

ARE FORMS OF POPULAR EXPRESSION COLLAPSING?



EXPERT
PERSPECTIVE

WHAT IS THE IMPACT OF STREAMING AND COVID?



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Introduction

Back in 1938, Ira Gershwin wrote the following lyrics to the song, *Our Love is Here to Stay*:
“The radio and the telephone
And the movies that we know
May just be passing fancies
And in time may go...”

With the decline in conventional TV, the rise of streaming, and the migration of advertising dollars to Google and Facebook, one may well ask if some of our forms of cultural expression may turn out to be passing fancies. People who think forms of artistic expression are here forever have not studied the past. Consider the silent movie. As soon as the talkies arrived in the 1920s, silent films were dead. Or consider the artistic form known as vaudeville. It was incredibly popular in its day, but it survived only until the 1930's, displaced by movies as a cheaper and more popular way to go out to theatres.

Then there were general interest magazines, like the *Saturday Evening Post* or *Life*. They had very wide circulation. But they ceased operation by the 1970s. What killed them? Some would argue that they were doomed with the advent of television. And while television did not kill radio, it certainly killed radio drama. In 1938, Orson Welles scared America with his radio drama of the *War of The Worlds*. But radio drama is no more.

Then we have pulp fiction. In the 1940s and 50s, there were many specialty magazines (the “pulp”) devoted to mystery and science fiction. Each month, hundreds of new stories competed for attention. Now the specialty pulp fiction magazines have been reduced to a handful. What killed them?

These developments are dwarfed by what is happening today with the combined impact of the internet and the pandemic on forms of cultural expression.

In what follows, I propose to look at each of the cultural industries in turn to evaluate the impact of the internet and the pandemic. And while that impact has been global, I will be particularly interested in the effect on Canadian creative expression.

Books

Let's start with the future of the book. How are trade books – the ones sold in bookstores – faring? Here there is both good and bad news. The good news is that books are doing very well as a form of cultural expression. There is something about a book that is irreplaceable. Bestseller lists continue to stimulate demand. The bad news is for bookstores. Consumers can obtain access to books more cheaply on a Kindle or can order a hard copy through Amazon or Indigo. And although traffic in bookstores is returning with the end of the pandemic, many independent bookstores have gone out of business. And in the face of the unrelenting competition from Amazon, Indigo's big-box bookstores have tried to entice shoppers with non-book items.

Canadian-authored trade books have suffered another problem: the demise of book reviews in Canadian newspapers. The big US best sellers still do well, given the overflow of coverage from south of the border. But the disappearance of book reviews in Canadian media has hurt smaller local book publishers and their titles in Canada.

The rise of podcasts may give new opportunities for the marketing of books that are not best sellers. But even that form of expression is becoming dominated by foreign giants.

The educational book market has also been severely affected by technology. For years, the dominant players like Cengage Learning, Houghton Mifflin Harcourt, McGraw-Hill Education, Pearson Education and Scholastic, thrived with high-priced textbooks that students were obliged to buy. But they are now faced with competition from companies like Top Hat, who can offer a text in electronic form, including interactive material, to students at a cheaper price, while providing the author/professor with a higher royalty. This is revolutionizing the field of higher education.

Music

What about the future of recorded music? Here the technological transformation has been even more profound. Vinyl records had long been displaced by audio cassettes and CDs. And once YouTube and Spotify made songs available over cellphones or computers, the market for physical recordings largely disappeared. In terms of revenue, however, the growth in streaming (+19.9% from 2019 to 2020) has more than made up for the declines for the major labels. Through the agreements with record labels, Spotify is required to pay them about 70% of every dollar from streaming revenue. By 2021, streaming constituted 62.1% of all recorded industry revenues. Streaming growth has been fueled by the further adoption of subscription services, which accelerated during the pandemic.



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However, while the major record labels are doing fine, the same cannot be said about the independent labels. With the demise in local record stores, and the lack of promotion on the streaming services, independent artists and the labels that carry them, have suffered. The closure of venues across Canada during the pandemic has meant that there were fewer performance opportunities for artists to generate revenue and build a following. This was particularly challenging for emerging artists, who rely on touring and performing as a major revenue stream. Nor has streaming revenue helped. 97% of the musical artists on Spotify received less than \$1,000 in 2020.

Can this be remedied? If the *Broadcasting Act* is amended by Bill C-11, online undertakings that provide the programming services of other broadcasting undertakings may be required to “ensure the discoverability of Canadian programming services and original Canadian programs, including original French language programs, in an equitable proportion.”^[1] Since the word “program” is defined to include musical works, this may aid in the promotion of Canadian musical artists.

Television

No one can be surprised at the migration of viewers away from scheduled television to Disney+, Netflix and the other streamers. After all, the streamers provide two huge benefits to the viewer – the ability to schedule a program at a time of the viewers’ choosing, and the ability to skip ads.

