



Broadcasting Regulatory Policy CRTC 2015-355 and Broadcasting Order CRTC 2015-356

PDF version

References: 2015-86 and 2015-87

Ottawa, 6 August 2015

Revised exemption order for certain classes of video-on-demand (VOD) undertakings and updated standard conditions of licence for licensed VOD undertakings

Consistent with its policy determinations in the Let's Talk TV process, the Commission sets out a revised exemption order for certain classes of video-on-demand (VOD) undertakings, as well as updated standard conditions of licence for licensed VOD undertakings. These changes are intended to provide Canadian alternatives to non-Canadian online video services.

Specifically, the revised exemption order, which takes effect immediately, creates a new hybrid VOD service category, along with the rules that apply to this category. This includes the requirement that the service be offered on the Internet to all Canadians without the need for a subscription to a specific broadcasting distribution undertaking, mobile service or retail Internet access service.

As a result of today's changes, Canadians will have more opportunities to discover Canadian programming, including original Canadian programming, on multiple Canadian-operated platforms. Further, Canadian companies will be able to compete on an equal footing in an on-demand environment.

Introduction

1. Historically, video-on-demand (VOD) services have been offered either as:
 - broadcasting distribution undertaking (BDU)-specific services operating either under a VOD licence or, in the case of services operated by smaller, independently owned BDUs, under the exemption order for small VOD undertakings (Broadcasting Order 2011-60) (hereafter the BDU-specific VOD services); or
 - online video services operating under the digital media exemption order (DMEO) (Broadcasting Order 2012-409), which are not licensed.
2. Most licensed VOD services are linked to specific BDUs, which in turn tend to be operated on a regional basis. These BDU-specific VOD services can only be accessed with a BDU subscription and are only offered through the particular technological platform used by the BDU. The BDU-specific VOD services operate under rules that

include the regulatory framework for VOD services set out in Broadcasting Regulatory Policy 2010-190 and the standard conditions of licence, expectations and encouragement for licensed VOD services set out in Broadcasting Regulatory Policy 2014-444. They must also abide by the conditions set out in their respective licences or, in the case of exempt VOD services, the conditions set out in the exemption order for small VOD undertakings.

3. BDU-specific VOD services also have specific obligations relating to Canadian programming similar to the requirements for programming services, as well as restrictions with respect to offering exclusive content. The intent of the latter rule is to avoid situations where consumers must subscribe to a particular BDU or even more than one BDU to access exclusive programming.
4. Different rules apply to unlicensed online video services authorized under the DMEO. Among other things, the DMEO prohibits services from providing exclusive access to programming designed primarily for television, but only where access to such programming is restricted based on a consumer's subscription to a specific mobile or Internet service provider (ISP). Exclusive content is therefore permitted provided that it is offered in a manner that is not dependent on subscription to a specific mobile or retail Internet access service.
5. In light of the new and evolving nature of many VOD services, the Commission announced in Broadcasting Regulatory Policy 2015-86 (the Create Policy) that it would expand the current exemption order for VOD services to authorize a third category of VOD services based on a hybrid regulatory approach.
6. These hybrid video-on-demand (HVOD) services will benefit from the same flexibility as services operating under the DMEO, including the ability to offer exclusive programming. They will also have the ability to offer their services on a closed BDU network like traditional VOD services without having to meet the specific regulatory requirements relating to financial contributions to and shelf space for Canadian programming applicable to traditional VOD services. However, to be eligible for exemption, the HVOD services must also be delivered and accessed over the Internet and such access cannot be dependent on subscription to a particular BDU, ISP or mobile service. This will help remove barriers for Canadian companies to compete on an equal footing in an on-demand environment, while ensuring that Canadians throughout the country have access to programming, including original Canadian programming, on Canadian-operated online platforms.
7. In Broadcasting Notice of Consultation 2015-87, the Commission sought comments on the wording of the proposed amendments to the VOD exemption order to include this new HVOD category of services. Further, in light of its determination that regulatory support is no longer needed to ensure programming diversity between services and that its genre exclusivity policy should be eliminated, the Commission sought comment on the elimination of the standard condition of licence for licensed VOD services prohibiting Canadian subscription video-on-demand (SVOD) packages that would compete directly with genre-protected Canadian discretionary services.

Interventions

8. The Commission received general comments from Canadians and the Competition Bureau supporting the HVOD initiative. Individual Canadians noted the importance of requiring that HVOD services be available on a standalone basis (i.e. without another subscription) in an increasingly on-demand world, while the Commissioner of Competition expressed the view that the initiative may lead to increased consumer choice, reduced switching costs for consumers and increased competition and innovation as HVOD services will be available to all Canadians regardless of whether they have an existing relationship with a particular BDU or ISP. The Bureau also noted that HVOD services will be able to operate without the regulatory requirements normally imposed on traditional licensed VOD services, thus reducing barriers to entry by ISPs and BDUs.
9. Other parties, including broadcasters, independent and vertically integrated BDUs, associations representing producers and the Public Interest Advocacy Centre (PIAC), supported, opposed or commented on specific aspects of the Commission's proposals, as discussed in the following sections. The public record for this proceeding can be found on the Commission's website at www.crtc.gc.ca.

