

Jamaican Electronic Media Regulatory and Policy Framework Consultation

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Executive Summary

The role of a modern electronic media regulator is to support the development of a dynamic broadcasting and/or media industry that enables the creation, distribution and promotion of indigenous content and reflects national social and cultural values back to the public as well as to the rest of the world. In light of these goals and Jamaica's relatively dated *Broadcasting Act*, a complete overhaul of the broadcasting and media legislation in Jamaica is required to ensure participation and equitable treatment of all 'like' services in the industry and success in the development of the industry. As Jamaica contemplates the creation of a dedicated, independently funded electronic media regulator, updating the media regulations becomes even more critical.

This document recommends multiple policy approaches that will bring Jamaica's broadcasting legislation in line with those of leading global jurisdictions. It will help prepare the Jamaican broadcasting and media industry to thrive and adapt to new technologies. The recommended approaches were developed through a process that moved from research and analysis of the current situation in Jamaica compared to best practices jurisdictions, to identification of main media policy topics and specific issues to be updated and addressed, and finally through testing with the Broadcasting Commission of Jamaica staff and board and industry stakeholders.

Through the entire development process, including the consultation, it became apparent that the majority of the recommended policy approaches could not achieve their intended impact if developed in isolation. Generally, as all the policy approaches focus on the central goals of a modern media regulator – including accessibility by citizens to indigenous broadcasting content, promoting the production of high-quality indigenous content and developing a level playing field for competition – each recommended policy approach benefits from the others.

Fundamental Issues:

Modern, best-practices regulatory regimes require a comprehensive, rules-based and transparent framework. This framework enables effective communications between regulator and stakeholders, dynamic and effective decision-making, and equitable treatment of stakeholders consistent with national economic and social goals. There are two changes at the industry level which are pre-requisites for the successful implementation of new broadcasting legislation and ultimately the ability of the industry to fully realize its potential:

- § All commercial entities in the system (television and radio broadcasters and distributors) report full financial information to the regulator on a regular basis and the reporting is consistent with accepted accounting practices;
- § All programming distributed within the regulated Jamaican broadcasting industry must be acquired through appropriate rights agreements, be they regional or full national rights, and first, second or subsequent window rights.

Broadcasting licensees are already required to submit annual audited financial statements and to comply with copyright under the general provision in the regulations that they need to be in compliance with all laws. However, compliance with these obligations varies. Therefore, the overall industry focus through the implementation of the recommended policy approaches in this document

should be to bring all regulated stakeholders to the same level of full compliance with reporting and copyright obligations.

The recommended approaches, summarized below, cover all main media policy areas of a successful modern regulator. They provide the framework for the industry to succeed in the face of technological change as well as the basis for the regulator to effectively oversee such success.

Defining the regulated broadcasting industry

In a constantly evolving media environment a comprehensible definition of the regulated broadcasting industry is needed to clearly outline which companies, or entities, compete in the broadcasting industry and therefore fall under the aegis of the regulator. The use of a service-based definition (i.e. based on capturing the activities of all 'like' services) in new legislation would ensure adherence to common regulations, equitable contribution to the sector and a level competitive playing field for all players i.e. no competitors would be able to bypass the system.

Therefore, as part of the new legislation, Jamaica's current definition of the broadcasting industry needs to be revised to make sure that all programming services providers (broadcasters) and distributors, that can be received by consumers regardless of distribution technology, (cable, satellite, Internet, etc.) and have a corporate and commercial presence in Jamaica are subject to equitable regulation.

It is recognized that some programming services from some foreign programming service distributors that do not have a commercial presence in Jamaica will be received by some viewers. However, these services currently do not and will not enjoy the regulatory and legal protection afforded by the BCJ or other Jamaican government agencies.

Financial viability of media industry stakeholders

Regulated broadcasting industries are traditionally built on a combination of indigenous and foreign programming services/content. Because purchasing foreign content is often less expensive than producing original indigenous content, indigenous content producers are at a commercial disadvantage relative to foreign programming services in negotiating with indigenous broadcasters, as are the broadcasters in turn, in negotiating with distributors. A new broadcasting act should therefore encourage a balanced national broadcasting industry, ensuring strength among producers, broadcasters and distributors. In global best practices jurisdictions, measures to ensure the financial viability of all industry stakeholders include policies that mandate practices to capture new revenue, as well as policies that provide cost leniencies to low-revenue broadcasters.

In the Jamaican context, issues with standardized financial reporting and commercial competition from traditionally low-revenue entities (e.g. campus broadcasters) make the adoption of scaled licence conditions difficult at the present time, but such a measure may be suitable once all players are operating under the same rules. However, there is an opportunity for the broadcasting system to capture new revenue through substituted advertising practices including simultaneous and non-simultaneous substitution and local avails advertising. As well, the possibility exists to allow broadcasters to benefit from the economic value of vacating their analogue spectrum for use by

mobile wireless voice and data providers. These measures should be mandated if and when they are applicable and can be proven to provide a significant additional benefit to the broadcasting system. Indeed, the BCJ has already recommended selling local availabilities as one means to add new revenue to the broadcasting system.

Equitable market-based licence fees for all players and regulator funding

An appropriately funded regulator is a necessary component of any efficient and effective broadcasting and media industry. An electronic media regulator needs stable financing to effectively regulate the industry, and all entities in the broadcasting system should contribute for their right to operate. However, there is a distinct difference between paying for the inherent value of a broadcasting licence and contributing to the cost of regulation. Because of historical broadcast licensing and regulatory practices in Jamaica there is a disparity in what broadcasters and distributors pay to operate and to recover the cost of regulation.

As such, all broadcast licensees need to be brought into a common licensing structure including a two-fee framework:

- 1) A one-time cost for the economic value of a broadcasting licence for the duration of a common licence term; and,
- 2) An annual market-based contribution to cover the cost of regulation.

It is recommended that the annual regulatory fee be set as a percentage of licensee revenue (as is currently the case for STVOs¹). However, because of the above mentioned issues with reporting practices, where a licensee fails to submit financial statements or the veracity of those statements is questionable, the regulator should reserve the right to set a flat licence fee based on an estimate of a licensee's market-value. Once all entities are captured in the regulatory regime and provide standardized financial information, all fees should be set as a percentage of annual revenue.

Recognition and support of priority indigenous programming content

Caribbean-produced content competes for audiences with content from other countries/cultures, and should be protected, promoted and funded to encourage high quality programming and ensure it is broadly available. Particular content genres, because of their importance and/or inherent production costs, tend to need more support through a policy framework than others (e.g. drama versus news and current events). Jamaican content not only supports social and cultural goals, but a strong production sector can also be part of a national industrial strategy. Many regulatory methods are used globally to ensure there is a significant amount of national content available in the broadcasting system, ranging from financial and educational support measures to exhibition and carriage requirements.

¹ STVOs remit 5% of subscriber revenue to the BCJ to contribute to the cost of regulation.

A national indigenous programming production strategy needs to be developed in Jamaica to ensure a significant amount of high quality Jamaican content is available to viewers. Based on an analysis of the current situation in Jamaica and consultation with stakeholders, the preferred support measures include:

- § developing a priority programming fund from new industry revenue²;
- § creating a tax credit to support indigenous production;
- § developing training programs to increase production crew levels; and,
- § mandating carriage of all terrestrial broadcasters by programming services distributors, and encouraging carriage, including fair carriage negotiations, of national and local specialty, or cable-based, programming services.

All measures must be readily available to all qualified applicants and should not adversely affect the financial viability of any industry player.

Foreign ownership

Some broadcasting activities in Jamaica (such as operation of STV services) are currently limited to Jamaican or CARICOM-owned companies. However, foreign ownership can provide new investment into the broadcasting industry. Conversely, it can also threaten national objectives. Foreign ownership policy in broadcasting should maximize the potential for new investment without threatening Jamaican cultural and social goals.

To maximize the potential benefits of foreign ownership while ensuring it does not negatively affect national objectives, Jamaica should review its foreign ownership policies to determine what level of foreign ownership, if any, would be most beneficial. Jamaican broadcast stakeholder generally feel such a review is necessary, but caution that ownership should be subject to a minimum of 51% local (Caribbean or CARICOM) ownership of any single company.

Concentration of ownership

The broadcasting and media industry has significant influence over the opinions of the populace and therefore Jamaicans must be able to access a variety of views, opinions and content. The more diverse the ownership of a broadcasting system, the more voices there are to choose from. Conversely, a limited number of voices results in limited views on world issues being related to the populace.

Jamaica therefore should develop a concentration of ownership policy that clearly outlines appropriate concentration thresholds and additionally seeks to increase the number of independent Jamaican voices in the broadcasting industry.

² The BCJ has already championed a proposal to government for establishment of a Public Broadcasting Production Fund (PBPF) to be part-funded from new sources of revenue and financial sanction.

Broadcasting content standards

Broadcasting and media content should be held to consistent standards – including ratings systems and exhibition restrictions – to protect vulnerable audiences from mature content, and ensure ethical practices among broadcasters. Because broadcast licences are the key beneficiaries of an efficient content standards regime, in many global jurisdictions the responsibility for standards enforcement is devolved to an industry council under the guidance and authority of the regulator. The council is required to report back to the regulator on the application of broadcast standards, response times and complaint levels. Emboldening the industry to regulate its own content standards also creates an atmosphere of collaborative adherence and reduces individual broadcaster effort responding to these kinds complaints.

Under the ultimate oversight of the BCJ, Jamaica should create an industry-led and operated broadcasting standards council. The council should operate on a complaints-response basis and establish a clear response and enforcement framework. Finally, the council should additionally cooperate with the regulators of Jamaica's electoral process to ensure all political advertising regulations are enforced.

Transmission standards and digital transition

Global standards for broadcast distribution are migrating, or have already migrated, from analogue transmission to digital and high-definition transmission.

As there is already a committee on the digital transition in Jamaica, our recommendations are limited to maintaining the existing committee, establishing switchover milestone dates and developing industry and consumer incentives to foster the transition to digital and ultimately monitoring the transition process through completion in order to ensure that it is orderly and fair for broadcasters, distributors and consumers. The national steering committee on the digital transition chaired by the Minister and co-chaired BCJ and the industry will maintain a key role in shepherding the digital switchover.

Media response to emergencies and disasters

National media provides one of the most effective means for disseminating information on emergencies, including disasters, weather threats and missing persons. It is therefore essential to national interest that the broadcasting industry contributes to communicating emergency messages to the public consistently. Because of historical licensing processes in Jamaica, not all broadcast stakeholders are mandated to participate in the dissemination of emergency and disaster messaging.

Jamaica should therefore ensure all existing and planned emergency response measures pertaining to the cooperation of the broadcasting industry as specified by the Office of Disaster Preparedness and Emergency Management are included in broadcasting legislation as well as in the conditions of licence for all regulated entities.

Regulatory governance and dispute resolution

Finally, established regulations to create a successful and efficient broadcasting sector cannot be fully effective unless the regulator has the appropriate level of authority to enforce such regulations. Generally, the roles of the regulator and the subject Ministry need to be clearly segregated and defined as they pertain to oversight of the broadcasting industry in Jamaica. Separation of policy and regulatory functions and regulatory independence are considered to be essential conditions for effective and efficient governance of the broadcasting industry. Providing regulators with sole authority for broadcasting issues also creates a more efficient regulatory environment. This type of separation conforms to best practice and also to the general direction in which the Public Sector in Jamaica is developing.

Therefore, Parliament and the Ministry should recognize the BCJ as the sole authority for broadcasting issues, including granting and revoking broadcast licences. An appeal process, which could include a specialist tribunal or the courts, should be established for disputes between the BCJ and licensees. The Ministry would continue to have ultimate oversight over policy matters and the role, mandate and functions of Commission.

1. Introduction

1.1 Background

The role of a modern media regulator is to support the development of a dynamic broadcasting and/or media industry that includes the creation, distribution and promotion of indigenous content that reflects national social and cultural values back to the public as well as to the rest of the world. In order to ensure a level playing field for individual players and the overall development of the industry, the regulator must treat all regulated entities that compete directly and ensure all contribute equitably to national goals.

Whether their broadcasting and media policy is five or 50 years old, media regulators globally are updating their policies to account for the myriad distribution options provided by new and anticipated technologies. If left unchecked, many of these new forms of distribution threaten the regulated broadcasting system by allowing business entities to profit from distributing audio-visual content without contributing to the financial and social wellbeing in their distribution areas. Regulators around the world are thus grappling with drafting media policies that provide a level (or near level) playing field for all forms of content distribution, but does not stifle creative innovation or is so prescriptive as to drive viewers away.

Jamaica is no different. The country has kept pace with the developed nations in adopting new and emerging communication technology, leading to areas of media activity that were never contemplated by the *Broadcasting and Radio Re-Diffusion Act* enacted in 1949. However, multiple amendments to the now 60-year-old Act make it apparent that fundamental reform of the institutional framework for regulation of the communications sector is necessary.

It is beneficial that this framework reform comes at a time when the ongoing impact of new distribution technologies is better understood. While it may not be known exactly what the future forms of broadcast distribution will be, knowing merely that distribution technologies will evolve provides an opportunity to be forward thinking and flexible enough to accommodate future forms of broadcasting.

Also, the age of Jamaica's broadcasting policy provides the Broadcasting Commission some additional advantages over other regulators. For example, jurisdictions that updated media policies following the advent of the Internet generally choose not to regulate online content as part of the broadcasting industry. Such regulators now face legal hurdles as they try to eventually bring broadcasting content over the Internet into the regulated industry. Jamaica, on the other hand, will be able to avoid similar pitfalls because the role of the Internet in broadcasting is now better understood. Therefore, media policy can be set exclusively to focus on positioning the BCJ to excel at meeting the primary overarching goals of world-class electronic media regulators, which include:

- § Fostering the production of quality media creative content which appeals to a variety of audiences;
- § Dissemination of that content as programming services over various electronic media platforms; and
- § Capturing contribution from industry players for financing production of programming that advances national cultural and social goals.

This document, and the process by which it was produced, represents the first step towards revising Jamaica's broadcasting act. This report concludes with a number of policy recommendations, both for the present and medium (three to five year) term. They will need to be vetted as part of a Green Paper/White Paper process and eventually be enacted as part of Jamaica's new broadcasting and media legislation.

1.2 Scope and mandate

The BCJ engaged Nordicity to provide “**evidence-based policy advice to support the Broadcasting Commission becoming a world-class, modern, media regulator.**” Specifically, the BCJ sought research to inform its recommendations about:

- § An appropriate mechanism to sustain the Jamaican video production sector and public service broadcasting;
- § What areas of activity within the media sector require application of public resources and intervention by the state and what areas are properly to be left to the market for regulation;
- § The appropriate scope of functions for the media regulatory institutions; and
- § The best options for the structure and funding of the media regulator.

The BCJ additionally identified the following six categories of critical matters to be addressed in the research and recommendations:

- § Media market and structure
- § Media platforms
- § Media content and effects
- § Media consumption
- § Transmission/distribution infrastructure
- § Regulatory approaches and instruments

Finally, the BCJ specified that the recommendations be based on the following qualitative values:

- § **Legitimacy** – agreement with Jamaica's legal framework.
- § **Consensus** – including the needs and priorities of societal stakeholders.
- § **Equity and inclusion** – applicable under equal conditions to all stakeholders, including those traditionally excluded.
- § **Mainstreamed** – cutting across all sectors.
- § **Innovative** – generating positive change and new approaches.
- § **Attainability** – establishing concrete measurable and verifiable steps.
- § **Technology neutrality** – not favouring any given technology option.

- § **Located in the national context** – considering unique condition indigenous conditions and equivalent situations in similar jurisdictions.
- § **Located in the regional and international context** – considering the impacts of external policy decisions as well as national economic conditions.

