



## Broadcasting Decision CRTC 2009-170

Ottawa, 31 March 2009

### Complaint regarding the broadcast of the feature film *Toi* by Super Écran

*In this decision, the Commission addresses a complaint regarding Super Écran's broadcast of the feature film Toi, which contains sexually explicit material intended for adult audiences, before 9 p.m. The Commission concludes that by broadcasting the feature film before 9 p.m. with no descriptive viewer advisory, Astral Broadcasting Group Inc., licensee of Super Écran, failed to comply with the Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services, with which the service is required to comply by condition of licence.*

#### Introduction

1. On 14 April 2008, the Commission received a complaint regarding Super Écran's broadcast of the feature film *Toi* on 10 April 2008.
2. *Toi* is a feature film by Quebec filmmaker François Delisle about a young mother who has an extramarital affair and leaves her husband, son and job.
3. Super Écran, which is owned and operated by Astral Broadcasting Group Inc. (Astral, the licensee), bills itself as the leading French-language pay television service available to viewers who want to watch feature films in the comfort of their own homes. The service airs 30 new films a month, as well as dramatic series and comic variety shows.

#### The complaint

4. The letter of complaint concerned Super Écran's airing of the feature film *Toi* in the morning, in the afternoon and at 9 p.m., with a viewer advisory indicating that the film is intended for viewers of all ages, despite the fact that it contains several scenes of nudity, eroticism and explicit sexuality.
5. In its response to the complainant and to the Commission's requests for additional information, Astral indicated that *Toi* was aired 26 times between 10 April 2008 and 8 May 2008 before and after 9 p.m. The licensee acknowledged that the film addresses complex themes of passion and sexuality but pointed out that it used the same classification as that given by the Régie du cinéma du Québec (the Régie), i.e., 13 years of age and over (13+), and that a viewer advisory was aired before the film and printed in the service's monthly program schedule.
6. The licensee also noted its commitment to comply with several industry codes and with its own programming policy. The licensee added that because its service is discretionary, subscribers with young children can contact their cable or satellite service provider about blocking any program they find inappropriate.

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

7. The Commission notes that, in Broadcasting Decision 2008-321, it amended Super Écran's condition of licence relating to the *Pay television programming standards and practices code* (the former Code) to reflect its replacement by the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*<sup>1</sup> (the new Code) and to allow the Canadian Broadcast Standards Council (CBSC) to address and resolve any complaints it might receive concerning issues covered by the new Code.
8. The Commission notes that it received the complaint before the licence amendment took effect. At that time, the examination of complaints regarding the licensee or the Code was the Commission's jurisdiction, not the CBSC's.
9. The Commission notes, in addition, that it had to examine the complaint in light of the conditions of licence in effect at the time of the complaint, i.e., those appended to Decision 2001-730, particularly condition of licence number 14, which states that the licensee must adhere the former Code, as amended from time to time and approved by the Commission.
10. However, given that the new Code replaced the former Code on 6 March 2003, and given that all licensees that had been governed by the former Code, whether by condition of licence or by expectation, were now governed by the new Code, the Commission examined the complaint in light of the new Code.
11. After examining the complainant's concerns, the licensee's response and the content of the feature film in question, the Commission considers that the issues to be addressed in this decision relate to whether or not the licensee fulfilled its obligations with respect to the following three areas:
  - program classification;
  - viewer advisory; and
  - program scheduling.

Any failure to fulfil these obligations would constitute non-compliance with the new Code, to which the licensee is subject by condition of licence.

### **Program classification**

12. The Commission asked the licensee to provide it with a recording of the feature film and the viewer advisory broadcast prior to the airing of the program. The recording provided shows that Super Écran aired the feature film with a 13+ classification notice.

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<sup>1</sup> See Broadcasting Public Notice 2003-10.

13. The recording also shows that *Toi* contains scenes of nudity and explicit sexuality, clearly depicting sexual relations, including oral sex, which are appropriate for adult audiences only.
14. According to the new Code, each pay television licensee “will utilize the current classification system used by the classification/review board in the province in which the licensee’s primary broadcast operations are based,” and will apply that system.
15. Because the licensee’s head office is located in Montréal, the service uses the classification system of the Régie, which classified the film as 13+. Accordingly, the Commission concludes that the licensee complied with the Code by displaying the same classification that the Régie gave the film (i.e., 13+) when it broadcast the film.

#### **Viewer advisory**

16. According to section C(2) of the new Code, descriptive viewer advisories are provided to alert subscribers to the fact that the titles contain scenes with specific content, such as “violence” or “horror,” which may not be suitable for certain subscribers.
17. The Commission notes that, even though Super Écran is authorized to use classifications assigned by the Régie in its broadcasts and publications, its licensee is not exempt from the responsibility to evaluate the content of its programming and ensure that its viewer advisory obligations are also fulfilled.
18. The Commission notes that the viewer advisory aired by the licensee described only the film’s classification and gave no details on specific content that could offend viewers, i.e., eroticism, nudity and explicit sexuality.
19. The Commission is therefore of the view that the licensee of Super Écran had an obligation to air an accurate and specific advisory to warn viewers of the sexual nature of certain scenes in the film, and that the viewer advisory broadcast by the licensee, which stated only the film’s classification, was insufficient.

#### **Program scheduling**

20. In regard to programming for a general audience, section E(1)(a) of the new Code prohibits the scheduling of adult material in periods when school-age children are at home. Furthermore, “certain mature material on pay television services [...] should not be programmed prior to 9:00 p.m. [the watershed hour] or after 6:00 a.m. in the home province of the service in question.”
21. The new Code also specifies that “licensees of pay television services will exercise particular care for all time periods in the scheduling of programs that are likely to be considered as not suitable for viewing in a family context.”

22. The purpose of these requirements is to ensure that a wide variety of television programs are available within the Canadian broadcasting system and that children are protected from inappropriate content. While classifications and viewer advisories provide parents with the information they need to make informed viewing choices for their families, the provisions relating to scheduling are intended to prevent children from accidentally coming across inappropriate content during the time they most watch television.
23. Given the Commission's determination that the film contains scenes of nudity and sexual relations clearly intended for adult audiences, not children, *Toi* should not have been broadcast before 9 p.m., notwithstanding the Régie's 13+ classification. As the licensee admitted to broadcasting this feature film before the watershed hour and even several times in the early morning and after school hours, the Commission considers that Astral did not pay close enough attention to the film's scheduling, as required by the new Code.

## **Conclusion**

24. The Commission notes that the merits of the film are not at issue. The Commission is not questioning the licensee's decision or right to air the film, but rather its compliance with its conditions of licence.
25. In light of the foregoing, the Commission finds that Super Écran did not comply with section C(2) of the new Code because it failed to provide a viewer advisory stating that the film contains scenes of sexuality that are not appropriate for children. The licensee also failed to comply with section E(1)(a) of the new Code by airing the feature film before the watershed hour. Consequently, the licensee breached the condition of licence requiring it to adhere to the new Code.
26. The Commission expects Astral to ensure in future that the scheduling of programs containing scenes of explicit sexuality or dealing with other topics intended for adult audiences complies with the requirements to provide a descriptive viewer advisory and to broadcast this type of programming after 9 p.m. The Commission will examine the licensee's compliance with these requirements at Super Écran's licence renewal.

Secretary General

## **Related documents**

- *Super Écran – Licence amendments*, Broadcasting Decision CRTC 2008-321, 20 November 2008
- *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003

- *Licence renewal for Super Écran, Decision CRTC 2001-730, 29 November 2001*

*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>.*