relatively narrowly framed issue. It will give you some indication, but I don't think it will be a definitive statement on that neutrality.

**Mr. Ed Fast:** All right, then, here is the last question on that issue: do you expect that the CRTC will be developing policy on neutrality of carriage?

**Mr. Konrad W. von Finckenstein:** Oh, undoubtedly; Net neutrality is the issue of the day in telecom. We will be forced to develop a more fulsome position on it.

**Mr. Ed Fast:** Do you have a timeframe for that?

**Mr. Konrad W. von Finckenstein:** No, partially because it is a very full timetable as it is. As well, I think it's more response to demands rather than planning ahead on this one.

**Mr. Ed Fast:** I'd like to deal with administrative monetary penalties. That issue came up in the context of Bill C-327, which was Mr. Bigras' bill. This committee didn't support his bill, but it certainly did support a call to provide you with the power to levy administrative penalties where they're required as an intermediary remedy.

Are there other contexts in which you could see these being very helpful in addressing the issues you deal with at the commission?

**Mr. Konrad W. von Finckenstein:** There is no question.

My colleague here, who's in charge of broadcasting, can probably give you some instances in which they would be useful.

**Mr. Scott Hutton (Executive Director, Broadcasting, Canadian Radio-television and Telecommunications Commission):** They can be useful in all our areas of operations, because essentially, as the chairman indicated in his opening remarks, we have three methods, some of which are very light and some of which are far too heavy, depending on the situation.

We can certainly use it, hopefully as a deterrent; just the basic issue of an administrative monetary penalty existing can serve as a deterrent, as with our others. It's not our first choice to jump on that, as a rule. Certainly we've had issues of building access, situations in which you want a competitor to enter into a building where the incumbent company is providing roadblocks. That would certainly be one that would allow the consumers greater choice. I think you were talking about violence as the last issue, but any issue related to content and whether it's inappropriate content certainly can be helped with monetary penalties.

Quite frankly, it could help in all of our areas. It could be making sure you file and are up to date on your Canadian content and you're up to date and capable of respecting your conditions of licence with respect to Canadian content development. There are funds or levers you use to promote Canadian content.

You can use it in all the areas where people fail to comply. It's a very small minority of companies and broadcasters, and that's where we'd like to be more precise in dealing with those who do not comply, as opposed to setting regulations and having large hearings that apply to everybody.

**Mr. Ed Fast:** From your experience in the past, are there situations in which you haven't been able to obtain the kind of compliance you wanted because of an absence of AMPs?

**Mr. Scott Hutton:** It's hard to say whether individual cases....

We can walk through our process. Essentially, if we do receive a complaint—let's say it's a complaints-based process—where someone is offside on a particular subject, you're in the middle of a licence term. The licence term is seven years. Basically if somebody is offside, once you resolve the issue of the complaint, your ability to coerce or reprimand is a number of years into the future. You come up and have those discussions three or four years later.

If there continues to be failure in compliance, then what do you do? You have a shorter-term licence renewal. That's another three or

four years, another couple of years of process. It becomes rather heavy and burdensome to step yourself through, whereas in our view, if you had been able to draw a line in the sand earlier, you would have avoided all of that extra procedure and cost and non-compliance.

**Mr. Ed Fast:** Go ahead, Mr. von Finckenstein.

**Mr. Konrad W. von Finckenstein:** In any of the cases in which we give a very short, limited licence renewal—let's say for two or three years—it would be much more preferable to have an administrative penalty and say, “Look, you went too far. First correct yourself, then pay up, and don't do it again”, rather than basically giving it to them and hoping that over the next two years a shorter term will incent them to be more law-abiding.

**The Chair:** Thank you.

Mr. Siksay will be next. After him, I will give one complete round again for the first four. It would be shared time. Then it would be Ms. Mourani and then Mr. Siksay again.

You're going to have two more times to question, Mr. Siksay. I'm very generous.

Yes?