1.3 Approach and methodology

To ensure all of the BCJs specified deliverables and critical matters were researched and addressed in light of the necessary qualitative values, the projected team employed a rigorous, multi-stage research and analysis methodology with the following steps:

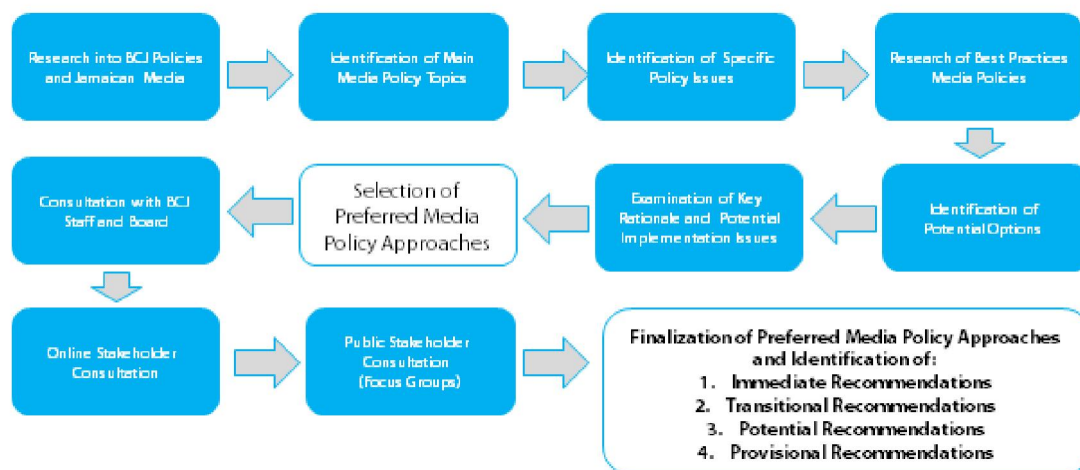
- § Background research on BCJ policies and Jamaican media;
- § Identification of main media policy topics;
- § Identification of specific approaches under each broad topic;
- § Research into the policies of best practices jurisdictions;
- § Identification of all potential options;
- § Examination of key rationale and implementation issues for each option;
- § Selection of the preferred media policy approaches;
- § Consultation with the BCJ staff and board and amendment of preferred options based on feedback;
- § Online consultation with stakeholders (December 2009 to February 2010) and narrowing of discussion topics based on feedback;
- § Public consultation (using focus groups) with stakeholders (March 2010); and
- § Finalization of media policy approaches report based on stakeholder feedback.

Ultimately, this report includes four types of recommendations:

1. Immediate recommendations that require no environmental changes or additional research to be implemented;
2. Transitional recommendations that should be implemented immediately under guidelines designed to suit the current media environment (near term) but will be adjusted as the sector matures (medium term). This approach is generally recommended in the absence of standardized accounting practices and comprehensive financial reporting on the part of all stakeholders to ensure efficient regulation. For example, it would make administration easier to set flat regulatory fees immediately but eventually move to a percentage of revenue model following the development of comprehensive financial reporting.
3. Potential recommendations that should only be implemented following additional research into their impacts on the industry; and

4. Provisional recommendations based on ensuring the regulator has the flexibility to address issues that are not yet applicable, but are likely to be relevant within the next decade based on the experiences of other mature media jurisdictions.

The process is illustrated in the figure below.



2. Defining the Regulated Broadcasting Industry

The definitions of regulated broadcasting industries have been constantly evolving to account for the introduction of new businesses – most often the result of new technology – into the audio (radio) or audio-visual (television) content distribution chain. Originally conceived to include entities acquiring and distributing audio or audio-visual programming signals over the air (OTA), the regulated broadcasting industry evolved with the introduction of cable and satellite television distributors. In effect, the regulated television broadcasting industry expanded to include the entities acquiring and programming content (broadcasters or programming services) and the entities disseminating the content (distributors i.e. subscriber television operators - STVOs).³

Similarly, the term 'programming' was used to describe the content of broadcast signals, where programming commonly referred to scheduled delivery of content. However, technology now allows consumers to access content on-demand, altering the notion of 'scheduled' content. New technologies similarly allow virtually anyone to transmit audio-visual content to the public, altering the nature of content distribution as a qualifier for inclusion in the regulated broadcasting industry. As in the case with the introduction of cable and satellite distribution, the definition of the broadcasting industry should account for the introduction of new businesses into the content distribution chain. In light of the consistent introduction of new distribution technologies, the industry definition must be forward thinking based on common key characteristics of future forms of 'broadcasting' to ensure regulation of all competing services.

A clear definition of the broadcasting industry provides the framework for the regulator to develop incentive measures for the sector and correspondingly to regulate companies which provide the regulated services. The principal regulatory policy considerations in defining the regulated broadcasting industry are comprehensiveness and equity. By comprehensiveness, we mean that the principal activities and players on the national scene which can be included in a practical fashion are captured under the regulatory aegis. By equity, we mean that in a competitive environment, all businesses or entities offering 'like' services are subject to a common regulatory regime and those entities receive equitable treatment i.e. licensing protection, obligations and incentives as appropriate. In other words, no entity should be able to operate free of the regulation and oversight that govern its competitors.

Therefore, determining what should be included under the definition of the regulated broadcasting industry – and thus regulated subject to the recommendations within this policy framework – is limited to business entities which meet the tests of having 'like' services; and are directly competitive.

The BCJ needs to revise the definition of the **broadcasting industry** to make sure that all programming service providers (broadcasters) and distributors (cable, satellite, Internet, etc.) that can be received by private consumers and have a commercial presence in Jamaica are regulated by the BCJ.

³ Satellite radio similarly led to a number of new radio stations operating effectively as programming services and requiring satellite distribution, but the radio industry remains much more segregated along distribution lines (OTA vs. satellite distribution, but not both) than the television industry.

2.1 Media policy approach: Broadcast Media

- § Adopt the definitions below for the broadcasting industry and the types of 'like' services that compete within the broadcasting industry.
- § Regulate all entities that meet these definitions.
- § Specify the distribution platform, or platforms, in each licensee's broadcasting licence.
- § Recognize the critical role played by all regulated entities (broadcasters and distributors) in the regulated broadcasting industry.

Broadcasting

"The acquisition and packaging of programming for transmission/distribution as (a) programming service(s) for reception by the public (i.e. multipoint reception) in Jamaica irrespective of the transmission infrastructure or platform and whether the programming is transmitted on a scheduled or non-scheduled basis;

Where: Programming is copyrighted audio or audio-visual content and is offered by a corporate entity to the public on a regular basis.

Not including: Transmission of programs made solely for performance or display in a public place; and transmission of audio-visual material which is neither copyrighted or a programming service (e.g. user-generated content)."

Programming Service Provider (PSP) (alternatively: Broadcaster)

"A corporate entity which acquires and/or produces, and packages programming for transmission/distribution as a programming service to the public in Jamaica."

Types of PSPs include:

Commercial PSP (alternatively: Commercial Broadcaster):

"A corporate entity with a commercial presence in Jamaica and which acquires and/or produces, and packages programming for transmission/distribution as a programming service to the public in Jamaica."

Public Service PSP (alternatively: Public Service Broadcaster):

"A programming service (therefore subject to the same regulations as private broadcasters, but potentially different conditions of licence), maintaining established and agreed criteria to underscore a unique role and operating structure directed at serving the public good, such as:

- § Broadcasts audio-visual material intended to be primarily of social, educational, cultural or informative value to the public and which promotes national social and cultural values; and
- § Receives no more than 30% of its revenue from advertising."

Commercial Public Service PSP (alternatively: Commercial Public Service Broadcaster)

"A programming service (therefore subject to the same regulations as private broadcasters, but potentially different conditions of licence), maintaining established and agreed criteria to underscore a unique role and operating structure directed at serving the public good, such as:

- § Broadcasts audio-visual material intended to be primarily of social, educational, cultural or informative value to the public and which promotes national social and cultural values; and
- § Unlike other Public Service PSPs, is not subject to limitations on advertising revenue as a percentage of total revenue."

Community PSP (alternatively: Community Broadcaster):

"A programming service (therefore subject to the same regulations as private broadcasters, but potentially different conditions of licence), maintaining the criteria to underscore its unique roles, mainly:

- § Dedicated to the provision of access to news, information and other content of public interest; and
- § Related to a specific geographic area within Jamaica such as a community or region served by the subscriber television operator or subscriber television licensee."

Internet Programming Service Provider (alternatively Internet Broadcaster):

"An entity that has acquired programming rights for distribution and is transmitting programming over the broader (non-proprietary) public Internet infrastructure, commonly delivered through a web interface."

Regulate such entities based on tests of level of competition with traditional broadcasting entities. Reserve the right to regulate where feasible, with respect to the following:

- § Issuance of broadcasting licence;
- § Licence fee for value of licence;
- § Annual contribution to cost of regulation;
- § Content standards;
- § Contribution to indigenous content creation; and
- § Promotion of indigenous programming.

(Jamaican broadcasters who offer licensed programming over the Internet as a second window to standard over the air or cable television distribution should not be re-regulated (i.e. they should not require any additional licences).)

Programming Services Distributor (PSD)

"A corporate entity with commercial presence in Jamaica which transmits programming services for reception by the public in exchange for commercial remuneration (such as subscription fees, pay-per view fees, etc.), and by any means of transmission infrastructure or platform, whether the programming is transmitted on a scheduled or non-scheduled basis, and where that transmission is not made solely for performance or display in a public place."

Types of PSDs include:

Cable PSD:

"A corporate entity with commercial presence in Jamaica which transmits programming services for reception by the public in exchange for commercial remuneration (such as subscription fees, pay-per view fees, etc.), by means of **cable-based** transmission infrastructure or platform, whether the programming is transmitted on a scheduled or non-scheduled basis, and where that transmission is not made solely for performance or display in a public place."

Satellite PSD:

"A corporate entity with commercial presence in Jamaica which undertakes the transmission of programming services for reception by the public in exchange for commercial remuneration (such as subscription fees, pay-per view fees, etc.), by means of **satellite-based** transmission infrastructure or platform, and where that transmission is not made solely for performance or display in a public place."

IPTV (Internet-protocol television) PSD:

"A corporate entity with commercial presence in Jamaica which undertakes the transmission of programming services for reception by the public in exchange for commercial remuneration (such as subscription fees, pay-per view fees, etc.), by means of a **proprietary internet-based** transmission infrastructure or platform, whether the programming is transmitted on a scheduled or non-scheduled basis, and where that transmission is not made solely for performance or display in a public place."

*(IPTV distributors (different from Internet Broadcasters) distribute programming services over their own **proprietary** Internet-protocol infrastructure. Distribution is commonly directly to the television set without the need for a Web interface.)*

Mobile PSD:

"A corporate entity with commercial presence in Jamaica which undertakes the transmission of programming services for reception by the public in exchange for commercial remuneration (such as subscription fees, pay-per view fees, etc.), by means of a **proprietary mobile** transmission infrastructure or platform, whether the programming is transmitted on a scheduled or non-scheduled basis, and where that transmission is not made solely for performance or display in a public place."

*(Mobile distributors (different from Internet Broadcasters) distribute programming services over their own **proprietary** mobile network infrastructure. Distribution is commonly to directly to a mobile handheld device acquired from that provider.)*

Electronic Audio-visual Billboard

"Any screen capable of exhibiting audio-visual content – whether it is re-broadcasting the signal of a licensed broadcaster, exclusively licensed live or tape-delayed content, advertising content or other – that is located in a public area with the explicit intent of reaching the public audience."

2.1.1 Rationale

A platform agnostic definition of content and distribution is necessary to ensure capture of new and potentially competing services for effective regulation of a critical sector of the Jamaican socio-cultural landscape and a dynamic sector of the economy.

Limiting broadcasting to a transmission and multi-point viewing by the public on individual's receiving devices - whether in home or mobile corresponds to regulatory best practice and what is effective and practical for modern regulators.

Excluding programming which is solely distributed in public places such as theatres, ensures the original concepts of broadcasting are maintained, and does not bring non-competing sectors into the fold. This is the practice used by virtually all other jurisdictions.

However, electronic billboards would traditionally not be included under broadcasting given that they distribute content solely in public and the content cannot be controlled by the viewer, they are increasingly competing with the regulated broadcasting industry for audiences and advertising revenue. As such, there are a number of arguments for and against considering electronic billboards as part of broadcasting.

Although not programmable directly by viewers, electronic billboards are programmable by their owners and the programming can therefore be changed to suit daily audience tastes. As well, billboards are increasingly distributing content that was originally developed for in-home viewing. In contrast, in the case of movie theatres - the other public audience platform - content is developed as the first release window and access is limited by the cost of entry.

Finally, while electronic billboards are increasingly exhibiting programmable content, including some content that is not suitable for younger audiences, it is necessary for a governing body to ensure vulnerable audiences are protected. Currently, there is no effective framework for the regulation of

Electronic billboards in Jamaica as the existing public decency legislation is outdated and rarely applied. As an increasingly 'like' broadcasting content distribution platform, the BCJ is best-suited to assume the role of regulating electronic billboards. The BCJ has developed a network of volunteers to monitor broadcast standards on television and this same network could be used efficiently and at virtually no additional cost, to review content (programming and advertising) on electronic billboards.

While there is significant audiovisual content which is distributed on social networking sites, these do not directly compete with programming services. The material is generally not copyrighted and is not offered as a programming service.

The term 'programming service provider or PSP is preferred to 'broadcaster for the following reasons:

- § 'Programming' service provider covers point-to-multi-point services – scheduled and non-scheduled services. The term allows for the distinction between a linear service for the public versus social networking or file sharing services.
- § The term 'broadcasting' originated in the 1920s and connotes an integrated programming and distribution entity using point-to-multipoint signals originating from a broadcasting tower and a studio.

Specifying distribution/transmission platforms for licensees provides the regulator with data to better understand the industry economics.

A separate definition for public service broadcasters underscores their role in serving the public that funds them, improves transparency, and adds a level of accountability.

A separate definition for community broadcasters underscores their roles in serving the community they represents.

Internet broadcasters operating as legitimate enterprises compete directly with broadcasters for the acquisition of programming rights, viewers and advertising. As this type of entity is relatively new, and possibly non-existent in Jamaica at this point (US examples are Joost and Hulu) the Commission should reserve the right to regulate, to the degree necessary based on the level of competition and technological limitations.

Distributors are a key piece of the regulated broadcasting industry, and are now generally included in the definition of broadcasting in many jurisdictions as a majority of homes receive programming via a distributor.

Cable distributors (as well as satellite, Internet and mobile distributors) carry both programming and non-programming (data, voice, and video) services. Thus, it is important to use a term which clearly refers to the role of the distributor in the carriage of programming services rather than to the underlying technology platform for distribution. Indigenous distributors tend to be cable-based and should fully contribute to the Jamaican industry.

Satellite distributors compete directly with Cable distributors and also provide programming that competes with programming on Jamaican Broadcasters. A completely level playing field cannot be established as it is not feasible to mandate carriage of Jamaican broadcasters or programming by satellite distributors. However, equitable contributions to regulation and indigenous programming can significantly equalize the industry.

IPTV distribution is analogous to cable distribution and therefore should be regulated in the same manner. Telephone/Internet providers are more commonly using their infrastructure to distribute programming services to compete with cable distributors. Technology allows for identical regulation to cable companies (must carry, contributions, etc.).

2.1.2 Recognized potential implementation issues

Full capture of all commercial entities within the broadcasting system requires industry cooperation and adequate capacity in order to locate and bring such entities into the regulated system.

Adding new distribution forms to the regulated mix can increase the required effort as it can be difficult to identify and locate such broadcasters. For instance, Internet channels may operate from an off-island server, or outside internet broadcasters may be available in Jamaica. Dealing with these entities becomes a rights issue for the broadcasters in Jamaica who have acquired the programming rights.

As involvement in the regulated system includes contributions to the regulator and potentially back to the industry, many entities may resist becoming licensed entities.

Regulating foreign satellite services would have to occur on a best-case scenario whereby such services acquire a licence and contribute to the cost of regulation, but would not be subject to mandatory carriage or substitution requirements as this is not technically feasible. The alternative would be to ban foreign satellite services from Jamaica altogether, which would require a substantial level of effort to be expended in enforcement.

An increase in the scope of the electronic media regulator to include the regulation of satellite distribution as well as Internet broadcasters would require increased financial and human resources to be effective. The BCJ would need a compliance and enforcement unit to monitor commercial broadcast entities operating in Jamaica (including monitoring of evidence of billing and customer service operations), to identify the unregulated entities and to ensure enforcement through fines and/or closure. The BCJ would also need the legislative authority to impose fines and to issue closure notices in the event that such a penalty is deemed appropriate.

Electronic billboard owners may argue that they do not compete directly with broadcast media for viewers and advertisers do not credit broadcasters for viewing on these billboards. Most content on electronic billboards is solely for public display (i.e. consumers cannot access it where they choose). There is no precedent in best practice jurisdictions for regulation of electronic billboards by a electronic media regulator. Other jurisdictions regulate electronic billboards under: existing outdoor advertising standards; public decency laws; municipal bylaws; and traffic safety laws.

Effective regulation of electronic billboards by a electronic media regulator would require the issuance of a broadcasting licence to a commercial entity which is not involved in the acquisition and/or distribution of content for personal receiving devices.

