



Broadcasting Notice of Consultation CRTC 2014-79

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Ottawa, 25 February 2014

Call for comments on amendments to Commission regulations – Standard non-disclosure clauses and auditing of subscriber information

The Commission calls for comments on proposed amendments to certain of its regulations to put into effect its determinations in Broadcasting Regulatory Policies 2013-578 and 2013-585.

The amendments would require licensed broadcasting undertakings engaged in a distribution arrangement or entering into carriage negotiations to sign agreements that include safeguards against the misuse of competitively sensitive information, thus providing a conducive environment for the negotiation of reasonable terms for the distribution, packaging and retailing of programming services. A further amendment would introduce changes to the Commission's audit requirements to clarify how audits of subscriber information held by broadcasting distribution undertakings are conducted by programming services.

*The Commission will accept interventions that it receives by **27 March 2014** and reply comments that it receives by **7 April 2014**.*

Introduction

1. The Commission proposes to amend the *Broadcasting Distribution Regulations*, the *Pay Television Regulations, 1990*, the *Specialty Services Regulations, 1990* and the *Television Broadcasting Regulations, 1987* to put into effect its determinations in Broadcasting Regulatory Policies 2013-578 and 2013-585.
2. The amendments would require licensed broadcasting undertakings engaged in a distribution arrangement or entering into carriage negotiations to sign agreements that reproduce the non-disclosure provisions set out in the appendix to Broadcasting Regulatory Policy 2013-578 and contain their consent to abide with these provisions. A further amendment to section 15.1 of the *Broadcasting Distribution Regulations* would introduce changes to the current audit requirements to clarify how audits of the subscriber information held by broadcasting distribution undertakings are conducted by programming undertakings.

Call for comments

3. The proposed *Regulations Amending Certain Regulations Made under the Broadcasting Act* are appended to this notice. The Commission invites comments on the wording of the proposed amendments.

4. In accordance with Broadcasting Regulatory Policy 2013-578, the Commission is also seeking additional comments on the following matters:
 - whether viewership or subscriber data obtained from set-top boxes or by similar means should be included within the definition of confidential information to be included in the baseline non-disclosure provisions; and
 - whether the obligation to enter into agreements binding an undertaking to the adopted baseline non-disclosure provisions should be imposed where both parties involved are vertically integrated.
5. The Commission intends to reflect its determinations on these policy matters in the regulations adopted as a result of this proceeding. The Commission will accept interventions that it receives by **27 March 2014** and reply comments that it receives by **7 April 2014**.

Procedure

6. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, SOR/2010-277 (the Rules of Procedure), set out, among other things, the rules for content, format, filing and service of interventions. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."
7. In accordance with the Rules of Procedure, a document must be filed with, not merely sent to, the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. The Commission takes no responsibility for postal delays and will not notify a party whose submission is received after the deadline date. Late submissions will not be considered by the Commission and will not be made part of the public file.
8. The Commission will not formally acknowledge interventions. It will, however, fully consider all interventions, and they will form part of the public record of the proceeding, provided that the procedures for filing set out in the Rules of Procedure and this notice have been followed.
9. Submissions must be filed by sending them to the Secretary General of the Commission by **only one** of the following means:

by using the

[\[Intervention/comment/answer form\]](#)

or

by mail to

CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

10. Submissions longer than five pages should include a summary.
11. 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 altered during electronic transmission.

Important notice

12. All information that parties provide as part of this public process, except information designated confidential, 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.
13. 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.
14. 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.
15. 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.
16. The Commission encourages parties and interested persons to monitor the record of the proceeding, available on the Commission’s website, for additional information that they may find useful when preparing their submissions.

Examination of documents

17. A list of all interventions and answers will also be available on the Commission’s website. The list is accessible by selecting “View all proceedings open for comment” from the “Public Proceedings” section of the Commission’s website and clicking on the “Interventions/Answers” link associated with this notice.
18. The public may examine public interventions 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

Nova Scotia

Metropolitan Place
99 Wyse Road
Suite 1410
Dartmouth, Nova Scotia
B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

Quebec

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

Ontario

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

Manitoba

360 Main Street
Suite 970
Winnipeg, Manitoba
R3C 3Z3
Tel.: 204-983-6306
Fax: 204-983-6317

Saskatchewan

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

Alberta

100 – 4th Avenue South-West
Suite 403
Calgary, Alberta
T2P 3N2
Tel.: 403-292-6660
Fax: 403-292-6686

British Columbia

858 Beatty Street
Suite 290
Vancouver, British Columbia
V6B 1C1
Tel.: 604-666-2111
Fax: 604-666-8322

Secretary General

Related documents

- *Provisions governing the timeframes and modalities for the conduct of audits of subscriber information held by broadcasting distribution undertakings*, Broadcasting Regulatory Policy CRTC 2013-585, 31 October 2013
- *Standard clauses for non-disclosure agreements*, Broadcasting Regulatory Policy CRTC 2013-578, 31 October 2013

Appendix to Broadcasting Notice of Consultation CRTC 2014-79

REGULATIONS AMENDING CERTAIN REGULATIONS MADE UNDER THE BROADCASTING ACT

TELEVISION BROADCASTING REGULATIONS, 1987

1. The *Television Broadcasting Regulations, 1987*¹ are amended by adding the following after section 9:

NON-DISCLOSURE

9.1 (1) A licensee whose programming services are being distributed by a licensed distribution undertaking or that is negotiating terms of carriage with such an undertaking for its programming services, including new programming services, shall sign and provide to the licensee of the distribution undertaking an agreement that

(a) reproduces the non-disclosure provisions; and

(b) contains its consent to comply with the non-disclosure provisions for the benefit of the licensee of the distribution undertaking.