Commission's analysis and decisions

10. Having examined the public record of this proceeding in light of applicable policies and regulations, the Commission considers that the issues it must examine are the following:
 - how to ensure that parties are able to identify under which category a given service is operating;
 - whether the programming on the BDU and online versions of an HVOD service must be identical for the service to qualify for exemption;
 - to what extent other BDUs should have access to the programming on HVOD services;
 - whether HVOD services should be allowed to operate without specific obligations for Canadian programming; and
 - whether the prohibition against offering a non-Canadian SVOD package that is directly competitive with a Canadian linear pay or specialty service should be maintained in the standard conditions of licence for VOD services.

Identification of a service's category

11. In the Create Policy and its call for comments, the Commission did not provide specific views as to how on-demand services would identify under which exemption order they operate (i.e. the DMEQ or an expanded VOD order including HVOD services).

12. PIAC recommended that the Commission clarify that the HVOD category is an automatic rather than an elective classification. It further submitted that if the Commission considered that services such as CraveTV and shomi constituted HVOD services, it should explicitly order them to operate under the expanded VOD exemption order. Similarly, in a joint submission, David Ellis, Benjamin Klass and Dwayne Winseck also requested regulatory clarity, stating that the Commission should make it clear that the DMEO and expanded VOD exemption order are mutually exclusive and that a service cannot qualify for both.
13. Cogeco, however, requested that HVOD services be subject to the requirements of both the DMEO and the expanded VOD exemption order.

Commission's analysis and decision

14. In light of the differences between the rules established for HVOD services in this policy and those imposed on services operating under the DMEO, it will not be possible for a single service to operate under both regimes. However, given the likelihood that services operating under the DMEO and those operating as HVOD services will appear similar from the viewer's perspective, the Commission concurs that identification of the exemption order under which a given service operates is essential to avoid confusion and possible regulatory gaming. Identification of a service's category will also facilitate the Commission's ability to address complaints against or problems with these services.
15. Accordingly, the Commission has added a criterion to the proposed exemption order requiring that an undertaking wishing to operate as an HVOD service register with the Commission.

Programming on the BDU version relative to the online version of an HVOD service

16. Since an HVOD service may be offered on a BDU platform as well as over the Internet, parties also sought clarity as to whether the programming offered on both versions of an HVOD service must be identical for it to qualify for exemption.
17. In this respect, PIAC submitted that the BDU and online versions need not be identical for the HVOD service to qualify, stating that the Commission should establish the most appropriate criterion, such as whether the programming on the two platforms might be substantially similar enough to constitute the same HVOD service.
18. For their part, Rogers and Shaw stated while it is the objective of their VOD service shomi to offer an identical experience on all platforms, this is not always possible for technical reasons. In particular, due to technical limitations relating to the inventory that can be made available on set-top boxes, the programming offered to customers accessing shomi on closed BDU-specific platforms may not be identical to the programming available on shomi when it is offered directly to consumers over the Internet. Accordingly, Rogers and Shaw submitted that the VOD exemption order

should not require that the HVOD service be identical on all platforms, but rather that such services be substantially similar in terms of branding and programming.

Commission's analysis and decision

19. The Commission concurs with PIAC that it is necessary to be able to assess how two platforms might qualify for exemption as part of the same HVOD service. The Commission also acknowledges the arguments made by Rogers and Shaw regarding the technical limitations presented by set-top boxes as compared to the Internet.
20. Any regulatory approach to HVOD services should be consistent with the principle set out in the Create Policy that the content of these services must be made available to all Canadians over the Internet in a manner that is not dependent on a specific BDU, mobile or ISP subscription. In this respect, incentives exist for an HVOD service to offer exclusive content on the BDU version of the service that would not be made available on the online version. Since it is the online version that will be made available to all Canadians, this could result in situations in which some content is only available with a specific subscription. Therefore, the Commission considers that to qualify for exemption, programs for which the rights are held on an exclusive basis must also be delivered and accessed over the Internet. This requirement will ensure that all of the content is available to all Canadians on the online version of the service without the need for a specific BDU subscription.
21. Accordingly, the Commission has amended criterion 12 of the exemption order to reflect this requirement.
22. In addition, the expanded VOD exemption order also contains an undue preference provision to deal with any other instance of offering programming on a preferential basis.

Access by BDUs to the programming on HVOD services

23. Independent BDUs and other parties also proposed measures to ensure access to HVOD programming and services, such as the following:
 - guaranteeing that any BDU can have access to the programming available on the BDU version of an HVOD service (Canadian Cable Systems Alliance);
 - ensuring that all BDUs can offer all HVOD services on their own closed networks (TELUS);
 - requiring HVOD services to provide access to their exclusive, original, made-for-digital-media content once it is licensed to a legacy platform (Cogeco);
 - prohibiting the BDU version of an HVOD service from acquiring TV programming exclusives and using anti-competitive head starts (Eastlink); and
 - prohibiting HVOD services from offering TV programming exclusives tied to a subscription to a particular service provider (Canadian Network Operators Consortium).