• (1635)

**Mr. Massimo Pacetti:** Is one NDP member going to get ten minutes and four Liberals five minutes?

**The Chair:** No. Mr. Siksay is the last one in this particular round, and he is ready to speak now.

**Mr. Massimo Pacetti:** Mr. Angus already went, I believe, from the NDP.

**The Chair:** Yes. I'm following the list.

We have a set list. I know you're new to this committee—

**Mr. Massimo Pacetti:** Yes, I just want to make sure that—

**The Chair:** —but we do run a pretty straight committee.

Mr. Siksay.

**Mr. Massimo Pacetti:** I'm just trying to understand, Mr. Chairman. I want to fit in.

**Mr. Bill Siksay (Burnaby—Douglas, NDP):** Thank you, Chair.

We wouldn't want to hear too much from the NDP around here. That would be a terrible thing.

Mr. Fast asked a number of the questions that I had on my list, and he did a good job of it, too. He did better than I would have, I think.

Mr. Hutton, you listed a couple of areas in which you thought these administrative monetary penalties would be helpful to the CRTC. Is there any one of those areas that crops up more often than another? Is there a particular area where these penalties would be most helpful, or where the flaw in the system has cropped up most often for the CRTC?

**Mr. Scott Hutton:** I cannot say, and quite frankly, where we've exercised shorter licence terms it has been over a number of different areas; there is not one specific area. Certainly, if you were to look at tempering your response to a non-compliant, often what we would see, and where an administrative monetary penalty would help, is that once you've gone through the motions of calling somebody offside, nine times out of ten after the first call people comply. The one out of ten who did not comply will continue in non-compliance, and I think that's where you would want to have something more—not the death penalty of no licence, but something heavier than simply a short-term renewal.

**Mr. Bill Siksay:** So you see some gradations in moving to this kind of system, whereby they wouldn't always be applied, but there would be a warning system in place, or a lesser sentence for a first offence, or something like that?

**Mr. Konrad W. von Finckenstein:** Mr. Siksay, I think just having the power would be a great constraint. You don't necessarily have to use it, but the mere effect of people knowing that at the end of the day we might use the AMP power will induce them to comply with our orders.

**Mr. Bill Siksay:** When this issue first came up, we were looking at Mr. Bigras' bill about violence on television. In that context, we heard about the system of voluntary codes and standards—codes of ethics, broadcast standards, and codes of conduct—that have been developed by the broadcasting industry. Is there a problem in applying an administrative monetary penalty when it's a voluntary code that's being enforced?

**Mr. Konrad W. von Finckenstein:** No, not at all. I'm a firm believer in the voluntary codes and Canadian broadcast standards that you're talking about. If it works, that's wonderful. The industry itself administers their standards, and we have approved them. We know that if the administrative party comes into place and somebody either refuses to become a member of this voluntary association and therefore we have to deal with them, or deliberately flouts it or goes against the grain, we would have to make an example.

Take the standards council; nearly all broadcasters are members, and they deal with this. We will deal with the few who aren't, and we would then, in the appropriate case, have the ability to use the AMPs. Hopefully we wouldn't have to use them; the mere fact that we have them would induce compliance.

**Mr. Bill Siksay:** I think when people talk about AMPs, they talk about their purpose being to compensate the state where harm has been done, or they see them as punitive, to punish for wrongdoing. In what sense do you see the kinds of proposal you're making with respect to the Broadcasting Act?

**Mr. Konrad W. von Finckenstein:** It's definitely not compensating, it's really to induce compliance, in effect as a reminder: there is a system here; there is a rule, and you haven't abided by it. Please abide in future, and because you did not, here—and essentially this is why it's called an administrative monetary penalty—you're being penalized for non-compliance.

**Mr. Bill Siksay:** Where a penalty has been imposed, is there a review possibility?

• (1640)

**Mr. Konrad W. von Finckenstein:** Any decision that we make, you can take to the Federal Court of Appeal for judicial review.

