



## Broadcasting Notice of Consultation CRTC 2016-385

PDF version

Reference: 2015-86

Ottawa, 26 September 2016

### Call for comments on *Discretionary Services Regulations*

*The Commission calls for comments on its proposal to merge the regulations for specialty and pay television services into a single set of regulations, to be known as the Discretionary Services Regulations. The proposed regulations are set out in the appendix to this notice. The Commission will accept interventions that it receives by 31 October 2016.*

#### Introduction

1. In Broadcasting Regulatory Policy 2015-86, which resulted from the Let's Talk TV proceeding, the Commission announced that it would streamline the licensing of programming services into three broad categories:
  - television services (over-the-air conventional and community television stations and provincial educational services);
  - discretionary services (all pay and specialty services);<sup>1</sup> and
  - on-demand services (pay-per-view and video-on-demand services).
2. The Commission stated it would initiate a proceeding to establish the standard requirements for each new licence category and amend its regulations with a view to putting into effect the new licence classes at the services' next licence renewal.
3. Currently, there are two distinct sets of regulations governing discretionary services, namely the *Pay Television Regulations, 1990* and the *Specialty Services Regulations, 1990*. With a few exceptions, which are discussed further in this notice, these two sets of regulations are essentially identical.
4. Moreover, in the current regulatory context, the distinct designations—pay and specialty—are no longer particularly meaningful. Except for those services granted mandatory distribution on the basic service, both types of services are offered to Canadians on a discretionary basis and will be treated the same as discretionary services under the amended *Broadcasting Distribution Regulations*. Further, only

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<sup>1</sup> This includes services other than conventional television stations granted mandatory distribution on the basic service pursuant to section 9(1)(h) of the *Broadcasting Act*. Such services will continue to be offered on basic, but will be licensed as discretionary services.

seven pay television services are currently offered: Movie Network, Movie Network Encore, Super Écran, Cinépop, Super Channel, Family Channel and Vivid TV.

5. The Commission considers that the differences between the current regulations for pay and specialty services are relatively minor and that creating a single set of regulations for both types of services will provide simplicity and eliminate repetition, consistent with its intent to streamline the licensing process and consolidate licence classes. Accordingly, in the proposed *Discretionary Services Regulations* set out in the appendix to this notice, the Commission has eliminated key differences between the two sets of regulations as it relates to the following by either deleting distinct clauses or having them apply to both types of services, as discussed further in this notice:

- licensee-produced programming;
- undue preference;
- commercial messages and political broadcasts;
- program delivery agreements;
- obscene or profane language or images;
- logs and records; and
- key figures.

### **Licensee-produced programming**

6. Except for ethnic pay television networks, pay television services are currently prohibited from broadcasting content other than filler programming produced by the licensee or a related person. The aim is to prevent licensees from airing programming that they or a related entity, such as a production company, have produced. However, in the past some pay television services have been authorized by condition of licence to broadcast some licensee-produced programming, provided that they also made direct expenditures on independently produced programs.
7. Given the few pay television services in operation, the Commission considers that it would be appropriate to eliminate this requirement for pay television services and address any future issues on a case-by-case basis by imposing conditions of licence (e.g. authorizing a set level of licensee-produced programming subject to direct expenditures on independent programming) on individual discretionary services at licence renewal.

### **Undue preference**

8. Under the current *Pay Television Regulations*, a pay television service that distributes a pay-per-view program for which the licensee has acquired exclusive or other

preferential rights is considered to have given itself an undue preference. Like the requirement that programming services be available to all BDUs and not only to a particular one, this requirement seeks to ensure that Canadians have access to programs found in the broadcasting system.

9. The Commission considers that it would be appropriate to extend this provision to all discretionary services and to make it applicable to the distribution of “on-demand services” generally, given the consolidation of pay-per-view and video-on-demand services into a single category of services. The provision was initially introduced in the *Pay Television Regulations* to address a specific situation that had arisen between licensees. With the later addition of the general provision on undue preference, it was maintained as a specific instance in which the Commission would find that a programming service has conferred an undue preference or disadvantage.

### **Commercial messages and political broadcasts**

10. The main distinction between pay television and specialty services is that the former are commercial-free. In this respect, it is worth noting that when these service categories were created, specialty services were viewed as offering programming similar to television stations, but on a discretionary basis, whereas pay television services were viewed as offering different programming (initially mainly films). Consequently, like television stations, specialty services were allowed to broadcast advertising and political broadcasts, while pay television services were prohibited from broadcasting commercial messages and had no specific obligation regarding political broadcasts.
11. The Commission considers that it would be appropriate to eliminate the prohibition against commercial messages for pay television as the new streamlined licence class of discretionary services will make the distinction between specialty and pay television services irrelevant. Moreover, there are a limited number of licensed pay television services and giving them the flexibility to broadcast advertising will leave the determination of the appropriate business model in the hands of the undertaking, which may choose to continue with a pay model or to incorporate advertisements.

### **Program delivery agreements**

12. Specialty services are currently prohibited from entering into program delivery agreements with non-Canadians.
13. While the policy reason for this provision was to ensure that licensees of Canadian specialty services retained control over their program schedule, programming supply agreements are now in common use and appear to have superseded program delivery agreements. Accordingly, there is some uncertainty as to the status of program delivery agreements in today’s television environment and this provision may now be obsolete.

