

# **Embracing 21<sup>st</sup> Century Media Regulation**

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Broadcasting Commission of Jamaica Strategic Retreat  
December 2010**

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## **INTRODUCTION**

21<sup>st</sup> Century Media requires 21<sup>st</sup> Century Regulation. The global new media landscape is one characterized by plurality and diversity in the number of players in the sector, and various forms of broadcasting, that is, public/commercial/private/community, requiring regulation that is on-time, proactive and flexible. This is the reality of the current broadcast media landscape in Jamaica.

The Broadcasting Commission of Jamaica (BCJ) is operating in an ever changing and dynamic environment and therefore should be constantly and proactively addressing the changing needs of media in Jamaica. With the tremendous and expansive growth of the sector in the past few years, and with changes in technologies, applications, services and media business models, the BCJ must seek to remain relevant and effective as a regulator. In the context of the current environment, the paper will seek to examine the following issues.

1. **Why** does the BCJ need to embrace 21<sup>st</sup> Century Media Regulation? Quite simply put, the new and emerging trends including convergence, digital switchover, IPTV, the social media revolution make it impossible to ignore the need for regulatory response and changes.
2. **What** is the role of the regulator in this environment? The scope of this role is defined by best practices as well as the local context of operations.
3. **How** should the strategic response of the BCJ be fashioned and executed? The recent media policy as well as industry developments provide a very clear picture of the key areas of focus in the Jamaican media landscape. It is the responsibility of the BCJ to take on the charge of addressing these focal issues whilst identifying and swiftly combating the various challenges.

## **EMERGENT TRENDS IN BROADCAST MEDIA**

A look at the current environment and prospects for the future, both locally and globally strongly reinforces the need for strategic planning in order to negate the threats and capture the numerous opportunities. There are a number of important trends which are of significance to the Broadcast media sector, of which Convergence, Web 2.0 and the issue of Open Access are of particular interest.

**Convergence** - This has been an ongoing phenomenon in the Information and Communication sphere of activities. Convergence refers not only to the coming together of various

technologies, but also to the merging of markets. It represents not just the emergence of new and alternative media distribution systems, but it directly impacts all existing media by bringing them all on a single digital platform. Convergence itself is accompanied by other variables which have been transforming the media landscape, namely the digitization, miniaturization and mobility of the technologies. Further, the emergence of Broadband presents yet unexplored possibilities with regard to the volume of data and the speed at which information can be communicated via broadcast technologies and across geographic boundaries. A good portion of media policy and regulation is now concerned with how to deal with issues such as the transition to Digital television and how and if to regulate IPTV, mobile TV and the wide range of services which the changes in technology has spawned.

As pointed out by the European Commission, Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation, *“Convergence is not just about technology. It is about services and about new ways of doing business and interacting with society”*

The merger of markets and transformation of business models has seen traditionally telecommunications companies venturing into the internet service provider and broadcast markets. The business reality of this new paradigm in the media today is that new markets plus new products and services equates to new and significant sources of revenue. Some examples of new media products and services include Mobile internet, webcasting of news, sports, concerts and IPTV.

With the growth of broadband and the use of the internet and the vast revenue potential, the expansion in the use of IPTV in particular is expected to be phenomenal. A recent report from Generator Research, Digital Media Insight, Internet Television 2010 to 2014 defines three types of IPTV services and projections for usage.

- Internet Video – short form video clips such as You Tube, with majority of revenues derived from advertising. Globally, there will be an estimated 730 million users in 2014, an increase of 55% over 2009, representing a 90% increase in profits.
- Telco TV – television services provided by telecoms companies as a part of their triple play bundle. It is estimated that there will be 121 million users by 2014, up 77% over 2009, generating over 400% increase in profits.
- Internet Television - Driven by subscription and pay per view models, in terms of the projections, this represents the most potentially popular and profitable service, with a 400% increase in users and over 2500% increase in profits, compared with 2009.

It is noted however, that these services will not simply replace the traditional television and cable broadcast delivery network, but their success will be more dependent on the ability to deliver a new experience, more content, social and community services and a unified user interface.

A second important trend is that **Web 2.0 and the emerging Web 3.0** is leading to a social media revolution which has and will continue to have an impact on media regulation. The emergence of FaceBook, Twitter and other application that depend on the internet, continue to transform our world. However, the revolution is in what they represent. They bring represents changes to the business models of the traditional media industry, moving further from mass media controlled by a few to citizen media, individuals in control of their own information, experiences and resources, that are then disseminated to a global audience. We are seeing the growth of personal not mass media.

