



Broadcasting Regulatory Policy CRTC 2017-138

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Reference: 2017-52

Ottawa, 10 May 2017

Standard requirements for on-demand services

The Commission amends the standard conditions of licence, expectations and encouragements for on-demand services (formerly known as pay-per-view and video-on-demand services). The amended requirements are set out in the appendix to this policy and will be implemented at licence renewal.

Introduction

1. In Broadcasting Notice of Consultation 2017-52, the Commission called for comments on proposed amendments to the standard requirements for on-demand services to reflect changes to the regime governing local and community programming, including changes relating to the community channel (see Broadcasting Regulatory Policy 2016-224).
2. In particular, the Commission proposed to amend the standard conditions of licence for on-demand services relating to logs and records to require licensees to log and submit additional information concerning the accessibility, the origin and the language of access television programming. These amendments were consistent with proposed changes to section 33 of the *Broadcasting Distribution Regulations* (the Regulations) set out in the appendix to Broadcasting Notice of Consultation 2017-50, published on the same date as Broadcasting Notice of Consultation 2017-52.
3. Other proposed amendments addressed redundancies and inconsistent wording in certain conditions of licence, as well as definitions for certain terms used in those conditions of licence.

Interventions

4. The Commission received an intervention supporting the proposed amendments set out in Broadcasting Notice of Consultation 2017-52 from Saskatchewan Telecommunications. The Commission also received interventions in response to Broadcasting Notice of Consultation 2017-50 commenting on similar proposed changes to the Regulations. The interveners were BCE Inc. (BCE), the Canadian Association of Community Television Users and Stations (CACTUS), Cogeco Communications Inc. (Cogeco), Csur la télé, the Forum for Research and Policy in Communications (FRPC), NewWest.tv, Quebecor Media Inc. (Quebecor), Rogers Communications Inc. (Rogers) and Shaw Communications Inc. (Shaw). Given the similarities between the provisions of the proposed Regulations and the proposed

amendments to the standard requirements, the Commission has taken these comments into consideration in finalizing the standard requirements for on-demand services.

Commission's analysis and decisions

5. The Commission considers that the key issues it must address with respect to the proposed amendments to the standard requirements for on-demand services are the following:
 - the appropriate form for the keeping of logs or records relating to local expression programs;
 - the information to be logged regarding access programming; and
 - the logging of “first-run” programs.

Appropriate form

6. The Commission proposed to amend the current condition of licence 20(a) to require that the log or record of local expression programs be kept “in a form acceptable to the Commission.” Cogeco, Quebecor, Rogers and Shaw suggested that the Commission should provide a standardized form to ensure that the data is in a format accessible to the Commission. They submitted that such standardization would be beneficial and efficient for both licensees and the Commission and would ensure that the information tracked aligns with the requested information. Rogers also asked that the Commission provide further information on acceptable formats.
7. Given the different operational needs of each licensee and in the interest of maintaining flexibility, the Commission does not believe that it is necessary to specify a particular format or provide a standardized form at this time. The contents to be entered in the log or record are set out in the various conditions of licence, and the Commission will work with licensees to ensure that the format in which they are logging the information is acceptable.

Information to be logged regarding access programming

8. Several interveners also sought greater clarity on various terms, including the use of the expressions “name,” “role” and “relationship” in condition of licence 20(b)(v)(B) regarding access programming requests.
9. Specifically, the FRPC submitted that the term “name” is vague and may lead to results in which the same person is misidentified as different people due to variations in his or her name or the fact that different people have very similar names. Instead, the FRPC proposed that the Commission require the full legal name of the individual requesting access. BCE and Rogers sought clarification of the term “role” and requested that the Commission identify the specific options to be selected by a licensee in order to avoid ambiguity and inconsistent reporting.

