



## Broadcasting Decision CRTC 2013-125 and Broadcasting Order CRTC 2013-126

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Additional reference: 2012-560-2

Ottawa, 15 March 2013

**Own Inc.**  
Across Canada

*Reference 2012-1233-1*

*Applications 2012-1450-2 and 2012-1422-0, received 8 November 2012*

*Public hearing in the National Capital Region*

*11 December 2012*

### **OWN: The Oprah Winfrey Network – Issuance of mandatory order**

*The Commission issues a mandatory order requiring OWN Inc. to ensure that OWN: The Oprah Winfrey Network complies with its nature of service definition, which is to provide formal and informal educational programming and learning opportunities that generally focus on adult education and that come from a full spectrum of basic, credit-based, skills-related and life-enhancing programs. Further, the Commission provides guidelines and imposes reporting and monitoring requirements to ensure the licensee's compliance with its conditions of licence and regulatory requirements.*

#### **Introduction**

1. OWN: The Oprah Winfrey Network (OWN) is a specialty Category A service originally approved under the name Canadian Learning Television (CLT) in Decision 96-600. This service provides educational programming and learning opportunities that generally focus on adult education.
2. In the Broadcasting Decision 2008-206, the Commission approved an application of which the result was the transfer of the effective control of the licensee of CLT to Corus Entertainment Inc. (Corus). Shortly after, Corus announced the rebranding of CLT as VIVA. In 2010, Corus further announced that VIVA was being rebranded as OWN as of 1 March 2011. The name of the licensee also changed, becoming OWN Inc.
3. Because of concerns about the licensee's compliance with OWN's nature of service definition, the Commission called OWN Inc. to a public hearing held on 11 December 2012 to inquire into, hear and determine the matter relating to the licensee's apparent

non-compliance (Broadcasting Notice of Consultation 2012-560 – reference 2012-1233-1). Specifically, it called OWN Inc. to that public hearing to show cause as to why the Commission should not:

- issue a mandatory order under section 12 of the *Broadcasting Act* (the Act) requiring the licensee to adhere to its nature of service definition; or
  - suspend or revoke the licence pursuant to sections 9 and 24 of the Act.
4. In Broadcasting Notice of Consultation 2012-560-2, the Commission announced its decision to hear two further applications filed by OWN Inc.:
- The first application (2012-1450-2) is for a broadcasting licence to operate a national, English-language specialty Category B service to be known as OWN: The Oprah Winfrey Network. Specifically, the service would provide educational programming and learning opportunities that would generally focus on informal basic adult education, skills-related and life-enhancing programs.
  - The second application (2012-1422-0) seeks to amend the definition of “broadcast day” for OWN’s Category A licence so as to schedule its programming over a 24-hour rather than an 18-hour period.

### **Regulatory framework**

5. The regulatory framework for pay and specialty programming services is set out in Broadcasting Public Notice 2008-100. The Commission licenses new services as specialty Category A services on a one-per-genre basis. The Commission generally requires that these services be complementary and not compete directly with one another. Each Category A service therefore has a unique nature of service and a unique role to play in providing a wide range of Canadian programming choices to Canadians and ensuring the maximum contribution to the creation of Canadian programming. In recognition of this role, the Commission grants Category A services a number of benefits, including guaranteed distribution by licensed cable, satellite and other distributors.
6. Conditions of licence establishing nature of service are intended to ensure genre exclusivity. They generally consist of three elements:
- a narrative description of the nature of the service and its programming;
  - a list of program categories from which the service may draw programming; and
  - limitations on the types of programming the service may broadcast or on the program categories from which the service may draw programming.

7. OWN's conditions of licence relating to its nature of service are set out in Appendix 4 to Broadcasting Decision 2011-446 (the Corus group renewal decision), which renewed the broadcasting licence for OWN until 31 August 2016. They read as follows:

2. (a) The licensee shall provide a national English-language specialty Category A service which provides formal and informal educational programming and learning opportunities that generally focus on adult education. Educational programs will come from a full spectrum of basic, credit-based, skills-related and life-enhancing programs, many of which will be undertaken in cooperation with colleges, universities and training institutions.

(b) The programming must 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 (a) Analysis and interpretation
- (b) Long-form documentary
- 5 (a) Formal education and pre-school
- (b) Informal education/Recreation and leisure
- 9 Variety
- 10 Game shows
- 11 (a) General entertainment and human interest
- (b) Reality television
- 12 Interstitials
- 13 Public service announcements
- 14 Infomercials, promotional and corporate videos

(c) No less than 55% of the programs during the broadcast day shall be drawn from category 5(a) and shall have clear learning objectives.

## **Background**

8. In a press release on 29 September 2010, Corus announced the rebranding of VIVA as OWN. It stated that OWN would target adults between the ages of 18 and 54 with a core of women aged 25 to 54 and explore issues from health and wellness, home and relationships to stories of strength and transformation. In a letter dated 4 October 2010, the Commission requested that the licensee explain how the programming described in this press release was consistent with the licensee's current nature of service definition. In its reply of 18 October 2010, Corus stated that the rebranding would provide significant benefits to the Canadian broadcasting system and that OWN would operate in full compliance with all conditions of licence, including the nature of service definition.

9. In a subsequent letter to Corus dated 6 December 2010, the Commission stated that it might follow up on this matter at the group licence renewal hearing in the spring of 2011.