2.1.3 Consultation results

Stakeholders generally agree that broadcasting regulation must account for current new and foreseeable platforms. Additionally, stakeholders feel that concentrated effort to bring all 'broadcasters' into the regulated mix would benefit local television by reducing unregulated systems that do not contribute to the local industry.

There were two areas of concern that should be noted:

- § Increasing the scope of the BCJs mandate would require increased regulatory capacity and financial resources for the regulator; and
- § New definitions for the broadcasting industry and its services need to be clearly articulated and must be understandable.

2.2 Media policy approach: Other Electronic Media

- § Do not regulate the media services described below.
- § Communicate in the Broadcasting Commission mandate that the following services do not fall under the aegis of the BCJ for the reasons indicated below.

DVDs

The sale and rental of DVDs does not constitute a transmission of programming and therefore there are no grounds for regulation by the BCJ. There is no precedent in best practice jurisdictions for regulating DVD sales or rentals by a electronic media regulator. Electronic media regulators lack the authority to enforce DVD sales or rental. Effective regulation of the distribution of DVDs by the electronic media regulator would require the issuance of a broadcasting licence to a commercial for the sale or rental of DVDs.

Cinema's

There is no transmission and the content display is solely to the public (i.e. consumers cannot access it where they choose). Cinema and broadcasting have traditionally been kept separate, especially in regulation. The use of cinematic ratings for TV content display can be at times appropriate and useful.

3. Financial Viability of Media Industry Stakeholders

Regulated broadcasting industries are traditionally built on a combination of indigenous and foreign programming services/content. Because it is often less expensive to purchase foreign content than it is to produce original indigenous content, indigenous content producers and broadcasters are frequently at a disadvantage to distributors and to foreign programming services. Policies should therefore encourage a balanced national broadcasting industry, ensuring strength among producers, broadcasters and distributors. Often, additional revenue can be derived by limiting the leakage of revenues to outside stakeholders and by accessing untapped revenue sources.

3.1 Media policy approach: Substituted Advertising

- § Mandate **simultaneous substitution** (defined below) immediately for all instances where a broadcaster holds national programming rights and correspondingly, allow distributors to charge broadcasters for cost recovery for the substitution.
- § Allow **local availabilities substitution** (defined below) if and when it can be proven to provide a significant benefit to the Jamaican broadcasting industry and baring the establishment of equitable contribution parameters for the new revenue.
- § Mandate **non-simultaneous substitution** (defined below) for instances where a broadcaster holds national programming rights and following an investigation into its applicability and benefits, and after determining appropriate implementation parameters.

Simultaneous Substitution

Where a Jamaican broadcaster and foreign broadcaster are airing the same program at the same time and the Jamaican broadcaster has acquired the broadcast rights for the Jamaican market, the programming services distributor would be required to substitute the Jamaican broadcaster's signal for the foreign broadcaster's for the duration of that program. This allows the Jamaican rights holder to sell the 'entire audience' to advertisers for that program. In this measure, the Jamaican broadcaster would control all ad sales and ad revenue for that program, less payment of the direct costs of substitution to the PSD.

Currently, the most common application of this measure would be during major live sporting events.

Local Availabilities Substitution

This involves a PSD selling advertising time during the roughly two minutes per hour where foreign programs run regionally- or station-specific advertising (called local availabilities, or avails) that is not relevant to the Jamaican audiences and thus do not generate local sales revenues. As a new revenue source, selling local avails to advertisers must only occur if it can be proven to provide a significant benefit to all facets of the Jamaican broadcasting industry and therefore must be subject to conditions such as:

- § Maintaining a certain amount of local avails (e.g. 30-60 seconds per hour) to advertise Jamaican programming services or public service announcements at no cost;
- § Determining an equitable percentage of revenue from local avail sales to be contributed back into the industry as part of an indigenous programming fund;
- § Can be economically proven not to negatively affect advertising sales by Jamaican broadcasters (i.e. expanding the advertising pie, not taking from the same pie.)

Non-simultaneous Substitution

Where a Jamaican broadcaster airs a program for which it holds the national rights in close proximity to, but not at the same time (same day, same week) as a foreign programming service airing the same program, PSD's would be required to substitute the Jamaican broadcaster's signal for the foreign broadcaster's for the duration of that program. This would allow the Jamaican rights holder to sell the 'entire audience' to advertisers for that program.

Currently, for example, this measure could be applied to daytime talk shows that air on Jamaican-owned stations at a different time of the day that they air on a US signal.

3.1.1 Rationale

Simultaneous substitution accesses un-tapped revenue and prevents Jamaican broadcasters from losing potential advertising revenue due to audience fragmentation. However, it does not result in lost revenue by any other Jamaican-based stakeholders.

Local avails represent new un-tapped industry revenue source for licensed stakeholders. It has the potential to infuse revenue into all aspects of the broadcasting system. Other best practice jurisdictions have considered this measure. For example Canada has allowed insertion of programming service ads and PSA's into local avails for years. Canada recently let PSDs advertise their other services (wireless phones, etc.) during that time. Both PSDs and broadcasters would benefit from new revenue source, based on the principle that any new revenue sources for PSDs would have to be matched with increased contribution to the industry.

Non-simultaneous substitution facilitates the capture of revenue that is current not captured by the Jamaican system. This measure would reduce the losses in the value of commercial advertising to Jamaican broadcasters who air programs a few hours after they have already aired on another, foreign, channel.

3.1.2 Recognized potential implementation issues

Simultaneous substitution requires involvement from the distributors to substitute a local broadcasters signal. As a result, they have to be compensated for this work. If simultaneity of a signal on a local and foreign channel is very rare, the benefits may not outweigh the administrative costs.

Local avails substitution adds a new revenue stream for the PSDs and the rest of the industry, but is only beneficial if it can be proven not to draw from the existing advertising pool that broadcasters rely on. Therefore, the benefits (new revenue, increased activity from the production sector to produce television creative) have to exist in absence of any reduction in advertising revenue directly to broadcasters.

Non-simultaneous substitution would require clear regulations governing its applicability. BCJ would have to test the practicality/viability of this concept (benefits to broadcasters and costs for distributors) as a condition for its adoption. A study would be need to be conducted on the value, and parameters limiting the period over which a program would be eligible for NSS (i.e. aired on the same day? week?) would need to be developed.

This practice would, however, would allow the Jamaican programming service to have two separate programs running simultaneously (one on its own channel and one on a foreign broadcaster's channel), as opposed to the straight simultaneous substitution. Therefore, requiring a portion of revenue to be returned to the industry via a contribution regime is advised.

An additional objection could include the perception that this allows broadcasters to 'double dip' by accruing ad revenue from two sources at the same time.

Finally, simultaneous and non-simultaneous substitution would only apply to broadcasters that have acquired full national rights to a program. As the rights acquisition situation in Jamaica is currently varied, standardized rights acquisition procedures would have to become more common before substituted advertising produces any significant benefit.

3.1.3 Consultation results

Stakeholders generally accept that the introduction of new distribution channels and outlets, such as substituted advertising, is inevitable as digital technologies change and advance. However, there is still much resistance the various forms of substituted advertising.

Terrestrial broadcasters do not support providing another revenue source to PSDs (local availabilities), particularly if that source could ultimately impact their own advertising revenues. PSDs counter that there are advertisers who currently cannot afford to purchase TV ad time but would if more ad inventory was made available, therefore there would be an overall increase in total advertising. A thorough study of the current and potential advertising market would have to be conducted to ensure there would be no negative impact on terrestrial broadcasters.

Additionally, it is recognized that there is a cultural value in having advertisements for Jamaican products and businesses airing during foreign programming.

Finally, it is agreed that the implementation of any forms of substituted advertising cannot happen in isolation and that rights issues (such as ensuring national and regional rights are purchased) and grey-market distribution (cable companies that do not pay for the content they sell) need to be rectified first.

3.2 Media policy approach: Scaled Licence Conditions

- § Scale licence fees and/or conditions of licence for broadcasters that meet high tests of evidence for providing a significant social and cultural contribution (commonly restricted to educational and campus broadcasters) and could increase that contribution should their licence fees be reduced, but only at such time that all entities in the broadcasting system are operating 'above board' with full transparency to the regulator (likely 3 to 5 years) and there is no opportunity for abuse.

3.2.1 Rationale

Broadcasters provide a variety of social, community and cultural benefits to Jamaicans through their programming. Often, programming that provides high social and cultural benefits does not necessarily generate the same level of revenues which a broadcaster could generate from other, less culturally significant programming.

Globally, electronic media regulators recognize that social, community and cultural contributions by broadcasters are only sustainable if broadcasters themselves are financially viable. Therefore, the regulator takes into account the social and cultural benefits of a broadcaster when setting its licence conditions, and in many cases, establishes favourable licence conditions – including fees – that can help offset the economic impact of providing these benefits.

Favourable licence conditions and regulatory fees are recognized as a way to support culturally significant broadcasting content without direct subsidy. In times of extraordinary economic conditions, like the current recession, this practice becomes more important as it is even harder for broadcasters to provide programming focused on social and cultural benefits that generate smaller or no contribution to the bottom line.

3.2.2 Recognized potential implementation issues

It can be difficult to 'draw the line' on what constitutes extraordinary economic conditions and significant social and cultural benefit. This might encourage licensees to ask for regulatory relief when not merited/to compensate for poor business decisions.

3.2.3 Consultation results

Stakeholders almost unanimously disagree with the concept of scaled licence conditions on the grounds that even with extreme tests of evidence there is potential for abuse. Stakeholders cited instances where campus radio stations have sold their free licences to private commercial operators which then successfully compete directly with other broadcasters.

It is also recognized that market-based licence fees will generally have the effect of reducing licence fees for those broadcasters that do not generate large revenues.

3.3 Media policy approach: Carriage Fees

- § Make provision in the *Broadcasting Act* for new licence conditions in the eventuality where terrestrial broadcasting is not viable in the absence of subscriber fees. The appropriate solution would have to be thoroughly investigated at the time, but could include reciprocal license conditions for PSDs and broadcasters involving any or combination of mandatory carriage, mandated carriage fees, arbitrated negotiation, or the option to drop mandatory carriage requirements and enter into a scenario whereby carriage is based on successful negotiation.

3.3.1 Rationale

PSDs traditionally pay fees to specialty programming services, but not OTA broadcasters. As more consumers receive programming through PSDs and the number of specialty subscription channels has vastly exceeded OTA channels, OTA broadcasters are unable to compete based on advertising revenue alone. Therefore equitable treatment of all programming services becomes an essential principle.

3.3.2 Recognized implementation issues

The mandatory carriage of terrestrial signals would have to be rectified before fair negotiations could take place between terrestrial broadcaster and PSD if subscriber fees for terrestrial broadcasters were allowed.

Although carriage fees do not appear to be necessary at this time, it is recommended that the broadcasting legislation be amended to empower the regulator to address the issue should it ever become necessary, thus allowing Jamaica to avoid the legal entanglements currently happening in countries like Canada and the US.

3.3.3 Consultation results

Stakeholders do not feel there is a need for carriage fees at this time.

3.4 Media policy approach: Sharing Spectrum Value

- § Consider developing a framework to enable broadcasters to share in the economic value of the analog spectrum that they will mandatorily abandon so it can be re-farmed to higher economic uses such as mobile and fixed data, video and voice applications. Such a sharing regime could include the remittance of a portion of spectrum auction proceeds back to broadcasters, or licensing spectrum to the broadcasters beyond that which is required for digital distribution of their existing signals. Such additional spectrum could be used for the development of additional digital channels, for fixed or mobile spectrum or could be re-leased to other users.

3.4.1 Rationale

Spectrum is a resource that has been granted to over the air broadcasters to use as a condition of their licence. It can be argued that there was an expectation amongst broadcast licensees, particularly those that were granted perpetual licences, that the spectrum resource was theirs to use in perpetuity. Therefore, mandating that they abandon this resource could be accompanied by a financial incentive.

Also, undertaking the transition from analog to digital terrestrial distribution is costly for broadcasters. For undertaking this costly transition, broadcasters may be entitled to part of the significant economic value of the spectrum they were forced to abandon.

Reallocating spectrum to broadcasters for additional uses other than distributing their existing signals provides the opportunity to continue to benefit from the spectrum rather than receive a one-time payment for abandoning it. Finally, in a digital world consumer choice is almost infinite and the viability of traditional broadcasters as a consequence, is diminished. Innovative measures will be required to ensure that broadcasters continue to play their role as key stakeholders and service providers.

3.4.2 Recognized implementation issues

The BCJ would have to have the approval and work in concert with the Spectrum Management Authority and the Ministry in devising and applying any digital licensing regime. Use of additional spectrum by broadcasters for purposes other than distributing their existing signals may require review and sign-off by the BCJ to ensure there is a significant social benefit.

4. Equitable Market-based Licence Fees for all Players and Regulator Funding

An appropriately funded regulator is a necessary component of any efficient and effective broadcasting and media industry. A electronic media regulator needs stable financing to effectively regulate the industry, and all entities in the broadcasting system should contribute to the financing of the regulatory in exchange for their right to operate and draw commercial revenues from the marketplace. However, there is a distinct difference between paying for the inherent value of a broadcasting licence and contributing to the cost of regulation.

As Jamaican broadcasters and distributors received their operating licenses at different times and under different regulatory and/or policy regimes, licence terms and contribution requirements vary greatly. In some cases, especially in the case of original licensees, license terms are open-ended and the value of these broadcasters' licences is not reassessed on a regular basis to reflect current market conditions. Broadcasters also do not contribute to the cost of regulation on a regular basis, but distributors (STVOs) do.

Therefore, there are structural inequities between regulated players across the industry in terms of regulatory contributions and licence conditions, and thus an uneven competitive environment. This runs contrary to the goal of creating a level playing field for all regulated competitors.

Most global regulators differentiate between the cost of a licence and the cost of regulation when setting fees. They also recognize that technological and economic trends can impact each of the two costs separately. For example, while the inherent value of a broadcasting licence in a region may increase over time, the cost of regulation may decrease at the same time, and vice versa. A regulator needs the flexibility to adjust either of these costs over set terms to ensure broadcasters and distributors are paying fees based on real values.

4.1 Media policy approach: Equitable Licences and Contributions

- § Treat all broadcasters and distributors equally with defined licence terms and mandated renewal processes. The BCJ should also identify the standard process and parameters for evaluating licensees when setting new licence terms.
- § Institute a two-part licence fee approach for all regulated entities:
 - a one-time **Operating Fee** based on the economic value of the licence; and
 - an ongoing market-based **Regulatory Fee** to support the cost of regulation. This fee would be a fixed annual fee in the near term (approximately 1-3 years) based on the estimated value of a broadcasting licence, followed by a fee based on a percentage of gross broadcasting-based revenues irrespective of source (though most commonly advertising, subscribers, etc.) in the long term (after 3 years) once all entities are operating 'above board' with full transparency and financial reporting to the regulator.
- § Provide an annual report of the BCJ's operational costs and activities to be reviewed and commented on by all licensed entities in the broadcasting system.

- § Require licensees as a condition of license to provide annual, comprehensive financial reports based on generally accepted accounting principles to the BCJ. Enable BCJ to apply financial sanctions in the case of non-compliance by licensees.

4.1.1 Rationale

Regulation of the broadcasting industry provides a framework for orderly development of the sector and some protection for licensees against unlicensed entities. A consistently-funded regulator is needed to ensure the industry is directed towards meeting its goals. In widening the contribution base, BCJ would reduce financial contribution level of existing stakeholders and ensure equitable contribution from all stakeholders.

Access to stakeholders' financial data is critical to the functions and informed decision making of a modern regulator.

4.1.2 Recognized potential implementation issues

Because a substantial portion of the Jamaican broadcasting industry does not provide standardized financial reporting⁴ to the BCJ, the implementation of such a regime could require significant time and effort and be seen as treating those entities that currently operate 'above board' the same as those who are not.

Access to reliable financial data from regulated entities can be difficult due to issues such as consolidated reporting units, and transfer pricing. BCJ would need to have the cooperation of the Ministry of Finance, TAAD and the firms themselves and should consider the 'lessons learned' from previous experience. Thus while the electronic media regulator should emphasize the standardized financial reporting by stakeholders as the required solution, it may be necessary to consider estimates of market value as an interim solution to ensure a comprehensive, equitable effective contribution regime.