14. In addition, when a Canadian licensee enters into a programming supply agreement with a non-Canadian producer, it must, by condition of licence, comply at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, as well as file with the Commission a copy of any programming supply agreement or licence trademark agreement that it intends to enter into with a non-Canadian party in order to ensure that it complies at all times with that direction.
15. In light of the above, the Commission proposes to eliminate the prohibition regarding program delivery agreements.

### **Obscene or profane language or images**

16. Specialty services are currently prohibited from distributing programming that contains obscene or profane language or images.
17. However, several safeguards exist to ensure that Canadians are able to avoid programming they may view as obscene or profane. Complaints regarding obscenity or profanity are typically made to the Canadian Broadcast Standards Council (CBSC) under industry codes to which specialty and pay services are held by condition of licence, rather than to the Commission under the regulations. These include the *Equitable Portrayal Code*, the *Broadcast Code for Advertising to Children*, the *Violence Code*, the *Industry code of programming standards and practices governing pay, pay-per-view and video-on-demand services* and the *Pay television and pay-per-view programming code regarding violence*. Not only does the CBSC remain the appropriate body for processing such complaints, but Canadian viewers are also provided with additional protection as the industry codes set out specific requirements for adult programming, such as appropriate classification, advisories and time of day restrictions. Finally, both specialty and pay television services are prohibited from broadcasting programming that contravenes the law or contains abusive comments or images.
18. Given the significant safeguards already available to Canadians, the Commission considers it appropriate to eliminate these duplicative provisions and rely on the CBSC and the industry codes to address such matters.

### **Logs and records**

19. Historically, the nature of most pay television services (primarily film) meant that they did not normally broadcast music videos. Specialty services, on the other hand, did broadcast such programming, and some had natures of service designating this as their primary type of programming. Accordingly, contrary to the regulations for pay television, the regulations for specialty services include specific logging requirements for music video clips.
20. The Commission is of the view that these clauses are not unduly burdensome and will ensure that it is able to gather the necessary information to monitor all services that choose to broadcast music video clips. Accordingly, it considers it appropriate to extend these requirements to all discretionary services.

## Key figures

21. As originally implemented, the key figures reflected the historically different nature of the programming offered on pay and specialty services. Consequently, the key figures for completing logs set out in Schedule I of the two regulations vary.
22. Since distinctions between pay and specialty services will be eliminated, a single set of figures incorporating the key elements of both sets of figures is necessary. The Commission has already proposed amendments to the key figures for target audiences, which would be the same for the two sets of regulations.<sup>2</sup>
23. Accordingly, the Commission considers it appropriate to streamline the key figures for all discretionary services.

## Other matters – Standard conditions of licence for on-demand services

24. In Broadcasting Notice of Consultation 2016-195, the Commission called for comments on streamlined standard conditions of licence to be applied to television stations, discretionary services and on-demand services. The Commission noted that the *Discretionary Services Regulations* would apply to on-demand services by condition of licence, subject to any exceptions. At the time, the Commission had not yet published the *Discretionary Services Regulations* for comment, so parties were unable to comment on the applicability of the regulations and the relevance of the exceptions.
25. The Commission considers it appropriate to except on-demand services from the requirements related to Canadian programming set out in section 2 of the proposed regulations as these requirements were only intended to apply to discretionary services. As well, with respect to the requirements regarding logs and records under section 8, given that on-demand services have not previously been subject to this provision, the Commission considers it appropriate to continue to exclude them from its application.
26. Accordingly, the Commission seeks comments on the appropriateness of applying the proposed *Discretionary Services Regulations* to on-demand services and the proposed exceptions to sections 2 and 8.

## Call for comments

27. The proposed *Discretionary Services Regulations* are set out in the appendix to this notice. The Commission will accept interventions that it receives by **31 October 2016**.

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<sup>2</sup> See Broadcasting Notice of Consultation 2016-30.

## Procedure

28. The *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure) apply to the present proceeding. The Rules of Procedure set out, among other things, the rules for content, format, filing and service of interventions, answers, replies and requests for information; the procedure for filing confidential information and requesting its disclosure; and the conduct of public hearings. Accordingly, the procedure set out below must be read in conjunction with the Rules of Procedure and related documents, which can be found on the Commission's website under "[Statutes and Regulations](#)." The guidelines set out in Broadcasting and Telecom Information Bulletin 2010-959 provide information to help interested persons and parties understand the Rules of Procedure so that they can more effectively participate in Commission proceedings.
29. The Commission encourages interested persons and parties 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.
30. Submissions longer than five pages should include a summary. Each paragraph of all submissions should be numbered, and the line \*\*\*End of document\*\*\* should follow the last paragraph. This will help the Commission verify that the document has not been damaged during electronic transmission.
31. Pursuant to Broadcasting and Telecom Information Bulletin 2015-242, the Commission expects incorporated entities and associations, and encourages all Canadians, to file submissions for Commission proceedings in accessible formats (for example, text-based file formats that allow text to be enlarged or modified, or read by screen readers). To provide assistance in this regard, the Commission has posted on its website [guidelines](#) for preparing documents in accessible formats.
32. Submissions must be filed by sending them to the Secretary General of the Commission using **only one** of the following means:
- by completing the**  
[\[Intervention/comment/answer form\]](#)
- or
- by mail to**  
CRTC, Ottawa, Ontario K1A 0N2
- or
- by fax at**  
819-994-0218
33. Parties who send documents electronically must ensure that they will be able to prove, upon Commission request, that service/filing of a particular document was

completed. Accordingly, parties must keep proof of the sending and receipt of each document for 180 days after the date on which the document is filed. The Commission advises parties who file and serve documents by electronic means to exercise caution when using email for the service of documents, as it may be difficult to establish that service has occurred.