10. After considering the licensee's arguments at that hearing, the Commission found in the Corus group renewal decision that the licensee had not complied with its nature of service definition. In particular, the Commission concluded that the service's curriculum of educational programs did not reflect the variety of educational programming required in its nature of service definition. The Commission further noted that most of the other programs listed on the programming schedule explored the broad themes of food and nutrition, fitness, beauty and well-being, family and relationships, and design. In general, it found that OWN's programming was too heavily focused on the enhancement programming (i.e., life-enhancing) portion of its nature of service definition and therefore fulfilled only part of its mandate. Consequently, the Commission directed the licensee to file a report by 1 March 2012 detailing the measures it had taken to bring the service into compliance with its nature of service definition. Alternatively, the Commission stated that it expected the licensee to surrender the broadcasting licence for its specialty Category A service by the same date and apply for a broadcasting licence to operate a new Category C service or submit another appropriate proposal.
11. On 1 March 2012, Corus filed an application on behalf of OWN Inc. for a broadcasting licence to operate OWN as a specialty Category B service. Corus proposed to discontinue OWN's operation as a specialty Category A service. It specified that its application was conditional on the Commission's allowing the continued carriage of OWN on Shaw-owned cable systems by authorizing an exception to the Commission's rule respecting the carriage of related Category B services.<sup>1</sup>
12. In a letter dated 22 June 2012, the Commission indicated to Corus that it would not process an application that was conditional upon another application by a third party, such as Shaw. Consequently, the Commission once again directed the licensee to come into compliance with its nature of service definition, and this time, by 1 September 2012, or to submit an application by 9 July 2012 for a new broadcasting licence to operate OWN as a specialty Category B or Category C service.
13. On 23 July 2012, Corus filed an application<sup>2</sup> under Part 1 of the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) to amend OWN's broadcasting licence to re-designate the service as a specialty Category B service and amend OWN's nature of service definition. Since the broadcasting licence for OWN had been renewed until 31 August 2016, it proposed that the amendments apply to the remainder of the

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<sup>1</sup> At the time of the application, section 19 of the *Broadcasting Distribution Regulations* stated that if a broadcasting distribution undertaking distributes a Category B service from a related programming undertaking, it must distribute at least three Category B or exempt third-language services or a combination thereof from an unrelated programming undertaking. Given that Corus and Shaw are related undertakings within the meaning of section 19, Shaw would then have had to ensure that it was complying with this requirement to continue to distribute OWN.

<sup>2</sup> Corus filed this application following the Commission's granting of a two-week extension ending 26 July 2012.

service's current licence term and that the Commission issue a new broadcasting licence whereby OWN would be operated as a specialty Category B service as of 1 September 2016. Corus noted in its application that such an amendment would avoid the unnecessary renegotiation of existing affiliation agreements with broadcasting distribution undertakings that currently distribute OWN.

14. The Commission informed Corus in a letter dated 15 August 2012 that because of the policy considerations raised by the application, it would not process its application under Part 1 of the Rules of Procedure and that it would inform Corus regarding the next steps to be taken.
15. On 12 October 2012, the Commission announced the 11 December 2012 public hearing in Broadcasting Notice of Consultation 2012-560. In that notice, the Commission stated that neither of the applications submitted by Corus adhered to the directives set out in the Corus group licence renewal or the Commission's 22 June 2012 letter. Consequently, it appeared that OWN Inc. remained out of compliance with its nature of service definition. As a result, the Commission called the licensee to a public hearing to inquire into, hear and determine the matter.
16. In the lead-up to the public hearing, the Commission expressed concerns in a letter dated 29 October 2012 about the service's broadcast of formal educational programming, as well as the licensee's practices relating to the submission of program logs.
17. On 30 November 2012, Corus submitted a letter to the Commission in which it proposed changes to its program schedule. These proposed changes included the creation of new formal education programming (not yet produced), an increase in the variety of the types of basic, skills-related and credit-based programs offered on the service, and limiting the number of series tied to any given academic course.
18. At the public hearing, the Commission questioned the licensee on the broadcast of programming from program category 7 Drama and comedy in light of the fact that the service does not have authorization to draw programming from this category. These concerns are discussed further below.

## **Interventions**

19. In response to Broadcasting Notice of Consultation 2012-560, the Commission received many interventions in support of OWN Inc. It also received an intervention from the Canadian Media Production Association (CMPA) offering general comments on the issues set out in that notice, as well as interventions in opposition from students at Carleton University and from the Writers Guild of Canada (the Writers Guild). Corus, on behalf of OWN Inc., replied collectively to all of the interventions received.

20. In regard to the applications announced in Broadcasting Notice of Consultation 2012-560-2, the Commission received an intervention from Channel Zero Inc. (Channel Zero) opposing both applications, as well as an intervention from the CMPA in opposition to the application to amend the definition of “broadcast day.” Corus, on behalf of OWN Inc., also replied collectively to those two interventions.
21. The public record for this proceeding is available on the Commission’s website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under “Public Proceedings.”

### **Issues to be addressed**

22. After examining the public record for the present proceeding in light of applicable regulations and policies, the Commission considers that the issues it must address are the following:
- the licensee’s apparent non-compliance with OWN’s nature of service definition;
  - concerns relating to the filing of accurate program logs;
  - concerns relating to the broadcast of formal educational programming;
  - concerns relating to the broadcast of programming drawn from program category 7 Drama and comedy;
  - concerns relating to programming overlap between OWN and W Network, which is also owned by Corus;
  - the licensee’s request to amend the definition of “broadcast day”; and
  - the licensee’s application for a broadcasting licence to operate a specialty Category B service.