**The Chair:** Mr. Bélanger.

[*Translation*]

**Hon. Mauril Bélanger:** Thank you, Mr. Chair.

Mr. von Finckenstein, I would like to come back to one of your comments. On page 3 of your speech, we read:

I would like to be clear on one point. Our interest primarily lies in the distribution of professionally produced broadcasting content. That is, the same kind of high-quality Canadian content you would normally watch on television or hear on the radio.

I am intrigued by that sentence, Mr. von Finckenstein. Is it in relation to amateur, non-professional, second-rate content?

**Mr. Konrad W. von Finckenstein:** This is something we will have to define in our future hearings. We are responsible for the broadcasting system and the act governing it. Obviously this act is concerned with professional broadcasting, and not programs produced by individuals who wish to share them with their friends, or other such things. I do not think it is the government's role to oversee how this type of activity takes place. We are talking here about for-profit professional activities.

**Hon. Mauril Bélanger:** What about the professional activities broadcast on YouTube, for instance? You mentioned YouTube, as if it was of no interest to the CRTC.

If a private broadcaster said that, since this seems to work, it is going to start broadcasting its content there too, would that pose any difficulties for you?

**Mr. Konrad W. von Finckenstein:** No. I was referring to the original YouTube, which was a portal leading to a site showing amateur videos. If a broadcaster or a private company used YouTube as a means of distributing its professional content, obviously that would concern us.

**Hon. Mauril Bélanger:** What is your definition of professional content?

**Mr. Konrad W. von Finckenstein:** I do not have a better word to describe it. We will have to define what constitutes private, amateur, etc. activities. This is not a broadcasting matter. I use the word "professional" to describe broadcasting activities, but obviously this is something that should be clarified.

[*English*]

**The Chair:** Ms. Fry.

**Hon. Hedy Fry:** We see a convergence of telecommunications and broadcasting. This is happening, this is coming. We want Canada to take advantage of the opportunity to compete in this arena. According to your report from Dunbar and Leblanc, we need to look at ways of helping Canada to participate in this competitive medium.

However, there has to be some way of regulating certain things like advertising. Given that there is a convergence, given that you had suggested that we don't amend the Broadcasting Act, what about looking at a new convergence act, a communications act, that is made up of the Telecommunications Act and the Broadcasting Act? I would think that the time has come to look at an innovative move forward in this area.

**Mr. Konrad W. von Finckenstein:** I couldn't agree with you more. We see a technological convergence. The technology of broadcasting and telecom has merged, and so has the industry. Is Rogers a broadcaster or a telecom enterprise? You can look at it either way. When you watch a movie over a portable device, are you in broadcasting or are you in telecommunications? Who knows? Convergence is there.

The problem is that we have two very different administrative frameworks. For telecom, we want to let the market rule and we only intervene in cases of market failure. In broadcasting we have two goals: a cultural goal and a social one. They won't be achieved by market forces. They can only be achieved by active intervention.

How do you merge those two regimes in light of merging industry and technology and still maintain your position? That is a conundrum. There are solutions, but we have to confront the problem.

I agree with you; maybe a new act would be a solution, or maybe we could revise both acts with some common denominator in mind. Sooner or later, we will have to do one or the other.

•(1645)

**Hon. Hedy Fry:** You just have to look at BlackBerry; they are now coming up with getting into iPod and getting into music and getting into broadcasting as well. So I think we shouldn't be waiting to do this.

**Mr. Konrad W. von Finckenstein:** Mrs. Fry, that is the challenge of the day for me. Trust me, we are working on it, but it's not an easy problem to resolve.

**Hon. Hedy Fry:** Well, we can help you push. We need to help you push at this level.

**Mr. Konrad W. von Finckenstein:** Good.

**The Chair:** We're pretty well out of time.

You can have one little one.

**Mr. Massimo Pacetti:** It's just a quick question. It's mainly on the TQS. I just want to understand. I know there are going to be hearings coming forward on TQS. I'd like to know what the approach for the CRTC is going to be. Is the approach to make sure that they respect their conditions of licence and maintain their news service? Or is it to assure that their survival is going to continue?