34. In accordance with the Rules of Procedure, a document must be received by the Commission and all relevant parties by 5 p.m. Vancouver time (8 p.m. Ottawa time) on the date it is due. Parties are responsible for ensuring the timely delivery of their submissions and will not be notified if their submissions are received after the deadline. Late submissions, including those due to postal delays, will not be considered by the Commission and will not be made part of the public record.
35. The Commission will not formally acknowledge submissions. It will, however, fully consider all submissions, which will form part of the public record of the proceeding, provided that the procedure for filing set out above has been followed.

### **Important notice**

36. All information that parties provide as part of this public process, except information designated confidential, whether sent by postal mail, facsimile, email or through the Commission's website at [www.crtc.gc.ca](http://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, email addresses, postal/street addresses, telephone and facsimile numbers, etc.
37. 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.
38. 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.
39. 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.

### **Availability of documents**

40. Electronic versions of the interventions and of other documents referred to in this notice, are available on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) by visiting the "Participate" section, selecting "Submit Ideas and Comments," and then selecting

“our open processes.” Documents can then be accessed by clicking on the links in the “Subject” and “Related Documents” columns associated with this particular notice.

41. Documents are also available from Commission offices, upon request, during normal business hours.

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Secretary General

**Related documents**

- *Call for comments on standard requirements for television stations, discretionary services and on-demand services*, Broadcasting Notice of Consultation CRTC 2016-195, 20 May 2016
- *Call for comments on amendments to the Television Broadcasting Regulations, 1987, the Pay Television Regulations, 1990, and the Specialty Services Regulations, 1990, relating to target audience markers*, Broadcasting Notice of Consultation CRTC 2016-30, 28 January 2016

- *Filing submissions for Commission proceedings in accessible formats*, Broadcasting and Telecom Information Bulletin CRTC 2015-242, 8 June 2015
- *The way forward – Creating compelling and diverse Canadian programming – Let's Talk TV*, Broadcasting Regulatory Policy CRTC 2015-86, 12 March 2015
- *Guidelines on the CRTC Rules of Practice and Procedure*, Broadcasting and Telecom Information Bulletin CRTC 2010-959, 23 December 2010
- *Direction to the CRTC (Ineligibility of non-Canadians)*, P.C. 1997-486, 8 April 1997

# Appendix to Broadcasting Notice of Consultation CRTC 2016-385

## Discretionary Services Regulations

### Interpretation

#### Definitions

1 The following definitions apply in these Regulations.

*Act* means the *Broadcasting Act*. (*Loi*)

*advertising material* means any commercial message or programming that promotes a station, network or program but it does not include

- (a) a station or network identification;
- (b) the announcement of an upcoming program that is voiced over credits; or
- (c) a promotion for a Canadian program or a Canadian feature film, even if a sponsor is identified in the title of the program or film or as a sponsor of that program or film, as long as the identification is limited to the sponsor's name and does not include a description, representation or attribute of the sponsor's products or services. (*matériel publicitaire*)

*broadcast year* means the period that begins on September 1 of one year and ends on August 31 of the following year. (*année de radiodiffusion*)

*Canadian program* means a program

- (a) in respect of which a *Canadian film or video production certificate* as defined in section 125.4 of the *Income Tax Act* is has been issued; or
- (b) that qualifies as a Canadian program in accordance with the criteria established by the Commission in
  - (i) Appendix II to Public Notice CRTC 2000-42, dated March 17, 2000, entitled *Certification for Canadian Programs — A revised approach*,
  - (ii) the appendix to Broadcasting Regulatory Policy CRTC 2010-905, dated December 3, 2010, entitled *Revision of the definition of a Canadian program to include Canadian programs that have been dubbed in Canada and outside Canada*, or
  - (iii) paragraphs 128 to 130 of Broadcasting Regulatory Policy CRTC 2015-86, dated March 12, 2015, entitled *Let's Talk TV: The way forward – Creating compelling and diverse Canadian programming*. (*émission canadienne*)

**commercial message** means an advertisement that is intended to sell or promote goods, services, natural resources or activities, including by mentioning or displaying in a list of prizes the name of a person that is selling or promoting the goods, services, natural resources or activities. (*message publicitaire*)

**exempt distribution undertaking** means a distribution undertaking whose operator is exempt from one or more of the requirements of Part II of the Act by an order of the Commission made under subsection 9(4) of the Act. (*entreprise de distribution exemptée*)

**key figure** means a figure formed by a combination of alphanumeric characters set out in column 2 of Schedule 1 that corresponds to the description of the program set out in column 1. (*chiffre clé*)

**licensed** means licensed by the Commission. (*autorisé*)

**licensee** means a person that is licensed to carry on discretionary programming undertaking or a discretionary services network. (*titulaire*)

**new programming service** means a programming service that has not been previously distributed in Canada and includes a high definition version or a new multiplex of an existing programming service. (*nouveau service de programmation*)

**program** means a program that falls into a category set out in item 6, column 1, of Schedule 1. (*émission*)

**programming** means anything that is broadcast, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric characters. (*programmation*)

## **Canadian Programs**

### **Obligation to broadcast Canadian programs**

**2 (1)** Subject to subsection (2) and except as otherwise provided under a condition of its licence, a licensee shall broadcast Canadian programs during at least 35% of the time that it devotes to broadcasting in a broadcast year.