### **Apparent non-compliance with OWN’s nature of service definition**

23. In the Corus group licence renewal, the Commission expressed concern that OWN’s programming had departed from its nature of service definition. It considered that the service’s curriculum of educational programs did not reflect the variety of educational programming required in its nature of service definition and that the service was too heavily focused on “enhancement programming.” As such, it found that OWN was fulfilling only part of its mandate.
24. Upon examination of the service’s history and the public record relating to this proceeding, the Commission is concerned that the licensee remains in non-compliance with OWN’s nature of service definition.

## **Interventions**

25. Two of the opposing interventions received were submitted by groups of students at Carleton University. In one of those interventions, the interveners stated that rather than respecting its nature of service, OWN had chosen a format close to that of the W Network. They submitted that this likeness in programming had caused a decrease in program diversity as there were now two channels working within a genre targeting women. In the other intervention, the interveners expressed concern that the service offers enhancement programming, not educational programming, with a very narrow range of classes.
26. The Writers Guild expressed concern that OWN's non-compliance was part of a growing trend among programming services and urged the Commission to continue its efforts to enforce its genre exclusivity policy. The Writers Guild further submitted that with a schedule packed with home design, food and shopping programs, Corus had essentially abandoned its mission to provide formal educational content through a wide range of programming.
27. Finally, the CMPA stated that it supported the Commission in taking measures to ensure that licensees do not abuse its rules and policies regarding their nature of service definitions.

## **Reply by Corus**

28. Corus took issue with the Carleton University students' statement regarding a decrease in programming diversity. It submitted that OWN and Corus had contributed more Canadian content diversity to the Canadian broadcasting system in the last five years than any other broadcaster or producer. Corus further stated that it had made good faith efforts to respond to the Commission's concerns to ensure that OWN is operated in full compliance with its nature of service.
29. Corus similarly rejected the submission by the Writers Guild that OWN had abandoned its mission to provide formal educational content through a wide range of programming.
30. Finally, in response to the intervention by the CMPA, Corus stated that it did not take issue with the Commission's legitimate role in ensuring that the licensee of a specialty television service adheres to its authorized nature of service. It also welcomed the opportunity to demonstrate its commitment to operate OWN in a manner that was consistent with its nature of service.
31. At the public hearing, Corus made extensive representations in response to both of these interventions and the Commission's questions, and reiterated and elaborated on the points it had made in response to written interventions.

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

32. OWN was licensed to provide formal and informal educational programming and learning opportunities that generally focus on adult education. OWN's educational programs are to come from a full spectrum of basic, credit-based, skills-related and life-enhancing programs, many of which will be undertaken in cooperation with colleges, universities and training institutions. This intent is set out clearly in its condition of licence relating to its nature of service.
33. A review of OWN's programming schedule for the week of 21-27 October 2012 as set out on its website (which formed part of the record for the hearing) reveals that the licensee has done little to address the Commission's programming concerns since the Corus group renewal decision.
34. In the Commission's view, the licensee has not sufficiently addressed the concern that OWN is focused on "enhancement programming" rather than offering a "full spectrum of basic, credit-based, skills-related and life-enhancing programs," as contemplated in its nature of service definition. The Commission finds that a disproportionate amount of OWN's schedule is still composed of "life-enhancing" programming, with the result of an insufficient representation of basic, skills-related and credit-based programming.
35. Moreover, the Commission finds that the licensee has not addressed concerns regarding the limited scope of OWN's accredited programming (i.e., programming associated with courses or training offered by educational institutions). Such programming would meet the requirements that some of the service's programs be credit-based and that many of its programs be undertaken in cooperation with colleges, universities and training institutions. In the Corus group renewal decision, the Commission expressed concern that eight programs listed on the schedule were associated with a single script writing course and two programs were associated with three different courses in cinematography, story development and video production techniques. The Commission notes that as of 22 October 2012, the website for OWN showed that 14 of its 19 accredited programs relate to television production and that 9 of those 14 programs are accredited to a single course, Ryerson University's "Writing for Factual Programs." As a result, the Commission finds that OWN's curriculum of accredited programs still does not reflect the variety of educational programming required by its nature of service definition.
36. Although Corus expressed confusion about what is meant by its requirement to offer a "full spectrum of basic, credit-based, skills-related and life-enhancing programs," the Commission considers that its intent in this regard was clearly set out in the Corus group renewal decision.
37. The Commission further considers that the licensee has had ample time since its licence renewal in 2011 to increase its basic, credit-based and skills-related programming and to explore new relationships and accreditation opportunities with a variety of learning institutions. The Commission also notes that it was only after

OWN Inc. was called to a public hearing that it took any steps readily apparent to the Commission aimed at changing OWN's programming schedule with a view to addressing concerns regarding OWN's compliance with its nature of service definition.