(2) A licensee whose programs are being broadcast by a licensed video-on-demand undertaking or that is negotiating terms of carriage with such an undertaking for its programs shall sign and provide to the licensee of the video-on-demand undertaking an agreement that

(a) reproduces the non-disclosure provisions; and

(b) contains its consent to comply with the non-disclosure provisions for the benefit of the licensee of the video-on-demand undertaking.

(3) For the purposes of subsections (1) and (2), the non-disclosure provisions are those provisions set out in the Appendix to Broadcasting Regulatory Policy CRTC 2013-578, dated October 31, 2013 and entitled *Standard clauses for non-disclosure agreements*.

PAY TELEVISION REGULATIONS, 1990

2. The *Pay Television Regulations, 1990*² are amended by adding the following after section 3:

NON-DISCLOSURE

3.1 (1) A licensee whose programming services are being distributed by a licensed distribution undertaking or that is negotiating terms of carriage with such an undertaking for its programming services, including new programming services, shall sign and provide to the licensee of the distribution undertaking an agreement that

(a) reproduces the non-disclosure provisions; and

(b) contains its consent to comply with the non-disclosure provisions for the benefit of the licensee of the distribution undertaking.

(2) A licensee whose programs are being broadcast by a licensed video-on-demand undertaking or that is negotiating terms of carriage with such an undertaking for its programs shall sign and provide to the licensee of the video-on-demand undertaking an agreement that

(a) reproduces the non-disclosure provisions; and

(b) contains its consent to comply with the non-disclosure provisions for the benefit of the licensee of the video-on-demand undertaking.

(3) For the purposes of subsections (1) and (2), the non-disclosure provisions are those provisions set out in the Appendix to Broadcasting Regulatory Policy CRTC 2013-578, dated October 31, 2013 and entitled *Standard clauses for non-disclosure agreements*.

SPECIALTY SERVICES REGULATIONS, 1990

3. The *Specialty Services Regulations, 1990*³ are amended by adding the following after section 6:

NON-DISCLOSURE

6.1 (1) A licensee whose programming services are being distributed by a licensed distribution undertaking or that is negotiating terms of carriage with such an undertaking for its programming services, including new programming services, shall sign and provide to the licensee of the distribution undertaking an agreement that

(a) reproduces the non-disclosure provisions; and

(b) contains its consent to comply with the non-disclosure provisions for the benefit of the licensee of the distribution undertaking.

(2) A licensee whose programs are being broadcast by a licensed video-on-demand undertaking or that is negotiating terms of carriage with such an undertaking for its programs shall sign and provide to the licensee of the video-on-demand undertaking an agreement that

(a) reproduces the non-disclosure provisions; and

(b) contains its consent to comply with the non-disclosure provisions for the benefit of the licensee of the video-on-demand undertaking.

(3) For the purposes of subsections (1) and (2), the non-disclosure provisions are those provisions set out in the Appendix to Broadcasting Regulatory Policy CRTC 2013-578, dated October 31, 2013 and entitled *Standard clauses for non-disclosure agreements*.

BROADCASTING DISTRIBUTION REGULATIONS

4. The *Broadcasting Distribution Regulation*⁴ are amended by adding the following after section 9:

NON-DISCLOSURE

9.1 (1) A licensee that is distributing programming services of a licensed programming undertaking or that is negotiating terms of carriage with such an undertaking, or with an undertaking otherwise authorized to operate by reason of a Commission decision approving the issuance of a licence under paragraph 9(1)(b) of the Act, for its programming services, including new programming services, shall sign and provide to the other licensee or to the operator of the undertaking otherwise authorized an agreement that

(a) reproduces the non-disclosure provisions; and

(b) contains its consent to comply with the non-disclosure provisions for the benefit of the other licensee or the operator of the undertaking.

(2) A licensee that is distributing an exempt Category B service or an exempt third-language service of an exempt programming undertaking or that is negotiating terms of carriage with an exempt programming undertaking for an exempt Category B service or an exempt third-language service, including any new programming service that is an exempt Category B service or an exempt third-language service, shall sign and provide to the operator of the exempt programming undertaking an agreement that

(a) reproduces the non-disclosure provisions; and

(b) contains its consent to comply with the non-disclosure provisions for the benefit of the operator of the exempt programming undertaking.

(3) For the purposes of subsections (1) and (2), the non-disclosure provisions are those provisions set out in the Appendix to Broadcasting Regulatory Policy CRTC 2013-578, dated October 31, 2013 and entitled *Standard clauses for non-disclosure agreements*.

5. Section 15.1 of the Regulations is replaced by the following:

15.1 A licensee shall give access to its records to any Canadian programming undertaking that receives a wholesale rate for its programming services to enable the programming undertaking to verify subscriber information for its programming services in accordance with the terms prescribed in the Appendix to Broadcasting Regulatory Policy CRTC 2013-585, dated October 31, 2013 and entitled *Provisions governing the*

timeframes and modalities for the conduct of audits of subscriber information held by broadcasting distribution undertakings.

COMING INTO FORCE

6. These Regulations come into force on the day on which they are registered.

¹ SOR/87-49

² SOR/90-105

³ SOR/90-106

⁴ SOR/97-555