**Mr. Konrad W. von Finckenstein:** There is a hearing coming up, as you well know. There's an application by Ramstar to acquire the licence of TQS. They have it now on a temporary basis so that TQS didn't go off the air. They're operating it under a temporary list. We're going to have hearings in both Montreal and Quebec City in order to get the view from as many participants and as many people in the province of Quebec as possible, and then we're going to make a judgment in accordance with the Broadcasting Act.

Now, the Broadcasting Act is clear on establishing goals. It leaves a considerable amount of discretion to the commission on how to interpret the goals, how to apply them, and over what time period.

Until we have the hearing and I hear from all sides, I cannot answer your question any more than to say we will be guided, as always, by the objectives of the Broadcasting Act in trying to obtain that.

I remind you that the Broadcasting Act has a provision that specifically says we can make rules for the French market that are different from those for the English market where that's necessary, and we feel it's necessary for the attainment of the objectives of the Broadcasting Act.

**Mr. Massimo Pacetti:** And they're operating right now under a temporary—

**The Chair:** We're done.

**Mr. Massimo Pacetti:** No, just....

They're operating now—

**The Chair:** Don't say "no" to me. I've already given you—

**Mr. Massimo Pacetti:** No, I'm asking, through you, if they're operating on a temporary.... I didn't hear what he had said.

**The Chair:** Your time is up.

Mr. Chong.

**Hon. Michael Chong:** Thank you, Mr. Chair.

I just want to go back to our earlier discussion on new media. I think your fundamental challenge or problem is that, when the 1999 exemption order went into place, basically it was an acknowledgement at the time—and I still think it is valid today—that the government wasn't going to regulate IP-based packet-switched networks. The only countries that do that presently are not as free and open and transparent and democratic as ours. We don't regulate those big OC-3 lines or other big cables coming across the border. Those packets come flying across those borders on those big cables and the Government of Canada, directly or indirectly through regulation, doesn't monitor those packets. There are countries that do that. They are far more authoritarian and less open than we are. So I think that it's going to be incredibly difficult, if not impossible, for governments to ever regulate packet-switched, IP-based networks.

I put that out there as a point, because I think you were right in your earlier testimony when you said the challenge here was not to regulate more but to ensure that Canadian voices are heard on broadcast media.

I note today that Research In Motion released its next generation of BlackBerry. It's going to work on the 3G networks. It's going to have a camera. It's going to have a video recorder. It's going to have enhanced web access. Apple has announced that this summer it's coming out with a new platform for the iPhone that will have enhanced multimedia capabilities. These are all on packet-switched, IP-based networks.

I put the point out there, just as a comment, that maybe we need to look at it from the other end, as you suggested. Maybe the solution isn't more regulation, but rather for governments at some future date to say, "Look, we're entering into an era now where foreign media will be ubiquitous within our country because of these IP-based networks, and as a result, we're going to take a look at putting more resources into the public broadcaster to allow and ensure that Canadian voices continue to be heard within our own country."

• (1650)

**Mr. Konrad W. von Finckenstein:** Once again, I'm quite sure there's no silver bullet for the issue of the challenge of new media. We're going to deal with it on all sorts of fronts. It's part of the reason we're having this hearing. As you point out, maybe the idea is to put more emphasis on public broadcasting. Maybe the idea is to establish more of a regime of subsidies or incentives, rather than trying to control access, etc. I honestly don't know.

And the timing is so very difficult. As Mr. Abbott said, there are technological constraints right now, and nobody knows whether they're going to be here for five years or five months. That's what makes our task so challenging and so urgent. I agree absolutely with Mrs. Fry that we have to do this as quickly as we can.

**The Chair:** Thank you.

Mr. Abbot is sharing some time here.

**Hon. Jim Abbott:** The second-last paragraph in your presentation reads: A modern regulator needs AMPs powers in all areas under its mandate. If we are to regulate with a lighter hand, and to provide broadcasters and BDUs with more latitude, then we must have the tools to ensure that licensees live up to their responsibilities.