38. Following its 2011 renewal, there were a number of procedural options available to the licensee to remedy its non-compliance. The licensee first filed an application to operate OWN as a specialty Category B service, but this application was not processed since it was conditional upon the approval of another application by a third party. The Commission notes that the instructions provided in its 22 June 2012 reply letter were to either submit an application by July 2012 to operate the service as a Category B or Category C service, or come into compliance with its nature of service definition by 1 September 2012. While OWN submitted a licence amendment application on 23 July 2012, this application did not conform to the above-noted instructions and was not processed because of the policy considerations that it raised. Therefore, the only option available to the licensee as of that date was to come into compliance by 1 September 2012. Moreover, in this regard, the Commission notes that the licensee is required to be in compliance with its nature of service condition of licence at all times. The Commission therefore does not consider appropriate OWN's argument that it did not modify its programming because it was pursuing other procedural avenues to address the Commission's findings in the Corus group renewal decision.
39. Finally, the Commission also notes that at the public hearing the licensee acknowledged the Commission's finding in the Corus group renewal decision that OWN was in non-compliance with its condition of licence relating to its nature of service definition.
40. In light of the above, the Commission finds that OWN Inc. remains in non-compliance with OWN's nature of service definition.
41. The Commission notes that the licensee made a number of commitments at the hearing to address the Commission's concerns relating to OWN's compliance with its nature of service definition. In particular, OWN Inc. proposed that:
  - no less than six different "genres" will be covered each year; and
  - there will be a refresh rate of 50% from one year to another.
42. The Commission also notes that Corus, in the proposed programming schedule detailed in its 30 November 2012 submission, indicated that a maximum of two programs would be tied to a single course at any given time.
43. The Commission considers that adherence to the above commitments and a limit on the number of programs tied to a single course (specifically, no more than two) would assist the licensee in ensuring that OWN fulfills its requirement to provide a full spectrum of basic, credit-based, skills-related and life-enhancing programs and would

address the Commission's concerns relating to the lack of variety in its accredited programming. The Commission therefore **directs** OWN Inc. to implement these measures.

44. The Commission notes, however, that the licensee did not provide any insight into how it would define "genre." The Commission cautions that the term is not to be interpreted too narrowly and that it should be interpreted as a field of study. The Commission considers that examples of fields of study or genres include but are not limited to the following: Interior Design, Nutrition, Psychology and Media Production. As an example, courses such as "Cinematography," "Story Development" and "Video Production Techniques" would all be considered to be Media Production courses and therefore would be considered as belonging to a single field of study or genre.
45. In light of OWN's Category A status and in order to monitor its adherence to the above-noted measures and ensure its future compliance with its nature of service definition, the Commission considers it appropriate to impose certain monitoring and reporting requirements. Accordingly, pursuant to section 8(2)(b) of the *Specialty Services Regulations, 1990* (the Regulations), the Commission **directs** OWN Inc. to adhere to the monitoring and reporting requirements set out in Appendix 2 to this decision.
46. In light of the licensee's longstanding non-compliance and to ensure its future compliance with its nature of service definition, the Commission considers it appropriate to issue a **mandatory order** under section 12(2) of the Act requiring OWN Inc. to comply at all times with the nature of service definition for OWN. This mandatory order is set out in Appendix 1 to this decision.
47. Pursuant to section 13 of the Act, the order will be filed with the Federal Court and will become an order of that court. Failure to comply with Federal Court orders may result in recourse to the compliance procedures of that court.

#### **Filing of accurate program logs**

48. Section 7(2) of the Regulations requires licensees to provide logs and records to the Commission within 30 days after the end of each month, with a certificate by or on behalf of the licensee attesting to the accuracy of the contents of the log or record. The logging requirements are in place to ensure that services are in compliance with conditions of licence such as Canadian content requirements and program category limitations.
49. When completing their logs, licensees are to indicate the program category under which a given Canadian program has been certified by the Commission. Program categories<sup>3</sup> are assigned by the Commission's Canadian Program Certification group

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<sup>3</sup> The definitions for television program categories can be found in Broadcasting Regulatory Policy 2010-808.

(CANREC). Each Canadian program that is certified under this process is assigned to a single program category; a program may not be certified under more than one program category.<sup>4</sup>

50. On 29 October 2012, in advance of the hearing, the Commission sent a letter to OWN indicating that it appeared that a large portion of the service's programming had been logged incorrectly. In particular, the Commission noted that it appeared that much of OWN's programming that had been logged as category 5(a)<sup>5</sup> had actually been certified under another program category by CANREC. In its letter, the Commission reiterated OWN's obligations to file logs under section 7(2) of the Regulations.
51. In a reply letter dated 9 November 2012 and again at the public hearing, Corus submitted that the fact that CANREC had certified a program under another category did not preclude another designation if such a program also met the formal education requirements established by the Commission in its definition of formal education. It argued that the logging practices used in its August 2012 logs were longstanding and had been used not only by OWN but also by VIVA and CLT. Corus concluded that it was therefore fully compliant with section 7(2) of the Regulations.

#### **Commission's analysis and decision**

52. The Commission acknowledges Corus's statements regarding its past logging practices. In particular, the Commission notes that the logging system does not permit OWN to indicate that a program categorized by CANREC under another program category also meets the definition of program category 5(a).
53. However, the Commission considers that accurate logs are necessary in order that it may monitor licensees to ensure that they remain in compliance with their conditions of licence. To allow the Commission to adequately monitor OWN's programming in the future, the Commission **directs** OWN Inc. to file its logs so that they accurately reflect the program category designations that have been accorded to its programming by CANREC. For example, in completing its logs in the future, if a program has been certified by CANREC as belonging to program category 11(b), OWN is to log that

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<sup>4</sup> The Commission notes that some Canadian programming is not subject to the CANREC certification process. Certain Canadian programming undergoes a separate process by the Canadian Audio-Visual Certification Office (CAVCO). CAVCO is under the jurisdiction of the Department of Canadian Heritage and the certification process is confidential. While the Commission accepts a CAVCO-certified program as being Canadian for the purposes of Canadian content requirements, the program is not subject to the Commission's CANREC certification process and therefore is not given a program category. It should also be noted that similarly, programming that originates outside of Canada is not subject to any certification process.