Commission's analysis and decision

24. Although independent BDUs have raised concerns about their ability to access the programming on HVOD services, which are most likely to be operated by the large, vertically integrated broadcasting groups such as Bell, Quebecor, Rogers and Shaw, ensuring access to content for traditional VOD licensees was not the intent of the Commission in developing its approach to HVOD services in the Create Policy. The Commission's objectives in authorizing these new services were to provide access for all Canadians to HVOD content without requiring authentication through a specific BDU, mobile or ISP subscription and to put Canadian VOD services on a more equitable regulatory footing with online video services that operate under the DMEQ.
25. In the Commission's view, the proposals put forward by some parties would appear to be inconsistent with these policy objectives in that they attempt to treat the BDU version of an HVOD service in the same manner as a traditional licensed VOD service by making it subject to the same prohibitions against programming exclusives. Adopting this approach would effectively eliminate one of the key elements of the policy (i.e. the ability to offer exclusive programming) and would prevent HVOD services from operating on an equitable regulatory footing with other online services.
26. Accordingly, consistent with the Create Policy, the Commission considers it appropriate to allow HVOD services to offer exclusive programming on both the online and BDU versions of the service subject to the condition set out in criterion 12 of the exemption order.

Lack of specific Canadian programming obligations for HVOD services

27. The Canadian Media Production Association (CMPA) opposed the proposal to allow HVOD services to operate over closed BDU networks without Canadian programming requirements similar to those of licensed VOD services, arguing that the Commission had not explained how removing such requirements would ensure that Canadians have access to original Canadian programming on these services. The CMPA also maintained that by introducing this new hybrid category of service, the Commission was reversing its overall position on VOD. Finally, the CMPA argued that it was neither necessary nor appropriate for the Commission not to impose current, longstanding Canadian programming requirements in order to encourage Canadian broadcasters to pursue new, unregulated online business opportunities.
28. Similarly, the Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ) expressed concern that the Commission was opening the door to less financing and less distribution of original Canadian content without benefit to the system. ADISQ also questioned the Commission's belief that businesses will contribute to Canadian programming without any obligations.
29. To mitigate the risk and help monitor the impact and benefits of HVOD services, both ADISQ and the Association québécoise de la production médiatique (AQPM) proposed annual reporting requirements for such services similar to those applicable

to licensed VOD services. These requirements would include reporting on the number of subscriptions, the expenditures on original Canadian content and the inventory of Canadian content offered to subscribers. ADISQ also proposed reviewing the VOD sector in three years to examine the impact of the HVOD model on the financing, production and inventory of original Canadian content and to determine if it is desirable to continue with this approach. Cogeco supported this proposal.

Commission's analysis and decision

30. With respect to the CMPA's arguments, the purpose of the call for comments was to put in place one of the new measures set out in the Create Policy, not to re-examine the Commission's determinations in that policy.
31. However, the Commission considers that there is merit to the proposal by ADISQ and the AQPM regarding annual reporting requirements for HVOD services. In particular, this measure could help address some of the concerns expressed by parties representing the creative sector by monitoring new developments in the on-demand world, including how Canadian programming is performing in that area in the absence of contribution requirements or obligations for inventory. Accordingly, the Commission has required the filing of a simplified annual return for these services in the revised exemption order.

Prohibition against offering a non-Canadian SVOD package that is directly competitive with a Canadian linear pay or specialty service

32. In its call for comments, the Commission proposed to remove condition of licence 7 from the standard conditions of licence for licenced VOD services, which reads as follows:

The licensee is prohibited from offering: (a) a non-Canadian subscription video-on-demand (SVOD) package that is directly competitive with a Canadian linear pay or specialty service or (b) a Canadian SVOD package that is directly competitive with a genre-protected Canadian linear pay or specialty service, unless the package is an on-demand extension of this Canadian linear pay or specialty service.

33. Cogeco and Rogers supported eliminating this requirement in its entirety, while ADISQ, the AQPM, Bell, Groupe V Média and TV5 argued that condition of licence 7(a) must be retained, consistent with the Commission's continued approach of prohibiting non-Canadian English- and French-language services that compete directly with Canadian pay and specialty services (see Broadcasting Regulatory Policy 2015-96).

Commission's analysis and decision

34. The Commission agrees with the interveners who opposed removing the prohibition against offering a non-Canadian SVOD package that is directly competitive with a Canadian linear pay or specialty service on the grounds that it would be inconsistent

with the Commission's policy approach to the authorization of non-Canadian services for distribution by BDUs. In this respect, the Create Policy only indicated that the Commission would remove the prohibition against a Canadian SVOD package from competing directly with a genre-protected Canadian discretionary service. Such a change is in keeping with the Commission's policy determination regarding the elimination of genre protection. Accordingly, the Commission has retained the prohibition against offering a non-Canadian SVOD package that is directly competitive with a Canadian linear pay or specialty service in the revised standard conditions of licence for VOD services.

