



Broadcasting Decision CRTC 2007-40

Ottawa, 30 January 2007

Ultimate Indie Productions Inc. Across Canada

Application 2006-0050-4
Public Hearing in the National Capital Region
14 November 2006

Ultimate Indie TV – 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 Ultimate Indie Productions Inc. (Ultimate Indie), for a broadcasting licence to operate a national, English-language Category 2¹ specialty programming undertaking to be known as Ultimate Indie TV.
2. The applicant proposed to offer a service that would consist exclusively of music videos and other related programming (concerts, behind the scenes information, interviews, news, etc.) from Canadian music artists not affiliated through management, recording or physical distribution, with any major music label or any of their Canadian subsidiaries.
3. The applicant further requested that it be allowed to continue to play videos of previously featured artists for a period of six months once they have signed with a major label and to be allowed to periodically feature these artists in a program to be called *You Heard it Here First*.
4. The applicant also proposed that, during each broadcast week, 90% of all programming would be in the English language and 10% would be in the French language.
5. All of the programming would be drawn from the following categories as set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*: 2(b) Long-form documentary; 5(b) Informal education/Recreation and leisure; 7(c) Specials, mini-series or made-for-TV feature films; 7(f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy; 8(a) Music and dance other than music video programs or clips; 8(b) Music video clips; 8(c) Music video programs; 9 Variety; and 11 General entertainment and human interest.

¹ 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

6. The Commission received a number of interventions in support of this application, and two in opposition, submitted by the Canadian Independent Record Production Association (CIRPA) and MusiquePlus Inc., licensee of MusiquePlus and Musimax (MusiquePlus).
7. CIRPA expressed concern that the definition of an “independent” as supplied by the applicant does not address several important issues. CIRPA was of the view that it is unreasonable to disqualify independent artists and labels from airplay based on the nature of their distribution agreement, particularly considering that these agreements are subject to change. CIRPA also suggested that the applicant had not addressed the issue of music videos by Canadian independents that may at one time be distributed by a major label but which may later move to an independent distributor.
8. CIRPA noted that the applicant made no allowance for changes in distribution between major labels and independent distributors, and does not provide any information as to how that would affect airplay of music videos. CIRPA argued that this would likely result in confusion not only for the music industry and the applicant (in terms of programming), but for Canadian consumers as well.
9. CIRPA stated that the applicant’s narrow focus on ties to major label distributors will unfairly discriminate against many of Canada’s independent recording artists. It noted the majority of CIRPA’s member companies do not have distribution agreements with major labels.
10. CIRPA also recommended that the Commission require the applicant to broadcast independent content that is Canadian owned and controlled, defined as 50.1% Canadian ownership.
11. Musique Plus estimated that, since Ultimate Indie indicated in its application that 75% of the service’s programming would be comprised of category 8(b) programs, the proposed programming would be directly competitive with its own programming.
12. MusiquePlus noted that examination of Ultimate Indie’s application did not demonstrate that its proposed programming would be different from that presently offered by MusiquePlus. Consequently, MusiquePlus recommended that the Commission dismiss Ultimate Indie’s application.
13. However, should the Commission decide to approve Ultimate Indie’s application, MusiquePlus asked that the following condition of licence be added:

The licensee shall not broadcast any material provided, financed or distributed by any of the four major music labels or their affiliates or respective divisions, namely: Warner Music, Universal Music, Sony BMG and EMI.

14. Further, MusiquePlus suggested that the Commission deny the following requests submitted by Ultimate Indie:
- The authorization to continue to play videos of previously featured artists, for a period of six months once they have signed with a major label.
 - The authorization to periodically feature these artists in a program called *You Heard it Here first*.

Applicant's response

15. In response to CIRPA's concerns, the applicant indicated that Ultimate Indie TV would provide exposure for Canadian musical artists that do not currently have significant access to existing stations and channels due to their lack of affiliation, including distribution, with major multinational music labels.
16. With respect to CIRPA's suggestion that Ultimate Indie TV be required to broadcast independent content that is Canadian owned and controlled, the applicant stated that this is not different in essence from what Ultimate Indie TV has proposed, given that it has proposed to devote 100% of the channel to Canadian content from musical artists that are not signed or distributed by a multinational music label.
17. In response to concerns of MusiquePlus, the applicant stated that it did not see any merit in the intervener's claim of direct competition for the following reasons:
- Ultimate Indie TV would be a national, English-language digital specialty service while MusiquePlus and MusiMax are national, French-language specialty services;
 - Ultimate Indie TV would feature 100% Canadian artists in category 8(b) music video clips, while both MusiquePlus and MusiMax are obligated to provide only 30% Canadian content in the Category 8(b) music video clips;
 - Ultimate Indie TV's programming drawn from categories other than 8(b) would be 100% Canadian and would be focused entirely on Canadian musical artists, while both MusiquePlus and MusiMax are obligated to provide only 35% Canadian content in categories other than Category 8(b); and
 - With the conditions of licence proposed, no more than 20% of artists to be featured on Ultimate Indie TV would have an affiliation with the four largest multinational record labels or their subsidiaries, while a minimum of 60% of the artists currently played on MusiquePlus are affiliated with the four largest multinational record labels or their subsidiaries.