<sup>5</sup> Broadcasting Regulatory Policy 2010-808 defines program category 5(a) Formal education and pre-school as follows: "Programs presenting detailed information related to a wide variety of topics and used by the viewer primarily to acquire knowledge. The programs can be related to established curricula. All programs targeted at pre-schoolers (ages 2-5) except those that are primarily comprised of drama."

program as 11(b). Therefore, where a program has undergone the CANREC certification process, OWN is only to log the program as a category 5(a) program if that program has been certified as such by CANREC.

#### **Broadcast of formal educational programming**

54. OWN is subject to the following condition of licence:

2(c) No less than 55% of the programs during the broadcast day shall be drawn from category 5(a) and shall have clear learning objectives.

55. Program category 5(a) is defined as follows:

Programs presenting detailed information related to a wide variety of topics and used by the viewer primarily to acquire knowledge. The programs can be related to established curricula. All programs targeted at pre-schoolers (ages 2-5) except those that are primarily comprised of drama.

56. In its 29 October 2012 letter to Corus, the Commission informed OWN that due to apparent logging errors, the Commission could not determine whether OWN was in compliance with the above-noted condition of licence 2(c). The Commission provided OWN with a list of titles that OWN had logged as program category 5(a) and that had been certified by CANREC in a different program category, and asked OWN to explain the discrepancies.

57. In its 9 November 2012 letter, Corus submitted that the Commission had previously accepted under category 5(a) programs that were otherwise certified by CANREC if the programs in question were associated with an accredited course and had clear learning objectives. OWN argued that its practices relating to the logging of category 5(a) programming were necessary given that there was no way in the logging system to indicate that accredited programming should fall into the calculation of OWN's category 5(a) programming.

58. At the hearing, OWN Inc. was questioned as to why it had also logged programs under category 5(a) that had been otherwise categorized even when the programs had not been associated with an accredited course. The licensee submitted that for programs not associated with an accredited course, it had been following this longstanding practice, which dated back to the origins of CLT.

59. The Commission also questioned the licensee on the appropriateness of its practice of using programming that was not subject to the CANREC process (e.g. programming that did not originate in Canada or Canadian programming that had been certified under another process) to fulfill its condition of licence, given that an assessment of whether these programs met the definition of category 5(a) programming had not been done. In reply, the licensee committed to filing in its annual returns an explanation as to how these programs meet the 5(a) criteria.

60. Finally, at the public hearing, the Commission questioned Corus about its investment in the production of category 5(a) programming. Corus replied that while it had invested very little in the creation of certified category 5(a) programming, it had invested in programming that it believed should be considered as belonging to category 5(a). Corus also repeatedly claimed at the hearing that it was unclear what the Commission considered to be formal educational programming. It stated that before it invested and committed to a schedule, it wished to discuss what was considered appropriate category 5(a) programming.

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

61. The Commission acknowledges the licensee's statements regarding its past practices in meeting its requirement concerning the broadcast of formal educational programming. In regard to programming that has been certified by CANREC under a program category other than formal educational programming, the Commission considers that if a program has been accredited by an educational institution, it would be appropriate for OWN to count this program towards the fulfilment of its formal educational programming obligation. In such instances, the use of a program that has been otherwise categorized is justified by the fact that its educational value has been recognized by an educational institution. For clarity, however, the Commission finds that for those programs that have undergone the CANREC certification process, only those programs certified by CANREC as category 5(a) or those that have been accredited by educational institutions may be counted towards the fulfilment of OWN's condition of licence 2(c). Moreover, the Commission considers that accreditation of a program by an educational institution should not be permanent. To verify how a program is being used as a learning tool by an educational institution, the Commission **directs** OWN Inc.:

- to obtain from the educational institution an attestation as to how any program that remains on the programming schedule for multiple seasons is being used for a specific year/semester; and
- to obtain from the educational institution proof of accreditation for each new accredited program broadcast on OWN, by no later than one month after the first broadcast of that program.

62. Regarding programs that have not been subject to the CANREC certification process, the Commission considers that adequate monitoring is required in order to determine if it is appropriate for OWN to use such programs to meet its formal educational programming obligation. In other words, the Commission considers that additional monitoring is required to ensure that programs that have not been subject to an official CANREC certification process in fact meet the Commission's definition of category 5(a) programming.

63. In particular, the Commission finds that for any program not subject to the CANREC certification process that the licensee wishes to use to meet its 55% requirement, OWN must demonstrate to the Commission how the program meets the definition of a category 5(a) program.
64. The Commission reminds the licensee that it must demonstrate the clear learning objectives of each program used in fulfillment of its condition of licence 2(c).
65. Pursuant to subsection 8(2)(b) of the Regulations, the Commission has set out a mandatory monitoring and reporting framework in Appendix 2 to this decision. In addition to the licensee's logs, the Commission will use this framework to monitor OWN's compliance with its condition of licence 2(c). The Commission **directs** OWN to adhere to that monitoring and reporting framework.
66. The Commission acknowledges that the definitions of both formal and informal education, as well as OWN's nature of service definition, are subjective in nature. Therefore, to provide clarity for OWN and other licensees authorized to draw programming from category 5(a), the Commission has set out interpretive guidelines in Appendix 3 to this decision. The Commission will use these guidelines in the future to assess if a program meets the definition of program category 5(a).