Other matters raised by parties

Requirements that HVOD services adhere to standard industry codes and not distribute programming that contains anything that contravenes any law, abusive comment or abusive pictorial representation, obscene or profane language or pictorial representation, and false or misleading news

35. David Ellis, Benjamin Klass and Dwayne Winseck submitted that these requirements were out of place and "highly restrictive" when applied to online content.
36. The Commission considers that it is unlikely that HVOD services would not be able to meet the criteria, given that the codes in question have been co-created with the industry and would generally already apply to that programming when offered by other licensed or exempt programming services. Further, the requirements in question are generally intended to enforce other legal requirements that would already apply to online services, regardless of whether or not these criteria are included in the exemption order. Accordingly, the Commission has maintained these requirements.

Proposal to add dispute resolution provisions from the DMEQ to the exemption order

37. Bell stated that these provisions should not be included because it is unclear how they could apply to exempt VOD services. Cogeco supported the inclusion of the provisions but asked that the Commission clarify that providing access during a dispute must not be construed or applied in such a way as to create a right for any exempt VOD undertaking to require carriage for its programs or services by any BDU in Canada.
38. The Commission considers that while the provisions may have limited application in this context, there may be future situations where they could be useful. Accordingly, it has retained the dispute resolution provisions. However, for clarity, these provisions are intended to address a dispute between two parties that already have a contractual relationship.

Conclusion

39. In light of all of the above and consistent with its policy determinations in the Let's Talk TV process, the Commission replaces Broadcasting Order 2011-60 with the amended exemption order for VOD undertakings set out in Appendix 1 of this policy. The new exemption order takes effect immediately.

40. The Commission also revises the standard conditions of licence for VOD undertakings as set out in Appendix 2 of this policy. These standard conditions of licence replace those set out in Appendix 6 to Broadcasting Regulatory Policy 2014-444.

Secretary General

Related documents

- *Let's Talk TV: A World of Choice – A roadmap to maximize choice for TV viewers and to foster a healthy, dynamic TV market*, Broadcasting Regulatory Policy 2015-96, 19 March 2015
- *Call for comments on proposed amendments to the exemption order for video-on-demand undertakings and to the standard conditions of licence for video-on-demand undertakings*, Broadcasting Notice of Consultation CRTC 2015-87, 12 March 2015
- *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*, Broadcasting Regulatory Policy 2015-86, 12 March 2015
- *Amendments to various regulations, the standard conditions of licence for video-on-demand undertakings and certain exemption orders – Provisions requiring the mandatory distribution of emergency alert messages*, Broadcasting Regulatory Policy CRTC 2014-444 and Broadcasting Orders CRTC 2014-445, 2014-446, 2014-447 and 2014-448, 29 August 2014
- *Amendments to the Exemption order for new media broadcasting undertakings (now known as the Exemption order for digital media broadcasting undertakings)*, Broadcasting Order CRTC 2012-409, 26 July 2012
- *Exemption order for small video-on-demand undertakings*, Broadcasting Order CRTC 2011-60, 31 January 2011
- *Regulatory framework for video-on-demand undertakings*, Broadcasting Regulatory Policy CRTC 2010-190, 29 March 2010

Appendix 1 to Broadcasting Regulatory Policy CRTC 2015-355

Broadcasting Order CRTC 2015-356

Terms and conditions of the exemption order for video-on-demand undertakings

By this order and pursuant to subsection 9(4) of the *Broadcasting Act* (the Act), the Commission exempts from the requirements of Part II of the Act and any regulations made thereunder those persons carrying on broadcasting undertakings of the classes defined by the criteria set out below.

Purpose

The purpose of these television programming undertakings is to provide on-demand programming services that may be distributed by broadcasting distribution undertakings.

A. General

1. For the purpose of this order, the following definitions apply:

“television programming” means programming designed primarily for conventional television, discretionary programming services or licensed video-on-demand services.

“terms of carriage” means the rates, terms and conditions pursuant to which a programming service is provided by one broadcasting undertaking to another.

2. The Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament or any direction to the Commission by the Governor in Council.
3. The undertaking does not give an undue preference to any person, including itself, or subject any person to an undue disadvantage. In any proceeding before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the party that gives the preference or subjects the person to the disadvantage.
4. The undertaking files information with the Commission specifying: the name of the service provider, the name under which the service operates, the broadcasting distribution undertaking(s) that distribute the service and the service’s contact information, including mailing address, telephone number, fax number, email address and website. In the case of a new undertaking, the above information is filed with the Commission when the undertaking is ready to commence operations. The undertaking will advise the Commission if there are any changes to this information.
5. The undertaking submits any information requested by the Commission to ascertain the undertaking’s compliance with the terms of this order.

