



Broadcasting Notice of Consultation CRTC 2010-702

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Ottawa, 23 September 2010

Call for comments on standard requirements for video-on-demand undertakings

The Commission calls for comments on standard conditions of licence, expectations and an encouragement for video-on-demand services. The deadline for comments is 25 October 2010.

Introduction

1. In Broadcasting Regulatory Policy 2010-190, the Commission introduced a number of new regulatory mechanisms that will be applied to video-on-demand (VOD) undertakings primarily through conditions of licence. In most cases, the Commission noted that these conditions of licence would be put in place for individual licensees at their next licence renewals.
2. The same new conditions of licence will apply to all VOD undertakings, as is the case for most existing conditions of licence. Accordingly, the Commission has decided to seek comment on a set of standard conditions of licence, expectations and an encouragement for VOD undertakings in advance of upcoming licence renewals for some of the larger VOD undertakings. This will allow the Commission to consider all comments on the wording at one time and make the renewal process more streamlined and efficient. The Commission will also develop a simplified application form for VOD licences based on these standard requirements.
3. Accordingly, a list of standard conditions of licence, expectations and an encouragement for VOD undertakings is set out in the appendix to this notice of consultation. Requirements not currently applied to VOD licensees are in bold text.
4. Included in this list of requirements are the standard conditions of licence and expectations reflecting accessibility requirements. In Broadcasting and Telecom Regulatory Policy 2009-430, the Commission stated its intention to impose conditions of licence relating to accessibility provisions on programming undertakings at the time of their licence renewals. In Broadcasting Regulatory Policy 2010-190, the Commission stated that it intended to explore accessibility issues further with VOD undertakings at the time of licence renewals. However, the Commission considers that the process proposed herein will also provide an appropriate forum to solicit comments on these accessibility provisions.

Call for comments

5. The Commission calls for comments on the standard conditions of licence, expectations and encouragement set out in the appendix to this document. The Commission will accept comments that it receives on or before **25 October 2010**. The Commission cannot be held responsible for postal delays and will not notify a party whose comment is received after the deadline. The comment will not be considered by the Commission and will not be part of the public file.
6. The Commission will not formally acknowledge comments. It will, however, fully consider all comments, and they will form part of the public record of the proceeding, provided that the procedures for filing set out below have been followed.

Procedure for filing comments

7. Interested parties can file their comments to the Secretary General of the Commission in only one of the following formats:

by using the
[\[Broadcasting interventions/comments form\]](#)

OR

by mail to
CRTC, Ottawa, Ontario K1A 0N2

OR

by fax at
819-994-0218

8. Submissions longer than five pages should include a summary.
9. Each paragraph of the submission should be numbered. In addition, where the comment is filed by electronic means, the line *****End of document***** should be entered following the last paragraph of the document, as an indication that the document has not been damaged during electronic transmission.

Important notice

10. All information that parties provide as part of this public process, except information granted confidentiality, whether sent by postal mail, facsimile, e-mail or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e-mail addresses, postal/street addresses, telephone and facsimile numbers and any other personal information parties provide.

11. The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission or for a use consistent with that purpose.
12. Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.
13. The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.
14. The Commission encourages interested parties to monitor the public examination file and the Commission's website for additional information that they may find useful when preparing their comments.

Examination of documents

15. A list of all comments will also be available on the Commission's website. An electronic version of all comments submitted will be accessible from this list. To access the list, select "Lists of interventions/comments" under "Public Proceedings" from the Commission's website.
16. The public may examine public comments and related documents at the following Commission offices during normal business hours.

Location of Commission offices

Toll-free telephone: 1-877-249-2782
Toll-free TDD: 1-877-909-2782

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Regional offices

Metropolitan Place
99 Wyse Road
Suite 1410

Dartmouth, Nova Scotia B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

205 Viger Avenue West
Suite 504
Montréal, Quebec H2Z 1G2
Tel.: 514-283-6607

55 St. Clair Avenue East
Suite 624
Toronto, Ontario M4T 1M2
Tel.: 416-952-9096

Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba R3B 2B3
Tel.: 204-983-6306
Fax: 204-983-6317

2220 - 12th Avenue
Room 620
Regina, Saskatchewan S4P 0M8
Tel.: 306-780-3422

10405 Jasper Avenue
Suite 520
Edmonton, Alberta T5J 3N4
Tel.: 780-495-3224

858 Beatty Street
Suite 290
Vancouver, British Columbia V6V 1C1
Tel.: 604-666-2111
Fax: 604-666-8322

Related documents

- *Regulatory framework for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2010-190, 29 March 2010
- *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009

Secretary General

Appendix to Broadcasting Notice of Consultation CRTC 2010-702

Standard conditions of licence, expectations and encouragement for VOD undertakings

Conditions of licence

1. **The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of sections 3(2)(d), 3(2)(e), 3(2)(f), 4 and 6.1.**
2. Except as authorized by the Commission, the programming undertaking licensed herein shall be operated in fact by the licensee itself.
3. The licensee shall ensure that, at all times:
 - (a) not less than 5% of the English-language feature films in the inventory available to subscribers are Canadian;
 - (b) not less than 8% of the French-language feature films in the inventory available to subscribers are Canadian;
 - (c) the feature film inventory includes all new Canadian feature films that are suitable for video-on-demand exhibition and that meet the approved *Industry Code of Programming Standards and Practices Governing Pay, Pay-Per-View and Video-On-Demand Services*; and
 - (d) not less than 20% of all programming other than feature films in the inventory available to subscribers is Canadian.
4. The licensee shall ensure that not less than 25% of the titles promoted each month on its barker channels are Canadian titles.
5. **The licensee shall contribute 5% of its gross annual revenues to an existing Canadian program production fund administered independently of its undertaking.**
6. (a) **The licensee shall remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films. The licensee will be permitted to exclude the amount remitted to Canadian feature film rights holders as revenue for the purpose of calculating the contribution to a production fund set out in condition of licence 5.**

(b) **Notwithstanding paragraph (a), some Canadian feature films may be the subject of a negotiated revenue-sharing agreement between the licensee and the rights holder of Canadian feature films. Any revenues retained by the VOD licensee with respect to such Canadian feature films shall be included**

as gross broadcasting revenues for the purposes of calculating contribution for the purposes of condition of licence (5), above.