I think you're not quite like Mr. Carney in terms of your pronouncements, but I'm sure many people at the CAB and in the various BDUs hang on every word that you say, understandably. I wonder if you want to expand on this. Maybe there isn't a lot more, but it seems to me you're saying one heck of a lot there.

**Mr. Konrad W. von Finckenstein:** I have been saying this consistently. We have these two regimes: the telecom and the broadcasting. The telecom, as I say, is essentially market-oriented, where we step in for market failure, and it's an *ex post* sector regime.

On the cultural side, you will always have some sort of regulation because you are trying to achieve a cultural-social role. But we've done it with a very heavy bureaucratic hand. I want to make sure we do it as lightly as possible, that we interfere as little as possible, and do it in a targeted way, to the extent that their creative forces, their market forces, can be unleashed to produce. But I fully realize, since at the end of the day we're talking not about an economic goal but a cultural goal, there is going to be some sort of government intervention—let's put it that way.

**The Chair:** Ms. Mourani.

[*Translation*]

**Mrs. Maria Mourani:** Thank you, Mr. Chair.

I followed your presentation and I noted something that perhaps you will not agree with. Artists' groups are complaining that the CRTC is heading towards deregulation. There is talk of a voluntary code. In the community, there is talk of deregulation.

Mr. Abbott raised a point I would like to discuss with you, that is, lighter regulation, which would offer greater freedom, take market forces into account and streamline the bureaucracy. When I hear all that, I am afraid of giving you more tools.

If there is a range of penalties, clearly there will be a tendency most often towards infractions entailing small penalties. Seldom if ever will extreme penalties going so far as suspension of a licence be imposed. It is well known that, where there is a range of penalties, people will always opt for a sort of halfway penalty that consists charging a series of small fines. At present, it is true that you do not have much choice: you can opt either for the minimum, or for the maximum.

Talk of deregulation, market forces and voluntary codes worries me. Perhaps it is better to keep the status quo. That way, there is not much choice. If someone repeatedly fails to abide by the regulations, at some point their licence must be taken away. When people no longer understand and just do whatever they feel like, maybe they should lose their licence.

• (1655)

**Mr. Konrad W. von Finckenstein:** We must concentrate on the most important things, on content and access. This is the main objective of the current broadcasting system. We must be able to force people to comply with the regulations. In my speeches, I always say that broadcasting will always be regulated. I said it again two minutes ago. For me, this objective is clear and it is not economic. The market is not what will make it possible for us to achieve this objective.

I would like our regulation to be light and targeted. That is what counts. I can tell someone who has not complied with the regulations that I do not want to revoke their licence, but that it will only be renewed for three years instead of seven, for instance. The licensee could then say that in three years another renewal will be granted. In actual fact, there is not any penalty.

**Mrs. Maria Mourani:** You say that, since the penalties are either extreme or minimal, there is no penalty. But even if the penalties are major, they should not be imposed less. If I commit a murder, I will get a sentence of life imprisonment. If I am caught shoplifting or if I attack my colleague here, I will have another sort of sentence. Of course, if someone breaches the conditions of their licence ten times, their licence will be suspended. The people who hold licences, however, earn millions of dollars. For them, a fine of \$3,000 or \$5,000 is nothing, but taking away their licence is something else.

Will the variation in penalties induce you to be more tolerant and wait before imposing an extreme penalty?

**Mr. Konrad W. von Finckenstein:** Not at all. First of all, we must not forget about the public interest. If we revoke a licence, the public will suffer and we want to avoid that. We do not wish to punish a broadcaster's audience. Second, the fine will be stiffer.

Perhaps my colleague could explain how the system operates.

**Mr. Scott Hutton:** We want to add AMPs to our other methods, not to replace them. I do not think that we will back down or be less insistent. It is an additional method.

I am going to make an analogy with what you have just said. We have a penalty for murder, but not for shoplifting. We do not have this sort of penalty, and that is what we are seeking. The last time we discussed bill C-327, we suggested a maximum penalty of \$200,000 for a first infraction and \$400,000 for a second one. These are pretty hefty amounts.