I had the opportunity of attending this year the annual conference of the International Institute of Communication (IIC) held in Barcelona Spain. There, Eli Noam spoke of the “Widening and Deepening of Media.” He observed that many countries (though mainly in the developed world) are moving to a stage of maturation of infrastructure and applications and are now focussed on content development. Media content is widening, whereby there are more and different types of television options and is characterized by a greater richness (deepening) in the form of computer generated content, including three-dimensional, virtual reality and more interactive games. This richer, personalized media, characterized by total user immersion and participation, with limited external control presents many opportunities (and challenges) for a new generation of content providers and requires new thinking in terms of policy and regulation.

The concept of **open access** is a third major emerging trend. Worldwide, regulators are concerning themselves with open access to *inter-alia*, infrastructure, markets and even content to ensure the growth of competitive ICT's, including media. The concern is to mitigate the creation of a new kind of digital divide, not caused by lack of access to technology, but by access to data. The recent 2010 Global Regulators Symposium posed the question of the role of regulators in bringing public service content online, such as E'Government, e'Health and e'Education. The symposium presented some best practice guidelines for enabling open access, including a role for regulators in facilitating the creation of local content and local internet exchange points “to complement and ease the international data flow<sup>1</sup>.” The concept of open data also brings to the fore new issues in relation to privacy, intellectual property and security, even at the international level. The recent controversial disclosures from the Wikileaks website

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<sup>1</sup> [http://www.itu.int/ITU-D/treg/Events/Seminars/GSR/GSR10/consultation/guidelines/GSR10\\_guidelines\\_V3-en.pdf](http://www.itu.int/ITU-D/treg/Events/Seminars/GSR/GSR10/consultation/guidelines/GSR10_guidelines_V3-en.pdf)

about US government's internal foreign policy cables has brought data sharing and many state secrets into the open. What was previously considered classified data was laid bare and signifies the types of radical changes, planned and unplanned that are emerging within new media and entering the broadcast/media space.

**It's the practices, not the technologies<sup>2</sup>.** What is clear is that the emergent 21<sup>st</sup> Century media will be characterized not only by converged and digitized technologies, but also by the changes in communication practices which impact who is able to communicate, how they communicate and what they are able to communicate. The two consistent characteristics of media in this dispensation are:

- 1- Their ability to deliver uniquely individualized information, which can be simultaneously delivered to an infinite number of persons and;
- 2- Open content that is not monopolized but is shared by most players involved, that is, publishers, broadcasters and consumers.

21<sup>st</sup> Century media represent the creation of whole new industries, providing value added services and applications.

## **THE ROLE OF THE REGULATOR IN A CHANGING WORLD**

In such a dynamic broadcast/media environment, the role of effective regulation becomes crucial. Typically, the Regulator should seek to serve a number of basic purposes, whilst being cognizant of the peculiarities of their specific environment and its changing needs. The Broadcast Media Regulator should:

1. Ensure efficient provision of high quality services to users and audiences;
2. Encourage and facilitate an climate that will encourage and sustain investments in the sector;
3. Protect and enhance social and cultural values;
4. Promote protection and access for vulnerable/marginal sectors and help preserve our physical environment.

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<sup>2</sup> <http://www.openforum.com.au/content/21st-century-media-revolution>

In order to achieve these goals, a regulator, within the context of changing technologies, markets and business models, must seek to embrace and foster industry and national development through its regulatory philosophy and practices.

As noted in the Final Report of the Jamaican Electronic Media Regulatory and Policy Framework Consultation, the BCJ has already expressed and sought to align itself with the best practices for good regulatory principles, namely;

- Legitimacy, Transparency and Accountability
- Consultation and Consensus
- Equity and Inclusiveness
- Innovation
- Technology Neutrality
- Proactive and Flexible Management

These should be framed within the context of the national environment and industry needs as while taking account of regional and global issues.

## **DEFINING THE COMMISSION'S STRATEGIC FRAMEWORK**

Having identified the general media trends and broad principles which will define the operations of the BCJ, a short to medium term strategic response can be framed by examining the following.

- 1) What are the key strategic areas for focus over the next three to five years, and
- 2) How the BCJ can effectively execute its regulatory duties.

**Nationally**, the specific forefront issues in the broadcast/media sector and for which the work of the BCJ should be focussed include the following:

- Regulating new technologies and services
- Transitioning from analogue to digital television
- Content Regulation and Development
- Public Broadcasting and Indigenous Content
- Media Literacy
- Environmental Issues

### **Regulating New Technologies and Services**

It is the duty of the Regulator to promote equity, fairness and competition to facilitate the development of the industry. However, in this new environment, a redefinition of industry to be

regulated is required. The Nordicity Report<sup>3</sup> suggests that in addition to the traditional broadcast media players, regulation should cover distributors; internet broadcast providers; IPTV and mobile TV as well as electronic audio visual billboards. No doubt, this definition will change with time and new developments, but as the regulator, the BCJ must position itself to employ flexible and proactive regulatory leadership. The challenge therefore, for the BCJ is to provide a high level of regulatory certainty in an ever changing environment.