7. The licensee is prohibited from offering: (a) a non-Canadian subscription VOD (SVOD) package that is directly competitive with a Canadian linear pay or specialty service, or (b) a Canadian SVOD package that is directly competitive with a genre-protected Canadian linear pay or specialty service.
8. The licensee shall not include as part of its video-on-demand offering any program containing a commercial message except where:

(a) the commercial message

- (i) is included in a program that is obtained from a Canadian programming undertaking that is not a related Canadian programming undertaking;
- (ii) is included in a program that is obtained from a related licensed Canadian programming undertaking that has acquired the right to broadcast the program on its linear Canadian programming service(s);
- (iii) was already included in a program previously broadcast in Canada by a non-Canadian programming service authorized for distribution in Canada; or
- (iv) is included in the licensee's community programming in accordance with subsections 27(1)(g), 27(1)(h) and 27(1)(i) of the *Broadcasting Distribution Regulations* (where applicable);

(b) insofar as the commercial message is included by virtue of 8(a)(i), 8(a)(ii) or 8(a)(iv), the program's inclusion as part of the VOD offering is in accordance with the terms of a written agreement entered into with the programming undertaking that owns the rights to the program; and

(c) the licensee adheres to the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.

For the purpose of this condition of licence, the term "related Canadian programming undertaking" means a Canadian programming undertaking of which the licensee or an affiliate, or both, controls more than 10% of the total shares issued and outstanding.

9. The licensee may broadcast a commercial message directly or indirectly advertising an alcoholic beverage only if
 - (a) the sponsor is not prohibited from advertising the alcoholic beverage by the laws of the province in which the commercial message is broadcast;
 - (b) the commercial message is not designed to promote the general

consumption of alcoholic beverages; and
 (c) the commercial message complies with the *Code for Broadcast Advertising of Alcoholic Beverages*, published by the Commission on 1 August 1996.

Paragraph (b) does not apply so as to prohibit industry, public service or brand preference advertising.

10. The licensee shall not give an undue preference to any person, including itself, or subject any person to an undue disadvantage. In any proceedings before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage.
11. The licensee shall not acquire exclusive rights for any of the programming offered on its programming service.
12. The licensee shall caption 100% of the English- and French-language programs in its inventory, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
13. The licensee shall adhere to the quality standards on closed captioning developed by the television industry's working groups, as amended from time to time and approved by the Commission.
14. The licensee shall have a monitoring system in place to ensure that, for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal, and this captioning reaches, in its original form, the distributor of that signal. "Original form" means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.
15. The licensee shall adhere to the *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
16. The licensee shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
17. The licensee shall adhere to the *Industry Code of Programming Standards and Practices Governing Pay, Pay-Per-View and Video-On-Demand Services*, as amended from time to time and approved by the Commission. However, the

application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.

18. The licensee shall maintain for a period of one year, and submit to the Commission upon request, a detailed list of the inventory available on each file server. The list must identify each program by programming category and by country of origin, and indicate the period of time that each program was on the server and available to subscribers.

Expectations

1. The Commission expects the licensee to make its program offering available, to the maximum extent possible, to customers in both official languages.
2. **When captions are available, the Commission expects the licensee to provide viewers with a captioned version of all advertising, sponsorship messages and promos offered in its programming.**
3. **The Commission expects the licensee to acquire and make available described versions of programming, where possible, and to ensure that its customer service responds to the needs of persons with a visual impairment, as set out in *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009.**
4. **In regard to described programming, the Commission expects the licensee to:**
 - **display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described program; and**
 - **make information available regarding the described programs that it will broadcast.**
5. **The Commission expects the licensee to provide an audio description of all programming that provides textual or graphic information, including programming broadcast on the Barker channel.**
6. The Commission expects the licensee to adhere to its internal policy on adult programming approved by the Commission. The Commission further expects that any future changes made by the licensee to its internal policy on adult programming will be submitted for Commission approval prior to their implementation.
7. The Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect the presence in Canada of ethnocultural minorities, Aboriginal peoples, and persons with disabilities. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.

8. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992, if the licensee has 100 or more employees, it is subject to the *Employment Equity Act*.

If the licensee has between 25 and 99 employees, the Commission expects the licensee to have in place an employment equity plan that addresses the equitable representation of the four designated groups (women, Aboriginal peoples, persons with disabilities and visible minorities), as set out in Public Notices CRTC 1992-59 and 1997-34.

In implementing its employment equity plan, the Commission further expects the licensee to:

- ensure that the details of the licensee's employment equity policies are communicated to managers and staff;
- assign a senior level person to be responsible for tracking progress and monitoring results; and
- dedicate financial resources to the promotion of employment equity in the workplace.

Encouragement

1. The Commission encourages VOD undertakings to share aggregate information on viewing to VOD programs with broadcasters if such information is available.