Also, in extending the annual fee to all licensees, the regulator should consider the viability of the players. In particular, broadcasters may incur additional costs in the transition period for simulcasting of digital and analog signals. As well, broadcasters face a potential loss of advertising revenue due to increased audience fragmentation, which should be considered in any new revenue-based fee regime.

⁴ It is our understanding that the broadcasting industry has lagged in providing audited financial statements to the BCJ developed according to accounting standards which provide for, amongst other things, a standard code of accounts. Jamaican industry generally uses GAAP (General Accepted Accounting Principles) as this is used by its trading partners in the US, Canada, and UK.

4.1.3 Consultation results

Stakeholders agree that a well funded regulator is necessary and that all entities should contribute on an equitable basis, thereby levelling the current playing field. However, as with several other issues, stakeholders feel that if accurate financial reporting and the adoption of generally accepted accounting principles was employed by the majority of the industry, this would lead to 'good corporate citizens' that pay their taxes and the basis for fair assessment of fees and contributions to the regulator.

Instead of a percentage fee linked directly to company revenue, stakeholders prefer a fixed flat fee, linked to BCJ operational costs. At the stakeholder level, they suggest ranges or tiers of fees that would be assigned based on an estimate of a stakeholders financial performance. Only at such time that all entities are reporting accurately could a fee be based on a percentage of revenue.

When a fee is based on a percentage of revenue, it can only be a percentage of broadcasting revenue (advertising, subscription revenue, and advertising on Internet broadcasts) but cannot be linked to profitability or to other business lines such as internet service and telephone service.

5. Recognition and support of Priority Indigenous Programming Content

Jamaican-produced content competes for audiences with content from other countries. Indigenous content must be protected, promoted and funded so as to encourage high quality programming and ensure it is broadly available. Particular content genres, because of their importance and/or inherent production costs, tend to need more support through a policy framework than others.⁵ Indigenous programming categories which are both popular and highly valued such as sports and music are generally provided by private broadcasters in the absence of regulation and thus are not considered priority programming for the regulator.

In light of the importance of Jamaican programming to national social, cultural and economic goals, as well as these competitive pressures, the industry needs a policy framework that will foster the production and exhibition of high-quality programming and ensure it is available to all Jamaicans.

Many regulatory methods are used globally to ensure there is a significant amount of national content available in the broadcasting system. These methods include: mandating the carriage of national broadcasters by distributors; promoting indigenous broadcasters and content; and funding support measures. Historically, BCJ has recognized the importance of public service programming in the licensing regime (e.g. licensing of community radio broadcasters). More recently, it has worked with stakeholders in the financing and promotion of public service broadcasting programming and has recommended to the Government of Jamaica the creation of a specific fund to develop public service programming.⁶

Establishing the right blend of regulatory support methods helps ensure indigenous content can compete with foreign programming and therefore remains available to the public.

5.1 Media policy approach: Indigenous Content

- § Identify the Jamaica's priority programming categories (types of programming that best reflect national social and cultural values and are more likely to need to be protected and/or promoted). From experience in other jurisdictions, common priority categories include:
 - Regional/local programming;
 - Drama/comedy;
 - Children's programming;
 - Educational programming;
 - Documentary
- § Develop a comprehensive strategy to support the development and distribution of indigenous programming that could include:

⁵ Drama programming production costs are far greater than those for news or current events programming.

⁶ Source: Cordell Green, Executive Director, BCJ May 3rd, 2010.

- A Priority Programming Fund financed in part by new industry revenues (e.g. local avails, non-simultaneous substituted advertising and corporate transaction benefits);
- Production tax credits that promote indigenous content creation as well as the use of Jamaican production crew members by visiting productions;
- Education, training and business development initiatives;

5.1.1 Rationale

There is clear evidence that Jamaican indigenous content is innovative and valued on an international basis. It is also clear that the nation often 'loses' much of the revenues which derive from the success of those individuals who have become internationally recognised and commercially successful. There is therefore considerable economic benefit to be derived from the better fostering and local retention of this material.

Availability of high-quality priority indigenous programming for viewing by the public is essential to national cultural, social and economic goals. Identifying the priority categories is the first step towards focused regulation and policy.

To be viable, the production and distribution of high-quality indigenous priority programming, requires some form of direct or indirect public financial support. This is particularly true in smaller national markets such as Jamaica. Jamaican audiences do watch quality Jamaican programming when it is available.

There are a number of third party producers and distributors with production subsidiaries which can produce high quality programming.

Contribution towards national cultural, social, and economic goals in the broadcasting sector should include all players in the industry but recognize the viability of players and availability of financial resources. The business case for fiscal and direct funding programs would need to be explored on a case-by-case basis. Among the prerequisites for a rigorous examination of individual initiatives is the clear identification of objectives and measurement parameters to track investment and return. A number of incentive measures already exist (academic and industry training programs, awards, etc.). Any increase in type or level of support would need to be tailored to the financial resources of the industry and viability of the stakeholders.

Amongst financial incentive programs, tax credits are probably the most substantive, easily measured and widely used to provide a funding source that matches industry-level investment. However, due consideration of the net benefits for this measure must be closely weighed before a decision is made.⁷

⁷ Tax credits are well liked by line departments as they don't require a direct spending outlay from program budgets and companies must first invest to get reimbursed. National treasuries, however, dislike this type of program for exactly the same reason – lack of department oversight on a program-by-program spending basis as well as on the principle of integrity of the fiscal regime (i.e. by definition, there is no upper limit on payouts to eligible corporations).

5.1.2 Recognized potential implementation issues

Jamaica is in an economic recession therefore it will be difficult to find government or industry revenue to establish a programming fund. Stakeholders (in particular, contributors), will argue that direct financial measures such as programming funds financed by the industry, distort the market and thus would harm their viability.

Programming services might additionally object to independent producers and distributors being eligible for the PPF.

The Ministry of Finance would have to be involved in any changes to taxation regimes. The MoF might object to open-ended tax credits as an attack on the integrity of the fiscal system. Clearly defined benefits and mobilization of stakeholders are necessary countervailing arguments.

5.1.3 Consultation results

Stakeholders overall are in favour of the promotion and production of a priority programming and feel it should be part of Jamaica's broader economic strategy for job creation and cultural benefits. They generally favour a priority programming fund as long as it is funded through new revenue streams and is easy to access for production companies so it is not monopolized by the big players. Stakeholders also fully support a production tax credit, and feel any measures that support the use of Jamaican production crews by foreign production companies will help build industry capacity.

5.2 Media policy approach: Promotion of Indigenous Programming Services

- § Mandate carriage of all terrestrial (over-the-air) broadcasters by PSDs in the areas those broadcasters serve (i.e. in all markets covered by the terrestrial broadcaster's footprint).
- § Strongly encourage national carriage of non-terrestrial (subscription-based) indigenous programming services that provide programming of a distinctly national interest and/or social benefit. Foster fair negotiations regarding value of signal between subscription-based channels and distributors as necessary and appropriate.
- § Encourage carriage on a regional basis and foster fair negotiations for value for signal for distinctly local or regional programming services between subscription-based channels and distributors as necessary and appropriate.

5.2.1 Rationale

Availability of indigenous content for viewers is essential to national economic and socio-cultural goals. The current policy of mandating carriage of two of three terrestrial broadcasters does not recognize this principle.

As the broadcasting industry moves away from terrestrial distribution to majority cable-based (or IP-based) distribution, policies that were once intended to support carriage of indigenous national and local over-the-air channels should be applied national and local cable channels.

5.2.2 Recognized potential implementation issues

PSDs may have to juggle their line-ups to accommodate one or two additional channels and may also face delivery capacity issues.

5.2.3 Consultation results

Stakeholders generally support increasing carriage requirements to include all terrestrial broadcasters, as long as this does not lead to mandatory carriage requirements for subscription services.

Stakeholders unanimously disagree with providing priority channel line up placement based on social and cultural contributions. As a result, this measure was dropped from the list of recommendations.

6. Foreign Ownership

The BRRA limits some broadcasting activities (such as operation of STV services) to Jamaican or CARICOM-owned companies. Foreign ownership has the potential to provide new investment into the broadcasting industry, but can also threaten national objectives. Foreign ownership policy in broadcasting should maximize the potential for new investment without threatening Jamaican cultural and social goals.

6.1 Media policy approach: Foreign Ownership

- § Encourage local and CARICOM-owned firms to develop new and/or expanded broadcasting entities as the initial, preferred solution. These might include soft measures such as invitation to tender for new licences or brokering alliances between local and CARICOM firms. In the case where 'soft measures' are not sufficient and local and CARICOM-owned firms risk being absent or marginalized in the national broadcasting system, consider restrictions on foreign ownership.
- § Review the current foreign ownership policies for media assets to determine how foreign ownership restrictions can be amended to best serve the goals of the broadcasting industry. This would include investigating the benefits of allowing percentage ownership or full ownership of Jamaican media assets (programming service and distribution entities) by foreign companies.
- § Consider equity ownership and operational control as key measurement parameters in setting new foreign ownership restrictions.
- § Continue to exempt CARICOM companies from foreign ownership restrictions.
- § Continue to exempt foreign public service broadcasters (e.g. Alliance Francaise, BBC).
- § Apply Concentration of Ownership regulations (discussed below) to any future foreign owners of Jamaican media assets.

6.1.1 Rationale

Structured and directed foreign investment can help ensure a modern broadcasting sector including commercial and technological innovation. Where foreign ownership/investment does not stifle the expression of free speech or national viewpoints or the development of a diversity of indigenous voices in the current broadcast system, it is beneficial.

6.1.2 Recognized potential implementation issues

Requires coordination between agencies and a comprehensive study of foreign ownership benefits/costs to make changes and/or set the appropriate parameters. Resulting changes, if any, would require legislative amendments.

6.1.3 Consultation results

Stakeholders unanimously support reviewing foreign ownership restrictions but generally do not believe any foreign entity should be able to own more than 49% of any media company.

7. Concentration of Ownership and Diversity of Voices

The broadcasting and media industry has significant influence over the opinions of the populace and therefore Jamaicans should be able to access a variety of views, opinions and content. The more diverse the ownership of a broadcasting system, the more voices there are to choose from. Conversely, a limited number of voices results in limited views on world issues being related to the populace. A diversity of voices can be achieved by promoting new voices and limiting undue concentration of ownership. Nonetheless a balance needs to be drawn in order to ensure that operators have a scale which enables them to be profitable and which generates the revenues required to support indigenous content development.

7.1 Media policy approach: Concentration of Ownership

- § Adopt common ownership legislation which incorporates limitations on the over-consolidation of broadcasting licences under one ownership group in the future;
- § Implement a policy whereby the purchasing party in any merger and/or acquisition of broadcasting assets makes a financial contribution back to the industry for production of indigenous program (via the Priority Programming Fund discussed previously) based on the value of the transaction;
- § Seek to licence new Jamaican broadcasters to address programming genres not currently covered by Jamaican programming services.
- § Require broadcasters which have unused licenses to turn these back to the regulator and allow the regulator to make these licenses available to new operators.

7.1.1 Rationale

New ownership injects plurality of voices into the industry. Specialty and particularly community channels may require less capital investment than fully commercial ventures, which traditionally has been a barrier to entry for new players.

In absence of a variety of ownership, current ownership can be limited by market, or viewership to ensure Jamaicans are receiving multiple voices.

A benefits program for mergers ensures benefits (in the form of indigenous programming) to all parties from consolidation and this has become common practice in other jurisdictions. By promoting indigenous programming, a benefits program would also foster a diversity of voices in news services which is essential to an informed populace.

7.1.2 Recognized potential implementation issues

Current owners may object to any policy seen to favour the introduction of new owners.

Incumbent media companies might argue that the economics of small markets require a higher degree of concentration for reasons of financial viability i.e. Jamaica requires significant concentration

to attain/maintain viability. Such arguments would have to be considered to develop the best-case parameters. Academic critics will argue that media ownership legislation needs to consider newspapers as well as electronic media.

Concentration of ownership might not be seen as a priority issue by stakeholders.

Media companies might object that a contribution regime for mergers and acquisitions would add to the cost of doing business and make Jamaica less attractive for investors.

7.1.3 Consultation results

Stakeholders nearly unanimously support developing concentration of ownership legislation to limit monopoly power in the industry. Some feel that all media (including newspapers) should be included in such legislation and all agree that appropriate parameters would have to be developed.

Stakeholders also agree with the principle in the case of mergers of the buying party contributing to a programming fund. Additionally, they feel that in the case of a merger involving enterprises with overlapping licenses, the 'excess' licenses should be made available to the market.

8. Broadcasting Content Standards

Broadcasting and media content should be held to current, consistent professional ethics standards and subject to exhibition restrictions to protect vulnerable audiences from mature content. This includes all content within the purview of the regulated broadcasting system (programming and advertising). Further, broadcasting regulations should align with regulations governing other arenas, such as politic broadcasts.

8.1 Media policy approach: Content Standards Monitoring and Enforcement

- § Oversee the formation of an industry-led Broadcast Content Standards Council (BCSC) with its own statutory framework from Parliament and recognition of its roles and responsibilities in the new broadcasting act.⁸
- § Collaboratively (the BCJ and the Standards Council members) set the vision, mandate, standards and enforcement regime for responding to content standards complaints.
- § Maintain ultimate oversight and final authority of content standards issues with the BCJ.
- § Operate the Broadcast Standards Council on a complaints-response basis with clear parameters by which complaints that do not pertain to content standards are re-routed to the appropriate governing body and thus do not pass the first point of contact within the BCSC.
- § Publish an annual report detailing all legitimate content standards complaints and their responses available to the public and to Parliament.
- § Maintain consistent content standards across all distribution platforms and in the case differential treatment is justified (e.g. mature audience programming on pay-per-view programming and movie networks versus family programming on mainstream broadcasting during early evening), outline nature and circumstances of differential treatment.
- § Once the BCSC is well established in the broadcast industry, consider the inclusion of content standards monitoring under the aegis of the standards council for other non-broadcasting electronic media (cinema, electronic billboards, DVDs). In that case, BCSC's mandate would have to be modified in the acts of incorporation, the firms would have to accept the authority of the Council to monitor and report and impose a levy to recover the cost of monitoring. In the case that the BCSC was mandated to enforce a standards code as well, the industry firms would have to agree to abide by the code and accept whatever penalties – including financial, which are imposed by the Council.

⁸ The authors note that in consultations with the Board on May 3rd, some Board members were not optimistic about the willingness of stakeholders to support the creations or sustainability of a new BSC. Those members generally supported an expanded role for the current self-regulating Advertising Standards Authority (ASA) run by the Advertising Agencies Association of Jamaica (AAAJ) in broadcasting.

8.1.1 Rationale

Licensees are the key beneficiaries of broadcast standards in maintaining the image and integrity of the broadcasting industry amongst its viewers and the general public. Thus, the costs should be borne by the licensees. Licensees are best positioned to develop realistic framework for the application of standards as long as the regulator has a key role in setting the criteria. Industry-led standards monitoring also promotes an atmosphere of collaborative adherence to the standards. Complaints-based process is common and reduces the burden of ongoing monitoring.

BCJ is ultimately responsible for broadcast content/standards to the Minister and Parliament.

Considering inclusion of other industries recognizes the logic to have at least some minimum common standards/thresholds across media platforms. There is also the efficiency argument in the delivery of services by public agencies as it also reduces duplication of effort where the activity is essentially the same.

8.1.2 Recognized potential implementation issues

Political will, coordination and financing are needed, as well as majority stakeholder buy-in. Amongst the pre-requisites for efficient implementation of such a measure are the development of clear objectives, measurement parameters and reporting mechanisms in order to avoid 'capture' by the industry.

Licensees might object to the costs of operating the BCSC and/or being seen as the disciplinarian by their peers. Providing examples of successful, low cost industry-lead councils - like the Canadian Broadcast Standards Council will help.

Council might be slow in forming and in setting standards which meet the public interest – the regulator might have to take a leadership role at the beginning until the council is well established.

Council members might be reluctant to take action on egregious behaviour by a fellow licensee.

8.1.3 Consultation results

Stakeholders fully support the creation of an industry-led standards council, noting that developing an association to field and handle complaints will provide a process to screen complaints for issues that are not afoul of content standards. Stakeholders wanted full input into developing the content standards as well as a standardized complaints and response process.

8.2 Media policy approach: Political Advertising

- § Respect and enforce all political advertising regulations as set by the Electoral Commission as they pertain to broadcasting.
- § Ultimately, maintain political advertising standards setting and enforcement as the responsibility of the Political Ombudsman.