As previously mentioned, new technologies and services will spawn new business models and will give rise (as with the telecommunication sector) to significant opportunities for local and foreign investments. These bring to the fore issues related to ownership, mergers and acquisitions to which the BCJ will again have to play a significant role to ensure that the sector is able to attract the necessary investments (local and foreign) whilst protecting the industry and ultimately the consumers from negative outcomes which could arise. These could include the pervasiveness of foreign content at the expense of the growth of indigenous media content and culture and issues of concentrated ownership through mergers and acquisitions which impact on the overall competitiveness of the industry.

Even as we look toward the era of a new electronic media, it must be recognized that the infrastructure in many developing countries, as is the case in Jamaica, is not yet at that stage to support this new type of media. The broadband infrastructure, fibre to the home and digital broadcasting transmission capabilities necessary for this new sector to fully evolve are still works in progress. Therefore broadcast media policy and regulation must also continue to be concerned with issues to do with the roll out of and access to infrastructure and technologies on which to facilitate the growth and development of new media and its contents.

### **Digital Switchover**

The issue of Analogue to Digital transition raises many concerns in the broadcast industry and becomes a major policy issue as it will touch the life of every Jamaican. It should therefore be an issue on which the BCJ ensures full inclusiveness of all with respect to the guidance provided for critical decisions and programmes. Though switchover is proceeding at rapid pace in Europe and other regions, the BCJ must ensure that throughout the process in Jamaica, the peculiarities and needs of the local sector are adequately taken account of and that the process focuses not only on the technical transition, but the economic, human resources and other implications. The Committee on Digital Switchover has recommended at date of 2015 for the full transition.

It is a key objective of the BCJ to promote regional harmonization in digital switchover implementation. In this regard, we have hosted or supported three regional meetings on the

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<sup>3</sup> Jamaican Electronic Media Regulatory and Policy Framework Consultation, Final Report. The Nordicity Group.

subject and I myself have raised the matter with other regulators and policy-makers in other regional jurisdictions.

### **Content Regulation and Standards**

The BCJ has made some strides in the areas of Content Regulation and the development of standards in the traditional media. The BCJ has in place the Children's Code for Programming and Rating Standards and has a system for receipt and investigation of complaints and recommendations for various types of sanctions. In recent times, the BCJ has also been instrumental and successful in regulating the quality of content on the airwaves, restoring broadcast standards through a series of directives now in force.. However, there is still a lot of work to be done re questionable content, lack of diversity and generally poor quality of aired content. Furthermore, there is the challenge of the new media, which is still emerging in Jamaica, where there is a proliferation of content, anywhere, any time and created by anyone and the concept of open data which is rapidly gaining popularity. Such citizen media initiatives as are taking place globally through social networking, full length weblogs (blogging) and micro-blogging (such as Twitter) are to be encouraged. At the same time, these developments require serious thought re their implications for traditional regulatory approach. The issue of self regulation or co-regulation arises in order to promote mechanisms to ensure improving quality of this new content. The developments also present challenges in the areas of Privacy, Cyber Security and Intellectual Property.

### **Payola to be Criminalized**

One of the biggest content issues for the forthcoming period is Payola, or the acceptance of bribe for the promotion of music or artistes through airplay. The Commission considers this to be illegal and will continue and intensify its efforts to stamp out this practice or reduce it significantly Here, the BCJ has proposed criminalization of the offence of payola and has proposed stringent new legislation to punish, through tough fines and prison sentences for those found to be involved.

Broadcast media houses who are being encouraged to strengthen their internal vigilance on this matter, are also to come in for closer monitoring for their management of airplay and the practices being employed by music disc jockeys that may contribute to the problem.

Public and industry consultations on this and other content standard issues will continue into the new year.

### **Public Broadcasting and Indigenous Content**

Even as there is the effort to promote a market based, competitive media environment, it is recognized that market failure will occur in areas such as the provision of Public and Community Broadcasting. Broadcasting as a public service is critical for development in Jamaica and the Regulator has a role in ensuring that this is maintained. A key issue/challenge in this area is enabling public broadcasting to move into new media so that it can fulfil its mandate. The Nordicity Report recommends the creation of the licence fee structure which would in part support public broadcasting. The report also raises the issue of the role of the BCJ in promoting what I have proposed as a Broadcast Content Production Fund which would be used to support the development of local content, in keeping with the BCJ's mandate. The transparency and accountability of the arms length structure and mechanism for collecting and distributing funds will be implemented as soon as the proposed legislative provisions and been made.