6. The undertaking does not distribute programming that contains the following:
- (a) anything that contravenes any law;
 - (b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;
 - (c) any obscene or profane language or pictorial representation; or
 - (d) any false or misleading news.

For the purpose of section (b), sexual orientation does not include the orientation towards a sexual act or activity that would constitute an offence under the *Criminal Code*.

7. The undertaking shall adhere to the *Equitable Portrayal Code*, as amended from time to time and approved by the Commission.
8. The undertaking shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission.
9. The undertaking shall adhere to the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as amended from time to time and approved by the Commission.

B. Small video-on-demand undertakings

10. The undertaking is owned and operated by a person that does not hold a broadcasting distribution licence and is not an affiliate of a person that holds a broadcasting distribution licence (licensee). An “affiliate” means a person who controls the licensee or who is controlled by the licensee or by a person who controls the licensee.
11. The undertaking provides video-on-demand services that are distributed using only the facilities of exempt broadcasting distribution undertakings operating pursuant to the exemption order set out in *Exemption order for terrestrial broadcasting distribution undertakings serving fewer than 20,000 subscribers*, Broadcasting Order CRTC 2009-544, 31 August 2009, as may be amended from time to time.

C. Hybrid video-on-demand undertakings

12. If the undertaking does not meet the criteria set out in paragraphs 10 and 11 above, the undertaking offers its service over a broadcasting distribution undertaking provided that all of the programs for which the rights are held on an exclusive basis are also delivered and accessed over the Internet.

13. Where the service is delivered and accessed over the Internet as described in paragraph 12 above, it shall not be offered in a way that is dependent on a subscription to any specific broadcasting distribution undertaking, mobile service or retail Internet access service.
14. An undertaking of the type described in paragraphs 12 and 13 shall submit such information regarding the undertaking's activities in broadcasting in digital media, and such other information that is required by the Commission to monitor the development of broadcasting in digital media, at such time and in such form as requested by the Commission from time to time.
15. In regard to the filing of information with the Commission:
 - (a) The undertaking files information with the Commission specifying: the name of the service provider and the owner or owners (i.e. the person who controls the service provider, if different from the service provider), the name under which the service operates, the service's contact information, including mailing address, telephone number, fax number, email address, website, the name of any broadcasting distribution undertaking to which the service is related and the operating language(s) of the service. In the case of a new undertaking, the above information is filed with the Commission at least 30 days before the service is first distributed.
 - (b) The undertaking updates with the Commission the information required under (a) above prior to making any change.
 - (c) By 30 November of each year, the undertaking submits to the Commission all information required as part of the simplified annual return for such undertakings.

D. Obligation during dispute

16. If there is a dispute concerning the carriage or terms of carriage of programming or concerning any other right or obligation under the Act, the undertaking shall continue to provide access to the programming services on the same terms of carriage as it did before the dispute.
17. For purposes of paragraph 16, a dispute exists from the moment that written notice of the dispute is provided to the Commission and served on the other undertaking that is party to the dispute and ends when an agreement settling the dispute is reached by the undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter.

E. Dispute Resolution

18. If there is a dispute concerning any aspect of the terms of carriage, one or both of the undertakings to the dispute may refer the matter to the Commission for dispute

resolution and the undertakings to the dispute submit to any decision that may result therefrom.

19. If the Commission accepts a referral of a matter for dispute resolution, the undertaking submits to participation in a mediation before a person appointed by the Commission.
20. Where the undertaking provides another undertaking with access to television programming in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the undertaking submits to:
 - (a) having the dispute resolved as provided for in *Practices and procedures for staff-assisted mediation, final offer arbitration, and expedited hearings*, Broadcasting and Telecom Information Bulletin CRTC 2009-38, 29 January 2009, as amended from time to time; and
 - (b) the terms of carriage established by the Commission as of the date the programming was first made available to the relevant undertaking absent a commercial agreement and on a going-forward basis for the contractual term established by the Commission.
21. For greater certainty, nothing in paragraphs 18 or 20 prevents parties from reaching an agreement with respect to rates, terms or conditions that differ from those established by the Commission.
22. During dispute resolution, the undertaking submits to produce and file such additional information as may be requested by the Commission or any individual named by the Commission to act as a mediator in a given dispute.

Appendix 2 to Broadcasting Regulatory Policy CRTC 2015-355

Standard conditions of licence, expectations and encouragement for video-on-demand undertakings

Conditions of licence

1. The licensee shall adhere to the *Pay Television Regulations, 1990*, as amended from time to time, with the exception of sections 3(2)(d), 3(2)(e), 3(2)(f), 4 and 6.1.
2. Except as authorized by the Commission, the programming undertaking shall be operated in fact by the licensee itself.
3. The licensee shall ensure that at all times:
 - (a) no less than 5% of the English-language feature films in the inventory available to subscribers are Canadian;
 - (b) no less than 8% of the French-language feature films in the inventory available to subscribers are Canadian;
 - (c) the feature film inventory includes all new Canadian feature films that are suitable for video-on-demand exhibition and that meet the approved *Industry Code of Programming Standards and Practices Governing Pay, Pay-Per-View and Video-On-Demand Services*; and
 - (d) no less than 20% of all programming other than feature films in the inventory available to subscribers is Canadian.
4. The licensee shall ensure that no less than 25% of the titles promoted each month on its barker channel are Canadian titles.
5. The licensee shall contribute 5% of its gross annual revenues to an existing Canadian program production fund administered independently of its undertaking.