- § Continue to apply current advertising content standards (right to access, etc.) to the political and electoral process.
- § Refer the issue of free time political programming to the Political Ombudsman.
- § Recognize the primary roles of the Political Ombudsman and/or Electoral Commission in setting and enforcing the standards for political advertising and correspondingly the supporting role of the Broadcasting Commission to those bodies, in the new Broadcasting legislation.

8.2.1 Rationale

Broadcasters can have significant political influence and should not be able to discriminate based on personal political views. There is currently no legal requirement for broadcasters to restrict political advertising (as this is a significant revenue generator). Strict rules governing political advertising are recognized as critical to fostering fairness in the electoral process and are common in best practice jurisdictions.

This issue is more properly dealt with under the mandate of the Political Ombudsman and/or Electoral Commission. They are better positioned (clear mandate under current legislation,⁹ specialized knowledge, resources) to set advertising standards regarding political advertising during elections. If the Political Ombudsman makes certain political advertising practices illegal, the regulated broadcasters are obliged to comply.

As it has long been recognized in Jamaica and other democracies that the dissemination of political messages should not be decided based solely on financial means and thus free time political programming is an essential part of a free and fair electoral process. Setting the rules for free time political programming is an issue within the mandate of the Political Ombudsman and/or Electoral Commission and they are better positioned (specialized knowledge, resources) to deal with it.

8.2.2 Recognized potential implementation issues

Broadcasters might resist the implementation of standards for political advertising or the imposition of free time political programming as both represent potential loss of advertising revenues.. The initiative for these measures lies with the Political Ombudsman and/or the Electoral Commission with the Broadcasting Commission providing sector knowledge in support. Effective implementation of new standards will requires the support and coordination between BCJ and the electoral process.

⁹ Representation of the People Act, November 20th, 1944 (reference: http://www.eoj.com.jm/legislation/the_representation_of_the_people_act%20.pdf)

8.2.3 Consultation results

Stakeholders generally feel that issues surrounding political advertising on television are already handled through the *Representation of the People Act*, discrimination policies and internal review by broadcasters of advertisements to ensure they are not problematic or libellous. Stakeholders support coordinating political advertising standards with other content standards.

9. Transmission Standards and Digital Transition

Global standards for broadcast distribution are migrating, or have already migrated, from analogue transmission to digital and high-definition transmission. Jamaica has already taken steps to ensure a transition process that is fair for broadcasters, distributors and consumers by creating the National Digital Switchover Steering Committee,¹⁰ which is chaired by the Minister and includes representation from distributors, broadcasters and other stakeholders. The broadcasting industry has a major stake in the success of the transition process, thus the role of the BCJ and the other agencies has been to enable stakeholders to find effective, financially-viable and timely solutions.

9.1 Media policy approach: Digital Transition

- § Maintain the current industry committee on the digital transition.
- § Investigate, with cooperation from the Spectrum Management Authority and the Treasury, the implementation of a policy framework and incentives in order to encourage an expedited, effective transition process:
 - Setting a firm analogue shut off date;
 - Setting digital switch-over milestones such as target percentages of digital customers for distributors;
 - Implementing consumer, broadcaster and distributor incentives to switch to digital transmission/reception.

9.1.1 Rationale

A coordinated effort is required on the part of the ministries and agencies responsible to provide certainty to both licensees and stakeholders that the digital transition process will be expeditious, and strike the appropriate balance between national social and economic goals and encouragement of private enterprise. There is a need to attract new investments to modernize both the broadcasting sector (to digital transmission) and the wireless telecommunications sector, such as HSPA wireless networks. ;

Spectrum is also a valuable national economic resource which needs to be transferred from its current broadcast use to higher economic applications (i.e. wireless services). Consumers need access to new digital programming services – and downstream HD and 3D enhancements – or risk being isolated from global media content and production standards. At the same time, accessibility to the new digital services for all socio-economic strata is critical (i.e. need to avoid stranding lower socio-economic households which currently have analog sets, in order to avoid the creation of a ‘digital divide’ within society).

¹⁰ Source: http://www.jis.gov.jm/information/html/20090120T090000-0500_18096_JIS_BROADCASTING_COMMISSION_MAKING_PREPARATIONS_FOR_DIGITAL_SWITCHOVER.asp

Milestones would incite broadcasters to complete the necessary digital upgrades sooner, make broadcasters more efficient and better enable the Jamaican broadcasting system to remain competitive in the face of the explosion of programming content and un-regulated platforms.

Consumer co-operation is essential to the timely digital switchover. Customer uptake of new digital programming service packages as well as new receivers – both inside and out of the home, is important to digital transmission, yet customers are often unaware of upgrade requirements and costs. Consumer incentives were partially successful in the US in speeding up the transition process and diffusing a politically explosive issue of ending over the air analog broadcasting services.

9.1.2 Recognized potential implementation issues

Digital switchover can be costly for broadcasters and distributors, especially OTA broadcasters. Consumers may not be ready or able to upgrade TVs and/or reception boxes.

The Ministry of Finance might object to sharing auction proceeds with existing broadcast licensees and remit of proceeds to broadcasters would be contingent on successful auction of this spectrum to wireless service providers.

Consumer incentives would require public funding to subsidize the cost of switchover. In current economic downturn, these funds will be difficult to find in Jamaica.

9.1.3 Consultation results

Stakeholders fully support all recommendations on the digital transition, but caution against unnecessarily fast-tracking the process.

10. Media Response to Emergencies and Disasters

National media provides one of the most effective means for disseminating information on emergencies, including disasters, weather threats and missing persons. It is thus essential to the national interest that this is maintained.

10.1 Media policy approach: Emergency Alerting

- § Ensure all existing and planned emergency response measures pertaining to the cooperation of the broadcasting industry as specified by the Office of Disaster Preparedness and Emergency Management are included in broadcasting legislation.
- § Include all requirements for broadcasters and distributors under the ODPEM Act to cooperate with emergency/disaster relief authorities in broadcasting licences.
- § Ensure all entities in the broadcasting industry (terrestrial and subscription broadcasters, and distributors) are required to cooperate with emergency authorities as necessary.

10.1.1 Rationale

All parties need to be present to coordinate emergency message efforts. OPDEM has the responsibility for sanctioning broadcasters in the event of non-compliance. However, BCJ would also be able to question the licensees on their performance under the OPDEM Act (if this was an issue), at time of license renewal. Recognize the essential role of licensees in a key national economic sector in ensuring effective emergency measures.

10.1.2 Recognized potential implementation issues

Close coordination and cooperation will be required between OPDEM and the broadcasters.

Emergency measures are not a 'top of mind' recurring issue for broadcasters so this coordinated approach might be seen as regulatory overkill on the part of the BCJ.

PSDs would be responsible for the majority of message insertion into programming and therefore may feel they are bearing the majority of the burden. Parameters around what is an eligible emergency would have to be specified to limit abuse or undue use.

10.1.3 Consultation results

Stakeholders fully support the involvement of the media industry in emergency messaging as long as it is not technically onerous.

11. Regulatory Governance and Dispute Resolution

The roles of the regulator and the Ministry need to be clearly defined as they pertain to oversight of the broadcasting industry in Jamaica. Separation of policy and regulatory functions and regulatory independence are considered to be essential conditions for effective and efficient governance of the broadcasting industry and a pre-condition to attracting new investment to the industry. Providing regulators with sole authority for broadcasting issues also creates a more efficient regulatory environment.

11.1 Media policy approach: Industry Governance

- § Recognize in new broadcasting legislation the mandate of the BCJ as the sole authority for broadcasting regulation, including granting and revoking broadcast licences.¹¹
- § Create a separate BCJ Act specific to outlining the mandate and operational framework for the BCJ.
- § Ensure that the selection of BCJ Board members is a transparent process undertaken by the Ministry in consultation with both industry stakeholders and the public.
- § Implement regulatory separation from the ministerial level by recognizing the competency of BCJ to adopt regulations without the need for approval from the Ministry or negative resolution in parliament.
- § Empower BCJ to impose a range of financial sanctions and penalties which would allow it to respond in a graduated and nuanced fashion to non-compliance on the part of licensees to licence conditions and/or financial reporting standards.
- § Provide the regulator with de facto operating independence by the provision of an industry-based self-funding mechanism. The regulator's operating budget would be based on the initial operating fee, annual regulatory license fees and any financial sanctions charged to licence holders.
- § Establish an appeal process between the BCJ and licensees, which could include an administrative tribunal and/or the courts as final arbiter.
- § Continue to leave ultimate oversight over the role, mandate and functions of the BCJ with the Ministry, including the annual reporting requirements by the Regulator back to the Ministry as part of this oversight function.
- § Recognize the special role and competency of the BCJ with regards to the Competition Act, Spectrum Management Act, Copyright legislation¹², Privacy legislation¹³ and associated

¹¹ This reflects the need for BCJ to have the regulation-making powers in order for it to respond to a fast changing regulatory environment.

¹² Jamaica Copyright Act 5 of 1993, 01/09/1993 (see website: http://www.wipo.int/clea/en/text_html.jsp?lang=en&id=2586)

standard setting. Recognize BCJ's co-management role with the industry for the application of broadcasting standards and dispute resolution mechanisms. Correspondingly, recognize significant discretionary role of the BCJ under new legislation in setting administrative policy and delineation of powers between the Ministry of Information and the regulator. Recognize the supporting role of the BCJ to the Political Ombudsman and/or Electoral Commission for political advertising and to the Office of Disaster Preparedness and Emergency Management for emergency measures.

11.1.1 Rationale

Best global practices recognize the independence and authority of the regulator in broadcasting issues. Regulatory independence is a pre-requisite to attract new investment capital to the sector.

Consistent with best global practices recognizing the need to provide operational authority to the regulator separate from the sector legislation. Two Acts clearly delineate the regulations that govern the industry (which are overseen by the regulator) from those regulations that govern the regulator itself (which are overseen by the Ministry).

Identifying the BCJs role in enforcing other legislation is essential for the effective regulation of a key sector of the national economy. Competition issues within the broadcasting sector (genre infringement, asset consolidations) should be able to be dealt with by the electronic media regulator.

Empowering BCJ with an effective range of financial and licensing sanctions and penalties is essential in enabling it to take a graduated and nuanced approach to non compliance to license conditions and or financial reporting on the part of licensees. Thus financial sanctions would be applied first in a graduated fashion. If necessary, other sanctions such as license suspension and ultimately license revocation could also be considered as appropriate.

BCJ has recommended to the Government of Jamaica that it be authorize to impose financial sanctions on licensees in the case of non-compliance.

11.1.2 Recognized potential implementation issues

New broadcasting legislation and corresponding BCJ corporate legislation would require a significant green paper- white paper process including further stakeholder consultations and coordination with multiple ministries.

¹³ There is a potential issue of sale of customer service records and data by subscriber-based services to third-party commercial entities. The new broadcasting or media legislation should refer to any existing privacy legislation or in absence of such legislation, make provision for privacy requirements in the broadcasting or electronic media legislation.

11.1.3 Consultation results

Stakeholders fully support empowering the BCJ with the authority to regulate all aspects of the broadcasting industry.

12. Summary of Recommended Media Policy Approaches

Defining the Regulated Broadcasting Industry

12.1 Media policy approach: Broadcast Media

- § Adopt the definitions below for the broadcasting industry and the types of 'like' services that compete within the broadcasting industry.
- § Regulate all entities that meet these definitions.
- § Specify the distribution platform, or platforms, in each licensee's broadcasting licence.
- § Recognize the critical role played by all regulated entities (broadcasters and distributors) in the regulated broadcasting industry.

Broadcasting

"The acquisition and packaging of programming for transmission/distribution as (a) programming service(s) for reception by the public (i.e. multipoint reception) in Jamaica irrespective of the transmission infrastructure or platform and whether the programming is transmitted on a scheduled or non-scheduled basis;

Where: Programming is copyrighted audio or audio-visual content and is offered by a corporate entity to the public on a regular basis.

Not including: Transmission of programs made solely for performance or display in a public place; and transmission of audio-visual material which is neither copyrighted or a programming service (e.g. user-generated content)."

Programming Service Provider (PSP) (alternatively: Broadcaster)

"A corporate entity which acquires and/or produces, and packages programming for transmission/distribution as a programming service to the public in Jamaica."

Types of PSPs include:

Commercial PSP (alternatively: Commercial Broadcaster):

"A corporate entity with a commercial presence in Jamaica and which acquires and/or produces, and packages programming for transmission/distribution as a programming service to the public in Jamaica."

Public Service PSP (alternatively: Public Service Broadcaster):

"A programming service (therefore subject to the same regulations as private broadcasters, but potentially different conditions of licence), maintaining established and agreed criteria to underscore a unique role and operating structure directed at serving the public good, such as:

- § Broadcasts audio-visual material intended to be primarily of social, educational, cultural or informative value to the public and which promotes national social and cultural values; and
- § Receives no more than 30% of its revenue from advertising."

Commercial Public Service PSP (alternatively: Commercial Public Service Broadcaster)

"A programming service (therefore subject to the same regulations as private broadcasters, but potentially different conditions of licence), maintaining established and agreed criteria to underscore a unique role and operating structure directed at serving the public good, such as:

- § Broadcasts audio-visual material intended to be primarily of social, educational, cultural or informative value to the public and which promotes national social and cultural values; and
- § Unlike other Public Service PSPs, is not subject to limitations on advertising revenue as a percentage of total revenue."

Community PSP (alternatively: Community Broadcaster):

"A programming service (therefore subject to the same regulations as private broadcasters, but potentially different conditions of licence), maintaining the criteria to underscore its unique roles, mainly:

- § Dedicated to the provision of access to news, information and other content of public interest; and
- § Related to a specific geographic area within Jamaica such as a community or region served by the subscriber television operator or subscriber television licensee."

Internet Programming Service Provider (alternatively Internet Broadcaster):

"An entity that has acquired programming rights for distribution and is transmitting programming over the broader (non-proprietary) public Internet infrastructure, commonly delivered through a web interface."

Regulate such entities based on tests of level of competition with traditional broadcasting entities. Reserve the right to regulate where feasible, with respect to the following:

- § Issuance of broadcasting licence;
- § Licence fee for value of licence;
- § Annual contribution to cost of regulation;

- § Content standards;
- § Contribution to indigenous content creation; and
- § Promotion of indigenous programming.

(Jamaican broadcasters who offer licensed programming over the Internet as a second window to standard over the air or cable television distribution should not be re-regulated (i.e. they should not require any additional licences).)

Programming Services Distributor (PSD)

"A corporate entity with commercial presence in Jamaica which transmits programming services for reception by the public in exchange for commercial remuneration (such as subscription fees, pay-per view fees, etc.), and by any means of transmission infrastructure or platform, whether the programming is transmitted on a scheduled or non-scheduled basis, and where that transmission is not made solely for performance or display in a public place."

Types of PSDs include:

Cable PSD:

"A corporate entity with commercial presence in Jamaica which transmits programming services for reception by the public in exchange for commercial remuneration (such as subscription fees, pay-per view fees, etc.), by means of **cable-based** transmission infrastructure or platform, whether the programming is transmitted on a scheduled or non-scheduled basis, and where that transmission is not made solely for performance or display in a public place."

Satellite PSD:

"A corporate entity with commercial presence in Jamaica which undertakes the transmission of programming services for reception by the public in exchange for commercial remuneration (such as subscription fees, pay-per view fees, etc.), by means of **satellite-based** transmission infrastructure or platform, and where that transmission is not made solely for performance or display in a public place."

IPTV (Internet-protocol television) PSD:

"A corporate entity with commercial presence in Jamaica which undertakes the transmission of programming services for reception by the public in exchange for commercial remuneration (such as subscription fees, pay-per view fees, etc.), by means of a **proprietary internet-based** transmission infrastructure or platform, whether the programming is transmitted on a scheduled or non-scheduled basis, and where that transmission is not made solely for performance or display in a public place."

*(IPTV distributors (different from Internet Broadcasters) distribute programming services over their own **proprietary** Internet-protocol infrastructure. Distribution is commonly to directly to the television set without the need for a Web interface. It is expected that in the near future, IPTV will be distributed to both fixed and mobile devices.)*

Mobile PSD:

"A corporate entity with significant commercial presence in Jamaica which undertakes the transmission of programming services for reception by the public in exchange for commercial remuneration (such as subscription fees, pay-per view fees, etc.), by means of a **proprietary mobile** transmission infrastructure or platform, whether the programming is transmitted on a scheduled or non-scheduled basis, and where that transmission is not made solely for performance or display in a public place."

