



## Broadcasting Decision CRTC 2011-726

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Route reference: 2011-188

Ottawa, 24 November 2011

### **Cogeco Inc.**

Montréal, Quebec

*Public hearing in the National Capital Region*

*17 May 2011*

### **Complaint regarding the broadcast of French-language vocal music by CKOI-FM Montréal**

*In this decision, the Commission concludes that Cogeco Inc. made inappropriate use of montages, thus circumventing the Radio Regulations, 1986 as they relate to the broadcast of French-language vocal music. The Commission consequently imposes a **condition of licence** to limit the use of montages.*

#### **Introduction**

1. On 17 December 2010, the Commission received a complaint by the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) alleging that certain French-language radio stations, including CKOI-FM Montréal, were in non-compliance with the requirements of the *Radio Regulations, 1986* (the Regulations) relating to French-language vocal music (FVM). According to ADISQ, this non-compliance is due to an abusive use of montages in the music programming of the stations in question. In its complaint, ADISQ submitted that those stations [translation] “wrongly qualify a simple succession of English-language selections broadcast almost in their entirety as a montage in order to consider this montage as a single English-language selection for the purpose of calculating the levels of FVM.” The complaint filed by ADISQ and the reply by Cogeco Inc. (Cogeco) have been placed on the public record of this proceeding.
2. On 6 and 7 January 2011, the Society of Composers, Authors and Music Publishers of Canada (SOCAN) and the Association des professionnels de l'édition musicale (APEM) submitted letters in support of ADISQ's complaint.
3. On 16 March 2011, the Commission issued Broadcasting Notice of Consultation 2011-188. In that notice, the Commission noted that the licensee may have failed to comply with sections 2.2(5) and 2.2(10) of the Regulations concerning the broadcast of FVM, during the broadcast week of 30 May to 5 June 2010 and between 6 a.m. and 6 p.m. from Monday to Friday of that same week. In the same notice, the Commission also indicated its intention to discuss with the licensee the possibility of imposing

additional measures relating to the broadcast of montages (e.g. the imposition of conditions of licence limiting the duration and frequency of montages).

4. Although the licence for the station was not up for renewal, the Commission directed the licensee to appear at a public hearing to show cause why a mandatory order requiring it to comply with the above-mentioned sections of the Regulations should not be issued.
5. The Commission received comments relating to Cogeco's situation. The public record for this proceeding can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."

### **Interventions and reply**

6. The ministère de la Culture, des Communications et de la Condition féminine du Québec (the Ministère) and ADISQ both submitted comments in this proceeding. In its comment, the Ministère reiterated the position it took during the proceeding relating to Broadcasting Public Notice 2006-158 (the 2006 Commercial Radio Policy), which was that the level of FVM provides an important opportunity to broadcast French-language songs. It requested that the Commission be vigilant in enforcing strict adherence to its own regulatory provisions.
7. ADISQ indicated that the Commission's current intervention is fully justified, as broadcasters were warned of this possibility in 2006. ADISQ stated that licensees must not limit themselves to a single part of the entire regulations to be considered compliant.
8. SOCAN, the APEM and the Société professionnelle des auteurs et des compositeurs du Québec (SPACQ) supported ADISQ's position and the solutions it proposed.
9. In reply, Cogeco submitted that the arguments advanced by ADISQ to the effect that its stations, including CKOI-FM, had used montages in an abusive way were unfounded and should consequently be rejected by the Commission. Cogeco also noted that the regulatory framework does not include any reference to a limit concerning the maximum duration of a montage or the number of selections that must be broadcast within a given period, nor to a requirement to include Canadian or French-language musical selections in montages. Cogeco submitted that if the Commission wanted to apply a more restrictive interpretation regarding montages, it should revise its current policy since it would, in fact, be a new regulatory approach. Finally, Cogeco disagreed strongly with the disqualifying of all of its montages by the Commission.
10. After examining the public record for this proceeding in light of applicable regulations and policies, the Commission considers that the issues it must address are the following: the broadcast of montages and the broadcast of FVM.

## **Regulatory framework**

### **Montages**

11. The Regulations define a montage as “a compilation of one minute or more in duration containing excerpts from several musical selections but does not include a medley.” The Regulations also define a montage as a musical selection, which is defined as follows: “any live or recorded music of one minute or more in duration that is broadcast uninterrupted, and includes a medley and a montage.”

12. In paragraph 42 of Public Notice 1998-132, the Commission provides the following details regarding montages:

42. ... in order to be classified as a montage, the programming should consist of excerpts that are tightly woven and tied together by unifying elements such as a common rhythm or theme. Several unrelated musical excerpts played back to back, will therefore not be considered to be a montage, even if they are by the same artist. In cases where it is not clear whether the programming is a montage or a series of shortened selections, the Commission will consider the programming as a series of shortened selections.

13. In the 2006 Commercial Radio Policy, the Commission again addressed the issue of montages. Paragraphs 95 and 96 indicated the following:

95. Regarding the issue of montages, the Commission emphasizes the importance of playing musical selections in their entirety. However, the Commission has recognized that there can be positive aspects to programming montages. Properly used, montages allow audiences to discover new Canadian artists or selections that would not otherwise be broadcast. The Commission is, however, of the view that montages should not be used to circumvent the regulatory requirements related to [FVM].

96. Accordingly, the Commission will closely monitor the use of montages and will deal with any problems on a case-by-case basis, imposing necessary measures when appropriate.