For the purpose of this condition:

- (a) if the video-on-demand service is a “related service,” “gross annual revenues” shall be 50% of the total video-on-demand associated revenues received from customers of the broadcasting distribution undertaking distributing the service;
- (b) if the video-on-demand service is not a “related service,” “gross annual revenues” shall be the total amount received from the broadcasting distribution undertaking(s) distributing the video-on-demand service; and
- (c) a “related service” means one in which the broadcasting distribution undertaking distributing the video-on-demand service or any of its shareholders owns, directly or indirectly, 10% or more of the equity of the video-on-demand service.

6. In regard to Canadian feature films:
 - (a) The licensee shall remit to the rights holders of all Canadian feature films 100% of revenues earned from the exhibition of these films. The licensee will be permitted to exclude the amount remitted to Canadian feature film rights holders as revenue for the purpose of calculating the contribution to a production fund required under condition of licence 5.
 - (b) Notwithstanding paragraph (a), some Canadian feature films may be the subject of a negotiated revenue-sharing agreement between the licensee and the rights holder of Canadian feature films. Any revenues retained by the video-on-demand licensee with respect to such Canadian feature films shall be included as gross broadcasting revenues for the purposes of calculating the contribution to a production fund required under condition of licence 5.
7. The licensee is prohibited from offering a non-Canadian subscription video-on-demand package that is directly competitive with a Canadian linear pay or specialty service.
8. The licensee shall not include as part of its video-on-demand offering any program containing a commercial message except under the following circumstances:
 - (a) the commercial message
 - (i) is inserted by the licensee in a program that is obtained from a Canadian programming undertaking that is not a related Canadian programming undertaking;
 - (ii) is inserted by the licensee in a program that is obtained from a related licensed Canadian programming undertaking that has acquired the right to broadcast the program on its linear Canadian programming service(s);
 - (iii) was already included in a program previously broadcast in Canada by a non-Canadian programming service authorized for distribution in Canada; or
 - (iv) is included in the licensee's community programming in accordance with subsections 30(1)(g), 30(1)(h) and 30(1)(i) of the *Broadcasting Distribution Regulations* (where applicable);
 - (b) if the commercial message is included in a program by virtue of 8(a)(i), 8(a)(ii) or 8(a)(iv), the program's inclusion as part of the video-on-demand offering must be the subject of a written agreement entered into with the programming undertaking that owns the rights to the program;

- (c) the commercial message complies with the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission; and
- (d) the commercial message complies with the technical requirements set out in *ATSC Recommended Practice A/85: Techniques for Establishing and Maintaining Audio Loudness for Digital Television*, published by the Advanced Television Systems Committee Inc., as amended from time to time.

For the purpose of this condition of licence, “related Canadian programming undertaking” means a Canadian programming undertaking of which the licensee and/or an affiliate controls more than 10% of the total shares issued and outstanding.

9. The licensee may broadcast a commercial message directly or indirectly advertising an alcoholic beverage only if:
 - (a) the sponsor is not prohibited from advertising the alcoholic beverage by the laws of the province in which the commercial message is broadcast;
 - (b) the commercial message is not designed to promote the general consumption of alcoholic beverages; and
 - (c) the commercial message complies with the *Code for Broadcast Advertising of Alcoholic Beverages* published by the Commission on 1 August 1996.

Paragraph (b) does not prohibit industry, public service or brand preference advertising.

10. The licensee shall not give an undue preference to any person, including itself, or subject any person to an undue disadvantage. In any proceedings before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that has given the preference or subjected the person to the disadvantage.
11. The licensee shall not acquire exclusive rights for any of the programming offered on its programming service.
12. The licensee shall caption
 - (a) 100% of the English- and French-language programs in its inventory, consistent with the approach set out in *A new policy with respect to closed captioning*, Broadcasting Public Notice CRTC 2007-54, 17 May 2007, with the exception of original licensee-produced community programming and access programming.
 - (b) 100% of original licensee-produced community programming by the end of the licence term.