*(Mobile distributors (different from Internet Broadcasters) distribute programming services over their own **proprietary** mobile network infrastructure. Distribution is commonly to directly to a mobile handheld device acquired from that provider.)*

Electronic Audio-visual Billboard

"Any screen capable of exhibiting audio-visual content – whether it is re-broadcasting the signal of a licensed broadcaster, exclusively licensed live or tape-delayed content, advertising content or other – that is located in a public area with the explicit intent of reaching the public audience."

12.2 Media policy approach: Other Electronic Media

- § Do not regulate the media services described below.
- § Communicate in the Broadcasting Commission mandate that the following services do not fall under the aegis of the BCJ for the reasons indicated below.

DVDs

The sale and rental of DVDs does not constitute a transmission of programming and therefore there are no grounds for regulation by the BCJ. There is no precedent in best practice jurisdictions for regulating DVD sales or rentals by an electronic media regulator. Electronic media regulators lack the authority to enforce DVD sales or rental. Effective regulation of the distribution of DVDs by the electronic media regulator would require the issuance of a broadcasting licence to a commercial for the sale or rental of DVDs.

Cinema's

There is no transmission and the content display is solely to the public (i.e. consumers cannot access it where they choose). Cinema and broadcasting have traditionally been kept separate, especially in regulation. The use of cinematic ratings for TV content display can be at times appropriate and useful.

Financial Viability of Media Industry Stakeholders

12.3 Media policy approach: Substituted Advertising and Signals

- § Mandate **simultaneous substitution** (defined below) immediately for all instances where a broadcaster holds national programming rights and correspondingly, allow distributors to charge broadcasters for cost recovery for the substitution.
- § Allow **local availabilities substitution** (defined below) if and when it can be proven to provide a significant benefit to the Jamaican broadcasting industry and baring the establishment of equitable contribution parameters for the new revenue.
- § Mandate **non-simultaneous substation** (defined below) for instances where a broadcaster holds national programming rights and following an investigation into its applicability and benefits, and after determining appropriate implementation parameters.

Simultaneous Substitution

Where a Jamaican broadcaster and foreign broadcaster are airing the same program at the same time and the Jamaican broadcaster has acquired the broadcast rights for the Jamaican market, the programming services distributor would be required to substitute the Jamaican broadcaster's signal for the foreign broadcaster's for the duration of that program. This allows the Jamaican rights holder to sell the 'entire audience' to advertisers for that program. In this measure, the Jamaican broadcaster would control all ad sales and ad revenue for that program, less payment of the direct costs of substitution to the PSD.

Currently, the most common application of this measure would be during major live sporting events.

Local Availabilities Substitution

This involves a PSD selling advertising time during the roughly two minutes per hour where foreign programs run regionally- or station-specific advertising (called local availabilities, or avails) that is not relevant to the Jamaican audiences and thus do not generate local sales revenues. As a new revenue source, selling local avails to advertisers must only occur if it can be proven to provide a significant benefit to all facets of the Jamaican broadcasting industry and therefore much be subject to conditions such as:

- § Maintaining a certain amount of local avails (e.g. 30-60 seconds per hour) to advertise Jamaican programming services or public service announcements at no cost;

- § Determining an equitable percentage of revenue from local avail sales to be contributed back into the industry as part of an indigenous programming fund;
- § Can be economically proven not to negatively affect advertising sales by Jamaican broadcasters (i.e. expanding the advertising pie, not taking from the same pie.)

Non-simultaneous Substitution

Where a Jamaican broadcaster airs a program for which it holds the national rights in close proximity to, but not at the same time (same day, same week) as a foreign programming service airing the same program, PSD's would be required to substitute the Jamaican broadcaster's signal for the foreign broadcaster's for the duration of that program. This would allow the Jamaican rights holder to sell the 'entire audience' to advertisers for that program.

Currently, for example, this measure could be applied to daytime talk shows that air on Jamaican-owned stations at a different time of the day that they air on a US signal.

12.4 Media policy approach: Scaled Licence Conditions

- § Scale licence fees and/or conditions of licence for broadcasters that meet high tests of evidence for providing a significant social and cultural contribution (commonly restricted to educational and campus broadcasters) and could increase that contribution should their licence fees be reduced, but only at such time that all entities in the broadcasting system are operating 'above board' with full transparency to the regulator (likely 3 to 5 years) and there is no opportunity for abuse.

12.5 Media policy approach: Carriage Fees

- § Make provision in the *Broadcasting Act* for new licence conditions in the eventuality where terrestrial broadcasting is not viable in the absence of subscriber fees and where negotiations between broadcasters and PSDs do not result in a mutually acceptable solution. Thus the role of the regulator is first to enable negotiations between the distributors and broadcasters and only in the case of failure of these negotiations, intervene. In a revised Broadcasting Act, the electronic media regulator would be provided with a number of discretionary powers to enable a fair and equitable solution: ranging from arbitrated negotiation, mandatory carriage and mandated carriage fees. The particular process and solution adopted would depend on the particular circumstances of the stakeholders and their ability to reach a negotiated solution. The appropriate solution to a specific situation would have to be thoroughly investigated by the Regulator.

12.6 Media policy approach: Sharing Spectrum Value

- § Consider developing a framework to enable broadcasters to share in the economic value of the analog spectrum that they will mandatorily abandon so it can be re-farmed to higher economic uses such as mobile and fixed data, video and voice applications. Such a sharing regime could include the remittance of a portion of spectrum auction proceeds back to broadcasters, or licensing spectrum to the broadcasters beyond that which is required for digital distribution of their existing signals. Such additional spectrum could be used for the development of additional digital channels, for fixed or mobile spectrum or could be re-leased to other users.

Equitable Market-based Licence Fees and Regulator Funding

12.7 Media policy approach: Equitable Licences and Contributions

- § Treat all broadcasters and distributors equally with defined licence terms and mandated renewal processes. The BCJ should also identify the standard process and parameters for evaluating licensees when setting new licence terms.
- § Institute a two-part licence fee approach for all regulated entities:
 - a. a one-time **Operating Fee** based on the economic value of the licence; and
 - b. an ongoing market-based **Regulatory Fee** to support the cost of regulation. This fee would be a fixed annual fee in the near term (approximately 1-3 years) based on the estimated value of a broadcasting licence, followed by a fee based on a percentage of gross broadcasting-based revenues irrespective of source (though most commonly advertising, subscribers, etc.) in the long term (after 3 years) once all entities are operating 'above board' with full transparency and financial reporting to the regulator.
- § Provide an annual report of the BCJ's operational costs and activities to be reviewed and commented on by all licensed entities in the broadcasting system.
- § Require licensees as a condition of license to provide annual, comprehensive financial reports based on generally accepted accounting principles to the BCJ. Enable BCJ to apply financial sanctions in the case of non-compliance by licensees.

Recognition and support of Priority Indigenous Programming Content

12.8 Media policy approach: Indigenous Content

- § Identify the Jamaica's priority programming categories (types of programming that best reflect national social and cultural values and are more likely to need to be protected and/or promoted). From experience in other jurisdictions, common priority categories include:
 - Regional/local programming;
 - Drama/comedy;

- Children's programming;
 - Educational programming;
 - Documentary
- § Develop a comprehensive strategy to support the development and distribution of indigenous programming that could include:
- A Priority Programming Fund financed in part by new industry revenues (e.g. local avails, non-simultaneous substituted advertising and corporate transaction benefits);
 - Production tax credits that promote indigenous content creation as well as the use of Jamaican production crew members by visiting productions;
 - Education, training and business development initiatives;

12.9 Media policy approach: Promotion of Indigenous Programming Services

- § Mandate carriage of all terrestrial (over-the-air) broadcasters by PSDs in the areas those broadcasters serve (i.e. in all markets covered by the terrestrial broadcaster's footprint).
- § Strongly encourage national carriage of non-terrestrial (subscription-based) indigenous programming services that provide programming of a distinctly national interest and/or social benefit. Foster fair negotiations regarding value of signal between subscription-based channels and distributors as necessary and appropriate.
- § Encourage carriage on a regional basis and foster fair negotiations for value for signal for distinctly local or regional programming services between subscription-based channels and distributors as necessary and appropriate.

Foreign Ownership

12.10 Media policy approach: Foreign Ownership

- § Encourage local and CARICOM-owned firms to develop new and/or expanded broadcasting entities as the initial, preferred solution. These might include soft measures such as invitation to tender for new licences or brokering alliances between local and CARICOM firms. In the case where 'soft measures' are not sufficient and local and CARICOM-owned firms risk being absent or marginalized in the national broadcasting system, consider restrictions on foreign ownership.
- § Review the current foreign ownership policies for media assets to determine how foreign ownership restrictions can be amended to best serve the goals of the broadcasting industry. This would include investigating the benefits of allowing percentage ownership or full ownership of Jamaican media assets (programming service and distribution entities) by foreign companies.

- § Consider equity ownership and operational control as key measurement parameters in setting new foreign ownership restrictions.
- § Continue to exempt CARICOM companies from foreign ownership restrictions.
- § Continue to exempt foreign public service broadcasters (e.g. Alliance Francaise, BBC).
- § Apply Concentration of Ownership regulations (discussed below) to any future foreign owners of Jamaican media assets.

Concentration of Ownership and Diversity of Voices

12.11 Media policy approaches

- § Adopt common ownership legislation which incorporates limitations on the over-consolidation of broadcasting licences under one ownership group in the future;
- § Implement a policy whereby the purchasing party in any merger and/or acquisition of broadcasting assets makes a financial contribution back to the industry for production of indigenous program (via the Priority Programming Fund discussed previously) based on the value of the transaction;
- § Seek to license new Jamaican broadcasters to address programming genres not currently covered by Jamaican programming services.
- § Require broadcasters which have unused licenses to turn these back to the regulator and allow the regulator to make these licenses available to new operators.

Broadcasting Content Standards

12.12 Media policy approach: Content Standards Monitoring and Enforcement

- § Oversee the formation of an industry-led Broadcast Content Standards Council (BCSC) with its own statutory framework from Parliament and recognition of its roles and responsibilities in the new broadcasting act.
- § Collaboratively (the BCJ and the Standards Council members) set the vision, mandate, standards and enforcement regime for responding to content standards complaints.
- § Maintain ultimate oversight and final authority of content standards issues with the BCJ.
- § Operate the Broadcast Standards Council on a complaints-response basis with clear parameters by which complaints that do not pertain to content standards are re-routed to the appropriate governing body and thus do not pass the first point of contact within the BCSC.
- § Publish an annual report detailing all legitimate content standards complaints and their responses available to the public and to Parliament.

- § Maintain consistent content standards across all distribution platforms and in the case differential treatment is justified (e.g. mature audience programming on pay-per-view programming and movie networks versus family programming on mainstream broadcasting during early evening), outline nature and circumstances of differential treatment.
- § Once the BCSC is well established in the broadcast industry, consider the inclusion of content standards monitoring under the aegis of the standards council for other non-broadcasting electronic media (cinema, electronic billboards, DVDs). In that case, BCSC's mandate would have to be modified in the acts of incorporation, the firms would have to accept the authority of the Council to monitor and report and impose a levy to recover the cost of monitoring. In the case that the BCSC was mandated to enforce a standards code as well, the industry firms would have to agree to abide by the code and accept whatever penalties – including financial, the Council imposes.

12.13 Media policy approach: Political Advertising

- § Respect and enforce all political advertising regulations as set by the Electoral Commission as they pertain to broadcasting.
- § Ultimately, maintain political advertising standards setting and enforcement as the responsibility of the Political Ombudsman.
- § Continue to apply current advertising content standards (right to access, etc.) to the political and electoral process.
- § Refer the issue of free time political programming to the Political Ombudsman.
- § Recognize the primary roles of the Political Ombudsman and/or Electoral Commission in setting and enforcing the standards for political advertising and correspondingly the supporting role of the Broadcasting Commission to those bodies, in the new Broadcasting legislation.

Transmission Standards and Digital Transition

12.14 Media policy approach: Digital Transition

- § Maintain the current industry committee on the digital transition.
- § Investigate, with cooperation from the Spectrum Management Authority and the Treasury, the implementation of a policy framework and incentives in order to encourage an expedited, effective transition process:
 - Setting a firm analogue shut off date;
 - Setting digital switch-over milestones such as target percentages of digital customers for distributors;

- Implementing consumer, broadcaster and distributor incentives to switch to digital transmission/reception.

Media Response to Emergencies and Disasters

12.15 Media policy approach: Emergency Alerting

- § Ensure all existing and planned emergency response measures pertaining to the cooperation of the broadcasting industry as specified by the Office of Disaster Preparedness and Emergency Management are included in broadcasting legislation.
- § Include all requirements for broadcasters and distributors under the ODPEM Act to cooperate with emergency/disaster relief authorities in broadcasting licences.
- § Ensure all entities in the broadcasting industry (terrestrial and subscription broadcasters, and distributors) are required to cooperate with emergency authorities as necessary.

Regulatory Governance and Dispute Resolution

12.16 Media policy approach: Industry Governance

- § Recognize in new broadcasting legislation the mandate of the BCJ as the sole authority for broadcasting regulation, including granting and revoking broadcast licences.
- § Create a separate BCJ Act specific to outlining the mandate and operational framework for the BCJ.
- § Ensure that the selection of BCJ Board members is a transparent process undertaken by the Ministry in consultation with both industry stakeholders and the public.
- § Implement regulatory separation from the ministerial level by recognizing the competency of BCJ to adopt regulations without the need for approval from the Ministry.
- § Empower BCJ to impose a range of financial sanctions and penalties, which would allow it to respond in a graduated and nuanced fashion to non-compliance on the part of licensees to licence conditions and/or financial reporting standards.
- § Provide the regulator with de facto operating independence by the provision of an industry-based self-funding mechanism. The regulator's operating budget would be based on the initial operating fee, annual regulatory license fees and any financial sanctions charged to licence holders.
- § Establish an appeal process between the BCJ and licensees, which could include an administrative tribunal and/or the courts as final arbiter.
- § Continue to leave ultimate oversight over the role, mandate and functions of the BCJ with the Ministry, including the annual reporting requirements by the Regulator back to the Ministry as part of this oversight function.

- § Recognize the special role and competency of the BCJ with regards to the Competition Act, Spectrum Management Act, Copyright legislation,¹⁴ Privacy legislation and associated standard setting. Recognize BCJ's co-management role with the industry for the application of broadcasting standards and dispute resolution mechanisms. Correspondingly, recognize significant discretionary role of the BCJ under new legislation in setting administrative policy and delineation of powers between the Ministry of Information and the regulator. Recognize the supporting role of the BCJ to the Political Ombudsman and/or Electoral Commission for political advertising and to the Office of Disaster Preparedness and Emergency Management for emergency measures.

¹⁴ Jamaica Copyright Act 5 of 1993, 01/09/1993 (see website: http://www.wipo.int/clea/en/text_html.jsp?lang=en&id=2586)

A Summary of Stakeholder Consultations

As noted in Section 1, two separate stakeholder consultations were conducted as part of the process to develop and refine the media policy approach recommendations in this report. The feedback submitted by the industry through those two consultative processes is summarized, by topic, below.

A.1 Online consultation

Defining the regulated broadcasting industry

- § In widening the ambit of the BCJs operations its capabilities will be further eroded. There will need to be significant capacity improvement in order for them take on additional responsibilities.
- § Clarification is required on the difference between a Programming Service Provider (PSP) and a Commercial Programming Service Provider.
- § An Internet Programming Service Provider that has acquired programming rights for Jamaica and broadcasts over the Web should come under the regulation of the Broadcasting Commission. Such services compete directly with other regulated distributors in Jamaica and cannot operate with an unfair advantage over distributors.
- § The regulations that govern Programming Service Distributors must be consistent regardless of the platform employed by the distributor e.g. cable, satellite, IPTV.
- § The playing field can be levelled in the area of mandatory carriage as the technology that enables such requirements does exist for all distribution platforms.
- § It is important that this segment is strongly regulated to prevent what now obtains, the over saturation of the local landscape with purely foreign content.
- § The demands of the local viewer is not now seriously taken into consideration by the power brokers of the media, while locals who are genuinely trying to develop and sustain indigenous and relevant clean programs are being put in file thirteen.

Substituted advertising

- § The insertion of local advertising content in foreign channels by cable distributors has been happening although not permitted under law.
- § The effect of opening up the market in that way will dilute the advertising revenue of FTA. On the flip side, FTA broadcasters are sometimes prohibited from inserting local advertising into content purchased from overseas which creates a value imbalance between the cost of such programming and the ability to earn revenues from it.
- § Mandated Simultaneous Substitution can only be entertained if the broadcaster has acquired exclusive rights for the program in question for the island of Jamaica.

