



## Broadcasting Decision CRTC 2004-16

Ottawa, 21 January 2004

**HGTV Canada Inc.**  
Across Canada

*Application 2002-0890-2  
Public Hearing in the National Capital Region  
26 May 2003*

### **Home and Garden Television Canada – Licence renewal**

*In this decision, the Commission **renews** the broadcasting licence for the specialty television service known as Home and Garden Television Canada, from 1 March 2004 to 31 August 2010. The details regarding the licensee's specific proposals for the new licence term, and the conditions of licence and other obligations determined by the Commission are set out below.*

#### **The application**

1. The Commission received an application by HGTV Canada Inc. (HGTV Canada) for the renewal of the broadcasting licence for the national, English-language, specialty television service known as Home and Garden Television Canada (HGTV).
2. The Commission's general analysis with respect to its consideration of this and other applications heard at the 26 May 2003 Public Hearing for the licence renewal of specialty television services is set out in *Introduction to Broadcasting Decisions CRTC 2004-6 to 2004-27 renewing the licences of 22 specialty services*, Broadcasting Public Notice CRTC 2004-2, 21 January 2004 (Public Notice 2004-2).
3. The Commission received 27 interventions specifically in support of HGTV's licence renewal and proposals, and four interventions expressing specific opposition to the licensee's proposed addition of game shows and drama programs to its nature of service. The concerns raised by the interveners related specifically to this application are discussed in the various sections of this decision.
4. Other interveners raised general concerns related to all of the specialty television licence renewal applications considered as part of this public process. These concerns are discussed in Public Notice 2004-2.

5. On the basis of its review of this licence renewal application and having considered the interveners' comments, the Commission **renews** the broadcasting licence for Home and Garden Television Canada, from 1 March 2004 to 31 August 2010.<sup>1</sup> The licence will be subject to the conditions specified therein and to the conditions set out in the appendix to this decision.
6. The licensee requested the renewal of the licence for HGTV under the same terms and conditions as the existing licence, with the exception of the addition of drama categories 7(a) Ongoing dramatic series, 7(b) Ongoing comedy series (sitcoms), and 7(c) Specials, mini-series or made-for-TV feature films, and category 10 Game shows to the list of categories from which History may draw its programming, subject to specific limits, as discussed below.

### **Expenditures on Canadian programming**

7. In each year of the current licence term, HGTV Canada has been required, by condition of licence, to expend on Canadian programs a minimum of 50% of the previous year's gross revenues with respect to HGTV.
8. The Commission notes that the service's historical average profit before interest and tax (PBIT) margin has been less than 20%. Taking this into account, and consistent with the approach described in Public Notice 2004-2, the Commission has determined that an increase is not warranted at this time. Accordingly, the Commission is requiring the licensee to expend 50% of the previous year's gross revenues on Canadian programming. A **condition of licence** to this effect is set out in the appendix to this decision.

### **Nature of service**

9. As part of its licence renewal application, the licensee requested an amendment to the condition of licence describing its nature of service, in order to add program categories 7(a), 7(b), 7(c) and 10 to the list of categories from which it may draw its programming.
10. The licensee stated that, in order to ensure that the proposed drama and game shows are consistent with the existing programming on HGTV, all would have building and remodelling, or decorating and interior design, or gardening and landscaping, or crafts and hobbies as a central theme. HGTV Canada further stated that all of the additional programming would be original Canadian programming commissioned for the service, and that 50% of it would be acquired from independent producers. The licensee also stated that it would accept a condition of licence to the effect that no more than 5% of each broadcast year would be devoted to each of categories 7 and 10.

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<sup>1</sup> In *Administrative renewals*, Broadcasting Decision CRTC 2003-290, 21 July 2003, the Commission granted a six-month administrative renewal for Home and Garden Television Canada, from 1 September 2003 to 29 February 2004.

11. In support of its proposal, HGTV Canada indicated that its proposed amendments would support the production of original Canadian programming, and provide additional diversity in the system, and stated that the changes would have no impact on other broadcasters, given that the proposed programming would be consistent in theme with HGTV's current programming related to building, decorating, gardening and hobbies.

