



Broadcasting Decision CRTC 2013-420

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Ottawa, 20 August 2013

Serdy Media Inc.
Across Canada

Application 2012-0844-7

Complaint by Serdy Media Inc. against the Canadian Broadcasting Corporation

The Commission concludes that the service Explora complies with its nature of service definition as set out in its condition of licence.

Further, the Commission concludes that La Première Chaîne and Espace Musique are in compliance with their condition of licence regarding advertising when they promote the services of the Canadian Broadcasting Corporation without consideration.

The Commission therefore dismisses Serdy Media Inc.'s complaint.

The parties

1. Serdy Media Inc. (Serdy) is the licensee of the Category A service Évasion, whose licence was renewed in Broadcasting Decision 2012-245.
2. The Canadian Broadcasting Corporation (CBC) is a licensee of the Category 2¹ specialty service Explora (formerly known as Sens) and of several other radio services. The licence for the service Explora was approved in Broadcasting Decision 2011-114.

The complaint

3. Serdy's complaint was based on the following:
 - by broadcasting programming from the "adventure" genre, Explora is not complying with its nature of service definition;
 - by broadcasting promotions for Explora, ARTV and RDI, the CBC is using air time on its radio services (La Première Chaîne and Espace Musique),

¹ Category 2 services will be designated as Category B services at the time of their next licence renewal (or before if an application is filed to do so).

which is in violation of the rules that the CBC shall not broadcast any advertising or promotion on its stations.

Explora's compliance with its nature of service definition

Regulatory framework

4. The regulatory framework for pay and specialty programming services is set out in Broadcasting Public Notice 2008-100. The Commission licenses new services as specialty Category A services on a one-per-genre basis. It generally requires that these services be complementary and not directly competitive with each other. Each Category A service therefore has a unique nature of service and role in providing a wide range of Canadian programming choices to Canadians, while ensuring that it fully contributes to the creation of Canadian programming.
5. Conditions of licence establishing the nature of service are intended to ensure genre exclusivity and generally consist of the following three elements:
 - a narrative description of the nature of the service and its programming;
 - a list of program categories from which the service may draw its programming; and
 - limitations on the types of programming that the service may broadcast or on the program categories from which the service may draw its programming.
6. Explora's conditions of licence regarding its nature of service are set out in Broadcasting Decision 2011-114. They read as follows:

The licensee shall provide a national French-language Category 2 specialty programming undertaking that offers programming devoted to scientific discoveries, the environment, nature and human health.

The programming shall be drawn exclusively from the following program categories set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:

- 1 News
- 2 (a) Analysis and interpretation
(b) Long-form documentary
- 3 Reporting and actualities
- 4 Religion
- 5 (a) Formal education and pre-school
(b) Informal education/Recreation and leisure
- 6 (a) Professional sports
(b) Amateur sports
- 7 Drama and comedy
(a) Ongoing drama series

- (b) Ongoing comedy series (sitcoms)
- (c) Specials, mini-series or made-for-TV feature films
- (d) Theatrical feature films aired on TV
- (e) Animated television programs and films
- (f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
- (g) Other drama
- 8 (a) Music and dance other than music video programs or clips
- (b) Music video clips
- (c) Music video programs
- 9 Variety
- 10 Game shows
- 11 General entertainment and human interest
- 12 Interstitials
- 13 Public service announcements
- 14 Infomercials, promotional and corporate videos

The licensee shall devote not more than 10% of the programming broadcast over the broadcast month to programming drawn from each of program categories 6(a), 7(d) and 7(e), as well as from program categories 8(b) and 8(c) combined. According to its conditions of licence, Explora can draw its programming from all program categories except category 15 Filler programming.

Positions of parties

7. According to Serdy, although the “adventure” genre was not included in Explora’s nature of service definition, it has a significant presence in Explora’s programming schedule.
8. In response to Serdy’s complaint, the CBC suggested that the programming that is the subject of Serdy’s complaint can be categorized under one of Explora’s four genres set out in its nature of service definition, namely scientific discoveries, the environment, nature and human health. Thus, the CBC asks that the Commission dismisses Serdy’s complaint in this respect.

Commission analysis and determination

9. Upon filing its application for a broadcasting licence for Explora, the CBC submitted a study on the genres of “science” and “health” to demonstrate that the service would not compete with Ztélé or Canal Vie. The Commission notes that the “adventure” genre does not appear in the study.
10. Further, both parties filed a description of the programs that are subject of the complaint. The descriptions of these programs by the parties to the proceedings demonstrate the ambiguity of categorizing a program. In fact, a program can be categorized under several overlapping themes and genres. For example, the program *Devenir un homme en Afrique* can be categorized under the genre “science” from an anthropological perspective or under the genre “adventure.”