10. Quebecor and Rogers also sought clarification of the term “relationship,” while BCE suggested that the requirement to specify the relationship between the individual requesting access and the licensee be deleted as it would provide no useful information given that an access producer is not permitted to be an employee of the broadcasting distribution undertaking operating a community channel.
11. The Commission notes that the concepts of “role” and “relationship” flow from the requirements for access programming set out at paragraph 180 of Broadcasting Regulatory Policy 2016-224.
12. In particular, with respect to the “role” of the individual requesting access in the origination and production of the program, the Commission is seeking proof that the member of the community had creative control over the program, either by having an on-camera role (e.g. personality or actor who appears in a predominant portion of the production) or as a creative member of the production crew (e.g. directing, producing, writing).
13. As regards the “relationship” between the individual requesting access and the licensee, the Commission is seeking to verify that the program originates from a community member and that the individual is neither an employee of the licensee nor a media professional who is known to the public or who already has access to the broadcasting system.
14. Finally, the Commission does not consider that the level of precision proposed by the FRPC in identifying the individual is necessary. As mentioned, the purpose of specifying the name of the individual is simply to serve as a check in assessing whether those granted access meet the criteria set out at paragraph 180 of Broadcasting Regulatory Policy 2016-224.

Logging of first-run programs

15. BCE noted that community channels delivered through video-on-demand do not “broadcast” to subscribers in the traditional sense and do not have “first-run” programs (condition of licence 20(b)(viii)).
16. “Original first-run program” is defined in the standard requirements by reference to the definition established in the Regulations, namely “a program that is broadcast for the first time on the community channel and that has not already been broadcast on another community channel.” While it is true that on-demand community channels do not broadcast to subscribers in the traditional linear sense, they do broadcast in the sense of offering programs to their subscribers. Further, while a given program offered on such channels would not be broadcast for the first time in a linear sense, it is possible for an on-demand community channel to track programming that is original to its channel (i.e. not previously broadcast on another community channel). The Commission considers these clarifications sufficient to allow licensees to log this aspect of their programming.

Additional requests

17. CACTUS and NewWest.tv recommended that the logs be posted in a publicly available format on a regular basis so that Canadians can validate what programming and training opportunities are available in their area, as well as to allow for public assessment and comment. Csur la télé agreed with CACTUS's recommendation and both Csur la télé and NewWest.tv proposed further logging requirements.
18. The Commission considers these requests beyond the scope of its call for comments.

Conclusion

19. In light of all of the above, the Commission amends the standard requirements for on-demand services as set out in the appendix to this regulatory policy.

Secretary General

Related documents

- *Call for comments on proposed amendments to the standard requirements for on-demand services*, Broadcasting Notice of Consultation CRTC 2017-52, 24 February 2017
- *Call for comments on proposed amendments to the Broadcasting Distribution Regulations and the Television Broadcasting Regulations, 1987*, Broadcasting Notice of Consultation CRTC 2017-50, 24 February 2017
- *Policy framework for local and community television*, Broadcasting Regulatory Policy CRTC 2016-224, 15 June 2016

Appendix to Broadcasting Regulatory Policy CRTC 2017-138

Standard conditions of licence, expectations and encouragements for on-demand services

General

The following terms, conditions of licence, expectations and encouragements are applicable to all on-demand services, except where an authorization that represents a change from or addition to these terms and conditions is included in any decision pertaining to a particular licence.

Conditions of licence

Adherence to regulations

1. The licensee shall adhere to the *Discretionary Services Regulations*, as amended from time to time, with the exception of sections 2 and 8.

Operation and control

2. Except as authorized by the Commission, the programming undertaking shall be operated in fact by the licensee itself. The broadcasting licence cannot be transferred or assigned.
3. In order to ensure that the licensee complies at all times with the *Direction to the CRTC (Ineligibility of non-Canadians)*, the licensee shall file, within 30 days of its execution, for the Commission's review, a copy of the programming supply agreement and/or licence or trademark agreement it has entered into with a non-Canadian party. In addition, the Commission may request any additional document(s) that could affect control of the programming or management of the service.

Adherence to various codes

4. The licensee shall adhere to the *Broadcast Code for Advertising to Children*, as amended from time to time and approved by the Commission.
5. The licensee shall adhere to the *Equitable Portrayal Code*, the *Pay television and pay-per-view programming code regarding violence* and 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 broadcaster associate in good standing of the Canadian Broadcast Standards Council.