#### **Interventions**

12. As part of its general support for HGTV's licence renewal, the Directors Guild of Canada (DGC) stated that the proposal to add drama programming to HGTV "will not convert the nature of the service of the applicant, yet it provides a small window that might allow for the creation and presentation of original Canadian drama".
13. Global Television Network Inc. (Global) and three individuals submitted interventions in opposition to the addition of drama and game shows, suggesting that such programming is readily available on other channels and falls outside the mandate of a service dedicated to information programming on homes and gardens.
14. Global expressed concern about the potential impact of the addition of drama on conventional broadcasters, stating that "the role of specialty services is and has always been to complement conventional television services". Global further indicated its belief that the addition of drama programming to HGTV's programming would increase pressure on the Canadian Television Fund (CTF), a fund which finances Canadian production. Global claimed that this would reduce the ability of conventional broadcasters to access the fund to meet their prime-time priority programming requirements. Global expressed the view that "approval of this proposal would result in further exacerbating an already serious funding shortfall for Canadian drama".

#### **The licensee's reply**

15. In response to the concerns expressed by Global, HGTV noted that the CTF was never meant for the exclusive use of conventional broadcasters, and that a significant portion of financial support for the CTF comes from distribution undertakings that derive a great deal of revenue from the distribution of specialty services. HGTV Canada also expressed its view that specialty services can make useful contributions to resolving the problems surrounding the production and exhibition of Canadian drama programming.

#### **The Commission's analysis and determination**

16. The Commission has considered whether the proposal to amend the condition of licence setting out HGTV's nature of service would result in a significant shift in the nature of the service, if it would be consistent with the Commission's one-per-genre policy and whether it would promote the objective of increased programming diversity.

17. With respect to drama, the Commission notes that the licensee's commitment that no more than 5% of its programming schedule would be devoted to drama programming would result in approximately six hours of drama programming per week. The Commission considers that this amount of programming would not represent a significant shift in the nature of HGTV's service. The Commission is satisfied that allowing HGTV to broadcast a limited amount of drama programming is consistent with its treatment of other information-based specialty services that are allowed to broadcast limited amounts of drama. Further, given that any programming drawn from category 7 would be clearly related to the core themes of the current programming on HGTV, the Commission is satisfied that the proposal would not have a negative impact on other Canadian broadcasters.
18. Finally, the Commission notes that any drama programming broadcast on HGTV would be original Canadian programming new to the Canadian broadcasting system, and would thus contribute to program diversity and create improved opportunities for Canadian program producers.
19. Accordingly, the Commission **approves** the licensee's request to add program categories 7(a), 7(b), and 7(c) to the list of categories from which HGTV may draw its programming. A limitation of 5% per year has been placed on the use of all programming drawn from category 7. The **condition of licence** describing the nature of service is set out in the appendix to this decision.
20. With respect to game shows, the Commission notes that HGTV specified that any game shows to be broadcast would be related to the service's core themes, and that the ability to broadcast such material would not enable HGTV to be directly competitive with any other Canadian specialty service, since the licensee would continue to be constrained by its nature of service.
21. Accordingly, the Commission **approves** the licensee's request, and adds program category 10 to the list of categories from which HGTV may draw its programming. The **condition of licence** including this addition is set out in the appendix to this decision.
22. The Commission notes that the licensee does not foresee that game shows would represent more than 5% of the broadcast year, and expects that the licensee will, as proposed, devote not more than 5% of the broadcast year to game shows.

### **Canadian independent production**

23. In *HGTV-TV Canada (Home and Garden Television) – Approved*, Decision CRTC 96-607, 4 September 1996 (Decision 96-607), the Commission noted the licensee's commitment to contribute \$200,000 annually to script and concept development. It also imposed a condition of licence which prohibited the licensee from allocating any program development funds to its shareholders or affiliated corporations.

