



Broadcasting Notice of Consultation CRTC 2014-99

PDF version

Ottawa, 5 March 2014

Notice of hearing

28 April 2014

Gatineau, Quebec

Deadline for submission of interventions/comments/answers: 4 April 2014

[\[Submit an intervention/comment/answer or view related documents\]](#)

The Commission will hold a hearing on **28 April 2014 at 9 a.m., at the Commission Headquarters, 1 Promenade du Portage, Gatineau, Quebec**, to consider the following applications:

Applicant/Licensee and Locality

1. **Moviola: Short Film Channel Inc.**
Across Canada
Applications 2012-0858-8 and 2012-0933-8
2. **1490525 Ontario Inc.**
Across Canada
Applications 2012-0859-6 and 2012-0941-1
3. **Drive Publishing Inc.**
Across Canada
Applications 2012-0862-9 and 2012-0936-2
4. **1225520 Ontario Inc.**
Across Canada
Applications 2012-0863-7, 2012-0944-5 and 2012-0945-3

Preamble

In regard to items 1 to 4, it appears that the licensees in question may have failed to comply with the *Specialty Services Regulations, 1990* and/or a number of their conditions of licence.

The Commission calls the licensees to this public hearing, given the severity and frequency of the instances of apparent non-compliance observed and given the relationship between these licensees, whose ownership and control may be changed as a result of the proposed transaction. The Commission will want to discuss with these

licensees all measures taken and/or that could be taken to address the concerns raised by these instances of apparent non-compliance.

1. **Moviola: Short Film Channel Inc.**

Across Canada

Applications 2012-0858-8 and 2012-0933-8

Applications by **Moviola: Short Film Channel Inc.** (Moviola) for authority to effect a change in ownership pursuant to 10(4) of the *Specialty Services Regulations, 1990* (the Specialty Services Regulations) and to renew the licence of the national, English-language specialty Category B¹ service Moviola: the Short Film Channel, which expires on 31 August 2014.

As per the Commission's records, Moviola is owned by Anthony D'Andrea (25%), C.J. Millar (25%), Romen Podzyhun (25%) and Harold Balde (25%).

Following completion of the proposed transaction, Moviola would be owned by 2308740 Canada Inc. (2308740) and various shareholders and would be controlled by 2308740. 2308740 is a corporation owned by Romen Podzyhun (39.3%), C.J. Millar (39.3%) and Chris Fuoco (21.4%) and controlled by its board of directors pursuant to the terms of the shareholders agreement dated 9 December 2011.

The applicant did not propose any tangible benefits because the applicant is of the view that the change in ownership would not result in a change in effective control of the licensee.

In its licence renewal application, the licensee has confirmed that it would adhere to the standard conditions of licence for specialty Category B services set out in *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011.

However, the licensee proposed to amend its nature of service condition of licence by removing the requirement to broadcast short-length content ranging from 30 seconds to 40 minutes. The licensee also proposed to remove the requirement in its nature of service that it provide a showcase for professional, amateur, student and experimentalist animators and filmmakers in Canada. The nature of service definition, as amended would read as follows:

The licensee shall provide a national English-language specialty Category B service dedicated to the broadcast of the best of musical, dramatic, comical, experimental and animated films and series.

The licensee also proposed the addition of program categories 7(a), 7(b) and 7(d) without applying the standard limitation applicable to program category 7(d) as set out in

¹ A service that is currently licensed as a Category 2 specialty programming undertaking will be licensed as a specialty Category B service for the next licence term pursuant to the Commission's determinations set out in *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy*, Broadcasting Public Notice CRTC 2008-100, 30 October 2008.

Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008.

Non-compliance

The Commission notes that the licensee may have failed to comply with section 10(4) of the Specialty Services Regulations, which requires the licensee to obtain prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in a change by whatever means of the effective control of its undertaking. In the application to approve the change in ownership, it is indicated that Moviola is currently controlled by its board of directors, composed of Balde, Podzyhun, Millar and D'Andrea. However, the application for the change in ownership appears to enable the settlement of litigation between the shareholders which may have already resulted in a change of effective control.