- § The Commission cannot mandate simultaneous substitution for programming that a broadcaster does not hold exclusive rights as there are potential contractual breaches between the local cable operator and the international program provider.
- § There is a cost for substitution that will be incurred by the cable operator that needs to be recovered and the greater the volume of proposed content to be substituted, the higher these costs.
- § Currently all OTA broadcast feeds in Jamaica are analog and substituting these feeds into a digital system can be problematic and may impact the viewer significantly.
- § Mandated Simultaneous Substitution can be pursued in instances where exclusivity rights are held by the broadcaster, acceptable quality is maintained and schedules are conformed to.
- § The sale of advertising by Programming Service Distributors on local avails should be pursued. PSDs cannot be placed at an unfair disadvantage to broadcasters in the sale of advertising by mandating that PSDs utilize a certain number of spots per hour to promote local programming services. Broadcasters do not have such a requirement for content on their network that is internationally sourced. We believe that a quota (%) of PSDs advertising inventory can be maintained for the promotion of local programming or PSAs however the scheduling of same should not be regulated. To maintain fairness in the market, broadcasters should also be required to maintain a quota of advertising inventory to promote local programming.
- § Mandating non-simultaneous substitution should not be pursued under any circumstance. The question of rights and quality again arise, additionally the cost and complexity for the PSD increase exponentially. This proposal is not feasible.
- § This needs a proper survey of viewers. Some depend on the USA commercials to make purchases abroad at certain stores.
- § The timing of the inserted commercial must be defined by the BCJ as now one company in particular interrupts even the news to insert a commercial during which critical information became disjointed.

Contribution from all players

- § The regime must take into account the format and reach of the broadcaster.
- § The cost of regulation should be shared equitably by every sector in the industry. Increased regulation and bureaucratic infrastructure eventually leads to increased costs to customers.
- § All players, including content providers, cable channels etc. should contribute to the regulatory body in pre-determined amounts on scale of sector and market share. Can't be that the big boys want to enjoy all the goodies and have the lion's say so, while the little players pay. This has gone on too long.

Scaled licence conditions

- § The notion of a scaled license regime that promotes social, community and cultural benefits to Jamaica is sound but impractical to implement and regulate. The key question is who and on what rationale is the criteria for scaled license and regulatory fees determined.
- § Both PSDs and broadcasters can argue that their programming services provide high cultural and social benefit to Jamaica and as such either should qualify for favourable license conditions and fees.
- § We believe that the current licence requirement of a distribution threshold for local/regional services as a percentage of total services distributed is a fair approach to achieve the required goal. This approach ensures that satisfactory volume of local programming exist in a competitive environment and ensures that the highest quality of local programming is distributed.
- § This is a justified position. We have refrained from delivering any content that is not suited for all ages – no slackness period. While we transmit a lot of educational programs and receive commendations from educators and parents, getting sponsorship is nearly impossible.

Market-based License Fees and Stable Financing for the Regulator

- § There should be one fee which should be determined based on reach/population served.
- § In determining the fee structure and fee level, the BCJ must also take in to consideration the small margins upon which most media companies in the market currently operate.
- § The current system of verifying revenue and subscriber numbers for PSDs does not work. Cable operators routinely under report. No new revenue-based license fee system can be contemplated until a workable process of enforcement and compliance to reporting standards is in place.
- § License fees cannot be based on the cost of regulation, inevitably under such an approach, regulation along with costs will continue to grow which translates to increased costs to customers.
- § Fees cannot be calculated on gross revenues as PSDs are engaged in several lines of businesses meaning that the more diversified a PSD's operations are, the higher their fees would be. Fees for PSDs must be calculated based on the subscription revenue generated for distributing content services. Under the proposed changes PSDs would already be required to contribute a percentage of advertising revenue to an indigenous production fund and as such advertising revenue cannot be considered when calculating license fees for PSDs.
- § Agree to some extent. This must however be carefully looked at so that accountant exuberance does not play a part in the determination.

Indigenous programming content

- § What needs to be recognized here is that there is a high level of interest amongst FTA broadcasters and others to produce local content, however the market does not support the cost of producing it and therefore no quota or set percentage of output should be set.
- § An assessment of the quantity and quality of local programming available should be undertaken before the implementation of any mix of measures to encourage indigenous programming content. There is no requirement in place or proposed for the quantum of local programming that a broadcaster is required to produce. Currently broadcasters source much of the same international programming available on the cable networks distributed by PSDs and yet enjoy regulatory protections. Mandatory carriage of OTA broadcasters must be accompanied by strict quotas and quality standards for local programming. The Commission needs to be aware that any new regulation or requirements for PSDs ultimately translates into increased costs to the consumer.
- § PSD's would be required to contribute a percentage of their advertising revenues to an indigenous production fund, clarity is therefore required on whether this fund is the same as or separate from the Priority Programming Fund proposed. If this fund is separate from the indigenous production fund then PSDs would be contributing twice for the same benefit which is unfair.
- § Mandatory carriage of OTA broadcast signals is already a requirement. We again reiterate that mandatory carriage and carriage fees cannot co-exist and are an indirect tax to customers.
- § There is no evidence to suggest that priority placement on a channel line up for a programming service translates into increased audience. Additionally current packaging of local programming services have been established and changes to existing placement could have negative consequences for the program provider.
- § The intent of this approach is plausible. However, this should be left to other agencies such as the SDC or JCDC. For one, only the major players will be able to access the benefits from this approach, due to the attached red tape and other un-necessary bureaucracy that has been the hall-mark of other (not BCJ) good intended programs as suggested here-in. The BCJ should focus on making the landscape available to players at all levels and categories on a fair and competitive basis. As it is now, there is no room for those who are creative but lacking in the big dollar voice. BCJ must focus on its core business-regulating.

Foreign ownership

- § There should be a restriction on majority or total foreign ownership.
- § The current limits on some broadcasting activities by foreign corporations should be reviewed. Foreign investment would bring much needed capital investment to the industry.
- § This is a very important part of the policy and should be given appropriate attention. Ownership of any media related entity in Jamaica should be 51% Jamaican owned without

exception. This is important in technology transfer, personnel placement and the flight of money from Jamaica to countries of foreign owners/investors.

Concentration of ownership

- § This should not be limited to control of broadcasters. The significant threat of merger in Jamaica is the control of several media outlets in one place. We have been seeing the amalgamation/conglomeration of print with radio and TV.
- § The Jamaican broadcasting & media market is relatively small by global standards and the capital required to fund leading technologies is significant. As such industry players require satisfactory scale in order to build the infrastructure required to develop the industry. The current fragmented structure of the industry has hampered the ability of firms to expand and improve infrastructure. Any regime that seeks to limit the growth of industry players negatively impacts the ability of firms to invest in the technologies needed to improve the industry. The Jamaican industry requires consolidation policies that restrict ownership will limit investment and should not be pursued.
- § No one person or group should be allowed to own any significant percentage of the sector to the level where they can dictate their particular influence through financial ownership or content. This would also prevent foreign interest from unloading their persons on the Jamaican public at the expense of local qualified workers.

Broadcast content standards

- § The BCJ will set policies and guidelines but the broadcaster must have the ultimate responsibility for programming its station. There is a need to separate the quasi-judicial functions currently undertaken by the BCJ from that body as it now sits as complainant, judge and jury in instances of complaints against broadcasters and the system lacks transparency.
- § The proposed Broadcast Standard Council would require funding which ultimately means additional costs to consumers. The Commission should consider a model that encourages self regulation by the industry rather than formal bureaucratic entities and procedures.

Political advertising

- § The Representation of the People Act already provides for a cut off time for campaigning. Broadcasters will always have to review content of any ads for libel or other problematic content. Political ads are done on a commercial basis like any other and there are already limits on the maximum amount of ad time per hour.
- § This is another segment that needs to be given extensive attention and careful thought. No advert on polling day. If broadcaster elect to show their political bias, that should be their right in an editorial context, not news etc. While the Political Ombudsman can play a role, the BCJ should be the body setting the rules on the recommendation of the Ombudsman.

- § There should be no right to reply where the party is not willing to pay for air time or if the information was accurate.

Transmission standards and digital transition

- § The BCJ needs to be aware that the appropriate standards for digital transmission should be in keeping with the US based NTSC format and not seek to utilize UK/EU standards. Jamaica and the rest of the Caribbean and Latin America utilize the NTSC format. Additionally, available consumer electronics are all NTSC based. An analogue shut off date must only be done in consultation with broadcasters inclusive of preparation for high definition transmission which is extremely costly for the broadcaster and consumer alike.
- § Current committee on digital transition should be maintained.
- § In an environment where the majority of players operate on analog infrastructure, there is a tremendous burden on broadcasters and distributors to transition to digital technologies. Incentives must be pursued to facilitate digital transition but must also be equitable for all industry players.
- § While the BCJ should encourage the switch-over, there is no need for a fast track or hard core pressure to do so, as the market forces will dictate that players voluntarily do so, as is now taking place.

Media response to emergency disasters

- § The requirement for licensees to cooperate with emergency authorities during a disaster is sound however there are significant technical issues that need to be addressed to effectively broadcast emergency messages.
- § An emergency broadcast requirement for licensees needs to be accompanied by associated standards and protocols.

Regulatory governance

- § There needs to be a clear separation of roles and functions between the Ministry and the BCJ.
- § The BCJ should be given the authority to issue and revoke broadcast licenses however a simplified, independent appeals process would also have to be instituted.
- § The appeals entity should be administrative in scope and needs to be transparent, well organized and efficient
- § Parliament should approve the laws that govern the sector which must incorporate the concerns of the players and the BCJ. Once passed their application should rest solely with the BJC and its associated tribunal/committees.

A.2 Focus groups

In March 2010, three focus groups comprised of industry stakeholders were held at the BCJ offices. Attendees participated on the condition of anonymity, however, the following list of participants by industry group illustrates the representativeness of the sessions:

- § Free to Air TV and/or Radio licensees: 10
- § STVOs: 6
- § Independent Program Providers: 7

Substituted Advertising

NOTE: Substituted advertising was discussed in the context of both local avails (as is done by FLOW now) and full substitution (as is done now for major events such as the Academy Awards or major international sports events).

There was a clear division between those broadcasters who relied on advertising as their source of revenues and those (such as the cable companies) who have a subscriber fee base for generating income. However it was generally accepted that the introduction of new distribution channels and outlets, such as substituted advertising, is inevitable as digital technologies change and advance.

SESSION 1:

- § The available advertising budget is fixed – based on corporate budgets – and will not increase with the introduction of an additional vehicle or outlet. The introduction of substituted advertising will therefore cause leakage of revenue from FTA television.
- § The cable providers who will be the beneficiaries already enjoy income from subscription – unlike FTA – and this will be anti-competitive.
- § Support the concept, but it can't work in isolation (without some regulation and possible payment into a indigenous content fund) because some distributors do not pay for the content (channels) they distribute, and therefore should not be allowed to access ad revenue
- § This new vehicle will allow new opportunities for smaller and more geographically localised enterprises to advertise on television. This will bring new revenue into this market from those who do not see this media now. About ten (10) major advertisers dominate the space and therefore this would give other advertisers an opportunity, which would equalize or increase ad revenue
- § The introduction will allow changed business models and this will provide an opportunity to bring new revenues into the pool.
- § Would help infuse foreign signals with some local content (albeit advertising), therefore would help reflect local values
- § This is progress and change – it is inevitable and it is best to anticipate and regulate it.

SESSION 2:

- § Only some of the local broadcasters have foreign programming and thus could benefit – it is unfair competition- would have to go the route of STV to benefit
- § This vehicle creates direct competition with FTA providers and provides cable distributors with a “bottomless pit” of time and slots to sell – it is therefore anti-competitive
- § There is no objection to exploring the opportunity but standards must be set and applied – local providers in particular must be held to account
- § Limiting outlets has does not help any industries. Experience and evidence shows that markets grow as distribution channels and availability widens
- § There is a potential win-win situation of creating a programming fund and capture back of new advertising revenues. This can then be applied to support production by OTAs & independent producers. OTA could capture some of additional revenues from cable providers like FLOW in order to fund production

SESSION 3:

- § FTA broadcasters only have advertising as a source of revenue, should not allow cable this as a second source.
- § FTA primarily gets its ad revenue from news anyway, so would not lose out in other times
- § Some stakeholders mentioned there isn't an issue of advertisers not being able to buy time. Lots of cheap time available
- § The advertising price for substituted advertising would have to be comparable to that on local channels so as not to undercut them.
- § This avenue (introduced with an appropriate contribution regime) has been done in Trinidad and has: increased the advertising expenditures overall, provided new advertising opportunities to local advertisers; developed the supporting industries (advertising production), and not harmed print advertising or radio.
- § The actual ads have to be of a high production quality (no text-based ads)
- § There was concern expressed that the limited number of producers would spend their time making commercials instead of Jamaican programming
- § New business models must be explored. Today's business model is not the only business model.

Indigenous Programming

NOTE: Two items (mandatory carriage and program dial placement did not generate much discussion.

It was felt that the mandated carriage now of three (3) FTA channels is always exceeded as there is a consistent and high demand for local content ... therefore the constraints are only technical (in terms of quality of transmission and production) and acceptability and/or appropriateness of content. 'Jamaican viewers prefer local content, even if it's of a low quality. High quality content would be very popular'. The minimum FTA channels required to be shown should be raised to (say) 10.

It was felt that the placement made no difference but noted that the FTA stations usually enjoy lower channels in the interest of optimal signal quality to the consumer.

Sub Topic – Priority programming fund

SESSION 1:

- § Funds should go directly to the content producer – who then will work with the distributor for airplay time
- § Access to the fund should be fast and simple. A similar fund had been established some time ago but it was administered by a Central Government Ministry and the application process was so cumbersome that it was not a success
- § The fund should be based on industry contribution with a matching Government or International Funding Agency contribution

SESSION 2:

- § Very positive in favour of the fund
- § Incentives should go to producers and 'leave the rest to the market'
- § The BCJ should not be responsible for administration of the fund – something less bureaucratic is needed
- § The new Broadcasting Act should identify a new entity to administer a broadcasting fund

SESSION 3:

- § The fund is a must and a most important aspect of the industry
- § Question on where the cash will come from. It can't always come from the industry; so some kind of matching is needed
- § High quality production and exportable programming needs to be supported.

- § The industry contribution to the fund should be 'new money' only – e.g. from substituted advertising

Sub Topic 2 - Tax credit regime for indigenous production

SESSION 1:

- § Much more support for a tax credit than for a fund. Seen as a very good 'break' for the industry and needed
- § Equipment purchase exemptions for broadcasters and producers were suggested as a way to support indigenous production
- § Legislation or regulations should also include a requirement for local staff to be utilised when overseas media companies do production work in Jamaica

SESSION 2:

- § There is a need for Government policy – which need not involve the Regulator(s). Nonetheless it agreed that the BCJ should of necessity be the champion of the cause and the critical lobbyist
- § The policy and incentives must include tax considerations and ALSO training, equipment import support and SME start-up advice
- § Develop incentives in such a way that the market forces are promoted to develop the media industry and help it to become export orientated.