### **Licensee that provides third language programming**

**(2)** Except as otherwise provided under a condition of its licence, a licensee that provides a third language service shall broadcast Canadian programs during at least 15% of the time that it devotes to broadcasting

(a) in a broadcast year; and

(b) daily between six o'clock in the afternoon and midnight.

### **Period of time devoted to broadcasting**

(3) For the purposes of subsections (1) and (2), the time devoted to broadcasting includes time allocated to advertising material.

### **Definition of *third language service***

(4) In subsection (2), *third language service* means a programming service that provides at least 90% of its programming each broadcast week, the first day of which falls on a Sunday, in a language other than English or French exclusive of secondary audio programming and subtitles.

## **Programming Content**

### **Prohibition — broadcasting of programming**

3 A licensee shall not broadcast programming that contains

- (a) anything that contravenes an Act of Parliament or of the legislature of a province;
- (b) any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or a 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; or
- (c) any false or misleading news.

## **Commercial Messages**

### **Obligation to comply with technical requirements**

4 Except as otherwise provided under a condition of its licence, a licensee shall ensure that every commercial message that it broadcasts in a break within a program or between programs 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.

### **Alcoholic beverages**

5 (1) A licensee may broadcast a commercial message directly or indirectly advertising an alcoholic beverage 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

**(i)** does not attempt to influence non-drinkers of any age to drink or to purchase an alcoholic beverage,

**(ii)** is not directed at persons under the legal drinking age, does not associate an alcoholic beverage with youth or youth symbols and does not portray persons under the legal drinking age or persons who could reasonably be mistaken for such persons in a context where any such product is being shown or promoted,

**(iii)** does not portray an alcoholic beverage in the context of, or in relation to, an activity that is attractive primarily to people under the legal drinking age,

**(iv)** does not contain an endorsement of the alcoholic beverage, personally or by implication, either directly or indirectly, by any person, character or group who is or is likely to be a role model for minors because of their past or present position of public trust, special achievement in any field of endeavour, association with charities or advocacy activities benefiting children, or reputation or exposure in the mass media,

**(v)** does not attempt to establish an alcoholic beverage as a status symbol, a necessity for the enjoyment of life or an escape from life's problems or attempt to establish that consumption of the product should take precedence over other activities,

**(vi)** does not imply directly or indirectly that social acceptance, social status, personal success, or business or athletic achievement may be acquired, enhanced or reinforced through consumption of alcohol,

**(vii)** does not imply directly or indirectly that the presence or consumption of alcohol is, in any way, essential to the enjoyment of an activity or an event,

**(viii)** does not portray an alcoholic beverage, or its consumption, in an immoderate way,

**(ix)** does not exaggerate the importance or effect of any aspect of an alcoholic beverage or its packaging,

**(x)** does not show or use language that suggests, in any way, product misuse or product dependency, compulsive behaviour, urgency of need or urgency of use,

(xi) does not use imperative language to urge people to purchase or consume an alcoholic beverage,

(xii) does not introduce an alcoholic beverage in such a way or at such a time that it may be associated with the operation of any vehicle or conveyance requiring skill,

(xiii) does not introduce an alcoholic beverage in such a way or at such a time that it may be associated with any activity requiring a significant degree of skill, care or mental alertness or involving an obvious element of danger,

(xiv) does not contain inducements to prefer an alcoholic beverage because of its higher alcohol content,

(xv) does not refer to the feeling and effect caused by alcohol consumption or show or convey the impression, by behaviour or comportment, that the people depicted in the message are under the influence of alcohol,

(xvi) does not portray any person with an alcoholic beverage in situations in which the consumption of alcohol is prohibited, and

(xvii) does not contain scenes in which an alcoholic beverage is consumed or scenes that give the impression, visually or in sound, that it is being or has been consumed.

### **Non-application**

(2) For greater certainty, paragraph (1)(b) does not apply in order to prohibit industry, public service or brand preference advertising.

### **Political Broadcasts**

#### **Obligation — allocation of broadcasting time**

**6 (1)** If, during an election period, a licensee provides time on its programming service for the broadcast of programs, advertisements or announcements of a partisan political character, the licensee shall allocate the time on an equitable basis to all accredited political parties and rival candidates represented in the election or referendum.

#### **Definition of *election period***

(2) In subsection (1), *election period* means

(a) in the case of a federal or provincial election or a federal, provincial or municipal referendum, the period that begins on the day on which the announcement of the election or referendum is made and that ends on the day on which the election or referendum is held; or

(b) in the case of a municipal election, the period that begins two months before the day on which the election is to be held and that ends on the day on which the election is held.

## **Non-Disclosure**

### **Non-disclosure obligation — distribution of programming services**

**7 (1)** A licensee whose programming services are distributed by a licensed distribution undertaking or that is negotiating terms of carriage with such an undertaking for its programming services, including new programming services, shall sign and provide to the licensee of the distribution undertaking an agreement that

- (a) reproduces the CRTC non-disclosure provisions; and
- (b) contains its consent to comply with the CRTC non-disclosure provisions for the benefit of the licensee of the distribution undertaking.

### **Non-disclosure obligation — broadcasting of programs**

**(2)** A licensee whose programs are broadcast by a licensed video-on-demand undertaking or that is negotiating terms of carriage with such an undertaking for its programs shall sign and provide to the licensee of the video-on-demand undertaking an agreement that

- (a) reproduces the CRTC non-disclosure provisions; and
- (b) contains its consent to comply with the CRTC non-disclosure provisions for the benefit of the licensee of the video-on-demand undertaking.