The Commission also notes that Moviola may have failed to comply with its conditions of licence relating to its nature of service definition by 1) broadcasting programming drawn from program categories 7(d) and 14 that are not included in its current definition, 2) providing less than 35% Canadian programming over the broadcast year and during the evening broadcast period and 3) providing less than 90% closed captioning for English-language programs over the broadcast day.

Process

The Commission intends to hear the evidence and make determinations on the above-noted instances of apparent non-compliance. Accordingly, pursuant to sections 12 and 24 of the *Broadcasting Act* (the Act), the Commission calls the licensee to this public hearing to show cause why:

- a mandatory order under section 12 of the Act requiring the licensee to comply with the Specialty Services Regulations and its conditions of licence should not be issued;
- its licence should be renewed;
- if its licence is renewed, why the renewal should not be for a short term; and
- its licence should not be suspended or revoked pursuant to sections 9 and 24 of the Act.

Licensee's address:

P.O. Box 6143

Station A

Toronto, Ontario

M5W 1P6

Fax: 416-492-9539

Email: cal.millar@tvchannelzero.com

Email to request electronic version of application: info@tvchannelzero.com

2. 1490525 Ontario Inc.

Across Canada

Applications 2012-0859-6 and 2012-0941-1

Applications by **1490525 Ontario Inc.** (1490525) for authority to effect a change in ownership pursuant to section 10(4) of the *Specialty Services Regulations, 1990* (the Specialty Services Regulations) and to renew the broadcasting licence for the national English-language specialty Category B service Silver Screen Classics, which expires 31 August 2014.

As per the Commission's records, 1490525 is owned by Anthony D'Andrea (25%), C.J. Millar (25%), Romen Podzyhun (25%) and Harold Balde (25%).

Following completion of the proposed transaction, 1490525 would be owned by 2308740 Canada Inc. (2308740) and would be controlled by 2308740. 2308740 is a corporation owned by Romen Podzyhun (39.3%), C.J. Millar (39.3%) and Chris Fuoco (21.4%) and controlled by its board of directors pursuant to the terms of the shareholders agreement dated 9 December 2011.

The applicant did not propose any tangible benefits because the applicant is of the view that the change in ownership would not result in a change in effective control of the licensee.

In its licence renewal application, the licensee has proposed to operate the undertaking under the same terms and conditions as those in effect under the current licence and has confirmed that it would adhere to the standard conditions of licence for specialty Category B services set out in *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011.

Non-compliance

The Commission notes that the licensee may have failed to comply with section 10(4) of the Specialty Services Regulations, which requires the licensee to obtain prior approval of the Commission in respect of any act, agreement or transaction that directly or indirectly would result in a change by whatever means of the effective control of its undertaking. In the application to approve the change in ownership, it is indicated that 1490525 is currently controlled by its board of directors, composed of Balde, Podzyhun, Millar and D'Andrea. However, the application for the change in ownership appears to enable the settlement of litigation between the shareholders which may have resulted in a change of effective control.

The Commission also notes that 1490525 may have failed to comply with its conditions of licence relating to its nature of service definition by 1) broadcasting programming drawn from program categories 2(b) and 5(b) that are not included in its current definition 2) providing less than 35% Canadian programming over the broadcast year and during the evening broadcast period; and 3) providing less than 90% closed captioning for English-language programs over the broadcast day.

Process

The Commission intends to hear the evidence and make determinations on the above-noted instance of apparent non-compliance. Accordingly, pursuant to sections 12 and 24 of the *Broadcasting Act* (the Act), the Commission calls the licensee to this public hearing to show cause why:

- a mandatory order under section 12 of the Act requiring the licensee to comply with the Specialty Services Regulations and its conditions of licence should not be issued;
- its licence should be renewed;
- if its licence is renewed, why the renewal should not be for a short term; and
- its licence should not be suspended or revoked pursuant to sections 9 and 24 of the Act.

