



April 15, 2010

Mr. Robert A. Morin  
Secretary General  
CRTC  
Ottawa, ON K1A 0N2

Online: <http://support.crtc.gc.ca>

Dear Mr. Morin,

**Re: Broadcasting Notice of Consultation CRTC 2010-141, Items #1-8 – Applications by Canwest Television GP Inc., Canwest Media Inc., and its partners to amend the broadcasting licences of various specialty television programming undertakings (Application Nos. 2010-0054-6, 2010-0055-4, 2010-0056-2, 2010-0057-0, 2010-0058-8, 2010-0059-6, 2010-0060-4, and 2010-0066-1)**

1. On behalf of our 21,000 members, the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) welcomes the opportunity to comment on the above cited applications. ACTRA's comments in this submission reflect the unique perspective of professional performers working in the English-language recorded media in Canada.
2. Canwest Television Limited Partnership and Canwest Media Inc ("Canwest") have applied for greater program flexibility for nine analog and Category 1 services: Mystery, TVTropolis, Discovery Health Channel, Food Network Canada, HGTV Canada, History Television, Independent Film Channel, Showcase and Slice.
3. ACTRA urges the Commission to **deny** these applications.
4. As a general observation, ACTRA is frustrated with the pattern of licensees requesting changes to their licences mid-term. The frequent and superfluous requests give the appearance that licensees are throwing pasta at a wall to see what will stick, constantly looking for a loophole and a way out of their regulatory obligations. In our view, these requests are not an appropriate use of the Commission's valuable resources.
5. The Commission stated clearly when it released its Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services (CRTC 2008-100) that changes to categories of programming would be entertained at the next round of licence renewals:

---

**Alliance of Canadian Cinema, Television and Radio Artists**

**ACTRA National Office**

625 Church Street · Suite 300 · Toronto ON M4Y 2G1  
Toll free 1-800-387-3516 · Tel (416) 489-1311  
Fax (416) 489-8076 · E-mail [national@actra.ca](mailto:national@actra.ca) · [www.actra.ca](http://www.actra.ca)

Affiliated with the Canadian Labour Congress (CLC)  
and the International Federation of Actors (FIA)

**Branch Offices:** Vancouver · Edmonton · Calgary · Regina · Winnipeg  
Toronto · Ottawa · Montreal · Halifax · St. John's

*“With respect to the programming obligations for pay and specialty services, the Commission considers it more appropriate to discuss these in detail at their licence renewals. This will give the licensees an opportunity to assess the impact of the new policies and regulations contained in this public notice and formulate their commitments accordingly.”*

6. Canwest accepted these terms of service when it acquired this roster of specialty services from Alliance in 2007 and it will have an opportunity to seek changes to licence requirements at licence renewals in spring 2011.
7. On this principle alone, we urge the Commission to deny these applications and send a signal to licensees that terms of service are terms of service for the complete licence term; they are not subject to random review at the whim of the licensee.
8. ACTRA has a number of concerns with respect to the specifics of the applications. We have no issue with allowing specialty services to draw on additional categories on the two conditions that:
  - the categories of programming are consistent with the services’ particular nature of service definition
  - adding categories will not impinge on another service’s mandate making the service competitive with existing analog and Category 1 specialty services.
9. The current terms of licence for the specialty channels were crafted to ensure that these services remain just that, ‘special’. Genre-exclusivity must be maintained where it exists, and strengthened where it is fading.
10. The Applicant cites that the requested changes reflect the new policies outlined in BN 2008-100. In its decision the Commission states: “all Category A services will be permitted to draw from all programming categories.” However, the Commission also affirms that Category A services must remain non-competitive and true to their nature.
11. ACTRA is assured that since the release BN 2008-100, the Commission has made several decisions establishing the principles of non-competition and distinct natures of service as paramount, including the *bold* decision of April 14, 2010 (CRTC 2010-214) and the *OLN* decision of September 10, 2009 (2009-569).
12. In the *bold* decision, the Commission weighed the application against two important questions: would approval allow it to morph into a ‘general interest specialty service’ and would approval “allow it to be directly competitive with existing analog and Category 1 specialty services?” and would it “undermine the Commission’s licensing regime?”
13. ACTRA believes the same questions are appropriate in this instance and argues that in all counts, these applications fail.

14. That Canwest is looking for the flexibility to draw on **all** categories of programming for **all** of its analog and Category 1 specialty services is troubling. It would seem to indicate that it is not overly concerned with the unique nature of each service or genre exclusivity. The type of programming a service airs is equally important to the theme and point of view of the programming in making that service distinct. We are also not clear how some of the additional program categories support the nature of service definitions.
15. In a number of cases expanding the programming genres the services can draw on will dilute the unique nature of each service, and in some cases, conflict entirely with their mandates. Professional sports on Mystery? Music and dance on HGTV?
16. Already we see that Canwest takes a very liberal approach when interpreting their services' nature of service definitions. For example, History's nature of service is stated to be: "...*programs that embrace both current and historical events. The service will give special emphasis to documentary and dramatic programming relating to Canada's past.*"
17. Looking at the History website, we note that Canwest has interpreted this to include programs such as:
  - *Ax Men* – "The first-ever non-fiction series about the treacherous life of the Pacific Northwest timber cutters"
  - *Mad Labs* – "Amusing, irreverent and always entertaining, *Mad Labs* tackles every imaginable branch of science in an approachable way... In each episode, we recreate wacky experiments."
  - *Aftermath* – "*Aftermath* looks into the future - and reveals a world struggling to deal with fundamental changes to the way we live and the planet we live on."
18. ACTRA believes that further specific parameters are required to ensure that the definitions are not being stretched or misinterpreted. It is clear to us that particularly with respect to the Canwest services, relying on nature of service definitions to ensure genre-exclusivity and uniqueness is not adequate.
19. We also note with great concern that Canwest is already recycling a number of programs through several channels.
20. Canwest is already reusing programming over and over on various channels – taking from both Global and recycling on specialty channels as well as among specialty channels. Shows such as *NCIS*, *Bones*, *Last 10 Pounds Bootcamp*, *Cold Squad*, *Boston Legal* and *Project Runway Canada* appear on multiple Canwest specialty services. How can a service be 'special' if it is sharing the same programming with several other services?
21. This trend is especially troublesome for Canadian programming given the ongoing struggle to ensure that Canadians have access to their own stories. While services such as Slice and Showcase have high requirements for Canadian programming, it does not serve our industry well if a corporate group such as Canwest can buy the rights to one program and cycle it through two, three or even four services, services that are presumably 'distinct.'

22. Finally we note that there is no commitment to the production and airing of Canadian programming in the applicant's proposal. If they are going to be allowed to air more Category 7 programming, they should be required to air more **Canadian** drama and not given licence to broadcast more episodes of a foreign drama such as *Law and Order* which already takes up ample space on the licensee's schedules.

### **CONCLUSION**

23. We urge the Commission to reject these applications in order to maintain a diversity of voices, the integrity of the conditions of licence and genre-exclusivity. It must also be made clear to licensees that changes to terms of service should only be considered in exceptional circumstances.

24. Granting Canwest these expanded categories will only serve to further weaken the unique nature of these services.

25. ACTRA thanks the Commission for the opportunity to provide comment on this matter.

Thank you.



Stephen Waddell  
National Executive Director, ACTRA

CC: Karen Clout, Manager Regulatory Affairs, Canwest Television Limited Partnership

-- End --