**Broadcast of programming drawn from program category 7 Drama and comedy**

67. In Broadcasting Public Notice 2008-100, the Commission noted that in addition to imposing narrative descriptions on specialty services, it had imposed limits on the program categories from which they may draw programming. For some services, certain categories may be prohibited, while for others, certain categories may be limited relative to the overall programming schedule. These limitations are designed to ensure that discretionary services stick to the genres for which they were licensed and do not morph into a genre that is directly competitive with other Canadian Category A services, which benefit from guaranteed distribution.
68. OWN does not have authorization to broadcast programming drawn from program category 7, which consists of the following subcategories:
- (a) Ongoing drama 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
69. However, an examination of program logs provided by Corus for the week of 22-28 October 2012 revealed that two feature films drawn from program category 7(d) were aired.

70. OWN was questioned about the broadcast of such programming at the hearing. It submitted that the Commission had previously accepted the airing of feature films if the films were tied to an academic institution and that each film was preceded by an on-screen introduction explaining its relevance from an educational perspective. OWN further noted that while the Commission had questioned this practice in the past, no regulatory action was taken by the Commission.
71. Upon examination of program logs provided by Corus for the week of 22 - 28 October 2012, the Commission noted that while the two films were in fact introduced by a university professor, the introduction was brief, lasting about 20 seconds, and the university professor did not mention either of the films by name and did not tie the films in any way to the introduction.

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

72. The Commission considers that while OWN is not permitted to broadcast programming drawn from program category 7, it may be appropriate for the service to broadcast a program from this category if the program has been accredited and is presented in such a way that the program and the presentation of the program together meet the definition of a category 5(a) program. In other words, the program and its presentation would present detailed information related to a wide variety of topics and would be used by the viewer primarily to acquire knowledge.
73. However, the Commission finds that OWN's practice of introducing a drama or comedy program in a very brief manner that in no way references the particular program is insufficient in this respect. To provide clarity to the licensee, the Commission notes that it will use the following interpretive guideline when assessing if a drama or comedy program and its presentation together meet the definition of a category 5(a) program:

Only where a drama or comedy program has been accredited and is accompanied by an introduction, intermission or conclusion that provides educational value to the program and clearly explains the learning objectives of that particular program, is it appropriate for OWN to broadcast the program and count the program towards the fulfillment of its condition of licence 2(c).

74. To ensure that the licensee's use of drama or comedy programming remains appropriate, the Commission considers it appropriate to impose certain monitoring and reporting requirements. Accordingly, pursuant to subsection 8(2)(b) of the Regulations, the Commission **directs** OWN Inc. to adhere to the monitoring and reporting requirements relating to this issue set out in Appendix 2 to this decision.

#### **Concerns relating to programming overlap between OWN and W Network**

75. OWN's nature of service definition is intended to distinguish the service from other specialty services.

76. As indicated in the Corus group renewal decision, the Commission has concerns regarding the amount of programming broadcast on OWN that either originated on or continues to be broadcast by the specialty Category A service known as W Network, also operated by Corus.
77. When questioned on this issue at the hearing, Corus agreed to file a licence amendment application that would subject OWN to a requirement that only a certain percentage of the programming offered by the service in a broadcast month may overlap with the programming broadcast on W Network. To ensure that the two programming services remain distinct from one another, the Commission **directs** OWN Inc. to file by no later than **15 April 2013** an application to amend its broadcasting licence to limit the amount of shared programming between OWN and W Network to 10% of all programming broadcast during a broadcast month.

#### **Amendment to the definition of “broadcast day”**

78. On 8 November 2012, Corus, on behalf of OWN Inc., filed an application to amend the broadcasting licence for OWN. The licensee proposed to amend the definition of the term “broadcast day” as it applies to its licence so as to mean the 24-hour period beginning each day at 6 a.m.
79. The definition of “broadcast day” is a measure of time that is often used to determine if a licensee is in compliance with its conditions of licence or with its regulatory requirements. For example, OWN’s condition of licence relating to program category 5(a) requires that 55% of the programs broadcast by the service over the broadcast day be drawn from that program category.
80. In support of its application to amend the definition of “broadcast day” for OWN, Corus argued that it needed approval of this separate application to accommodate the changes it was making to its programming schedule as a result of the Commission’s compliance concerns raised in Broadcasting Notice of Consultation 2012-560.

#### **Interventions and applicant’s reply**

81. The CMPA opposed OWN’s application for a licence amendment. It submitted that the licensee had not explained why it needed to extend the length of its broadcast day to meet its nature of service obligations. It argued that the licensee was seeking the extension to meet its obligations by “dumping” its Canadian educational programming into the midnight to 6 a.m. period.
82. Channel Zero similarly opposed OWN’s licence amendment application and further argued that OWN had not provided sufficient rationale explaining why the amendment was necessary. Channel Zero stated that it was not clear how extending the broadcast day would enhance the level of service offered by OWN. It further submitted that it appeared that the licensee may be intending to broadcast its “educational” programming during the overnight period while offering its quasi-educational lifestyle programming during the daytime.