11. The Commission notes that since Serdy's complaint was filed, the CBC recategorized programs devoted to the genre "adventure" under the other genres set out in the nature of service. The analysis of Explora's weekly programming schedule provided by the CBC for the period 18 June to 15 July 2012 shows that all programs correspond to the four genres described in its nature of service.
12. Since the CBC has shown that the programs at issue in Serdy's complaint can be categorized under the genres set out in Explora's nature of service definition, the Commission concludes that Explora is in compliance with its definition of nature of service definition as set out in its condition of licence.
13. Accordingly, the Commission dismisses this complaint in this regard. The Commission expects, however, that the genre "adventure" will be removed from the program schedule, catalogues and promotional messages relating to the service Explora.
14. Further, given that the nature of service definition is imposed as a condition of licence, the CBC must submit an application to amend the licence if it wishes to change Explora's nature of the service definition.

Compliance of the radio networks La Première Chaîne and Espace Musique with their condition of licence regarding advertising

Regulatory framework

15. In Decision 2000-2, which was in effect when the complaint was filed, the Commission imposed a condition of licence on La Première Chaîne and Espace Musique according to which the licensee may not broadcast any commercial message from content category 5 (Advertising) except:
 - a) during programs that are available to the network only on a sponsored basis, or
 - b) as required to fulfill the requirement of the legislation of the Parliament of Canada pertaining to elections.
16. The expression "commercial message" is defined as follows in the *Radio Regulations, 1986* (the Regulations):

An advertisement intended to sell or promote goods, services, natural resources or activities and includes an advertisement that mentions or displays in a list of prizes the name of the person selling or promoting those goods, services, natural resources or activities.
17. Category 5 is defined as follows in *Revised content categories and subcategories for radio*:²

² See Broadcasting Regulatory Policy 2010-819

Broadcast matter intended to promote services or products offered to the public by persons normally advertising in the course of their business. For greater particularity, this Category includes the following three subcategories:

Subcategory 51: Commercial announcement

A commercial announcement for a business, product or service, presented in return for consideration.

Subcategory 52: Sponsor identification

Identification of the sponsor of a program or program segment other than under subcategories 51 and 53.

Subcategory 53: Promotion with sponsor mention

Verbal or musical material promoting increased listening to the station or to specific announcers, programs or programming elements, when accompanied by the identification of a sponsor.

Positions of parties

18. Serdy states that the advertising aired by CBC on its other services to promote Explora constitutes Category 5 advertising. Serdy therefore requested that the Commission require the CBC to cease the broadcast of advertising and promotional messages for the Explora, ARTV and RDI services on La Première Chaîne and Espace Musique.
19. Moreover, according to Serdy, the promotional messages for the service Explora that air on the CBC's French-language radio services cannot be considered as self-promotional messages as they refer to an independent entity within the group and that Explora is operated in a commercial context. Serdy thus believes that Explora, licensed as a commercial service like other French-language specialty service, is given a competitive advantage by receiving airtime on public television at taxpayers' expense.
20. The CBC explained that La Première Chaîne and Espace Musique promote the programming services that it owns. The advertising is broadcast without consideration to the radio services. According to the CBC, since no monetary consideration is paid for the airing of promotional messages for its programming services, this promotion should not be regarded as advertising, as defined by the condition of license relating to advertising. The CBC is of the view that there are no rules prohibiting the airing of such promotions.

Commission's analysis and decision

21. As mentioned above, according to the Regulations, a commercial message is an announcement relating to the sale or promotion of goods, services, natural resources

or activities. In this case, the Commission is of the view that messages promoting the CBC services that are broadcast by La Première Chaîne and Espace Musique fall under the definition of a commercial message set out in the Regulations.

22. That said, the Commission notes that the condition of licence that is the subject of the complaint prohibits the broadcast of category 5 commercial messages. In Broadcasting Regulatory Policy 2010-819, the Commission amended the list of content categories and subcategories for radio, including content category 5 (Advertising). The Commission has therefore analysed the complaint according to the definitions set out in Broadcasting Regulatory Policy 2010-819.
23. In this policy, the Commission added to Category 5 the concept of “commercial announcement” aired in return for consideration. The Commission notes that the CBC indicated that the advertising in question was broadcast without any consideration to the radio services.
24. Amended Category 5 includes subcategories 51, 52 and 53. In this case, the Commission is of the view that subcategories 52 and 53 do not apply since the messages broadcast by the CBC do not fall under the definition of subcategories 52 and 53 as set out in this decision.
25. With respect to subcategory 51, since the promotions in question were not aired in return for consideration, the Commission considers that this subcategory does not apply. The Commission therefore concludes that the messages promoting the CBC services broadcast by La Première Chaîne and Espace Musique are not category 5 commercial messages.
26. In light of the above, the Commission finds that La Première Chaîne and Espace Musique are in compliance with their condition of licence regarding advertising when they promote the services of the Canadian Broadcasting Corporation without consideration. Accordingly, the Commission dismisses Serdy Media Inc.’s complaint in this regard.

Secretary general

Related documents

- *Évasion – Licence renewal and amendments*, Broadcasting Decision CRTC 2012-245, 26 April 2012
- *Sens – Category 2 specialty service*, Broadcasting Decision CRTC 2011-114, 21 February 2011
- *Revised content categories and subcategories for radio*, Broadcasting Regulatory Policy CRTC 2010-819, 5 November 2010

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory Policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000
- *Licences for CBC French-language television and radio renewed for a seven-year term*, Broadcasting Decision CRTC 2000-2, 6 January 2000