Licensee's address:

P.O. Box 6143
 Station A
 Toronto, Ontario
 M5W 1P6
 Fax: 416-492-9539

Email: cal.millar@tvchannelzero.com

Email to request electronic version of application: info@tvchannelzero.com

3. Drive Publishing Inc.

Across Canada

Applications 2012-0862-9 and 2012-0936-2

Applications by **Drive Publishing Inc.** (Drive) for authority to effect a change in ownership pursuant to section 10(4) of the *Specialty Services Regulations, 1990* (the Specialty Services Regulations) and to renew the broadcasting licence for the English-language specialty Category B service AOV Adult Movie Channel, which expires 31 August 2014.

As per the Commission's records, Drive is owned by Doug Rankine (25%), Randy Jorgensen (25%), Anthony D'Andrea (12.5%), C.J. Millar (12.5%), Romen Podzyhun (12.5%) and Harold Balde (12.5%).

Following completion of the proposed transaction, Drive would be wholly owned by 2308740 Canada Inc., a corporation owned by Romen Podzyhun (39.3%), C.J. Millar (39.3%) and Chris Fuoco (21.4%) and controlled by its board of directors pursuant to the terms of the shareholders agreement dated 9 December 2011.

The applicant did not propose any tangible benefits because the applicant is of the view that the change in ownership would not result in a change in effective control of the licensee.

In its licence renewal application, the licensee has proposed to operate the undertaking under the same terms and conditions as those in effect under the current licence and has

confirmed that it would adhere to the standard conditions of licence for specialty Category B services set out in *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011.

Non-compliance

The Commission notes that the licensee may have failed to comply with section 10(4) of the Specialty Services Regulations and with its first condition of licence which requires that “Except as authorized by the Commission, this broadcasting undertaking shall be operated in fact by the licensee itself.” The Commission is of the preliminary view that the effective control of the undertaking does not appear to be exercised by the licensee’s board of directors, but rather by Diamond Media, as it appears that Diamond Media is operating the undertaking and receives all the revenues and profits from the service.

In addition, the Commission notes that Drive may have failed to comply with its conditions of licence relating to its nature of service definition by 1) broadcasting programming drawn from program category 7(f) not included in its current definition, 2) providing less than 35% Canadian programming over the broadcast year and during the evening broadcast period and 3) providing less than 90% closed captioning for English-language programs over the broadcast day.

Process

The Commission intends to hear the evidence and make determinations on the above-noted instance of apparent non-compliance. Accordingly, pursuant to sections 12 and 24 of the *Broadcasting Act* (the Act), the Commission calls the licensee to this public hearing to show cause why:

- a mandatory order under section 12 of the Act requiring the licensee to comply with the Specialty Services Regulations and its conditions of licence should not be issued;
- its licence should be renewed;
- if its licence is renewed, why the renewal should not be for a short term; and
- its licence should not be suspended or revoked pursuant to sections 9 and 24 of the Act.

Licensee’s address:

P.O. Box 6143
 Station A
 Toronto, Ontario
 M5W 1P6
 Fax: 416-492-9539

Email: cal.millar@tvchannelzero.com

Email to request electronic version of application: info@tvchannelzero.com

4. **1225520 Ontario Inc.**

Across Canada

Applications 2012-0863-7, 2012-0944-5 and 2012-0945-3

Applications by **1225520 Ontario Inc.** (1225520) for authority to effect a change in ownership pursuant to section 10(4) of the *Specialty Services Regulations, 1990* (the Specialty Services Regulations) and to renew the broadcasting licences for the national, English-language specialty Category B services AOV XXX Action Clips and AOV Maleflixxx, which expire 31 August 2014.

As per the Commission's records, 1225520 is owned by Anthony D'Andrea (25%), C.J. Millar (25%), Romen Podzyhun (25%) and Harold Balde (25%).

Following completion of the proposed transaction, 1225520 would be owned by 2308740 Canada Inc. (2308740) and would be controlled by 2308740. 2308740 is a corporation owned by Romen Podzyhun (39.3%), C.J. Millar (39.3%) and Chris Fuoco (21.4%) and controlled by its board of directors pursuant to the terms of the shareholders agreement dated 9 December 2011.

The applicant did not propose any tangible benefits because the applicant is of the view that the change in ownership would not result in a change in effective control of the licensee.