### **Definition of *CRTC non-disclosure provisions***

**(3)** In this section, *CRTC non-disclosure provisions* means the non-disclosure provisions set out in the appendix to Broadcasting Regulatory Policy CRTC 2013-578, dated October 31, 2013 and entitled *Standard clauses for non-disclosure agreements*.

## **Logs and Records**

### **Obligations — log or record**

**8 (1)** Except as otherwise provided under a condition of its licence, a licensee shall

- (a) keep a program log or record of its programming in a form that is acceptable to the Commission;
- (b) retain the log or record for a period of one year after the day on which the programming was distributed;
- (c) cause the following information to be entered in the log or record each day:



- (i) the date,
- (ii) an identification of the licensee or the service provided by the licensee,
- (iii) the time at which advertising material begins, its duration and, in the case of a commercial message that it broadcasts in a break within a program or between programs, the name of the person that is selling or promoting goods, services, natural resources or activities,
- (iv) in relation to each program other than a music video clip,
  - (A) its title and any additional information that is to be included in accordance with the appropriate subitem of Schedule 1,
  - (B) the key figure that describes the program,
  - (C) the time at which the program begins and ends,
  - (D) if applicable, the code set out in column 1 of Part A, C or D of Schedule 2 that indicates the language, type or group of the program described in column 2,
  - (E) if applicable, the code set out in column 1 of Part B of Schedule 2 that indicates the accessibility of the program described in column 2, and
  - (F) if it is required by a condition of the licence, a brief description of the content of the program,
- (v) in relation to each music video clip,
  - (A) the title of the clip,
  - (B) the name of and language used by the performer,
  - (C) an indication as to whether the clip is a Canadian music video clip, as defined in section V of Appendix I to Public Notice 2000-42, dated March 17, 2000, entitled *Certification for Canadian Programs — A revised approach*,
  - (D) the key figure that describes the clip, and
  - (E) if applicable, the code set out in column 1 of Part B of Schedule 2 that indicates the accessibility of the clip described in column 2, and
- (vi) if the licensee distributes its programming in a multi-hour block, the time at which each block begins and ends; and

(d) within 30 days after the last day of each month, provide to the Commission the log or record of its programming for the month and a certificate attesting to the accuracy of the contents of the log or record.

**If more than one subitem applies**

(2) For the purposes of clauses (1)(c)(iv)(B) and (1)(c)(v)(D), if more than one subitem of Schedule 1 applies to the program, a licensee may, in respect of that program, cause to be entered in its program log or record the key figures indicating the subitems that apply to each segment of the program, in the order in which the segments are distributed, and the starting time and duration of each segment of the program.

**Obligation to keep recording of programming**

(3) A licensee shall retain a clear and intelligible audio-visual recording of all of its programming

(a) for a period of four weeks after the day on which the programming is distributed; or

(b) for a period of eight weeks after the day on which the programming is distributed, if the Commission receives a complaint from a person regarding any programming, or for any other reason wishes to investigate the programming, and notifies the licensee of the investigation before the end of the four-week period.

**Obligation to provide recording to Commission**

(4) If the Commission requests a clear and intelligible audio-visual recording of a licensee's programming from the licensee before the end of the applicable period referred to in paragraph (3)(a) or (b), the licensee shall, without delay, provide the recording to the Commission.

**Requests for Information**

**Obligation to file statement of accounts**

9 (1) On or before November 30 of each year, a licensee shall file with the Commission, on the annual return form issued by the Commission, a statement of accounts for the previous broadcast year.

**Obligation to respond to complaint or request**

(2) At the Commission's request, a licensee shall respond to

(a) a complaint or request for resolution of a dispute filed by a person or a request for information regarding the programming that is originated by or is distributed by the licensee or regarding the licensee's technical operations, subscribership, financial affairs or ownership; and

(b) a request for information regarding the licensee's adherence to the conditions of its licence, the Act, these Regulations, industry standards, practices or codes or any other self-regulatory mechanism of the industry.

## **Transfer of Ownership or Control**

### **Definitions**

**10 (1)** The following definitions apply in this section.

*associate*, when used to indicate a relationship with a person, includes

- (a) a partner of the person;
- (b) a trust or an estate in which the person has a substantial beneficial interest or in which the person serves as a trustee or in a similar capacity;
- (c) the person's spouse or common-law partner;
- (d) a child of the person or of their spouse or common-law partner, including a child adopted in fact by the person, spouse or common-law partner;
- (e) the spouse or common-law partner of the child;
- (f) a relative of the person, or of the person's spouse or common-law partner, if that relative has the same residence as the person;
- (g) a corporation of which the person alone has, or the person together with one or more associates described in this definition have, directly or indirectly, control of 50% or more of the voting interests;
- (h) a corporation of which an associate, as described in this definition, of the person has, directly or indirectly, control of 50% or more of the voting interests; and
- (i) a person with which the person has entered into an arrangement, a contract, an understanding or an agreement in respect of the voting of shares of a licensee corporation or of a corporation that has, directly or indirectly, effective control of a licensee corporation, except when that person controls less than 1% of all issued voting shares of a corporation whose shares are publicly traded on a stock exchange. (*lien*)

*common-law partner* means an individual who is cohabiting with a person in a conjugal relationship having done so for a period of at least one year. (*conjoint de fait*)