6. The licensee shall adhere to the Wholesale Code set out in the appendix to *The Wholesale Code*, Broadcasting Regulatory Policy CRTC 2015-438, 24 September 2015, in its dealings with any licensed or exempt broadcasting undertaking.

Exhibition and promotion of Canadian content

7. If feature films are offered, the licensee shall ensure that not less than 5% of the English-language feature films and not less than 8% of French-language feature films available to subscribers in each broadcast year are Canadian.
8. If feature films are offered, the licensee shall ensure that the feature film offering includes all Canadian feature films released in the past 12 months.
9. The licensee shall ensure that not less than 20% of all programming other than feature films available to subscribers in each broadcast year are Canadian.
10. If feature films are offered, the licensee shall ensure that Canadian feature films are promoted to the same extent as non-Canadian feature films.
11. If a bilingual service is offered and a barker channel is provided, the licensee shall ensure that subscribers have access to a barker channel in the official language of their choice.
12. If a barker channel is provided, the licensee shall ensure that at least 25% of the titles promoted each month on its barker channel are Canadian titles.

Contribution to Canadian programming

13. The licensee shall contribute 5% of the service's gross annual revenues to an existing Canadian independent production fund administered independently of its undertaking.

For the purposes of this condition:

- (a) if the on-demand service is a "related service," "gross annual revenues" shall be 50% of the total on-demand associated revenues received from customers of the broadcasting distribution undertaking(s) distributing the on-demand service;
- (b) if the 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 on-demand service.

A "related service" means one in which the broadcasting distribution undertaking distributing the on-demand service or any of its shareholders owns, directly or indirectly, 10% or more of the equity of the on-demand service.

Advertising

14. The licensee shall not include as part of its 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 programming undertaking;
 - (ii) is inserted by the licensee in a program that is obtained from a related licensed 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 sections 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 paragraphs 14(a)(i), 14(a)(ii) or 14(a)(iv) above, the program's inclusion as part of the 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.
 - (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.
15. 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.

Programming rights

16. The licensee shall not acquire exclusive rights for any of the programming offered on its programming service.
17. The licensee is prohibited from offering a non-Canadian subscription on-demand package that is directly competitive with a Canadian linear discretionary service, unless the package is exclusively comprised of live events that do not include any wrap-around programming.

Local expression

18. 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 *Exemption order respecting still image programming service undertakings*, Public Notice CRTC 1993-51, 30 April 1993, 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.

19. The licensee shall

- (a) devote to community programming not less than 60% of the programming offered as local expression;
- (b) devote at least 50% of the programming offered as local expression to community access television programming;

- (c) 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;
- (d) 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
- (e) 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.

20. The licensee shall

- (a) keep, in a form acceptable to the Commission, a program log or a record of programs offered as local expression in the licensed area and retain the log or record for a period of one year after the latest date on which the program is offered;
- (b) enter into the program log or 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 18(a)(ii) and (vii);
 - (iii) a brief description of the program, including a statement as to whether it is local community programming;
 - (iv) the name of the distribution undertaking for which the program was produced and the name of the producer;
 - (v) a statement that indicates whether the program constitutes community access television programming, and if so,
 - (A) the party that has been provided with access and whether that party is a community television corporation, and
 - (B) the name of the individual requesting access, their role in the origination and production of the program, and any relationship with the licensee;
 - (vi) the time of commencement of the announcements and commercial messages referred to in conditions of licence 18(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;

- (vii) whether the program was offered with closed captioning, audio description or described video;
 - (viii) whether the program is an original first-run program; and
 - (ix) the language of the program;
- (c) 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 (c)(i).

Accessibility

21. The licensee shall caption 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 community access television programming.
22. Consistent with *Accessibility of telecommunications and broadcasting services*, Broadcasting and Telecom Regulatory Policy CRTC 2009-430, 21 July 2009, the licensee shall implement a monitoring system 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.
23. In regard to the quality of closed captioning:
- (a) for French-language services, the licensee shall adhere to the requirements set out in the appendix to *Quality standards for French-language closed captioning – Enforcement, monitoring and the future mandate of the French-language Closed Captioning Working Group*, Broadcasting Regulatory Policy CRTC 2011-741-1, 21 February 2012, as amended from time to time; and
 - (b) for English-language services, the licensee shall adhere to the requirements set out in the appendix to *English-language closed captioning quality standard related to the accuracy rate for live programming*, Broadcasting Regulatory Policy CRTC 2016-435, 2 November 2016, as amended from time to time.