In its licence renewal applications, the licensee has proposed to operate the undertakings under the same terms and conditions as those in effect under the current licences and has confirmed that it would adhere to the standard conditions of licence for specialty Category B services set out in *Standard conditions of licence, expectations and encouragements for Category B pay and specialty services – Corrected Appendices 1 and 2*, Broadcasting Regulatory Policy CRTC 2010-786-1, 18 July 2011.

Non-compliance

The Commission notes that the licensee may have failed to comply with section 10(4) of the Specialty Services Regulations and failed to comply with its first condition of licence which requires that "Except as authorized by the Commission, this broadcasting undertaking shall be operated in fact by the licensee itself." Given the fact that the parties involved in AOV Adult Movie Channel (item 3 on this notice) appear to be also involved in AOV XXX Action Clips and AOV Maleflixxx and given the fact that Diamond Media receives all the revenues and profits from the services, effective control of the AOV services may be exercised by Diamond Media rather than the licensee itself.

In addition, the Commission notes that the licensee may have failed to comply with its conditions of licence by 1) providing less than 35% Canadian programming over the broadcast year and during the evening broadcast period and 2) providing less than 90% closed captioning for English-language programs over the broadcast day for both services. In the case of the AOV Maleflixxx service, the Commission notes that the licensee may have also failed to comply with its condition of licence relating to its nature of service definition by broadcasting programming drawn from program category 7(d) not included in its current definition.

Process

The Commission intends to hear the evidence and make determinations on the above-noted instances of apparent non-compliance. Accordingly, pursuant to sections 12 and 24 of the *Broadcasting Act* (the Act), the Commission calls the licensee to this public hearing to show cause why:

- a mandatory order under section 12 of the Act requiring the licensee to comply with the Specialty Services Regulations and its conditions of licence should not be issued;
- its licences should be renewed;
- if its licences are renewed, why the renewals should not be for a short term; and
- its licences should not be suspended or revoked pursuant to sections 9 and 24 of the Act.

Licensee's address:

P.O. Box 6143

Station A

Toronto, Ontario

M5W 1P6

Fax: 416-492-9539

Email: cal.millar@tvchannelzero.com

Email to request electronic version of application: info@tvchannelzero.com

Procedure

Deadline for interventions or answers

4 April 2014

The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, SOR/2010-277 (the Rules of Procedure), set out, among other things, the rules for content, format, filing and service of interventions and answers of respondents, the procedure for filing confidential information and requesting its disclosure, and the conduct of the public hearing. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and its accompanying documents, which can be found on the Commission's website under "CRTC Rules of Practice and Procedure."

An intervention or an answer from a respondent must be filed with the Commission and served on the applicant on or before the above-mentioned date. An answer from a respondent must also be served on any other respondent.

In accordance with the Rules of Procedure, a document must be filed with, not merely sent to, the Commission by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. The Commission takes no responsibility for postal delays and will not notify a party

whose submission is received after the deadline date. Late submissions will not be considered by the Commission and will not be made part of the public file.

The intervention or answer must include one of the following statements in either the first or the last paragraph:

1. I request to appear at the public hearing.
2. I do not want to appear at the public hearing.

The applicant, respondents and interveners are permitted to coordinate, organize and file, in a single submission, interventions of other interested persons who share their position but do not wish to appear at the hearing as a “Joint Supporting Intervention.” More information on how to do so and a template for the covering letter to be filed by the parties can be found in *Changes to certain practices for filing interventions – Expansion of filing practices to include the filing of joint supporting comments for broadcasting policy proceedings*, Broadcasting Information Bulletin CRTC 2010-28-1, 10 December 2010.

Interventions and answers will be considered by the Commission and will form part of the public record of the proceeding without further notification to parties, provided the procedures set out in the Rules of Procedure and this notice have been followed. Parties will be contacted only if their submissions raise procedural questions.

Submissions must be filed by sending them to the Secretary General of the Commission by **only one** of the following means:

by using the
[[Intervention/comment/answer form](#)]

or

by mail to
CRTC, Ottawa, Ontario K1A 0N2

or

by fax at
819-994-0218

A true copy of each intervention or answer from a respondent must be sent to the applicant and, in the case of a respondent to an application, to any other respondent.