**common shares** means the shares that represent the residual equity in the earnings of a corporation, and includes securities that are convertible into such shares at any time at the option of the holder and the preferred shares to which are attached rights to participate in the earnings of the corporation with no upper limit. (*actions ordinaires*)

**person** includes an individual, partnership, joint venture, association, corporation, trust, estate, trustee, executor or administrator, or a legal representative of any of them. (*personne*)

**voting interest**, in respect of

(a) a corporation with share capital, means the vote attached to a voting share;

(b) a corporation without share capital, means an interest that entitles the owner to voting rights similar to those enjoyed by the owner of a voting share;

(c) a partnership, trust, association or joint venture, means an ownership interest in its assets that entitles the owner to receive a share of its profits, to receive a share of its assets on dissolution and to participate directly in its management or to vote on the election of the persons that are to be entrusted with the power and responsibility to manage it; and

(d) a not-for-profit partnership, trust, association or joint venture, means a right that entitles the owner to participate directly in its management or to vote on the election of the persons that are to be entrusted with the power and responsibility to manage it. (*intérêt avec droit de vote*)

**voting share** means a share in the capital of a corporation to which one or more votes are attached that are exercisable at meetings of shareholders of the corporation, either under all circumstances or under a circumstance that has occurred and is continuing, and includes a security that is convertible into such a share at any time at the option of the holder. (*action avec droit de vote*)

### **Control of voting interest**

(2) For the purposes of this section, control of a voting interest by a person includes situations in which

(a) the person is, directly or indirectly, the beneficial owner of the voting interest;

or

(b) the person, by means of an arrangement, contract, understanding or agreement, determines the manner in which the interest is voted but the solicitation of proxies or the seeking of instructions with respect to the completion of proxies in respect of the exercise of voting interests is not considered to be such an arrangement, contract, understanding or agreement.

### **Effective control of licensee**

**(3)** For the purposes of this section, effective control of a licensee or its undertaking includes situations in which

- (a)** a person controls a majority of the voting interests of the licensee directly or indirectly, other than by way of security only;
- (b)** a person has the ability to cause the licensee or its board of directors to take a course of action; or
- (c)** the Commission, after a public hearing of an application for a licence or in respect of an existing licence, determines that a person has effective control of the licensee or its undertaking and sets that determination out in a decision or public notice.

### **Obligation to obtain Commission's prior approval**

**(4)** Except as otherwise provided under a condition of its licence, a licensee shall obtain the Commission's prior approval of any act, transaction or agreement that, directly or indirectly, would result in

- (a)** a change by any means of the effective control of its undertaking;
- (b)** a person that alone
  - (i)** controls less than 30% of the voting interests of the licensee having control of 30% or more of those interests,
  - (ii)** controls less than 30% of the voting interests of a person that has, directly or indirectly, effective control of the licensee having control of 30% or more of those interests,
  - (iii)** owns less than 50% of the issued common shares of the licensee owning 50% or more of those shares but not having, directly or indirectly, effective control of the licensee, or
  - (iv)** owns less than 50% of the issued common shares of a person that has, directly or indirectly, effective control of the licensee owning 50% or more of those shares but not having, directly or indirectly, effective control of the licensee; or
- (c)** a person together with an associate
  - (i)** that control less than 30% of the voting interests of the licensee having control of 30% or more of those interests,

(ii) that control less than 30% of the voting interests of a person that has, directly or indirectly, effective control of the licensee having control of 30% or more of those interests,

(iii) that own less than 50% of the issued common shares of the licensee owning 50% or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) that own less than 50% of the issued common shares of a person that has, directly or indirectly, effective control of the licensee owning 50% or more of those shares but not having, directly or indirectly, effective control of the licensee.

### **Obligation to notify Commission**

(5) A licensee shall notify the Commission, within 30 days after the day on which the act or transaction occurs or the agreement is entered into, of the occurrence of any act or transaction or the entry into any agreement that, directly or indirectly, results in

(a) a person that alone

(i) controls less than 20% of the voting interests of the licensee having control of 20% or more but less than 30% of those interests,

(ii) controls less than 20% of the voting interests of a person that has, directly or indirectly, effective control of the licensee having control of 20% or more but less than 30% of those interests,

(iii) controls less than 40% of the voting interests of the licensee having control of 40% or more but less than 50% of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) controls less than 40% of the voting interests of a person that has, directly or indirectly, effective control of the licensee having control of 40% or more but less than 50% of those interests but not having, directly or indirectly, effective control of the licensee; or

(b) a person together with an associate

(i) that control less than 20% of the voting interests of the licensee having control of 20% or more but less than 30% of those interests,

(ii) that control less than 20% of the voting interests of a person that has, directly or indirectly, effective control of the licensee having control of 20% or more but less than 30% of those interests,

(iii) that control less than 40% of the voting interests of the licensee having control of 40% or more but less than 50% of those interests but not having, directly or indirectly, effective control of the licensee, or

(iv) that control less than 40% of the voting interests of a person that has, directly or indirectly, effective control of the licensee, having control of 40% or more but less than 50% of those interests but not having, directly or indirectly, effective control of the licensee.

### **Content of notification**

(6) The notification is to contain the following information:

(a) the name of the person and, if applicable, of the associate;

(b) the percentage of the voting interests controlled by the person or by the person and the associate; and

(c) a complete description of the act, transaction or agreement or a copy of the transaction or agreement.