The pandemic has also benefited the streamers. With the shuttering of movie theatres and concert halls, people who might have gone out for entertainment were now more likely to subscribe to streaming services that bring entertainment into the home. So subscriptions to Netflix and its competitors soared. At the same time, advertising revenues of television stations have continued to decline as the digital platforms succeed.

There are many who predict the demise of free “over-the-air” television and cable/satellite television subscription programming services over the next few years. They point to the rise of Netflix, Amazon Prime and Disney+, and the steady decline in cable subscriptions and TV viewing, particularly among Millennials (age 26-41) and Generation Z (age 10-25).

But is this true? Television is still free-to-air, although most homes subscribing to cable may have dispensed with their roof-top antennas. And while the streamers may be a better source for recorded programs, where a viewer can schedule the program and avoid ads, television is still dominant for live events, like sports, news and award shows. And as long as television has the revenue to buy the exclusive rights to prime-time drama, it will remain a must-see vehicle for those programs.

[1] *BILL C-11: an Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts* (2022). 1st Session, 44th Parliament <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-11/third-reading>



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Broadcasters in the US are making up for their ad revenue shortfalls, in part, by placing more emphasis on the fees paid by cable, satellite, and streaming platforms to retransmit local TV broadcast signals to their platforms. Just ten years ago, retransmission consent revenue was virtually nil. Today, retransmission consent fees top \$10 billion annually in the United States. This matches if not exceeds the total primetime ad revenue for the five US TV networks (ABC, CBS, NBC, Fox and the CW).

Retransmission consent fees do not apply in Canada. But the shows financed by those fees become uniquely available to Bell Media (CTV), Corus (Global) and Rogers (City), since the Canadian TV networks can purchase and monetize those shows in Canada by triggering simultaneous substitution on cable and satellite providers (in regulatory parlance, “broadcasting distribution undertakings” or BDUs). This also effectively excludes other Canadian buyers, since if they did buy the program rights for Canada, its viewing would be cannibalized by Canadians watching the same program on the US networks carried by BDUs.

Although conventional television in Canada is likely to have staying power through its free-to-air delivery and its unique access to US prime-time shows, the economics may not favor programming intended only for small local markets, like local news. To save money, a number of local TV stations may seek to become rebroadcasters of a regional feed.

Nor will the economics favor Canadian specialty programming services if they are entirely dependent on BDU carriage for their success. They do not have the benefit of the simultaneous substitution regime which helps the free-to-air networks monetize their programs. So as BDU penetration declines, those services are turning to the internet to stream their programs. In Canada, Corus has created StackTV, which offers 12 of its cable channels for a subscription price through Amazon Prime. Bell Media offers its programming services through Crave, its streaming service.

Most millennials and Gen Z viewers do not subscribe to cable. Some may want sports but increasingly they can get the NFL, NHL, MLB and NBA on streaming services. So BDU penetration will continue to decline, and the rights for many popular TV shows on specialty or pay TV will continue to migrate to advertising video-on-demand (AVOD) or subscription video-on-demand (SVOD) services available through streaming platforms.



Newspaper and Magazines

Turning to print media, we come to the parlous state of newspapers and magazines. Given the unique ability of the internet to facilitate search, no one can be surprised at the migration of classified advertising away from newspapers. Both newspapers and magazines have also been hard hit with the move of advertisers to Google and Meta. As for readers, they are increasingly able to access the news stories through the internet, undermining print circulation.

These developments have particularly undermined local news media in print form. In the last two years, 25% of all Canadian newspapers closed, either permanently or temporarily, and 2/3 of all outlets experienced layoffs and job losses. Most Canadian newspapers have added a digital link and are putting their content behind a paywall. However, overall revenues are still declining.

What is the solution? Canada has supported its print news media with meaningful tax credits and subsidies. And following the lead in Australia, Canada has proposed legislation (Bill C-18) to require Google and Meta to pay remuneration to the news media for linking to their stories. While the platforms have strongly opposed that legislation, it has broad political support. But will it be enough? That is the difficult million-dollar question. Smaller local newspapers are likely to abandon their print edition entirely, hoping to subsist on digital revenue only.

Like newspapers, magazine sector revenues and margins have declined over the last five years, but not as precipitously. Magazines are likely to survive in print, although there will be fewer titles and weeklies will increasingly move to monthlies. And over time, more and more readers will transition to online reading.

Theatres

The pandemic has had a devastating effect on anything requiring a theatre, concert hall or a public audience. The performing arts were particularly badly affected, as were movie theatres. With the end of the pandemic hopefully in sight, audiences are returning. However, their numbers are lower than the pre-pandemic levels, and they are an older demographic. So times will continue to be difficult for live theatre.

Movie theatres have another problem to face. Even before the pandemic, the theatrical window was shrinking as the streamers bid for the rights to newly released films. But now as movie theatres have returned, they are finding that the only films delivering audiences are the blockbusters. The smaller films now go directly to the streamers. The financial markets have responded by sending the theatres to the bankruptcy courts.