13. The licensee shall adhere to the quality standards on closed captioning developed by the television industry's working groups, as amended from time to time and approved by the Commission.
14. The licensee shall have a monitoring system in place to ensure that for any signal that is closed captioned, the correct signal is captioned, the captioning is included in its broadcast signal and this captioning reaches the distributor of that signal in its original form. "Original form" means, at a minimum, that the captioning provided by the licensee reaches the distributor unaltered, whether it is passed through in analog or in digital, including in high definition.
15. The licensee shall adhere to the *Equitable Portrayal Code*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
16. The licensee shall adhere to the *Pay television and pay-per-view programming code regarding violence*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
17. The licensee shall adhere to the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, as amended from time to time and approved by the Commission. However, the application of the foregoing condition of licence will be suspended if the licensee is a member in good standing of the Canadian Broadcast Standards Council.
18. The licensee shall maintain for a period of one year and submit to the Commission upon request a detailed list of the inventory available on each server. The list must identify each program by programming category and by country of origin and indicate the period of time that each program was on the server and available to subscribers.
19. In regard to local expression:
 - (a) Except as otherwise provided in subsections (b) and (c) or under a condition of its licence, if a licensee elects to offer an outlet for local expression, the licensee shall offer the programming at no charge to its subscribers and shall not offer any programming service other than the following:
 - (i) community programming;
 - (ii) a maximum of two minutes during a 60-minute interval of announcements promoting broadcasting services that the licensee is authorized to provide;

- (iii) a public service announcement;
 - (iv) an information program funded by and produced for a federal, provincial or municipal government or agency or a public service organization;
 - (v) the question period of the legislature of the province in which the licensed area is located;
 - (vi) an announcement providing information about the programming that is to be offered as local expression;
 - (vii) a commercial message that mentions or displays the name of a person who sponsored a community event or the goods, services or activities sold or promoted by the person, if the mention or display is in the course and incidental to the production of community programming relating to the event;
 - (viii) an oral or written acknowledgement, which may include a moving visual presentation of no more than 15 seconds per message, contained in community programming that mentions no more than the name of a person, a description of the goods, services or activities that are being sold or promoted by the person and their address and telephone number, if the person provided direct financial assistance for the community programming in which the acknowledgement is contained;
 - (ix) an oral or a written acknowledgement contained in community programming that mentions no more than the name of a person, the goods or services provided by the person and their address and telephone number, if the person provided the goods or services free of charge to the licensee for use in connection with the production of the community programming in which the acknowledgement is contained;
 - (x) a still image programming service as described in Public Notice CRTC 1993-51, dated April 30, 1993 and entitled *Exemption order respecting still image programming service undertakings*, if the service is produced by the licensee or by members of the community served by the licensee and does not contain commercial messages, other than commercial messages that are contained within the programming service of a licensed radio station; and
 - (xi) the programming of a community programming undertaking.
- (b) At least 75% of the time for promotional announcements included in programming offered as local expression under subparagraph (a)(ii) shall be made available for the promotion of the outlet for local expression and

for the promotion, by Canadian programming undertakings other than related programming undertakings, of their respective services.

- (c) A maximum of 25% of the time for promotional announcements included in programming offered as local expression under subparagraph (a)(ii) may be made available for the promotion of the services of related programming undertakings, discretionary services, packages of programming services, FM services and additional outlets and for the distribution of information on customer services and channel realignments.
- (d) Whenever a licensee is not offering community programming on the outlet for local expression or is offering as part of its inventory community programming that has no audio component, the licensee may offer as part of its inventory the programming service of a local radio station, other than an educational radio programming service whose operation is the responsibility of an educational authority.
- (e) If a licensee provides time on the outlet for local expression during an election period for the distribution of programming of a partisan political character, the licensee shall allocate that time on an equitable basis among all accredited political parties and rival candidates.

20. Except as otherwise provided under a condition of its licence,

- (a) a licensee shall devote to local community television programming not less than 60% of the programming offered as local expression.
- (b) a licensee
 - I. shall devote at least 50% of the programming offered as local expression to community access television programming;
 - II. shall devote a further percentage up to a total of 50% of the programming offered as local expression to community access television programming, according to requests;
 - III. shall, if one or more community television corporations are in operation in a licensed area, make available to them up to 20% of the programming offered as local expression for community access television programming; and
 - IV. shall, if one or more community television corporations are in operation in a licensed area, make available to each of them, on request, not less than four hours of community access television programming.

The time allocated to the distribution of alphanumeric message services is excluded from the calculation of the programming requirement under this condition.

21. The licensee shall:

- (a) except as otherwise provided under a condition of its licence,
 - I. keep a program log or a machine-readable record of programs offered as local expression in the licensed area and retain it for a period of one year after the latest date on which the program is offered; and
 - II. enter into the program log or machine-readable record of programs the following information for each program:
 - (i) the title of the program;
 - (ii) the duration of time the program was offered, including the announcements and commercial messages referred to in conditions of licence 19(a)(ii) and (vii);
 - (iii) a brief description of the program, including a statement as to whether it is local community television programming;
 - (iv) the name of the distribution undertaking for which the program was produced and the name of the producer;
 - (v) a statement as to whether the program constitutes community access television programming and identifying the party that has been provided with access; and
 - (vi) the time of commencement of the announcements and commercial messages referred to in conditions of licence 19(a)(ii) and (vii), the duration and in the case of each commercial message, the name of the person selling or promoting goods, services or activities.
- (b) retain a clear and intelligible audiovisual recording of each program offered as local expression in the licensed area for a period of
 - I. four weeks after the latest date on which the program is offered; or
 - II. eight weeks after the latest date on which the program is offered if the Commission receives a complaint from a person regarding the program or, for any other reason, decides to investigate and so notifies the licensee before the end of the period referred to in paragraph (I).