Program lists

24. The licensee shall maintain for a period of one year and submit to the Commission upon request a detailed list of the programming available on the service. The list must identify each program by program category, language, country of origin, whether captioning and/or video description is available, and whether it is produced by the

licensee. The list must also indicate the period of time during which each program was on the server and available to subscribers as well as, if applicable, whether the program is an event, and the time and dates of broadcast.

Aggregate statistical data

25. As part of its annual return to be submitted to the Commission on 30 November of each year, the licensee shall file aggregate statistical data for the broadcast year ending the previous 31 August relating to the following:

- video server capacity or number of channels – current;
- video server capacity or number of channels – projected for the end of the next broadcast year;
- total number of titles offered;
- total number of Canadian titles offered;
- breakdown of titles in both official languages;
- total number of feature films offered;
- total number of Canadian feature films offered;
- total number of orders for Canadian programs;
- total number of orders for non-Canadian programs;
- total number of orders for Canadian feature films; and
- total number of orders for non-Canadian feature films.

Expectations

Programming offering in both official languages

1. The Commission expects the licensee to make its programming offering available to the maximum extent possible in both official languages.

Accessibility

2. If closed captioning is available, the Commission expects the licensee to provide viewers with a closed 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 community access television programming is closed captioned.
4. The Commission expects the licensee to ensure that when programming with closed captioning on traditional platforms is made available on non-linear online platforms operated by the licensee, the closed captioning is included.

5. 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.
6. The Commission expects the licensee to:
 - (a) display a standard described video logo and broadcast an audio announcement indicating the presence of described video before the broadcast of each described program; and
 - (b) make information available regarding the described programs that it will broadcast.
7. 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.

Broadcast of adult programming

8. 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.
9. Where applicable, the Commission expects the licensee to adhere to its internal policy on adult programming once reviewed and approved by the Commission.

On-screen portrayal of ethnocultural minorities, Indigenous peoples and persons with disabilities

10. The Commission expects the licensee to endeavour through its programming and employment opportunities to reflect the presence in Canada of ethnocultural minorities, Indigenous 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.

Employment equity

11. In accordance with *Implementation of an employment equity policy*, Public Notice CRTC 1992-59, 1 September 1992 (Public Notice 1992-59), licensees with 100 or more employees are subject to the *Employment Equity Act*. If the licensee has from 25 to 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, Indigenous 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.

12. In regard to the implementation of the licensee's employment equity plan, the Commission further expects the licensee to:
 - (a) ensure that the details of the licensee's employment equity policies are communicated to managers and staff;
 - (b) assign a senior level person to be responsible for tracking progress and monitoring results; and
 - (c) dedicate financial resources to the promotion of employment equity in the workplace.

Encouragements

1. The Commission encourages the licensee to share aggregate information on viewing of on-demand programs with broadcasters if such information is available.
2. If the licensee has fewer than 25 employees, the Commission encourages the licensee to consider employment equity issues in its hiring practices and in all other aspects of its management of human resources.

Definitions

For the purposes of these conditions of licence and expectations:

“Audio description” refers to announcers reading aloud the key textual and graphic information that is displayed on the screen during information programs.

“Broadcast year” shall have the same meaning as that set out in the *Television Broadcasting Regulations, 1987*, as amended from time to time.

“Commercial message” has the same meaning as that set out in the *Discretionary Services Regulations*.

“Community access television programming,” “community programming,” “community television corporation,” “related programming undertaking” and “original first-run program” have the same meanings as those set out in the *Broadcasting Distribution Regulations*, as amended from time to time.

“Described video” (also referred to as videodescription or described narrative) consists of a narrated description of a program's main visual elements, such as settings, costumes and body language.

“Linear discretionary service” refers to a discretionary service that presents programming in a scheduled manner.

“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.

“Wrap-around programming” means any other programming that is offered together with the live event itself (for example, pre-or post-commentaries of the event).