### **French-language vocal music**

14. The Commission’s objectives regarding the broadcast of FVM were set out in paragraph 151 of Public Notice 1998-41:

151. The Commission’s requirements are based on two related goals. It wishes to support a francophone recording industry in Canada and to allow francophones to have access to music reflecting their culture. The Commission has always considered it to be the responsibility of French-language broadcasters to continue their efforts to contribute to the development of French-language expression.

15. In paragraph 38 of the 2006 Commercial Radio Policy, the Commission clarified its requirements for airing FVM as follows:

38. To ensure that French-language radio stations holding commercial licences serve the needs and interests of their audiences, section 2.2 of the Radio Regulations requires that at least 65% of the category 2 vocal musical selections aired by French-language stations during each broadcast week be in the French language. To ensure that French-language vocal selections are not consigned to periods with relatively small audiences, the Radio Regulations also require that at least 55% of the category 2 vocal musical selections aired by French-language stations each week between 6 a.m. and 6 p.m., Monday through Friday during any broadcast week be French-language selections.

### **Commission's analysis and decisions**

16. The Commission reiterates its view that French-language broadcasters must continue striving to contribute to the development of French-language expression. As mentioned above, the Commission indicated in the 2006 Commercial Radio Policy that montages should not be used to circumvent the regulatory requirements relating to FVM, and that it will closely monitor the use of montages and will deal with any problems on a case-by-case basis, imposing necessary measures when appropriate.
17. At the hearing, the Commission asked Cogeco and other licensees to submit in writing their respective positions on the possibility of implementing transitional measures applicable to their respective stations that would ensure that the use of montages remains consistent with the objective of the regulations and the intent of the Commission's policy on montages.
18. In response to the Commission's request, Cogeco and the other licensees consulted with each other and established a collective commitment to devote no more than 14% of each broadcast week to montages from 1 September 2011 to the earliest of the following two dates: a) 31 August 2013 or b) the Commission's comprehensive review of the various elements of the FVM policy.
19. The Commission considers that the time allocated to the broadcast of non-Canadian English-language music through montages is cause for concern. The Commission's analysis of CKOI-FM's logger tapes and music list for the week of 30 May to 5 June 2010 revealed that the 101 montages broadcast by the licensee represented 17.9% of the 126 hours of programming broadcast during that broadcast week and were all counted as English-language selections.
20. The Commission notes Cogeco's position that the Commission is seeking to apply a more restrictive interpretation of the regulatory framework governing montages. However, the Commission considers that Cogeco's interpretation of the rules regarding montages would permit it to broadcast montages that:

- include long excerpts from several non-Canadian English-language selections that would count as a single English-language selection;
- account for a significant part of the station's programming;
- generally would not be made up of selections by new artists that would not otherwise be broadcast;
- in many cases, are not made up of musical excerpts that are tightly woven and tied together by unifying elements;
- would be composed of musical excerpts that would instead be played almost in their entirety; and
- are of relatively long duration.

The Commission considers that such an interpretation is not in line with the objectives of the regulations relating to FVM or the intent of the policy on montages.

21. The Commission considers that Cogeco's practices enable it to maintain the required regulatory percentage of FVM while broadcasting significantly fewer French-language selections. Accordingly, the Commission finds that these practices constitute an inappropriate use of montages and thus allow for the circumvention of the regulatory requirements relating to FVM.

## Conclusion

22. The Commission notes the joint proposal made by the licensees called to the hearing to limit the overall duration of montages to no more than 14% of all programming broadcast each broadcast week. However, the Commission is of the view that the level proposed by the licensees is too high and that it would not ensure compliance with the regulatory requirements relating to FVM and Canadian content. Given its concerns regarding the percentage of English-language musical selections broadcast by Cogeco, the Commission considers that there is reason to limit the overall duration of montages further. In light of the foregoing and as an incentive for the licensee to broadcast more FVM and thus respect the regulatory requirements, the Commission considers it appropriate to limit the maximum duration of montages broadcast each broadcast week to 10% of all programming, i.e., to 12 hours and 36 minutes. Accordingly, the Commission imposes the following **condition of licence**, which will come into effect on 1 April 2012:

The licensee shall devote no more than 10% of all of programming broadcast during the broadcast week to the broadcast of montages. For the purposes of this condition of licence, the term "broadcast week" shall have the meaning set out in the *Radio Regulations, 1986*.

23. In addition, during the hearing, some licensees stated that the Commission's definitions and expectations regarding montages leave room for interpretation and that they should be clarified. Although the Commission does not share this view, it has nonetheless published today Broadcasting Information Bulletin 2011-728, in

which it reiterates its objectives and expectations regarding the broadcast of montages by radio licensees, refers to the relevant sections of the regulatory framework and confirms the interpretation that should be given to certain terms.

Secretary General

**Related documents**

- *Requirements for the broadcast of radio montages*, Broadcasting Information Bulletin CRTC 2011-728, 24 November 2011
- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2011-188, 16 March 2011
- *Commercial Radio Policy 2006*, Broadcasting Public Notice CRTC 2006-158, 15 December 2006
- *Regulations Amending the Radio Regulations, 1986 – Commercial Radio Programming*, Public Notice CRTC 1998-132, 17 December 1998
- *Commercial Radio Policy 1998*, Public Notice CRTC 1998-41, 30 April 1998

*\*This decision must be appended to the licence.*