



## Broadcasting Decision CRTC 2008-165

Ottawa, 8 August 2008

### **Encore Avenue Ltd.**

British Columbia, Alberta, Saskatchewan, Manitoba, Nunavut, Yukon Territory  
and the Northwest Territories

*Application 2008-0400-9, received 13 March 2008*

*Broadcasting Public Notice CRTC 2008-36*

*25 April 2008*

### **Regional pay television programming undertaking – Licence amendments**

*The Commission **approves** the application by Encore Avenue Ltd. to amend the broadcasting licence for its regional, English-language pay television programming undertaking known as Encore Avenue in order to decrease, from five to three years, the copyright period for theatrical feature films aired on television to be distributed by the service, and in order to add to the program categories from which it may draw programming.*

### **Introduction**

1. The Commission received an application by Encore Avenue Ltd. (formerly MovieMax! Ltd.) (Encore) to amend the broadcasting licence for the regional, English-language pay television programming undertaking known as Encore Avenue.
2. The licensee proposed to decrease, from five to three years, the copyright period for programs from subcategory 7(d) Theatrical feature films aired on TV<sup>1</sup> to be distributed by the service.
3. The licensee also proposed to add the following to Encore Avenue's condition of licence relating to the program categories from which it may draw programming:
  - ongoing dramatic series 7(a) copyrighted at least five years prior to the year in which they are distributed by the service; and
  - ongoing comedic series (sitcom) 7(b) copyrighted at least five years prior to the year in which they are distributed by the service.

In this regard, the licensee indicated that it would be prepared to limit the amount of programming that would be drawn from subcategories 7(a) and 7(b) combined to 15% of the broadcast year.

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<sup>1</sup> The program categories referred to in this decision are set out in item 6 to Schedule I of the *Pay Television Regulations, 1990*.

4. Encore submitted that, given the competitive environment in which it operates, it needs more flexibility with respect to the programming categories it can broadcast, as well as a modification to its obligation to broadcast only movies with five-year-old copyrights so as to broaden the scope of the movies it can broadcast.
5. The Commission received an intervention in opposition to this application from the Canadian Film and Television Production Association (CFTPA). The intervention and the licensee's reply to the intervention can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

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

6. After examining the application, the intervention and the licensee's reply to the intervention, the Commission finds that the issues to be determined relate to the proposed amendments to the program categories from which the service may draw programming, the licensee's need for the proposed amendments at this time, and issues surrounding the negotiation of terms of trade agreements.

#### **Program categories**

7. In its intervention, the CFTPA did not oppose the proposed amendment relating to the broadcast of newer theatrical films. It did oppose, however, the licensee's proposed amendments relating to the addition of subcategories 7(a) and 7(b) to the list of program categories from which it may draw programming, arguing that approval would erode support for Canadian theatrical films by reducing broadcast windows.
8. In its reply, Encore argued that authorizing the distribution of dramatic and comedic series by its service would have no impact on the number of Canadian films it would broadcast, as it would continue to licence all Canadian movies appropriate for its service. The licensee also argued that approval of the proposed amendments would only impact the number of times a film is repeated on its service and would therefore not amount to erosion of support for Canadian films, as suggested by the CFTPA. Finally, Encore committed to ensure that at least two-thirds of its Canadian programming consists of programs from subcategories 7(c) and 7(d). According to the licensee, this would ensure that the primary focus of its service would remain unchanged, while still providing the flexibility it requires.
9. The Commission notes the proposal by Encore to limit the programming that would be drawn from subcategories 7(a) and 7(b) combined to 15% of the broadcasting year, and considers that the limit proposed by the licensee would ensure that the nature of the service is not fundamentally altered. The Commission is imposing a **condition of licence** to that effect, as set out below.

10. The Commission also notes the proposal by Encore to ensure that at least two-thirds of its Canadian programming would consist of programs drawn from subcategories 7(c) and 7(d). The Commission is imposing a **condition of licence** to that effect, as set out below.
11. Finally, the Commission notes Encore's commitment to continue to licence all Canadian movies that are appropriate for its service, and will expect the licensee to adhere to this commitment.

#### **The need for the proposed amendments at this time**

12. The CFTPA rejected the licensee's claim that it is in "urgent" need of the proposed amendment to add subcategories 7(a) and 7(b) due to its financial situation, noting that Encore's profit before tax and interest (PBIT) margin was 65.86% in 2006-2007. The intervener suggested that the proposed amendments be denied and re-evaluated at the time of Encore Avenue's licence renewal, which is scheduled for 2009.
13. In its reply, Encore stated that the underlying rationale used to justify its application was not financial, as claimed by the CFTPA, but related instead to its concern for viewer satisfaction. The licensee also stated that the right of any licensee to seek an amendment to its licence has never been tied to the timing of licence renewal.
14. The Commission is satisfied that the licensee has adequately addressed the concerns raised by the CFTPA relating to the need for the proposed amendments and to the timing of the application for those amendments. The Commission further notes that no licensee (of other similar services) filed interventions in opposition to this application.

#### **Terms of trade agreements**

15. The CFTPA expressed concerns relating to the effect that approval of the present application would have on the state of terms of trade agreements. Specifically, the CFTPA evoked the possibility that Encore's parent company, Corus Entertainment, would gain further leverage in negotiating rights for Movie Central, its other pay television service, as well as for its specialty channels.
16. In its reply, Encore submitted that the terms of trade agreements issue raised by the CFTPA is irrelevant to the present application.
17. As set out in *Determinations regarding certain aspects of the regulatory framework for over-the-air television*, Broadcasting Public Notice CRTC 2007-53, 17 May 2007, the Commission is of the view that terms of trade agreements will provide stability and clarity to all concerned, and encourages the development of such agreements between broadcasters and independent producers. The Commission thus expects the licensee to provide draft, or signed, terms of trade agreements with independent producers as part of its next licence renewal application.

## Conclusion

18. In light of all of the above, the Commission **approves** the application by Encore Avenue Ltd. to amend the broadcasting licence for its regional, English-language pay television programming undertaking known as Encore Avenue in order to decrease, from five to three years, the copyright period for programs from subcategory 7(d) Theatrical feature films aired on TV to be distributed by the service, and in order to add to the program categories from which it may draw programming.
19. Accordingly, the **condition of licence** relating to program categories shall read as follows:

1.(b) The service shall consist of:

- ongoing dramatic series (subcategory 7a) copyrighted at least five years prior to the year in which they are distributed by the service;
- ongoing comedic series (sitcom) (subcategory 7b) copyrighted at least five years prior to the year in which they are distributed by the service;
- made-for-television feature films (subcategory 7c) copyrighted at least five years prior to the year in which they are distributed by the service;
- theatrical feature films aired on television (subcategory 7d) copyrighted at least three years prior to the year in which they are distributed by the service;
- public service announcements (category 13); and
- filler programming (category 15).

Other programming shall be limited to programs that are feature-film related and intended to set in context the feature film or films they accompany in the schedule.

These subcategories are set out in item 6 to Schedule I of the *Pay Television Regulations, 1990*.

20. In addition, the licence will be subject to the following **conditions of licence**:

The licensee shall ensure that not more than 15% of all programming broadcast during the broadcast year is drawn from subcategories 7(a) and 7(b) combined.

The licensee shall ensure that not less than 67% of its Canadian programming broadcast during the broadcast week is drawn from subcategories 7(c) and 7(d).

21. Finally, the Commission expects Encore to continue to license all Canadian films that are appropriate for its service Encore Avenue.

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>.*