24. HGTV Canada indicated during this process that it would be prepared to accept an expectation that at least 50% of the Canadian programs broadcast on HGTV would be acquired from arms-length producers. It further committed that, if its request to add drama programming and game shows to the service were approved, 50% of all such programming would be acquired from independent producers. It also indicated that it was prepared to maintain its commitment to script and concept development.
25. The licensee stated that its proposal of 50% would be appropriate, given the nature of its daily, information-based programming, much of which lends itself to in-house production and is less attractive to independent producers. HGTV Canada further stated that it uses independent producers for the more high-end design and garden shows that often have potential for international sales.
26. The Canadian Film and Television Production Association suggested that a more appropriate level would be 75% of all Canadian drama, game show and documentary programming.
27. Given the nature of its programming, much of which lends itself to in-house production, the Commission considers that it is reasonable to expect HGTV Canada, for the duration of the new licence term, to ensure that a minimum of 50% of all original, first-run Canadian programming is acquired from non-related producers. The Commission expects the licensee to ensure that it makes reasonable use of non-related producers for Canadian drama programming.
28. The Commission also notes the licensee's commitment to continue to expend a minimum of \$200,000 annually for script and concept development.

### **Regional reflection and production**

29. HGTV Canada stated that HGTV has presented programming reflective of many different regions throughout its first licence term, and that its relationships with the independent production community reach across the country.
30. The Commission expects the licensee to ensure that the programming aired by HGTV reflects all Canada's regions. The Commission also expects the licensee to provide opportunities for producers working outside the major production centres to supply programming for the service.

### **Programming shared between Life Network and HGTV**

31. In Decision 96-607, the Commission noted that none of the programming broadcast on HGTV would duplicate that presented by the Life Network, a specialty television service which has ownership in common with HGTV.

32. When asked during this process about the appropriateness of carrying this commitment forward, HGTV Canada stated that the commitment is no longer necessary. The licensee argued that the original commitment was made as a safeguard to ensure a marked distinction between the two services and that, through the evolution of both Life Network and HGTV, that distinction is now evident. HGTV Canada added that Life Network has developed into a service that provides useful and entertaining lifestyle and documentary programming, using programs with a less traditional how-to format and more of a fact-based reality format. HGTV Canada further indicated that programs broadcast on both HGTV and Life Network do not represent more than 15% of all programming offered by HGTV.
33. The Commission notes that no interveners expressed concern with respect to this matter, and that a limited overlap of programming between the two services could create cross-promotional opportunities. The Commission notes the licensee's statements that programs shared between Life Network and HGTV represent no more than 15% of all programming.

### **Cultural diversity**

34. As stated in Public Notice 2004-2, the Commission expects the licensee to endeavour, through its programming and employment opportunities, to reflect Canada's ethno-cultural minorities and Aboriginal peoples. The Commission further expects the licensee to ensure that the on-screen portrayal of such groups is accurate, fair and non-stereotypical.
35. Alliance Atlantis Communications Inc., parent company of the licensee, has not yet submitted to the Commission a formal corporate cultural diversity plan, although the *Alliance Atlantis Broadcasting Cultural Diversity Best Practices* plan was filed with this application. At the hearing, the licensee stated that it would file a corporate plan with the Commission within the next few months.
36. In its application, HGTV Canada described the ways in which it ensures the reflection of diversity in its original and acquired programs. The Commission notes the initiatives that the licensee has taken in this regard during the current licence term. As set out in Public Notice 2004-2, the Commission expects the licensee to file a corporate plan on cultural diversity, within three months of the date of this decision, and to provide annual reports on its progress in achieving the plan's objectives. Such reports should be filed no later than 31 December of each year of the new licence term, beginning December 2005.
37. As discussed in Public Notice 2004-2, the Commission further expects the licensee to incorporate persons with disabilities into its cultural diversity corporate planning and to ensure that this is reflected in its annual reports on cultural diversity.

## **Employment equity and on-air presence**

38. Pursuant to section 5(4) of the *Broadcasting Act*, the Commission does not regulate or supervise matters concerning employment equity in relation to broadcasting undertakings with more than 100 employees, as they are subject to the *Employment Equity Act*. However, the Commission continues to regulate matters such as on-air presence.
39. The Commission expects the licensees of specialty television services to ensure that the on-air presence of members of the four designated groups (women, Aboriginal persons, persons with disabilities and members of visible minorities) is reflective of Canadian society, and that members of these groups are presented fairly and accurately.
40. The Commission notes that HGTV Canada does not directly employ on-air staff.

