



## Broadcasting Decision CRTC 2006-518

Ottawa, 14 September 2009

### **Black Walk Corporation** Across Canada

*Application 2005-0960-7*  
*Public Hearing in the National Capital Region*  
*1 May 2006*

### **Movie News Network – Category 2 specialty service**

*In this decision, the Commission **approves** an application for a broadcasting licence to operate a new Category 2 specialty programming undertaking.*

#### **The application**

1. The Commission received an application by Black Walk Corporation for a broadcasting licence to operate a national, English-language Category 2<sup>1</sup> specialty programming undertaking to be known as Movie News Network.
2. The applicant proposed to offer a service that would consist of programs featuring Canadian, American and international movie trailers as well as documentaries and theatrical films. In response to the Commission's request for additional clarification on the nature of the proposed service, the applicant stated that the programming would be comprised of movie trailers for films in theatrical or DVD release in Canada, in depth promotional programming about a specific feature film as well as movie gossip, reportage from film festivals and film industry analysis and interpretation. The service would also air long-form documentaries and theatrical films that are thematically based on the film and TV industry.
3. All of the programming would be drawn from the following categories set out in Schedule 1 to the *Specialty Services Regulations, 1990*: 2(a) Analysis and interpretation; 2(b) Long-form documentary; 3 Reporting and actualities; 5(b) Informal education/Recreation and leisure; 7(c) Specials, mini-series or made-for-TV feature films; 7(d) Theatrical feature films aired on TV; 8(b) Music video clips; 12 Interstitials; 13 Public service announcements; and 14 Infomercials, promotional and corporate videos.

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<sup>1</sup> The Category 2 services are defined in *Introductory statement – Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000.

## **Interventions**

4. The Commission received numerous letters in support of this application as well as opposing interventions by Alliance Atlantis Communications Inc. (Alliance Atlantis), Corus Entertainment Inc. (Corus) and Captioning Consumers of Canada (CCC).
5. Alliance Atlantis owns The Independent Film Channel (IFC), an English-language Category 1 service that broadcasts dramatic and non-fiction short and feature-length independent films as well as programs focusing on the independent film-making process, film makers and film festivals. Alliance Atlantis contended that the proposed Movie News Network service would be directly competitive with IFC. In Alliance Atlantis' view, Movie News Network's proposed nature of service would be substantially similar to that of IFC and the proposed service would target the same audience as IFC. Alliance Atlantis argued that the added competition for feature films would also make it more difficult for programmers to acquire rights for film titles, both Canadian and foreign. Alliance Atlantis submitted that, if the Commission were to license this service, the Commission should impose a 15% weekly limit on programming from categories 7(c) and 7(d) and require that all such programming be Canadian.
6. Corus owns YTV Canada, Inc., which is a partner in The Canadian Documentary Channel Limited Partnership<sup>2</sup>, the licensee of The Documentary Channel, an English-language Category 1 service that broadcasts documentary programs. In Corus' view, the proposed service would be directly competitive with The Documentary Channel. Corus requested that the Commission impose a condition of licence limiting the amount of programming that the proposed service may broadcast from categories 2(a) and 2(b) in order to prevent the proposed service from becoming directly competitive with The Documentary Channel.
7. CCC contended that the applicant had not proposed an adequate level of closed captioning. In CCC's view, all the programming offered by the proposed service should be captioned, either by adding captioning to its programming, or by acquiring captioned programming. CCC also expressed concern about the quality of captioning.

## **Applicant's replies**

8. In response to Alliance Atlantis, the applicant stated that the mandate of the proposed service would be to promote Canadian films, not to broadcast them. The applicant also indicated its willingness to accept a condition of licence limiting the amount of programming that it may broadcast from categories 7(c) and 7(d) to 15% of the broadcast week.

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<sup>2</sup> YTV Canada, Inc. and the Canadian Broadcasting Corporation (the general partners), and 3366341 Canada Inc., Barna-Alper Productions Inc., CineNova Productions, Inc., the National Film Board of Canada and Omni Film Productions Ltd. (the limited partners), carrying on business as The Canadian Documentary Channel Limited Partnership

9. In response to Corus, the applicant stated that the proposed service would provide original, long-form programming commissioned by the service itself and aimed specifically at reporting, promoting and analyzing Canadian films within the larger arena of Hollywood and world cinema. The applicant indicated that it had no great concern with a limit on category 2(a) and 2(b) programming as long as there was a clear understanding of the nature of the proposed service.
10. The applicant did not reply to CCC.