### **Media Literacy**

It has become increasingly obvious that the “digital divide” is now less about access to technology and more about the gap between those who know how to use the technology to access content and those who do not. With the convergence of broadcasting onto smaller, mobile platforms and increased access to the internet, media regulation must now turn to the task of educating persons not only to find content, but also to discern usage. The fact is we live in an age where content can be accessed from almost anywhere and at anytime. The role of the regulator in promoting media literacy is important in assisting the citizen to achieve digital literacy. The BCJ's active and ongoing programme on digital literacy should ensure that the average population can participate in this new convergent media culture, discern the impact of media on their lives and make informed judgement about their practices.

### **Environmental Issues**

A few weeks ago, in November 2010 I made a presentation to the regional conference of the Organization of Caribbean Utilities Regulators (OOCUR) on the matter of ICTs and the Environment. In a paper, titled **Environmental Challenges in the Telecommunications and ICT Sector: Corporate Responsibility and Public Policy**, available on the BCJ website, I advocated greater attention by the broadcast and telecommunications segments to our own contribution to global warming. The paper was well received, as industry regulators, broadcasters and providers accepted the need to monitor and manage our own carbon footprints, even as we point fingers at other offenders in other industries.

As it pursues its work in ensuring the development and growth of the sector, the BCJ needs to continue being a champion for environmental stewardship and disaster mitigation concerns. This need is heightened by our access to tools and services that can help in public environmental education as well as in reducing this risk through monitoring and mitigation technologies available to our industry. A 2009 ITU background report on ICT's and Climate Change reports that climate related natural disasters (storms, droughts and floods) cost, on average 0.6 percent of

GDP in affected countries. Carbon emissions (Green House Gas (GHG)) emanating from a wide range of industries, including energy production and consumption, transportation and ICT is a major cause of the changes in climate which we observe. It has been estimated that the ICT sector (excluding radiocommunication) contributes between 2-2.5 percent of GHG. However, when one considers the proliferation of television, radio sets and set top boxes, it is likely that the carbon footprint is much higher than the 2 - 2.5%.

Despite the pronouncement by the ITU that digital broadcasting is envisaged to result in significant reductions in transmitter power as well as less transmitters<sup>4</sup>, our concern in Jamaica about e-Waste should be heightened as we look toward the switchover from analogue to digital HDTV standards. The BCJ should concern itself not only with the disposal of outdated analogue equipment, but also with the possible dumping of analogue sets by manufacturers in developed countries into developing country markets, such as ours.

### **KEY REQUIREMENTS FOR STRATEGY EXECUTION**

First, it is recognized that there are challenges, but there are also solutions. Some of these challenges are internal in nature, specifically the capacity of the BCJ to respond effectively to many of the identified issues. The capacity of the BCJ relates to technical, human and financial resources. External challenges relate to the current inadequacy and outdated nature of the policy, regulatory and legislative framework governing the sector. At the regional level, while countries may agree that there are economies to be gained from harmonization on many issues, the silo operation continues, thereby reducing the opportunities for collaboration.

Despite the ever present challenges, effective leadership in dealing with the key strategic issues and providing an effective response to 21<sup>st</sup> Century media regulation will require a number of issues to be addressed.

Among the most important are:

- Legislative and Regulatory Reform
- Consultation/Public Education and Impact Assessment
- Research and Development
- Ensuring Operational Efficiencies
- Human Resource Development
- Regional Harmonization
- Financing

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<sup>4</sup> Source: ICT's and Climate Change.

### **Legislative and Regulatory Reform**

In the Jamaican context, reform of the legislative and regulatory framework required to facilitate an independent, responsive, transparent and accountable BCJ is of the utmost importance. There should be a separation of powers between policy makers and the regulator, with the latter having the necessary powers to enforce the regulations and to rule in disputes. Whilst, this issue has discussed at length over the past few years, the current situation requires that action now be taken. Therefore the BCJ must continue to actively lobby to put in place these changes.

### **Consultation/Public Education/Impact Assessment**

To embrace 21<sup>st</sup> Century Media regulation, the BCJ, must adequately arm itself with the tools to constantly assess and reassess the needs of industry and all stakeholders. This may be achieved through;

- 1: Embracing the consultative approach
- 2: Engaging fully in public education/outreach
- 3: Using Regulatory impact assessments as tools to guide the regulator on the effectiveness of its decisions and recommendations.