## **Service to persons who are deaf or hard of hearing**

41. The Commission is committed to improving service to viewers who are deaf or hard of hearing, and has consistently encouraged broadcasters to increase the amount of closed captioned programming they broadcast. The Commission generally requires all broadcasters to offer a minimum percentage of closed captioned programs consistent with the nature of their services. Most English-language services must close caption at least 90% of their programming.
42. In the present case, the licensee made a commitment to close caption 90% of all programming broadcast on HGTV during each broadcast day of the new licence term.
43. Consistent with this commitment and with the Commission's general approach for English-language services, the Commission is imposing a **condition of licence** requiring the licensee to close caption 90% of all programming aired during the broadcast day, beginning not later than 1 September 2004. The condition of licence is set out in the appendix to this decision.
44. The 90% obligation is based on the recognition that requiring 100% captioning at all times by condition of licence may not be reasonable. Thus, the obligation is designed to provide some flexibility to cover unforeseen circumstances (such as late delivery of captions, technical malfunctions, or the lack of availability of captions for programs acquired outside North America), or programming where captioning may not be feasible, such as third-language programming.
45. The Commission expects that, during the new licence term, the licensee will focus on improving the quality, reliability and accuracy of its closed captioning, and work with representatives of the deaf and hard of hearing community to ensure that captioning continues to meet their needs.

## **Service to persons who are blind or whose vision is impaired**

46. The Commission is committed to improving the accessibility of television programming for persons with visual impairments through the provision of audio description<sup>2</sup> and video description (also known as described video).<sup>3</sup>
47. As part of this licence renewal process, HGTV Canada stated its belief that, much of HGTV's programming "necessitates a tremendous use of audio description of the simultaneous video in detailing exactly what is being worked on and how to benefit from this new knowledge". With respect to described video, the licensee stated that many distributors are currently incapable of transmitting described video signals. It stated its commitment to resolve the technical difficulties, and when resolved, to then provide described video programming.
48. The Commission expects that, during the new licence term, the licensee will:
- provide audio description wherever appropriate;
  - acquire and broadcast the described version of a program wherever possible; and
  - take the necessary steps to ensure that its customer service responds to the needs of viewers who have visual impairments.
49. The Commission notes the licensee's commitment to broadcast a minimum of two hours of described video programming per month, and to increase that amount to four hours per month, beginning in the seventh year of the licence term. The Commission encourages the licensee to fulfill this commitment.

## **Programming delivered across time zones**

50. As discussed in Public Notice 2004-2, the Commission expects the licensee to demonstrate responsibility in the scheduling of programming intended for adult audiences, taking into account time zone differences between where the program originates and where it is received.

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<sup>2</sup> Audio description involves the provision of basic voice-overs of textual or graphic information displayed on the screen. A broadcaster providing audio description will, for example, not simply display sports scores on the screen, but also read them aloud so that people who are visually impaired can receive the information.

<sup>3</sup> Video description, or described video, consists of narrative descriptions of a program's key visual elements so that people who are visually impaired are able to form a mental picture of what is occurring on the screen.



## Compliance with industry codes

51. In accordance with its usual practice for specialty television services, the Commission is imposing **conditions of licence** requiring the licensee to adhere to industry codes related to sex-role portrayal, advertising to children, and the depiction of violence in television programming.

Secretary General

*This decision is to be appended to the licence. It is available in alternative format upon request, and may also be examined at the following Internet site: <http://www.crtc.gc.ca>*