### **Undue Preference or Disadvantage**

#### **Prohibition — undue preference or disadvantage**

**11 (1)** A licensee shall not give an undue preference to any person, including itself, or subject any person to an undue disadvantage.

#### **Burden of proof**

(2) In a proceeding before the Commission, the burden of establishing that any preference or disadvantage is not undue is on the licensee that gives the preference or subjects the person to the disadvantage.

#### **Undue preference**

(3) If a licensee distributes an on-demand program for which it has acquired exclusive or other preferential rights it shall be considered to have given itself an undue preference.

#### **Definition of *on-demand program***

(4) In subsection (3), *on-demand program* means a program that is provided by a licensee for distribution by a distribution undertaking on an on-demand basis.

## **Tied Selling**

### **Prohibition**

**12** Except as otherwise provided under a condition of its licence, a licensee shall not offer its programming service for distribution as part of a package with other programming services unless it also makes its programming service available on a stand-alone basis.

## **Availability of New Programming Services for Distribution**

### **Obligation — distribution of new programming service**

**13** Except as otherwise provided under a condition of its licence, a licensee that is ready to launch a new programming service shall make that programming service available for distribution by all licensed broadcasting distribution undertakings or operators of exempt distribution undertakings, despite the absence of a commercial agreement.

## **Dispute Resolution**

### **Referral of dispute to Commission**

**14 (1)** If there is a dispute between a licensee and the operator of a licensed distribution undertaking or an exempt distribution undertaking concerning the carriage or terms of carriage of programming that originates from the licensee, including the wholesale rate and the terms of any audit referred to in section 15.1 of the *Broadcasting Distribution Regulations*, one or both of the parties to the dispute may refer the matter to the Commission for dispute resolution.

### **Mediation**

**(2)** If the Commission accepts a referral of a matter for dispute resolution, the parties to the dispute shall participate in a mediation with a person who is appointed by the Commission.

### **Additional information**

**(3)** During the dispute resolution process, the person who is appointed may require additional information from the parties.

### **Procedural requirements, rates, terms and conditions**

**(4)** If a licensed distribution undertaking or an exempt distribution undertaking distributes the licensee's programming service in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution,

**(a)** the dispute shall be resolved in accordance with the procedural requirements established by the Commission in Broadcasting and Telecom Information Bulletin CRTC 2013-637, dated November 28, 2013 and entitled *Practices and procedures for staff-assisted mediation, final offer arbitration and expedited hearings*; and



(b) the rates, terms and conditions established by the Commission apply as of the day on which the programming service was first made available to the distributor in the absence of a commercial agreement.

### **Rates, terms and conditions — new programming service**

(5) If the dispute relates to the rates, terms or conditions that relate to a new programming service that is being distributed in the absence of a commercial agreement and the matter proceeds before the Commission for dispute resolution, the parties will be bound by the rates, terms and conditions established by the Commission for the duration of the contractual term established by the Commission.

### **Rates, terms and conditions — agreement**

(6) Despite subsections (4) and (5), the parties may reach an agreement that sets out rates, terms or conditions that differ from those established by the Commission.

## **Obligations During Dispute**

### **Obligation — rates, terms and conditions**

**15 (1)** During a dispute between a licensee and a person that is licensed to carry on a distribution undertaking or the operator of an exempt distribution undertaking concerning the carriage or terms of carriage of programming that originates from the licensee or concerning any right or obligation under the Act, the licensee must continue to provide its programming services to the distribution undertaking at the same rates and on the same terms and conditions as it did before the dispute.

### **Period of dispute**

(2) For the purposes of subsection (1), a dispute begins when written notice of the dispute is provided to the Commission and is served on the other undertaking that is a party to the dispute and ends when an agreement settling the dispute is reached by the concerned undertakings or, if no such agreement is reached, when the Commission renders a decision concerning any unresolved matter.

## **Transmission of Programming Service**

### **Obligations — transmission of programming service**

**16** Except as otherwise provided under a condition of its licence, a licensee shall, in respect of each programming service that is required to be distributed under section 18 of the *Broadcasting Distribution Regulations*, by the Commission under paragraph 9(1)(h) of the Act or by order of the Commission made under subsection 9(4) of the Act,

(a) ensure the transmission of the programming service from its production facilities to each broadcasting distribution undertaking's head end located within the area for which the licensee is licensed or to a satellite uplink centre located within that area; and

(b) bear the costs of the transmission.

## Transitional Provision

**17 The holder of any licence for a pay television programming undertaking or a speciality services programming undertaking in effect on September 1, 2017 is considered to be a licensee for the purposes of these Regulations for the remainder of the term of the licence.**

## Repeal

**18 The *Pay Television Regulations, 1990*<sup>3</sup> are repealed.**

**19 The *Specialty Services Regulations, 1990*<sup>4</sup> are repealed.**

## Coming into Force

**20 These Regulations come into force on September 1, 2017 but if they are registered after that day, they come into force on the day on which they are registered.**

## SCHEDULE 1

(Sections 1 and 8)

## Key Figures

Column 1		Column 2							
Item	Program Description	Alphanumeric Characters							
		1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>
1	<u>Origin</u>								
	(1) Canada (other than Quebec)	1							

