



## Broadcasting Decision CRTC 2009-360

Route reference: 2009-36

Ottawa, 17 June 2009

### **Ultimate Indie Productions Inc.** Across Canada

*Application 2008-1468-3, received 29 October 2008  
Public Hearing in the National Capital Region  
30 March 2009*

### **CHEAR! HD – Category 2 specialty service**

*The Commission **approves** an application for a broadcasting licence to operate a new Category 2 high definition specialty programming undertaking.*

#### **The application**

1. Ultimate Indie Productions Inc. filed an application for a broadcasting licence to provide CHEAR! HD (Canadian Homebred Emerging ARTists HD), a national English-language Category 2 high definition specialty service that would offer programming focusing on the work of emerging Canadian musical artists who have sold fewer than 80,000 copies of any single recording.
2. Ultimate Indie Productions Inc. is a Canadian corporation jointly owned and controlled by Mr. Jeff J. Butler and Mr. William Marshall, both Canadian citizens ordinarily resident in Canada.

#### **Interventions**

3. The Canadian Independent Record Production Association (CIRPA) and the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) filed interventions in support of this application. However, each intervener also noted that it had proposed a definition of “emerging artists” in response to *Call for comments on the definition of emerging Canadian artists on commercial radio* (Broadcasting Public Notice 2008-16). CIRPA requested that its definition be used by the applicant for English-language artists while ADISQ asked that its definition be adopted by the applicant for its French-language programming.
4. In response, the applicant indicated its willingness to conform to the definitions of “emerging artists” proposed by CIRPA and ADISQ.

## Commission's analysis and determinations

5. Since the proceeding initiated by Broadcasting Public Notice 2008-16 is not yet concluded, there is no standard Commission definition of "emerging artists" that can be used in this case. Instead, the Commission required the applicant to propose an acceptable definition. Given that the definitions proposed in the interventions are more acceptable to CIRPA and ADISQ and are also acceptable to the applicant, the Commission will use those definitions in the licensee's conditions of licence. Once the Commission's standard definition has been released, the definitions of "emerging artists" in the licensee's conditions of licence may be amended, either at the request of the applicant or at the licensee's next licence renewal.
6. The Commission notes the applicant's commitment to broadcast 100% Canadian content. The Commission determines that it does not need to impose a condition of licence to that effect at this time.
7. 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 high definition specialty programming undertaking CHEAR! HD (Canadian Homebred Emerging ARTists HD). The terms and **conditions of licence** are set out in the appendix to this decision.

## Reminder

8. The Commission reminds the applicant that distribution of this service is subject to the applicable distribution rules set out in Broadcasting Public Notice 2008-100.

Secretary General

## Related documents

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory Policy – Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Call for comments on the definition of emerging Canadian artists on commercial radio* – Notice of consultation – Broadcasting Public Notice CRTC 2008-16, 27 February 2008
- *Introductory statement – Licensing of new digital pay and specialty services – Corrected Appendix 2*, Public Notice CRTC 2000-171-1, 6 March 2001

- *Licensing framework policy for new digital pay and specialty services, Public Notice CRTC 2000-6, 13 January 2000*

*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 2009-360

### Terms and conditions of licence for the Category 2 specialty programming undertaking CHEAR! HD (Canadian Homebred Emerging ARTists HD)

#### Terms

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 17 June 2012. 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.

The licence will expire 31 August 2015.

#### 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 high definition specialty programming service devoted to programming focusing on the work of emerging Canadian musical artists. English-language artists shall be considered to be emerging for a period of three years after reaching the Top 40 on a trade chart used by the Commission to determine hits. French-language artists shall be considered to be emerging until one of the following thresholds is met: a) a period of six months has elapsed since any single recording has achieved Gold status according to SoundScan; b) a period of 48 months has elapsed since the artist's first commercial release.
3. The programming shall be drawn exclusively from the following 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

- 5 (a) Formal education and pre-school
  - (b) Informal education/Recreation and leisure
  - 7 Drama and comedy
    - (a) Ongoing dramatic 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
4. The licensee shall broadcast not less than 90% of all programming during the broadcast week in the English language and 10% of all programming during the broadcast week in the French language.
  5. The licensee shall caption 100% of its programs over the broadcast day, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007.
  6. 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 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.
  7. The licensee shall ensure that no more than 65% of all programming broadcast during the broadcast week shall be drawn from category 8(b) Music video clips and 8(c) Music video programs.

For the purposes of the conditions of this licence, including condition of licence 1, *broadcast day* refers to the 24-hour period beginning each day at 6 a.m. or any other period approved by the Commission; *broadcast week* means seven consecutive broadcast days, beginning on Sunday.