### **Commission's analysis and determinations**

11. In *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000, the Commission implemented a competitive, open-entry approach to licensing Category 2 services. While the Commission does not consider the impact that a Category 2 service might have on an existing Category 2 service, it does seek to ensure that Category 2 services do not compete directly with any existing pay or specialty television service, including any Category 1 service.
12. In *Introductory statement - Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, and *Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001 (Public Notice 2000-171-1), the Commission adopted a case-by-case approach in determining whether a proposed Category 2 service should be considered directly competitive with an analog pay or specialty or existing Category 1 service. The Commission examines each application in detail, taking into consideration the proposed nature of service and the unique circumstances of the genre in question.
13. In the present case, the Commission is satisfied that the clarifications provided by the applicant clearly define the nature of Movie News Network's service. The Commission notes that the applicant indicated that long-form documentaries and theatrical films broadcast on the proposed service would have a story based on the film and TV industry. Moreover, the Commission notes that the applicant agreed to accept a condition of licence limiting the broadcast of category 7 programming to 15% of the broadcast week. The Commission is satisfied that the definition of Movie News Network's nature of service and the limitation on category 7 programming are sufficient to ensure that the proposed service would be complementary rather than directly competitive with IFC or The Documentary Channel.
14. The Commission acknowledges the concerns raised by CCC. As indicated in *Review of certain aspects of the regulatory framework for over-the-air television*, Broadcasting Notice of Public Hearing CRTC 2006-5, 12 June 2006, the Commission is currently reviewing its approach to closed captioning with a view to improving the quantity and quality of captioning in the Canadian broadcasting system.

15. In light of the above, the Commission is satisfied that the application is in conformity with all applicable terms and conditions announced in Public Notice 2000-171-1. Accordingly, the Commission **approves** the application by Black Walk Corporation for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking, Movie News Network.
16. The licence will expire 31 August 2013, and will be subject to the **conditions** set out in Public Notice 2000-171-1, as well as to the **conditions** set out in the appendix to this decision.

### **Issuance of the licence**

17. A licence will be issued once the applicant has satisfied the Commission, with supporting documentation, that the following requirements have been met:
  - the applicant has entered into a distribution agreement with at least one licensed distributor; and
  - the applicant has informed the Commission in writing that it is prepared to commence operations. The undertaking must be operational at the earliest possible date and in any event no later than 36 months from the date of this decision, unless a request for an extension of time is approved by the Commission before 14 September 2009. In order to ensure that such a request is processed in a timely manner, it should be submitted at least 60 days before that date.

Secretary General

*This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>*

## Appendix to Broadcasting Decision CRTC 2006-518

### Conditions of licence

1. The licence will be subject to the conditions set out in *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001.
2. The licensee shall provide a national, English-language Category 2 specialty programming service featuring Canadian, U.S., and international movie trailers for films in theatrical or DVD release in Canada, in-depth promotional programming about specific feature films as well as movie gossip, reportage from film festivals, and film industry analysis and interpretation.
3. The programming shall be drawn exclusively from the following categories, as set out in Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
  - 2 (a) Analysis and interpretation
  - (b) Long-form documentary
  - 3 Reporting and actualities
  - 5 (b) Informal education/Recreation and leisure
  - 7 (c) Specials, mini-series or made-for-TV feature films
  - (d) Theatrical feature films aired on TV
  - 8 (b) Music video clips
  - 12 Interstitials
  - 13 Public service announcements
  - 14 Infomercials, promotional and corporate videos
4. Not more than 15% of all programs broadcast during the broadcast week shall be drawn from program categories 7(c) and 7(d).
5. All long-form documentaries and theatrical feature films broadcast on the service shall be thematically based on the film and TV industry.

For the purposes of the conditions of this licence, including condition of licence no.1, *broadcast day* refers to the 24-hour period beginning each day at 6 a.m., or any other period approved by the Commission.