Many movie theatres will close. The fewer number of venues will largely be sustained by effects-driven blockbusters, provided they can secure an exclusive window ahead of pay-per-view (PPV) or SVOD. Smaller films will launch on SVOD.

The Rise of the Short Form

Another impact of the internet has been the rise of shorter forms of cultural expression. Audiences for feature films back in the 1930s also saw animated shorts like *Looney Tunes* and newsreels like *Pathé News*. But with the advent of television, movie theatres focused only on feature films and the shorts disappeared. The TV networks also ignored shorts that would not fit in their scheduled 30 minute format.

In the music industry, there was still a market for recorded “singles” which benefited from radio play and record store promotion. And this was enhanced in 1981 with the launch of MTV by Viacom, with its programming focused on a new type of short program – the music video.

But all of this was only a prelude to the real revolution for short forms of cultural expression. That happened in 2005 with the launch of YouTube. Suddenly there was a market for user-generated programming in shorter form. This accelerated with the arrival of Instagram in 2010 and TikTok in 2018.

This has given rise to what is called the “creator economy”, where thousands of homegrown creators turn short form content into cash on social media platforms. Often derided as “cat videos”, these short form creations have become surprisingly diverse and increasingly sophisticated. When they are successful in attracting viewers, they can also be lucrative for their creators. As a result, many of those creators are seeing this as their possible entry into professional production.

Audiovisual Production

Meantime, what has been happening with long form audiovisual production?

The advent of streaming services seeking the rights to popular programming has driven up the price for film and television libraries. And the demand for new programming from so many new buyers has led to three important effects. First, the volume of new programming has increased. Second, the quality of that programming is markedly better, with more elaborate sets and special effects. And third, the price for that programming has also increased.



These developments have had a major impact on long form audiovisual production in Canada. The amount of foreign location shooting has skyrocketed, impelled by the lower Canadian dollar, provincial tax credits, and our excellent technical crews. In the year ending August 31, 2020, the US studios spent \$5.2 billion for AV production in Canada, a new high.

The CRTC has had Canadian content expenditure requirements for Canadian TV broadcasters since 2011. And productions of Canadian shows in the drama and documentary genres (called Programs of National Interest or “PNI”) are driven by the CRTC requirement that Canadian broadcasters spend a percentage of their annual revenue on PNI. But while foreign location shooting has soared, Canadian production of Canadian shows has flat-lined, in line with the plateauing of Canadian television and BDU revenues. Total Canadian audiovisual production topped out at \$4.1 billion in the year ending August 31, 2020.

Even that level of expenditure may be under threat if there is a further decline in TV ad revenue and BDU subscriptions. In Canada, subscriptions to BDUs reached a high of 84% of households in 2010. Starting around 2014, that number began steadily declining, reaching a low of 67% in 2021. The number of BDU households in Canada dropped from about 11.3 million in 2015 to 9.9 million in 2021. However, the decline appears to have slowed down and may even have levelled off.

There is also a solution in sight for Canadian audiovisual production. If *Bill C-11* is enacted, the CRTC will likely impose similar content expenditure rules on Canadian online undertakings like Crave, GEM or Club Illico, as well as on foreign streaming services like Netflix, Disney+, Amazon Prime and the like. And as long as the foreign streaming services are treated no differently than the equivalent Canadian streaming service, they should have no cause for complaint under CUSMA, Canada’s free trade agreement with the United States.

Canada can also take comfort in the fact that European countries are taking similar steps. In December 2018 the European Union adopted a new Audiovisual Media Services Directive. Under the Directive, Member States may require media service providers of on-demand audiovisual media services to contribute financially to the production of European works. As of May 2022, according to the European Audiovisual Observatory, most member states of the EU have done so, with Italy and France imposing the highest obligations of the various member states.



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The Conclusion

According to Ira Gershwin, the Rockies may crumble and Gibraltar may tumble. But will the forms of popular art be “here to stay”?

Some, like DVDs, vinyl records and audio cassettes have already tumbled. And apart from titles with national reach, newspapers are likely to survive only in digital form. For magazines in print, there will be fewer titles and they will be less frequent.

Conventional TV will last longer but specialty programming channels that depend on cable and satellite platforms will steadily move to AVOD or SVOD platforms as BDU penetration declines. Trade books in printed form are here to stay, but educational textbooks will steadily migrate to digital form.

And there is good news for audiovisual production. Not only is it here to stay but it is increasing in volume and sophistication, both in short and long form. The market for AV production has significantly expanded with the rise of the digital streamers. And if countries like Canada follow through on regulatory requirements, local productions will also increase. Far from being passing fancies, they will greatly add to the quality and diversity of cultural expression.



ABOUT THE AUTHOR

Peter S. Grant retired from McCarthy Tétrault LLP in 2020 after heading its communications law group for many years. He was one of six experts appointed to the Broadcasting and Telecommunications Legislative Review Panel, which tabled its report in January 2020. This essay was written in October 2022.

