

Content Explosion Crowns the Consumer King

*Cordel Green MBA; LL.M (Dist.); LL.B (Hons.); BA (Hons.)**

Jodi-Ann Jackson M.Sc., B.Sc. (Hons.)

Introduction

In the US, media executives have been struggling with what have been termed "cord-shaving" and "cord-cutting". Consumers now have many options for accessing content. In a 2014 article from the Wall Street Journal¹, it was reported that several of them (cord-cutters) have completely disconnected their pay-tv packages and have opted for more affordable Over-the-Top (OTT) providers such as Netflix and Hulu. Others (cord-shavers) have downsized their pay-tv packages to basic packages which exclude many of the popular channels. According to Bryan Rader, CEO of Bandwidth Consulting LLC, a firm providing specialised consulting for the pay-tv industry, "We're at a tipping point of consumers thinking Internet first and TV second."

The Decline of Cable and Rise of OTTs

The Wall Street Journal article continues by highlighting that during the past four years, the top 40 most distributed [cable] channels for 2010 - such as CNN and USA- have lost approximately 3.2 million subscribers, that is, more than 3% of their distribution. Consequently, estimates have indicated that US local broadcast stations now constitute 12% of pay-tv subscriptions when compared to their previous 8% to 10%. Consumers are moving away from premium cable offerings.

Conversely, OTTs have begun to thrive. In 2013, Netflix reported an annual revenue of US\$4.37 billion, that is, a 28,978% increase in its 2002 revenue figure of US\$150,800². Between April and June 2015 Netflix added 3.3 million subscribers³, with more than 70% of this growth attributed to international subscribers. The OTT provider's subscription base now stands at 65.6 million.

Jamaican pay-tv operators are also feeling the effects of cord-cutting and cord-shaving. In 2014, there was a 5% reduction in the number of reported cable subscribers. This compares starkly to a 10% increase in 2013 and a 14% increase in 2012.

Anecdotal evidence suggests that many Jamaicans are opting for OTT services. One contributing factor seems to be the power that consumers derive from on-demand programming. For example, it is more convenient for consumers to select on-demand options which suit their lifestyles and can make content available on any device or screen. Also, with increased broadband access, personalised content becomes more easily accessible online.

TV Fights Back

¹ <http://www.wsj.com/articles/pay-tvs-new-worry-shaving-the-cord-1412899121>

² <http://www.statista.com/topics/842/netflix/>

³ <http://www.statista.com/chart/3153/netflix-subscribers/>

How then can TV operators survive and thrive in what appears to be a contracting sector? One option gaining traction in the US market is the Video-on-Demand (VoD) service. VoD allows the traditional pay-tv consumer to access content at their convenience. This service has recently been introduced in Jamaica.

Additionally, cable operators such as Time Warner and Comcast are now making significant investments to deliver their own OTT-type services⁴. They are able to capitalise on their access to a wide variety of content, existing customer base and ability to bundle OTT services with traditional offerings, in a bid to remain competitive.

Free-to-Air television stations are also reacting. In August 2014 the RJR Group announced that it would be launching a linear-type OTT service⁵.

In a 2014 article⁶, Endeavour Partners, a strategy consulting firm specialising in mobile and digital business, suggested that another option available to cable operators is unbundling. They proposed a structure in which channels and programme slots are paid for on a per-use basis, similar to Amazon Video, replacing the traditional pre-set packages. Advertisers would benefit by a better understanding of target consumers based on their clearly identifiable and distinct preferences.

Regulatory Treatment of OTTs

As innovation drives the content market and throws up new services and means of access, the question arises whether the Broadcasting Commission should regulate cable-like or broadcast-like services over the Internet. In response, the Broadcasting Commission has recommended to Government that there should be a service-based rather than platform-centric definition of broadcasting which captures the activity of all "like" services. It is recognised that owing to the ubiquitous nature of ICTs, the domestic consumption of some programming services from foreign programming service distributors (which do not have a commercial presence in Jamaica), will not enjoy the regulatory and legal protection nor bear the regulatory and legal burden of the local regulatory regime.

It also does not follow that the existing regulations would be applied in the same manner, or at all, to new services. So, for example, in August 2015⁷, Mexico's Federal Telecommunications Institute ruled that OTTs ought not to be regulated using the pay-tv model. In the U.S., the Federal Communications Commission⁸ (FCC) has considered whether to apply pay-tv regulations to online video distribution providers. The FCC's policy posture is that consideration should be given

⁴ <http://www.quickplay.com/cable-exes-say-cord-cutting-due-to-ott-is-insignificant-but-ott-is-an-opportunity/>

⁵ http://www.jamaicaobserver.com/business/RJR-goes-live-streaming--video-on-demand-by-Oct_16417156

⁶ <http://endeavourpartners.net/cable-companies-imitate-ott-services/>

⁷ <http://www.telecompaper.com/news/mexican-regulator-says-ott-providers-not-under-pay-tv-law--1096799>

⁸ <http://variety.com/2014/tv/news/fcc-considers-extending-broader-pay-tv-rules-to-ott-providers-1201383662/>

to extending pay-tv-like regulation to providers who offer linear programming or cable-like services. For the moment, those who provide a variety of non-linear content⁹ such as Netflix and Hulu, will be excluded from such regulation.

Conclusion

This discussion highlights the need for a robust, yet flexible regulatory framework if regulators such as the Broadcasting Commission are not to lag behind or be an obstacle to innovation. Such a framework should seek to minimise the occurrence of arbitrage in the regulation of services across platforms but without treating such services as homogenous.

Above all, those who create, distribute and regulate content must adopt approaches that respond to consumer migration to multiple digital platforms and their demand for seamless access to diverse content across platforms.

**ABOUT THE AUTHORS*

Cordel Green is an Attorney-at-Law, a former Assistant Attorney-General of Jamaica and a former broadcaster. He is the Executive Director of the Broadcasting Commission, which regulates radio, television and cable in Jamaica.

Mrs. Jodi-Ann Jackson is an Economist with a passion for growth and development. She currently serves as the Economist/Researcher at the Broadcasting Commission.

Their views are personal and do not necessarily reflect the position of the Broadcasting Commission.

⁹ Non-linear programming refers to advanced, non-traditional ways of presenting television programming. Many consider video on demand and other forms of interactive TV nonlinear.
http://www.itvdictionary.com/definitions/nonlinear_tv_definition.html