## Appendix to Broadcasting Decision CRTC 2004-16

### Conditions of licence

1. (a) The licensee shall provide a national, English-language specialty television service, providing advice and instruction about homes and gardens. The licensee shall also provide Canadian game shows and Canadian dramas that have been commissioned by the licensee and which have building and remodelling, decorating and interior design, gardening and landscaping, or crafts and hobbies as themes.
  - (b) The programming must be drawn exclusively from the following categories, as set out in section 6 of Schedule I of the *Specialty Services Regulations, 1990*, as amended from time to time:
    - 2 (a) Analysis and interpretation
    - (b) Long-form documentary
    - 3 Reporting and actualities
    - 5 (b) Informal education/Recreation and leisure
    - 7 (a) Ongoing dramatic series
    - (b) Ongoing comedy series (sitcoms)
    - (c) Specials, mini-series or made-for-TV feature films
    - 9 Variety
    - 10 Game shows
    - 11 General entertainment and human interest
    - 12 Interstitials
    - 13 Public service announcements
    - 14 Infomercials, promotional and corporate videos
  - (c) In each broadcast year, the licensee shall devote to programs drawn from categories 7(a), 7(b) and 7(c) not more than a total of 5% of the broadcast day.
2. In each broadcast year, the licensee shall devote to the exhibition of Canadian programs not less than 50% of the broadcast day, and not less than 50% of the evening broadcast period.
  3. In accordance with the Commission's position on Canadian programming expenditures as set out in *New Flexibility With Regard to Canadian Program Expenditures by Canadian Television Stations*, Public Notice CRTC 1992-28, 8 April 1992, in *The Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-93, 22 June 1993 and in *Additional Clarification Regarding the Reporting of Canadian Programming Expenditures*, Public Notice CRTC 1993-174, 10 December 1993:

- (a) In each broadcast year of the licence term, the licensee shall expend on the acquisition of and/or investment in Canadian programs a minimum of 50% of the gross revenues derived from the operation of this service during the previous broadcast year.
  - (b) In each broadcast year of the licence term, excluding the final year, the licensee may expend an amount on Canadian programs that is up to five percent (5%) less than the minimum required expenditure for that year calculated in accordance with this condition; in such case, the licensee shall expend in the next broadcast year of the licence term, in addition to the minimum required expenditure for that year, the full amount of the previous year's under-expenditure.
  - (c) In each broadcast year of the licence term where the licensee expends an amount on Canadian programs that is greater than the minimum required expenditure for that year calculated in accordance with this condition, the licensee may deduct:
    - (i) from the minimum required expenditure for the following year of the licence term, an amount not exceeding the amount of the previous year's over-expenditure; and
    - (ii) from the minimum required expenditure for any subsequent broadcast year of the licence term, an amount not exceeding the difference between the over-expenditure and any amount deducted under (i) above.
  - (d) Notwithstanding paragraphs (b) and (c) above, during the licence term, the licensee shall expend on Canadian programs, at a minimum, the total of the minimum required expenditures calculated in accordance with this condition of licence.
4. (a) Subject to subsection (b), the licensee shall not distribute more than twelve (12) minutes of advertising material during each clock hour.
- (b) Where a program occupies time in two or more consecutive clock hours, the licensee may exceed the maximum number of minutes of advertising material allowed in those clock hours if the average number of minutes of advertising material in the clock hours occupied by the program does not exceed the maximum number of minutes that would otherwise be allowed per clock hour.
- (c) The licensee shall not distribute any paid advertising material other than paid national advertising.
5. The licensee shall charge each exhibitor of this service a maximum monthly wholesale rate of \$0.07 per subscriber, where the service is carried as part of the basic service.

6. The licensee shall not remit any program development funds to its shareholders or affiliated corporations.
7. The licensee shall provide closed captioning for not less than 90% of all programs aired during the broadcast day, beginning not later than 1 September 2004.
8. The licensee shall adhere to the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' (CAB) *Sex-role portrayal code for television and radio programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the Canadian Broadcast Standards Council (CBSC).
9. The licensee shall adhere to the provisions of the CAB's *Broadcast code for advertising to children*, as amended from time to time and approved by the Commission.
10. The licensee shall adhere to the guidelines on the depiction of violence in television programming set out in the CAB's *Voluntary code regarding violence in television programming*, as amended from time to time and approved by the Commission. The application of the foregoing condition of licence will be suspended as long as the licensee remains a member in good standing of the CBSC.

For the purpose of these conditions, the terms "broadcast day", "broadcast month", "broadcast year", "clock hour" and "evening broadcast period" shall have the same meanings as those set out in the *Television Broadcasting Regulations, 1987*. The term "paid national advertising" shall mean advertising material as defined in the *Specialty Services Regulations, 1990* and that is purchased at a national rate and receives national distribution on the service.