83. In reply to the interventions by the CMPA and Channel Zero and at the public hearing, Corus stated that a 24-hour schedule would result in more Canadian content, more educational programming and more revenue, which would ultimately result in more Canadian program spending. It also stated that the notion of a “dumping ground” was an incorrect characterization of what a 24-hour schedule would do for OWN’s viewers, particularly in light of the fact that formal education programming was far more likely to be sought out on an on-demand rather than a scheduled basis.
84. In reply to Channel Zero’s argument that Corus had provided little rationale for its request, Corus noted that it had filed a schedule that illustrated the impact of the proposed amendment.

#### **Commission’s analysis and decision**

85. The Commission often processes expeditiously any application to change the definition of a service’s broadcast day. The decision as to the length of the broadcast day is typically left to the applicant or licensee’s discretion. However, in the present case and in light of the concerns raised in the interventions, the Commission considers it important to determine if the licensee’s request is appropriate at this time due to the importance of the 18-hour broadcast day in the calculation of the licensee’s obligations and due to OWN’s recurring non-compliance with its nature of service definition.
86. The licensee stated that the proposed amendment was necessary to accommodate the changes it anticipated making to its programming to address the Commission’s concerns about OWN’s compliance with its nature of service definition. However, it is the Commission’s view that the licensee has not provided a convincing rationale for the amendment. The Commission is also concerned that the proposed amendment would allow OWN to broadcast its basic, skills-related and credit-based programming in the overnight period. Moreover, the Commission does not consider it appropriate to approve an application for a licence amendment for which the objective appears to be to remedy a licensee’s non-compliance.
87. In light of the above and in light of the licensee’s continued non-compliance with OWN’s nature of service definition, the Commission **denies** this application.

#### **Application for a Category B licence**

88. The Commission requires an applicant for a Category B service to demonstrate that the proposed service will not be directly competitive with any Category A or Category C service.
89. In its application, OWN Inc. submitted that its proposed Category B service would not be competitive with the Category A service OWN currently offers. It submitted that the service would be distinct given that its proposed Category B service would focus on informal as opposed to formal education and would not be subject to a requirement that the service offer a full spectrum of educational programming.

90. When questioned on its application at the hearing, Corus clarified that if the Commission determined that the two services would be competitive, it only sought a Category B licence for the OWN service if its Category A licence were revoked.

#### **Intervention**

91. Channel Zero opposed OWN's application for a Category B licence, submitting that the proposed service appeared to be directly competitive with both Corus's existing Category A service and Corus's other lifestyle-based service targeting women, W Network.
92. In response to Channel Zero's intervention, Corus stated that concerns regarding competition between the proposed service and OWN Inc.'s existing service were moot given that a Category B licence was only being sought if the Commission decided to revoke OWN's Category A licence. In regard to diversity concerns between W Network and OWN, Corus noted that it intended to file an application to limit the programming content overlap between W Network and OWN to no more than 20%, which would serve to close any further debate on this issue.

#### **Commission's analysis and decision**

93. The Commission considers that the specialty Category B service that OWN Inc. described in its application would likely be directly competitive with the Category A service that it currently operates. In light of the above and given OWN's statement at the hearing that it only seeks a Category B licence if its Category A licence were revoked, which is not the case, the Commission **denies** the application by OWN Inc. for a broadcasting licence to operate a national, English-language specialty Category B service to be known as OWN: The Oprah Winfrey Network.

#### **Conclusion**

94. The Commission reiterates the importance it places on a licensee's compliance with its conditions of licence and other regulatory requirements. The Commission views any non-compliance as a very serious matter. The Commission notes that it may consider recourse to additional measures, including suspension, non-renewal or revocation of the licence under sections 9 and 24 of the Act, should OWN Inc. again breach its nature of service definition or any of its other regulatory requirements.
95. Further, to ensure that the licensee will comply with its conditions of licence relating to its nature of service and with the Regulations, the Commission **directs** OWN Inc. to adhere to the monitoring and reporting framework set out in Appendix 2 to this decision, pursuant to subsection 8(2)(b) of the Regulations.

Secretary General

#### **Related documents**

- *Notice of hearing*, Broadcasting Notice of Consultation CRTC 2012-560, 12 October 2012, as amended by Broadcasting Notices of Consultation CRTC 2012-560-1, 20 November 2012, 2012-560-2, 28 November 2012, and 2012-560-3, 3 December 2012

- *Corus Entertainment Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-446, 27 July 2011
- *Definitions for television program categories*, Broadcasting Regulatory Policy CRTC 2010-808, 1 November 2010
- *Change in effective control*, Broadcasting Decision CRTC 2008-206, 22 August 2008
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Canadian Learning Television – Approved*, Decision 96-600, 4 September 1996

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

## **Appendix 1 to Broadcasting Decision CRTC 2013-125**

### **Broadcasting Mandatory Order CRTC 2013-126**

OWN Inc. is hereby ordered, pursuant to subsection 12(2) of the *Broadcasting Act*, to come into compliance forthwith and to comply at all times within the term of the licence granted in *Corus Entertainment Inc. – Group-based licence renewals*, Broadcasting Decision CRTC 2011-446, 27 July 2011, with the condition of its licence as set out below:

2. (a) The licensee shall provide a national English-language specialty Category A service which provides formal and informal educational programming and learning opportunities that generally focus on adult education. Educational programs will come from a full spectrum of basic, credit-based, skills-related and life-enhancing programs, many of which will be undertaken in cooperation with colleges, universities and training institutions.