22. As part of its annual return on 30 November of each year, the licensee shall file aggregate statistical data for the previous broadcast year ending 31 August concerning the following:

- video server capacity - current;
- video server capacity - projected for the end of the next broadcast year;

- total number of titles on the servers;
 - total number of Canadian titles on the servers;
 - total number of feature films on the servers;
 - total number of Canadian feature films on the servers;
 - breakdown of titles in both official languages;
 - total number of orders of Canadian programs;
 - total number of orders of non-Canadian programs;
 - total number of orders of Canadian feature films;
 - total number of orders of non-Canadian feature films; and
 - the amount of revenue remitted to Canadian feature film rights holders.
23. The licensee is authorized to make available for distribution both a standard definition and a high definition version of its service, provided that no less than 95% of the video and audio components of the high definition and standard definition versions of the service are the same, exclusive of commercial messages and any part of the service carried on a subsidiary signal. Further, all of the programming making up the 5% allowance shall be provided in high definition.
24. The licensee shall:
- (a) except as otherwise provided under a condition of its licence, implement a public alerting system that inserts in a program, without delay, any alert that the licensee receives – in a form including both text and audio content – from the National Alert Aggregation and Dissemination System, that
 - (i) announces an imminent or unfolding danger to life; and
 - (ii) is designated by the applicable issuing authority for immediate broadcast or distribution in the licensed service area.
 - (b) insert the alert in all programs that it is distributing to subscribers whose residence or other premises are located in an area that is targeted by the alert.
 - (c) take all reasonable measures to ensure that the alerts that it inserts in a program are in conformity with the specifications and recommended practices set out in the document entitled *National Public Alerting System: Common Look and Feel Guidance*, produced at the request of the Federal/Provincial/Territorial Public Alerting Working Group of Senior Officials Responsible for Emergency Management with the support of Defence Research and Development Canada, Centre for Security Science, Canadian Safety and Security Program, and in consultation with the public-

private Common Look and Feel Working Group, as that document is amended from time to time.

For the purpose of this condition of licence, the terms “issuing authority” and “National Alert Aggregation and Dissemination System” shall have the same meaning as that set out in the *Broadcasting Distribution Regulations*.

Expectations

1. The Commission expects the licensee to make its program offering available to the maximum extent possible in both official languages.
2. If captions are available, the Commission expects the licensee to provide viewers with a captioned version of all advertising, sponsorship messages and promos offered in its programming.
3. The Commission expects the licensee to ensure that 100% of original access programming is captioned by the end of the licence term.
4. The Commission expects the licensee to acquire and make available described versions of programming, where possible, and to ensure that its customer service responds to the needs of persons with a visual impairment, as set out in *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009.
5. The Commission expects the licensee to:
 - display a standard described video logo and air an audio announcement indicating the presence of described video before the broadcast of each described program; and
 - make information available regarding the described programs that it will broadcast.
6. The Commission expects the licensee to provide an audio description of all programming that provides textual or graphic information, including programming broadcast on the barker channel.
7. If the licensee broadcasts adult programming, the Commission expects the licensee to provide its proposed internal policy on adult programming at least one month prior to the implementation of the service, as required by the Commission in *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services*, Broadcasting Public Notice CRTC 2003-10, 6 March 2003. The Commission further expects that any future changes made by the licensee to its internal policy on adult programming will be submitted for Commission approval prior to their implementation.

8. Where applicable, the Commission expects the licensee to adhere to its internal policy on adult programming once reviewed and approved by the Commission.
9. The Commission expects the licensee to endeavour through its programming and employment opportunities to reflect the presence in Canada of ethnocultural minorities, Aboriginal peoples and persons with disabilities. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.
10. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992 (Public Notice 1992-59):
 - if the licensee has 100 or more employees, it is subject to the *Employment Equity Act*.
 - if the licensee has between 25 and 99 employees, the Commission expects the licensee to have in place an employment equity plan that addresses the equitable representation of the four designated groups (women, Aboriginal peoples, persons with disabilities and visible minorities), as set out in Public Notice 1992-59 and in *Amendments to the Commission's Employment Equity Policy*, Public Notice CRTC 1997-34, 2 April 1997. As part of the implementation of this employment equity plan, the Commission further expects the licensee to:
 - ensure that the details of the licensee's employment equity policies are communicated to managers and staff;
 - assign a senior level person to be responsible for tracking progress and monitoring results; and
 - dedicate financial resources to the promotion of employment equity in the workplace.

Encouragement

The Commission encourages video-on-demand undertakings to share aggregate information on viewing of video-on-demand programs with broadcasters if such information is available.