The upcoming year will present the opportunity for the BCJ to consult on the wide range of issues raised in the draft Media Policy. Activities will include island-wide meetings with licensees and other stakeholders to discuss issues such as of Digital Switchover and the new Media Policy proposals including the Production Fund and Media Content Standards. As a developmental measure, the BCJ should also use the opportunity to critically assess the outcomes of the current programmes such as media literacy, content management with a view to refine and reform where necessary.

### **Research and Development**

The BCJ must continue to re-position itself to more readily address industry and global economic trends and challenges and to improve its ICT and new media output competences. Building the research capacity within the organization will be a critical factor in this endeavour, as is building regional and global linkages to take advantage of existing and new research in the area. In addition to improving knowledge and capacity re new technologies and regulatory issues, there is also the need for research into *inter-alia*, Audience Needs and Media Output Assessment.

### **Ensuring Operational Efficiencies**

The BCJ must continue to strive to streamline the operations of the entity in order to gain operational efficiencies. Additionally, the BCJ must take account of the anticipated changes based on the outcomes of current recommendations, for example with respect to the charging of fees and the recommendation for legislative changes to which will give the BCJ more regulatory autonomy. A situation where the BCJ will be collecting fees and having the autonomy to grant and revoke licences will require at the least, the necessary financial and accounting systems as well as re-engineered business processes and systems for licensing and monitoring of licensee compliance. This will be in addition to the technical tools and staffing requirements.

The continued responsibility of the BCJ in protecting the environment is also one which should be taken quite seriously. In addition to being more cost-effective, the BCJ should aim to become a model entity for other agencies and companies with respect to the reduction of its carbon footprint.

### **Human Resource Development**

Human resource development represents one of the most important aspects of the development of the BCJ as an effective regulator. The new environment is one which requires continuous learning, and it is not only about the technologies, but also about the economics and legislative needs of the sector. This new dispensation requires new skill sets on the part of Regulators to understand the dynamics of the various business models, competition issues, intellectual property rights, digital rights management, spectrum management and cybercrime/privacy issues. To fulfil its mandate to educate, inform and protect the consumer, communication and public relation skills will be essential. The Regulator should also have a role to play in training delivery for the development of indigenous content, as recommended by the Media Policy. Therefore, to be effective in all the above, the BCJ should now identify the gaps and move to ensure that it has access to the relevant skill sets and resources to deal with the myriad of issues

### **Regional Harmonization**

Some of the regulatory issues will require a regional approach, including issues of digitization, spectrum and mobile television regulation. Therefore, as is the case in Europe, Caribbean regulators will need to intensify their discussion of a harmonized approach to industry development and regulation. As indicated, the issue of Digital Switchover and the attendant spectrum issues is one such matter of regional importance. The BCJ has the opportunity to lead the charge in many of these issues and is already involved in taking up that challenge.

### **Financing**

It is often said that good regulation can be expensive regulation and therefore, the effective execution of the strategies of the BCJ will require substantial funding. It has been the case that in Jamaica traditional broadcasters do not contribute to the cost of regulation and the regulatory

burden is inequitably placed on other parts of the sector such as cable. This is an issue which must be addressed within short order, through the necessary legislative changes as well as through consultation with media owners and industry stakeholders in order to determine a fair and equitable system for regulatory fees.

## **CONCLUSION**

The broadcast media are going through a process of dynamic evolution, involving constant change both in breadth and depth. These range from changes in the technology, the delivery platforms and applications to the personalization and ubiquity of media. There are no evident boundaries to the potential of the industry's growth and profitability and in the delivery of new experience. The approval by the Commission and granting by government of a licence for mobile television to a subsidiary of the Telecoms provider LIME in December 2010 is an example of this expanding domain of the industry. As telecommunications converges with broadcast regulation we must also change and evolve to foster this new landscape. This will place new demands on us as regulators and we must be constantly ready by building an internal capacity for research and ICT technology and economics.

The BCJ is on the right path to on-going strengthening of its effectiveness and efficiency in regulating the Jamaican electronic communications sector. Having identified the key focal areas, including Digital transition and the promotion of indigenous content and standards, the BCJ is ensuring that it is better resourced (financial and human resources) to perform the changing roles demanded by the times. Improved public education, consultation processes and monitoring systems are already being developed. And a more proactive, evidence based approach to regulation are all pieces of the puzzle being put in place to create a model regulator, toward a more vibrant 21<sup>st</sup> Century electronic media sector in Jamaica and the Caribbean region.

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