[*English*]

**The Chair:** Your time is pretty well up.

Mr. Siksay.

**Mr. Bill Siksay:** Thank you, Chair.

When the CRTC applies an AMP and collects on it, where does that money end up?

**Mr. Konrad W. von Finckenstein:** Like all penalties, it goes to the central revenue fund.

**Mr. Bill Siksay:** Say the penalty was related to a violation of broadcast standards around violence on television. Would it be appropriate to direct some of that to media literacy education, for instance, since that was one of the aspects of the problem we heard about when we were discussing Mr. Bigras' private member's bill?

• (1700)

**Mr. Konrad W. von Finckenstein:** We don't generally do that because it can give perverse incentives to the regulator. That's why the rule is very simple. Of course, when there's a violation and a fine is paid it goes to the CRF so you, as a regulator, do not benefit from convicting somebody or determining the amount, etc. I think that's a very sound rule, and I wouldn't play with it.

**Mr. Bill Siksay:** How would doing media literacy education be seen as a perverse incentive?

**Mr. Konrad W. von Finckenstein:** Well, that way the money stays in the domain of broadcasting and it furthers an activity that we favour. If the fine didn't go there, we would have to find the money somewhere else, and the benefits, etc. It could give the appearance of perverse incentives.

**Mr. Bill Siksay:** Okay, thank you.

In terms of what you're proposing in terms of AMPs under the Broadcasting Act, how do they compare with what exists now under the Telecommunications Act and under the "do not call" list?

**Mr. Konrad W. von Finckenstein:** Scott, do you want to answer that?

**Mr. Scott Hutton:** What we proposed in Bill C-327 is certainly lesser than what we have under the Telecommunications Act. The primary reason, as indicated earlier, is that in the Broadcasting Act

there are criminal provisions that are set at certain levels. They're set higher for telecom. A case in point is that revenues are higher in telecom than in broadcasting, so we have to go one step back from that.

**The Chair:** Do you have any more questions? Thank you.

I'm going to go back to the time before. Our fourth round would have been the Liberals for five minutes and the Conservatives for five minutes.

One short question, Mr. Pacetti. I know I cut you off a little early. Then we'll go to Mr. Chong.

**Mr. Massimo Pacetti:** Thank you.

Previously you said that the TQS is now operating under a temporary licence. Is that right?

**Mr. Konrad W. von Finckenstein:** Yes. What happened is that Ramstar, as you know, was successful. TQS went bankrupt. It was then operating under bankruptcy protection. It was sold and Ramstar was the successful bidder. We gave a temporary licence to Ramstar so it could operate it while we held the hearing. Otherwise it would be off the air.

**Mr. Massimo Pacetti:** Is there a time limit on it, such as 30 days, 60 days?

**Mr. Konrad W. von Finckenstein:** Scott will look up the exact time limit. It's very short, that much I know.

**Mr. Massimo Pacetti:** Okay.

In your brief you say that you'll be holding public hearings on the new media broadcasting in early 2009. I'm wondering how many public hearings you are undertaking or how many major studies you'll be having. You're expecting to have a CBC study afterwards, I think. Will there be other things? And will you be expecting to report on this in 2009 or will it take a couple more years?

**Mr. Konrad W. von Finckenstein:** Our time for making decisions on specific applications, such as Ramstar's, is usually 30 days. In terms of our major policy ones, we just did one on diversity of voices, as you know. We did one on over-the-air television. We are just in the process of doing one on cable companies, or BDUs as they're called. It takes a bit longer, but we try to do them in the timeframe of three to four months maximum.

You have to make the decision when the evidence is fresh in your mind. You evaluate it and you come to a conclusion. Also, time marches on. The underlying facts change. So to give a decision one year after you've heard the hearing, you're—



**Mr. Massimo Pacetti:** Good, because that's the biggest criticism of the CRTC. I have a private member's bill asking that when public hearings are submitted or requested by the CRTC, they render a decision within six months. And that's nowhere in the law.