18. Nevertheless, the applicant indicated that it would be willing to accept a condition of licence requiring that it not broadcast material produced, financed and/or distributed by one of the four major music labels and/or their respective subsidiary companies or divisions, namely, Warner Music, Universal Music, Sony BMG and EMI.
19. However, the applicant disagreed with proposed restrictions on the broadcast of videos from artists who are played on Ultimate Indie TV prior to their signing or distribution by one of the four major multinational labels. The applicant suggested instead that it be permitted to broadcast a given artist's work previously broadcast on Ultimate Indie TV for six months after that artist signs with a major multinational label and/or their respective subsidiary companies or divisions, with the following restrictions:
 - The total airtime of music video clips from such artists would not comprise more than 20% of Ultimate Indie TV's programming, and music video clips from such artists would not comprise more than 25% of the time of any individual show on the channel.
 - Music from such artists would be broadcast in a show entitled *You Heard It Here First*. Not more than six hours per month would be devoted to such artists, with two of those hours being between 6:00 p.m. and 12:00 midnight. Such artists would also be featured in a two-hour special once each year, and the special would not go into regular broadcast rotation.

Commission's analysis and determination

20. 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.
21. 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, although not with an existing Category 2 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.

22. The Commission has considered the arguments presented by the applicant and the interveners. The Commission is satisfied that Ultimate Indie TV's proposed nature of service, as amended in its reply, is sufficiently specific to ensure that the service will not be directly competitive with any analog pay, specialty or existing Category 1 service. Further, the fact that the service will broadcast 100% Canadian content and 100% Canadian music videos will also ensure that the service will not be directly competitive with existing music video services.
23. With respect to the concerns expressed by CIRPA, the Commission notes the applicant's response that it would focus on musical artists that do not currently have significant access to the broadcasting system due to the lack of affiliation with major multinational music labels. Further, given that the licensee has proposed to broadcast 100% Canadian programming and 100% Canadian music videos, the Commission of the view that it is unnecessary to impose any additional requirements on the service.
24. 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 Ultimate Indie Productions Inc. for a broadcasting licence to operate the national, English-language Category 2 specialty programming undertaking, Ultimate Indie TV.
25. The Commission reminds the applicant that if it wishes to enter at any time into an agreement with non-Canadian independent producers regarding the supply of programming or the use of a licence trademark, it must comply at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998 (the Direction). Accordingly, the Commission has imposed a **condition of licence**, as set out in the appendix to this decision, that requires the licensee to file, for the Commission's review, a copy of any programming supply agreement or licence trademark agreement it intends to enter into with a non-Canadian party, in order to ensure that the licensee complies at all times with the Direction.
26. 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

27. 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 30 January 2010. 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 2007-40

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, except for conditions 7 and 9 which are replaced by:
 - The licensee shall devote not less than 100% of the broadcast year to the broadcast of Canadian programs.
 - The licensee shall devote not less than 100% of the total number of music videos broadcast during each broadcast week to Canadian music videos.
2. The licensee shall provide a national, English-language Category 2 programming service that consists exclusively of music videos and other related programming including concerts, behind-the-scenes information, interviews and news from Canadian music artists that are not affiliated through management, recording or physical distribution, with any major music label or any of their Canadian subsidiaries.
3. The programming shall be drawn exclusively from the following categories, as set out in item 6 of Schedule I to the *Specialty Services Regulations, 1990*, as amended from time to time:
 - 2 (b) Long-form documentary
 - 5 (b) Informal education/Recreation and leisure
 - 7 (c) Specials, mini-series or made-for-TV feature films
 - (f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
 - 8 (a) Music and dance other than music video programs or clips
 - (b) Music video clips
 - (c) Music video programs
 - 9 Variety
 - 11 General entertainment and human interest
4. The licensee shall not broadcast material produced, financed and/or distributed by any of the four major music labels and/or their respective subsidiary companies or divisions, namely, Warner Music, Universal Music, Sony BMG and EMI, with the exception of material played on the service previous to the artist signing with a major multinational label and/or their respective subsidiary companies or divisions, in which case, for six months after the signing, the licensee may broadcast any work previously broadcast on the service, with the following limitations:

- The total airtime of music videos clips from such artists shall not comprise more than 20% of the broadcast week;
 - Music video clips from such artists shall not comprise more than 25% of the time of any individual program on the service; and
 - The licensee may broadcast such videos in a retrospective program broadcast no more than six hours per month.
5. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997, as amended by P.C. 1998-1268, 15 July 1998 (the Direction), the licensee shall file, for the Commission's prior review, a copy of any programming supply agreement and/or licence trademark agreement it intends to enter into with a non-Canadian party.

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.