<sup>3</sup> SOR/90-105

<sup>4</sup> SOR/90-106

	(2) United States	2							
	(3) Other	7							
	(4) Quebec	8							
2	<u>Time Credits</u>								
	(1) A program for which 150 % credit is given under a condition of licence		4						
	(2) A program for which 150 % credit is not given under a condition of licence		5						
3	<u>Exhibition</u>								
	(1) Original exhibition of a program that has been distributed by another licensed broadcasting undertaking			1					
	(2) Original first-run program (original exhibition of a program that has not been distributed by another licensed broadcasting undertaking)			2					
	(3) Repeat exhibition of a program			3					
	(4) Live broadcast			4					
4	<u>Production Source</u>								
	(1) In-house (licensee)				1				
	(2) Related production company				3				
	(3) TV station (include call sign)				4				
	(4) Television network (include network identifier)				5				
	(5) Canadian independent producer (include Commission "C" number or the number assigned by the Department of Canadian Heritage)				6				
	(6) Co-venture (include Commission "S.R." number)				7				

	(7) Canadian programs from any government and productions of the National Film Board (include the source)				8				
	(8) Programs from any source that are not accredited as Canadian programs (include the pertinent Dubbing Dramatic credit (D/C) and Commission “D” number if applicable)				9				
	(9) Treaty co-production				0				
5	<u>Target audience</u>								
	(1) Preschool children (0-5 years)				1				
	(2) Children (6-12 years)				2				
	(3) Teenagers (13-17 years)				3				
	(4) Adults (18 years and over)				4				
6	<u>Categories</u>								
	Information:								
	(1) News					0	1	0	
	(2) (a) Analysis and interpretation					0	2	A	
	(b) Long-form documentary					0	2	B	
	(3) Reporting and actualities					0	3	0	
	(4) Religion					0	4	0	
	(5) (a) Formal education and preschool					0	5	A	
	(b) Informal education/Recreation and leisure					0	5	B	
	Sports:								
	(6) (a) Professional sports					0	6	A	
	(b) Amateur sports					0	6	B	

	Music and Entertainment:							
	(7) Drama and comedy (include the appropriate Commission drama credit if applicable)							
	(a) Ongoing dramatic series					0	7	A
	(b) Ongoing comedy series (sitcoms)					0	7	B
	(c) Specials, mini-series or made-for-TV feature films					0	7	C
	(d) Theatrical feature films aired on TV					0	7	D
	(e) Animated television programs and films					0	7	E
	(f) Programs of comedy sketches, improvisation, unscripted works, stand-up comedy					0	7	F
	(g) Other drama					0	7	G
	(8) (a) Music and dance other than music video programs or clips					0	8	A
	(b) Music video clips					0	8	B
	(c) Music video programs					0	8	C
	(9) Variety					0	9	A
	(10) Game shows					1	0	0
	(11) (a) General entertainment and human interest					1	1	A
	(b) Reality television					1	1	B
	Other:							
	(12) Interstitials					1	2	0
	(13) Public service announcements					1	3	0
	(14) Infomercials, promotional and corporate videos					1	4	0
	(15) Filler programming					1	5	0

**SCHEDULE 2**

(Section 8)

**Codes**

**PART A**

**Code Indicating Program Language**

<b>Column 1</b>		<b>Column 2</b>
<b>Item</b>	<b>Code</b>	<b>Description</b>
1	[Abbreviated name of language]	Language of the original production
2	[Abbreviated name of language]	Language of the program (for all programs of an ethnic station or for programs of a station if the language of the programs differs from the official language for which the station is principally licensed)

**PART B**

**Code Indicating Accessible Program**

<b>Column 1</b>		<b>Column 2</b>
<b>Item</b>	<b>Code</b>	<b>Description</b>
1	CC [to be inserted following key figure]	Program contains closed captioning for viewers who are deaf and hard of hearing, which has been exhibited during the complete length of the program
2	DV [to be inserted following key figure]	Program contains described video for viewers who are blind or have visual impairments, which has been exhibited during the complete length of the program
3	AD [to be inserted following key figure]	Program contains audio description for viewers who are blind or have visual impairments, which has been exhibited during the complete length of the program

4	CD [to be inserted following key figure]	Program contains both closed captioning and described video, which has been exhibited during the complete length of the program
5	CA [to be inserted following key figure]	Program contains both closed captioning and audio description, which has been exhibited during the complete length of the program

## PART C

### Code Indicating Type

Column 1		Column 2
Item	Code	Description
1	Type A	A program in a language other than English, French or a language of the Aboriginal peoples of Canada
2	Type B	A program in English or in French that is directed toward a distinct ethnic group whose mother tongue is English or French or in whose country of origin a common language is English or French
3	Type C	A program in English or in French that is directed toward a distinct ethnic group whose mother tongue is included in Type A
4	Type D	A bilingual program in English or in French as well as in a language other than English, French or in a language of the Aboriginal peoples of Canada that is directed toward a distinct ethnic group
5	Type E	A program in English or in French that is directed toward ethnic groups or toward the general public and that depicts Canada's cultural diversity through services that are multicultural, educational, informational or inter-cultural
6	Type X	Where the licensee is not required by a condition of licence to broadcast prescribed levels of Type A, B, C, D or E programming, an <i>ethnic program</i> , as defined in section 2 of the <i>Television Broadcasting Regulations, 1987</i>

**PART D****Code Indicating Group**

<b>Column 1</b>		<b>Column 2</b>
<b>Item</b>	<b>Code</b>	<b>Description</b>
1	[Abbreviated name of ethnic group]	The distinct ethnic group toward which an <i>ethnic program</i> , as defined in section 2 of the <i>Television Broadcasting Regulations, 1987</i> , is directed