SESSION 3:

- § Too many distributors have to turn to the US for programming. More Jamaican programming is needed.
- § Jamaica has a proven track record in the creation of innovative content – across the board; and the business environment must support the nurturing and development of new talent as well as the retention of revenues from successful established talent. The government hasn't had the foresight in the past to support this industry. A Government policy to support media and production is an 'economic development must'
- § The approach should be holistic and include a favourable tax regimen as well as arrangements for training, Customs Duty concessions, mandatory use of local resources by overseas 'crews', and low interest loan or venture funds

Market-based Licence Fees

NOTE: The attendees all accepted the basic principles – which were defined as a starting position for the discussion sessions - that:

- c. Regulation was necessary and had generally worked well
- d. The industry should (continue to) support the costs of the Regulator
- e. There should be equity in the fees paid – in relation to the size/profitability of the broadcaster
- f. There needs to be a one-off license fee as well as an annual ongoing fee

SESSION 1:

- § Reporting is very poor in Jamaica (a minority of cable channels even pay taxes). Income declared is often distorted as many enterprises under report or under record income and subscribers
- § Such a regime would punish the honest, tax-paying companies. Public (traded) companies are potentially most disadvantaged as their reporting is more detailed and transparent
- § There was more support for a fixed flat annual fee, instead of tying it directly to annual revenues. Ranges or 'bands' of fees – based on a relative size parameter to be agreed - is a better measure than gross revenue or subscriber numbers – it is less subject to reporting distortions, more predictable, and easier to administer. There needs to be a number of bands – say more than five and less than ten
- § Fee should be directly linked to BCJ costs. The Broadcasting Commission needs to be more accountable to the community it serves in relation to costs etc. The group liked the 'condo approach' suggestion, whereby the BCJ shows its financials to the players in the system and potential budget surpluses could result in lowered fees

SESSION 2:

- § The playing field for license fees must be more level than it is now
- § Initial license should be based on a set and published rate table of fees
- § Tiered annual fee based on Zone would be the most fair mechanism – in terms of equity, fairness, ease of administration and predictability
- § Openness and management of the BCJ are issues as the fairness of the assessment and application of funds are issues

SESSION 3:

- § The fee payment must be on an equitable and fair basis and transparency is a must
- § There is a need for the industry to have representation in relation to how the fees are spent and how priorities are allocated ... and the Broadcasting Commission must be more transparent and open in its dealings with the industry

- § The focus for the discussions on fees should be regulatory needs > cost for operations > regulator strategic plans > regulator budgets > funding and fee requirements > payment mechanisms

Scaled Licence Conditions

NOTE: There was ready and universal agreement in all sessions that there was no need for this kind of arrangement. It was accepted that any special needs could be met by the Government. It was noted that in the past licensees with special considerations had 'morphed' their content and operational model; and simply become another commercial player – but with lower license costs

SESSION 1:

- § Not necessary and not supported by any participant
- § A grey area and very difficult to manage in a local context. Even the idea of campus TV and radio stations was not supported because one campus stations in Jamaica outperform private radio
- § People don't want the BCJ to be determining what is culturally significant as policy may end up dictating culture

SESSION 2:

- § Could allow local or community interest groups a role ... but there would have to be rigorous tests and meaningful financial disincentives for non compliance
- § There could be some form of 'credit' in relation to license fees for mainstream producers in relation to providing exposure to special interest groups or for established national priority content

SESSION 3:

- § No one in the group agreed with the need for this

Concentration of Ownership

NOTE: It was generally agreed that there was a need to preserve a competitive environment but that the parameters should be set so as not to prevent mergers in the interest of ensuring profitability and appropriate operational scale

SESSION 1:

- § Fully support such a policy with the understanding that mergers will and must occur

SESSION 2:

- § Focus must be on the prevention of monopoly or dominance or restrictions rather than preventing necessary consolidation for profitability
- § Tests of market power/dominance rather than monopoly
- § Application of the principle applies across the entire media industry
- § In the event of a merger involving enterprises with overlapping licenses, the 'excess' licenses should be made available to the market

SESSION 3:

- § Full; agreement on the need to preserve competition but not to the extent that profitability is inhibited

Broadcasting Content Standards Council

NOTE: The establishment of a media managed and operated Council was strongly supported in all the sessions. It was thought that such a body would effectively deal with a number of issues which can be resolved at an industry level without the need for recourse to the regulator. Examples mentioned include the quality of the signal presented to the consumer, interpretation of policy and content or practices deemed to be undesirable or unacceptable.

SESSION 1:

- § Complete agreement on industry-led approach

SESSION 2:

- § Do not put into the law but rather allow the industry to decide what is required and establish the most appropriate structure and governance arrangements

SESSION 3:

- § This should also include a defined complaints and response process.
- § Evens the playing field because it is industry led

Political Advertising

NOTE: The universal view can be characterised as, 'if it is not broken, then don't fix it'. It was believed by all the groups that the current arrangements with the Political ombudsman and the other laws, regulations and practices surrounding the electoral process in relation to the use of the media for political advertising operate well. The proper role of the regulator in terms of monitoring and setting standards is respected. The Political Ombudsman operates effectively as a 'first stop' – and reference is made to the regulator after initial assessment. Many advertising regulations (such as broad discrimination policies) already cover much of this.

Live Event Rights

This topic was raised by the BCJ following the online consultation and prior to the focus groups for testing. It is based on the principle that a single broadcaster be prevented from acquiring the rights to multiple live events of significant national interest (most commonly major sporting events) where those events have conflicting schedules and therefore could not both be aired live to the Jamaican audience. Such legislation would prevent broadcasters from acquiring rights to multiple major events that run concurrently as a way to limit competition for audiences.

Similar issues have been raised in other jurisdictions, including South Africa, where significant events were available only on subscription services. Generally, it is not profitable for a broadcaster to acquire a significant live event and not accrue advertising revenue from its broadcast.

NOTE: The universal view of all the focus groups was that this area should be left to the market. There was no feeling that any additional regulation other than the free market was necessary. Anything which was really out of line would become a fair trading issue and therefore not require the intervention of a regulator. It will be too complex for the BCJ to determine which programs constitute an event of 'national' or overriding public interest.

B Summary of Best Practices

Throughout the research process the project team examined media policies in leading and similar global jurisdictions, including Canada, the US, the UK, Australia, France, Luxembourg, Denmark and Trinidad. Policies from other jurisdictions informed the development of the recommended policy approaches, including definitions, in this document. A summary of the policies examined are presented in the table below.

| Policy Issue | International Approach/Example |
|----------------------------|--|
| Defining Broadcasting | <p>UK:</p> <p>In this Part “digital programme service” means a service consisting in the provision by any person of television programmes (together with any ancillary services, as defined by section 24(2)) with a view to their being broadcast in digital form for general reception, whether by him or by some other person...</p> <p>http://www.opsi.gov.uk/acts/acts1996/ukpga_19960055_en_2#pt1</p> <p>Canada:</p> <p>“broadcasting” means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place;</p> <p>“programming undertaking” means an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus”; http://laws.justice.gc.ca/en/showdoc/cs/B-9.01//20090901/en?page=1</p> <p>Trinidad (proposed):</p> <p>“any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication, for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programmes:</p> <ul style="list-style-type: none"> a) made on demand of a particular person for reception only by the person; or b) made solely for performance or display in a public place.” <p>http://www.ttcswb.org/articles/computer-laws/draft-national-policy-on-broadcast-broadcasting-industry.htm</p> |
| Public service broadcaster | <p>UK:</p> <p>Defined as the channels licensed as PSBs</p> <p>http://www.ofcom.org.uk/consult/condocs/psb/psb/meaning/</p> |
| Community broadcasting | <p>Canada:</p> <p>“programming that is reflective of the community, and produced by the licensee in the licensed service area or by members of the community in the licensed service area. Programs produced in other licensed areas within the same municipality will also be considered local programming.” http://www.crtc.gc.ca/eng/archive/2002/pb2002-61.htm</p> |

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| New Media | <p>Canada:</p> <p>not regulated http://www.crtc.gc.ca/eng/news/releases/2009/r090604.htm</p> <p>Trinidad:</p> <p>"Government will co-regulate the industry. That is, Government will set objectives for the industry, but ask the private sector to design and operate flexible solutions. Hence, Government will set the legal infrastructure through legislation and encourage the formation of industry led bodies to help monitor such matters as child pornography."</p> |
| Simultaneous Substitution | <p>Canada:</p> <p>Canada: Simultaneous substitution helps protect the program rights that local broadcasters acquire for their market. While substitution can apply to two Canadian stations, it most often involves the substitution of a Canadian signal for a non-Canadian one. http://www.broadcasting-history.ca/index3.php?url=http%3A/www.broadcasting-history.ca/networks/networks_Simultaneous_Substitution.html</p> |
| Local Availabilities Advertising | <p>Canada:</p> <p>"Virtually all large Canadian BDUs have applied for, and have been granted, a condition of licence that authorizes them to insert certain promotional material during local availabilities. Currently, conditions of licence authorize BDUs to use at least 75% of local availabilities to promote Canadian programming services and up to 25% to promote their own services, including certain non-programming services." http://www.crtc.gc.ca/ENG/archive/2008/pb2008-102.htm</p> |
| Carriage Fees for Terrestrial Broadcasters | <p>Canada:</p> <p>"The Commission has set out a market-based solution to allow private local television stations to negotiate with cable and satellite companies. Each television station would have the option of entering into negotiations to establish a fair value for the distribution of their programs." http://www.crtc.gc.ca/eng/com100/2010/r100322.htm</p> |
| Scaled Licence Conditions | <p>UK:</p> <p>"conditions requiring the payment by the licence holder to the Commission (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined" http://www.opsi.gov.uk/acts/acts1996/ukpga_19960055_en_2#pt1-pb2-l1g4</p> <p>"A tariff fixed under subsection (3) may specify different fees in relation to different cases or circumstances; and the Commission shall publish every such tariff in such manner as they consider appropriate." http://www.opsi.gov.uk/acts/acts1996/ukpga_19960055_en_2#pt1-pb2-l1g4</p> <p>Canada:</p> <p>Has exemption levels for various broadcasting programmers or distributors, exempting them from licence fees.</p> <p>Exempt from licence fees:</p> <p>a radio undertaking or a television undertaking licensed by the Commission as a student</p> |

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| | <p>broadcasting undertaking, a native broadcasting undertaking, a community broadcasting undertaking or a campus/community broadcasting undertaking;</p> <p>(b) broadcasting undertakings carried on by the Corporation; and</p> <p>(c) an independent corporation, as defined in the Direction to the CRTC (Ineligibility to Hold Broadcasting Licences), which derives none of its revenues from the sale of air time.</p> |
| Two-part licence fee | <p>UK:</p> <p>"conditions requiring the payment by the licence holder to the Commission (whether on the grant of the licence or at such times thereafter as may be determined by or under the licence, or both) of a fee or fees of an amount or amounts so determined"</p> <p>http://www.opsi.gov.uk/acts/acts1996/ukpga_19960055_en_2#pt1-pb2-11g4</p> |
| Transparent Financial Reporting | <p>Canada:</p> <p>On or before November 30 of each year, a licensee shall submit to the Commission a statement of accounts, on the annual return of broadcasting licensee form, for the 12 month period ending on the previous August 31. http://laws.justice.gc.ca/en/showdoc/cr/SOR-87-49/bo-ga:s_11/20090901/en#anchorbo-ga:s_11</p> <p>The Commission (CRTC) shall, within three months after the end of each fiscal year, submit to the Minister a report, in such form as the Minister may direct, on the activities of the Commission for that fiscal year, and the Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it. http://laws.justice.gc.ca/en/showdoc/cs/C-22/bo-ga:s_12/20090901/en#anchorbo-ga:s_12</p> |
| Priority Programming | <p>UK:</p> <p>"For the purpose of securing the nationwide broadcast, by holders of regional Channel 3 licences (taken together), of news programmes which are able to compete effectively with other news programmes broadcast nationwide in the United Kingdom,"</p> <p>http://www.opsi.gov.uk/acts/acts1996/ukpga_19960055_en_8#pt3-pb2-11g74</p> <p>Canada:</p> <p>Priority genres are: drama, documentary, children's, and variety. News programming is also priority, but handled as local programming (news and current affairs).</p> <p>Australia:</p> <p>Broadcasters are encouraged to acquire independent drama programming.</p> |
| Programming Funds | <p>Canada:</p> <p>CTF, Shaw Rocket Fund, Bell Fund, (ten certified independent production funds)</p> <p>Australia:</p> <p>Film Finance Corporation Australia.</p> <p>France:</p> <p>Centre National de la Cinématographie</p> |

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| Contribution from All Players | Canada: CTF is based on Cable/Satellite revenues and Government allocation. |
| Tax Credits | Australia, Canada, both use tax credits. |
| Content Thresholds | Canada: General exhibition quotas mandate that commercial free-to-air broadcasters must devote 60% of their total (all-day) schedule and 50% of their peak-time schedule (in this case, 6 pm to midnight) to Canadian television programmes. Australia: In 1996, Australia increased its general exhibition quota from 35% to 55%. Trinidad: Considering consultation to determine quotas |
| Must-carry Rules | Canada: Distributors must carry public broadcasters, OTA's, educational networks, and other 9(1)(h) (priority) channels. Trinidad: Cable television systems should also be required to transmit all local off-air television broadcasting stations. |
| Channel Placement | Canada: OTA broadcasters, PSBs, educational and community channels must be placed early in the dial (usually 1-20). All must-carry channels appear below 70. |
| Foreign Ownership | Luxembourg: There are no other restrictions, and no restrictions on foreign ownership, although media ownership is monitored because licenses (called "concessions" and "permissions") are personal and not transferable. Denmark: No restrictions on foreign ownership. Trinidad: "Government is of the view that in order to promote the development of the local broadcasting industry, it is necessary that nationals of Trinidad and Tobago (resident or non-resident) be given the opportunity to own and operate broadcasting services. Concessions in respect of a broadcasting service will be granted to applications where there is a minimum fifty-one percent (51%) local ownership and decision-making responsibility. Foreign ownership may be accepted in circumstances where proprietary technology is involved." |
| Concentration of Ownership | US: No one person may own TV stations that in aggregate reach more than 39% of households. A |

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| | <p>person may not own more than one of the four main TV networks: ABC, CBS, Fox and NBC.</p> <p>Australia:</p> <p>In TV no one can control more than one commercial licence in the same area or commercial television licences whose combined licence area population exceed 75% of Australian population.</p> <p>Canada:</p> <p>Extensive common ownership policies (related to specific markets and programming genres). Also has new diversity of voices regulations:</p> <p>"impose limits on the ownership of broadcasting licences to ensure that one party does not control more than 45 per cent of the total television audience share as a result of a transaction; and</p> <p>not approve transactions between companies that distribute television services (such as cable or satellite companies) that would result in one person effectively controlling the delivery of programming in a market."</p> |
| Broadcast Content Standards | <p>UK:</p> <p>Broadcasting Standards Commission (government led)</p> <p>Canada:</p> <p>Canadian Broadcasting Standards Council (Industry led)</p> <p>"The Canadian Broadcast Standards Council (CBSC) is an independent, non-governmental organization created by the Canadian Association of Broadcasters (CAB) to administer standards established by its members, Canada's private broadcasters."</p> <p>http://www.cbsc.ca/english/index.php</p> |
| Standards Setting | <p>Canada:</p> <p>CBSC reports to CRTC. Standards in broadcasting regulations.</p> <p>UK:</p> <p>As soon as possible after the end of every financial year the BSC shall prepare a report of their proceedings during that year, and transmit it to the Secretary of State who shall lay copies of it before each House of Parliament.</p> <p>Ofcom developed code of standards</p> <p>TATT (Trinidad) developed Draft Broadcasting Code</p> |
| Advertising Standards | <p>Canada:</p> <p>Industry Led</p> <p>UK:</p> <p>No undue prominence may be given in any programme to a product or service.</p> <p>Trinidad:</p> |

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| | Advertising standards set by TATT. |
| Political Advertising | <p>UK:</p> <p>Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post.) http://www.ofcom.org.uk/tv/ifi/codes/bcode/elections/</p> <p>Broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes.</p> <p>Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period.</p> <p>Due weight must be given to the coverage of major parties during the election period. Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives. http://www.ofcom.org.uk/tv/ifi/codes/bcode/elections/</p> <p>Trinidad:</p> <p>"broadcaster provides a reasonable and balanced opportunity for all political parties and persons contesting local or general elections to have their views, positions and opinions aired. What is "reasonable", in terms of time given and number of persons, shall be determined based on the number of seats being contested by each party."</p> <p>http://www.tatt.org.tt/ddocs/Broadcast%20code/Broadcasting-Code_Final.pdf</p> |
| Digital Switchover | <p>Analog shut down dates:</p> <p>http://en.wikipedia.org/wiki/Digital_television_transition</p> |
| Transition Incentives | <p>US:</p> <p>FCC consumer coupon plan for digital receivers.</p> |
| Emergency Messaging | <p>Canada:</p> <p>CRTC mandated an alert system should be: built and operated through the joint efforts of, and recognize the respective roles and concerns of, emergency management officials, broadcasters and BDUs. http://www.crtc.gc.ca/eng/archive/2007/pb2007-20.htm</p> <p>To build an effective national emergency alert system, the coordination, cooperation and will of all levels of government and of emergency management officials, broadcasters, BDUs and other stakeholders is required.</p> |
| Regulator Authority | <p>UK:</p> <p>Ofcom has licensing authority</p> <p>Canada:</p> <p>CRTC has licensing authority</p> |
| Dual Acts | Canada: |

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| | Broadcasting Act covers broadcasting, CRTC Act governs CRTC. UK: Communications Act governs responsibilities of Ofcom. |