## **Appendix 2 to Broadcasting Decision CRTC 2013-125**

### **Monitoring and reporting requirements for OWN: The Oprah Winfrey Network**

As set out in *OWN: The Oprah Winfrey Network – Issuance of mandatory order*, Broadcasting Decision CRTC 2013-125, 15 March 2013 (Broadcasting Decision 2013-125), the Commission has various concerns regarding compliance by OWN Inc., licensee of OWN: The Oprah Winfrey Network (OWN), with its nature of service definition, as well as with the monitoring of the service's compliance with certain of its conditions of licence and the *Specialty Services Regulations, 1990* (the Regulations). The Commission expects OWN Inc. to be in compliance at all times and advises the licensee that, pursuant to subsection 8(2)(b) of the Regulations, it may at any time request a report demonstrating how the licensee has complied with OWN's conditions of licence and with its regulatory requirements.

In regard to the various issues addressed in Broadcasting Decision 2013-125, pursuant to section 8(2)(b) of the Regulations, the Commission sets out in this appendix a monitoring and reporting framework for OWN Inc. to follow to ensure its future compliance with OWN's conditions of licence and with its regulatory requirements.

The Commission will periodically monitor OWN's programming to verify the licensee's compliance with the requirements outlined below. To this end, the licensee is instructed to maintain an audiovisual recording of all of the programming broadcast on OWN for a period of eight weeks after the programming is broadcast, as set out in section 7(4)(b) of the Regulations, rather than the four weeks set out in section 7(4)(a), so as to permit the Commission to monitor the programming broadcast on the service with the corresponding log, which is to be provided within 30 days after the end of each month.

#### **Annual compliance reports regarding OWN's nature of service definition**

In Broadcasting Decision 2013-125, the Commission directed OWN to implement the following programming measures:

- no less than six different "genres" will be covered each year;
- there will be a refresh rate of 50% from one year to another; and
- a maximum of two programs will be tied to a single course at any given time.

The Commission noted that implementation of these measures would assist OWN in addressing the Commission's compliance concerns relating to OWN's nature of service definition. Specifically, the Commission noted that the above-noted measures would assist OWN in ensuring that it offered a full-spectrum of basic, credit-based, skills-related and life-enhancing programming and that its credit-based programming was sufficiently varied.

In order to monitor whether OWN is observing the above-noted measures, OWN Inc. is to file an annual report providing (a) an overview of the “genres” covered each year (a minimum of six must be demonstrated), as well as (b) a list of its accredited programming that clearly demonstrates with which course each program is associated. These reports shall be filed with the service’s annual reports.

### **Monthly compliance reports regarding OWN’s condition of licence relating to program category 5(a) Formal education and pre-school**

In order to measure OWN Inc.’s compliance with its condition of licence stating that “No less than 55% of the programs during the broadcast day shall be drawn from category 5(a) and shall have clear learning objectives,” the Commission directs the licensee to file a monthly report along with a program grid identifying each program that it seeks to have treated as falling under program category 5(a) for the purpose of fulfilling that condition of licence.

Within the list provided, OWN Inc. is directed to:

- (a) indicate which of the programs have been certified by the Commission’s Canadian Program Certification group (CANREC) under program category 5(a);
- (b) for those Canadian programs that have been certified under another CANREC category or those programs that have not been subject to the CANREC certification process (i.e., Canadian Audio-Visual Certification Office (CAVCO)-certified programming and programming that does not originate in Canada), yet are accredited by an educational institution, indicate the name of the course and institution to which the program is accredited;
- (c) for those programs that have not been subject to the CANREC certification process (i.e., CAVCO-certified programming and programming that does not originate in Canada) and are not accredited, provide a written justification that explains how the program meets the definition of a category 5(a) program; and
- (d) for programs that meet the definition of category 7 programming, provide a written justification that explains how the program and its presentation together meet the definition of a category 5(a) program.

OWN Inc. must further clearly explain the learning objectives of each program that appears on the above-mentioned list.

The monthly report shall be filed with the Commission on the 5<sup>th</sup> day of each month, beginning 5 April 2013.

### **Proof of program accreditation**

To facilitate the Commission’s monitoring of OWN’s use of accredited programming, OWN Inc. is directed to do the following:

- File proof of a program's accreditation by an educational institution with the Commission for each new, accredited program broadcast on OWN by no later than one month after the program is first broadcast on OWN. This information should be filed as part of the monthly compliance report, on the 5<sup>th</sup> day of each month, beginning 5 April 2013.
- Because program accreditation by an educational institution is not permanent, where a program remains on the programming schedule for multiple seasons, OWN Inc. is to file proof of a program's continued accreditation from the educational institution with the Commission along with its annual report.

## **Appendix 3 to Broadcasting Decision CRTC 2013-125**

### **Interpretive guidelines for establishing the designation of formal educational programming**

When assessing applications requesting program category 5(a) certification, other than programming targeting pre-schoolers, the Commission's Canadian Program Certification group takes into account the following criteria:

- The learning objectives of the program are clear to the average viewer watching at home.
- The primary objective of the program must be to educate viewers; however the program can be presented in an entertaining manner. In other words, it is the content and subject of the program that renders a program educational, not the manner in which it is being presented.
- The focus of the program should deal with a field of study that could be found in an educational institution or other formal training program (for example, mathematics, finance, language study, history, geography, religious studies, art history, cooking theory and skilled trades).
- While the programs can be tied to an educational institution or tied to established curricula, this is not a requirement.
- The program could be used to improve the viewer's technical or professional qualifications, develop their abilities or enrich their knowledge.