The Commission advises those who file and serve by electronic mode to exercise caution when using e-mail for service of documents, as it may be difficult to establish that service has occurred.

Parties must ensure that, before initiating service through electronic mode, they will be able to satisfy the Commission, upon request, that service was completed. The sender must keep proof of the sending and the receipt of the document for 180 days after the day on which it is filed.

Submissions longer than five pages should include a summary.

Each paragraph of the submission should be numbered. In addition, where the intervention is filed by electronic means, the line *****End of document***** should be entered following the last paragraph of the document, as an indication that the document has not been altered during electronic transmission.

Interventions and answers must clearly identify the application referred to and indicate whether parties support or oppose the application, or, if they propose changes to it, include the facts and grounds for their proposal.

Parties requiring communication support must state their request on the first page of their intervention. Only those parties whose requests to appear have been granted will be contacted by the Commission and invited to appear at the public hearing.

Persons requiring communications support such as assistance listening devices and sign language interpretation are requested to inform the Commission at least twenty (20) days before the commencement of the public hearing so that the necessary arrangements can be made.

Important notice

All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, e-mail or through the Commission's website at www.crtc.gc.ca, becomes part of a publicly accessible file and will be posted on the Commission's website. This information includes personal information, such as full names, e-mail addresses, postal/street addresses, telephone and facsimile numbers, and any other personal information parties provide.

The personal information that parties provide will be used and may be disclosed for the purpose for which the information was obtained or compiled by the Commission, or for a use consistent with that purpose.

Documents received electronically or otherwise will be put on the Commission's website in their entirety exactly as received, including any personal information contained therein, in the official language and format in which they are received. Documents not received electronically will be available in PDF format.

The information that parties provide to the Commission as part of this public process is entered into an unsearchable database dedicated to this specific public process. This database is accessible only from the web page of this particular public process. As a result, a general search of the Commission's website with the help of either its own search engine or a third-party search engine will not provide access to the information that was provided as part of this public process.

The Commission encourages parties and interested persons to monitor the record of the proceeding, available on the Commission's website, for additional information that they may find useful when preparing their submissions.

Examination of documents

An electronic version of the applications is available on the Commission's website by selecting the application number within this notice. It is also available from the applicants/licensees, either on their website or upon request by contacting the applicants/licensees at their email addresses, provided above.

A list of all interventions and answers will also be available on the Commission's website. The list is accessible by selecting "View all proceedings open for comment" from the "Public Proceedings" section of the Commission's website and clicking on the "Interventions/Answers" link associated with this notice.

Documents are also available during normal office hours at the Commission offices and documentation centres directly involved with these applications, or, upon request, within two (2) working days, at any other Commission offices and documentation centres.

Location of Commission offices

Toll-free telephone: 1-877-249-2782

Toll-free TDD: 1-877-909-2782

Les Terrasses de la Chaudière
Central Building
1 Promenade du Portage, Room 206
Gatineau, Quebec
J8X 4B1
Tel.: 819-997-2429
Fax: 819-994-0218

Regional offices

Nova Scotia

Metropolitan Place
99 Wyse Road
Suite 1410
Dartmouth, Nova Scotia
B3A 4S5
Tel.: 902-426-7997
Fax: 902-426-2721

Quebec

505 de Maisonneuve Boulevard West
Suite 205
Montréal, Quebec
H3A 3C2
Tel.: 514-283-6607

Ontario

55 St. Clair Avenue East
Suite 624
Toronto, Ontario
M4T 1M2
Tel.: 416-952-9096

Manitoba

360 Main Street
Suite 970
Winnipeg, Manitoba
R3C 3Z3
Tel.: 204-983-6306
Fax: 204-983-6317

Saskatchewan

2220 – 12th Avenue
Suite 620
Regina, Saskatchewan
S4P 0M8
Tel.: 306-780-3422
Fax: 306-780-3319

Alberta

100 – 4th Avenue South-West
Suite 403
Calgary, Alberta
T2P 3N2
Tel.: 403-292-6660
Fax: 403-292-6686

British Columbia

858 Beatty Street
Suite 290
Vancouver, British Columbia
V6B 1C1
Tel.: 604-666-2111
Fax: 604-666-8322

Secretary General