**Mr. Konrad W. von Finckenstein:** That's the past. That's not happening right now.

**Mr. Massimo Pacetti:** Okay, thank you.

Thank you, Mr. Chairman.

**The Chair:** Mr. Chong, one small question—

**Mr. Konrad W. von Finckenstein:** Sorry, Mr. Chair, I have the answer for Mr. Siksay.

Scott.

**Mr. Scott Hutton:** The licence condition, the temporary licence, is September 20, 2008, so six months from the time we granted it.

**The Chair:** Thank you.

Mr. Chong.

**Hon. Michael Chong:** My question is tangential to the presentation here today.

I have a question about 911 service over Voice over IP. Recently there was an incident in Calgary where a family tried to contact 911 through their VoIP provider and was unable to. My understanding is that in 2005 the CRTC issued its decision requiring all VoIP providers to comply with the decision and to provide the same level of 911 service, within 90 days, as the conventional telecommunication companies provided.

So my question is this. What sort of investigations, if any, has the CRTC undertaken with respect to this incident, and what regulatory regime is in place to ensure that this doesn't happen again? Or what plans are in place within the CRTC to ensure that this doesn't happen again?

• (1705)

**Mr. Konrad W. von Finckenstein:** First of all, there are two VoIPs. You have the static one and the nomadic one. The nomadic one is a phone that you take along. You can plug it in anywhere in the world on the high-speed Internet and you have a working phone. The static one is what Rogers gives you. Over the Internet line, you can also get it.

The static one is no problem. When you phone, this machine will say where you're calling from, etc. The problem is with the nomadic one. We're working on a technical solution. In the interim, we have instituted a system. If you use a nomadic phone, which is what happened in Calgary, you get a human voice automatically. If you are in Canada, the voice will ask who you are and where you are calling from, and your number will show up on the screen. The operator can then pass this information on to the emergency response. They also see on the screen where the phone is registered, which may not be where the call is coming from.

That's the system. It should work. It clearly didn't work here. I don't know why. We asked for a report from the company. We will get that report shortly and it will be assessed.

The way we devised the system, we thought this couldn't happen, but obviously it did. What broke down? If there is a problem in the system, we'll obviously fix it.

**The Chair:** I must again thank you for your candid answers today, for your forthrightness with the committee. I appreciate your taking the time to come to this committee.

I'm going to ask my committee to hang around for a very short time.

Even as our witnesses are leaving, I'd like to mention a short bit of committee business: I was unsuccessful today at the liaison committee. I'm batting one for five.

**An hon. member:** Are we going to Banff?

**The Chair:** No, we're not we're going to Banff. I'm not a very good salesman at the liaison committee.

The hearings will be held here. Our clerk has just sent out the list of witnesses to everyone. If there are people on the list you don't think should be there, please let my clerk know by tomorrow at noon. The hearings will begin on the 27th, the Tuesday after we're back from break. We have to get witnesses lined up. We will then determine how many days we need.

We're looking at video conference too. We're trying to get that up, because there are quite a few witnesses from Vancouver. Our clerk is looking after that.

Mr. Siksay.

**Mr. Bill Siksay:** I am really disappointed that we're not going to Vancouver. I know you did your best to sell the trip to the liaison committee. It is hugely disappointing, given the number of people in Vancouver who are interested in this. When it comes to scheduling the video conferencing and trying to accommodate the number of people from Vancouver who are interested in this issue, perhaps we might look at extended meeting times or evening meetings. With the time change between here and Vancouver, this might also accommodate folks who have difficulty leaving during the day for these appearances.

I do hope we can consider these options. We need to accommodate our people and to get this concluded before the summer recess.

• (1710)

**The Chair:** We'll take that under consideration. Right now our clerk has a fair bit of work to do to make sure that we have witnesses here for the 27th and that the necessary arrangements are made. Stay tuned. Everyone will get an agenda as we go forward.

With that, the meeting is adjourned.





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