



Broadcasting Decision CRTC 2005-405

Ottawa, 12 August 2005

Learning and Skills Television of Alberta Limited Across Canada

*Application 2004-0359-3
Broadcasting Public Notice CRTC 2005-19
28 February 2005*

CourtTV Canada – Licence amendment

*The Commission **denies** the application to amend the broadcasting licence for the national Category 2 specialty programming undertaking known as CourtTV Canada in order to increase the level of drama that it may broadcast.*

The application

1. The Commission received an application by Learning and Skills Television of Alberta Limited (Learning and Skills) to amend the broadcasting licence for the national Category 2 specialty programming undertaking known as CourtTV Canada (formerly known as The Law & Order Channel) in order to increase the level of drama that it may broadcast.
2. CourtTV Canada's nature of service conditions of licence¹ stipulate that:
 - a) The licensee shall provide a national English-language Category 2 specialty television service that will feature entertainment programming about police, law, the courts, emergency and medical response teams, disaster and relief operations featuring people and organizations that uphold law and order in our society. There will be special emphasis given to the Canadian experience, both historical and current, in the development and delivery of law and order. Canada's emphasis on "peace, order and good government" will be stressed, as opposed to the United States emphasis on "life, liberty and the pursuit of happiness." A daily live *Law and Order Help* program, with a strong, interactive website component, will assist people with specific legal and other issues, and will provide up-to-date information and service.
 - b) The programming must be drawn exclusively from the following categories, as set out in Schedule I to the *Specialty Services Regulations, 1990*:

¹ *The Law & Order Channel*, Decision CRTC 2000-614, 24 November 2000 and 14 December 2000 and *Licence amendment for CourtTV Canada – addition of program categories*, Broadcasting Decision CRTC 2003-164, 23 May 2003

- 1 News
- 2 (a) Analysis and interpretation
- (b) Long-form documentary
- 3 Reporting and actualities
- 5 (a) Formal education and pre-school
- (b) Informal education/Recreation and leisure
- 7 (a) Ongoing drama series
- (c) Specials, mini-series or made-for-TV feature films
- (d) Theatrical feature films aired on TV
- (g) Other drama
- 12 Interstitials
- 13 Public service announcements
- 14 Infomercials, promotional and corporate videos

c) No more than 15% of all programming broadcast during the broadcast week shall be drawn from category 7.

3. In its application, Learning and Skills proposed to replace condition of licence c) with the following:

c) No more than 35% of all programming broadcast during the broadcast week shall be drawn from category 7.

Interventions

4. The Commission received an intervention in support of this application by Mr. David Colpitts and interventions in opposition by Global Television Network Inc. (Global) and CTV Inc. (CTV). Global and CTV have ownership interests in conventional television and/or analog specialty and Category 1 and Category 2 services. Among its broadcasting holdings, Global is the co-owner of the national Category 1 service, Mystery (formerly known as 13th Street). Mystery is dedicated to programming offering suspense, espionage, thrillers, police drama and classic mysteries.
5. Global submitted that the applicant did not demonstrate that the proposed increase in drama programming would not make CourtTV Canada directly competitive with Mystery. Global further contended that allowing CourtTV Canada to increase the level of programming drawn from category 7 to 35% of the broadcast week would place Mystery at a competitive disadvantage. In support of its claim, Global pointed out that Category 1 services are subject to much more stringent requirements with respect to the exhibition of, and expenditures on Canadian programming than Category 2 services. It noted that Mystery must currently devote not less than 55% of the broadcast day to Canadian programs, and expend a minimum of 43% of its annual gross revenues on Canadian programs while CourtTV Canada is only required to devote 35% of the broadcast day to Canadian programs and is not subject to any requirements with respect to expenditures on Canadian programs.

6. Global further contended that, rather than adding to programming diversity, allowing CourtTV Canada to air more drama would increase the duplication of programming. In addition, Global expressed the opinion that approval of this application would exacerbate competition for programming rights for drama programming.
7. CTV submitted that CourtTV Canada was originally licensed to provide a service that includes a strong educational component. In CTV's view, the approval of this application would change CourtTV Canada's focus from educational to entertainment and essentially transform the service into a crime drama network.

Applicant's response

8. In response to Global's intervention, the applicant acknowledged that there would be some duplication in the programming broadcast by CourtTV Canada and that aired by Mystery, but maintained that such duplication would not be directly competitive. Moreover, the applicant alleged that any similarities in the programming offered by the two services are a result of Mystery's non-compliance with its nature of service conditions of licence. According to the applicant, Mystery currently broadcasts programming that is consistent with a police and action drama service as opposed to the mystery and suspense service that it was originally licensed to provide. In the applicant's view, Mystery should therefore not be permitted to seek protection from competition from Category 2 services.
9. In response to CTV's intervention, the applicant stated that the description of CourtTV Canada's nature of service set out in its conditions of licence states that the service will "feature entertainment programming about police, law, the courts, emergency and medical response teams, disaster and relief operations featuring people and organizations that uphold law and order in our society." The applicant further maintained that, while CourtTV Canada does schedule programming drawn from category 5(a) Formal education and pre-school and category 5(b) Informal education/Recreation and leisure, it is an entertainment service.

Commission's analysis and determination

10. In *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000 (Public Notice 2000-6), the Commission implemented a competitive, open-entry approach to licensing Category 2 services. While the Commission does not consider the impact that a Category 2 service might have on an existing Category 2 service, it does seek to ensure that Category 2 services do not compete directly with any existing pay or specialty television service, including any Category 1 service.

11. In *Introductory statement - Licensing of new digital pay and specialty services*, Public Notice CRTC 2000-171, 14 December 2000, the Commission adopted a case-by-case approach in determining whether a Category 2 service should be considered directly competitive with an existing pay, specialty or Category 1 service. The Commission examines each application in detail, taking into consideration the nature of service and the unique circumstances of the genre in question.
12. In the present case, the Commission has considered the concerns raised by Global that approval of the proposed licence amendment would make CourtTV Canada directly competitive with the Category 1 service, *Mystery*. As noted above, CourtTV Canada's nature of service conditions of licence specify that it will "feature entertainment programming about police, law, the courts, emergency and medical response teams, disaster and relief operations featuring people and organizations that uphold law and order in our society"; and that it will emphasize "the Canadian experience, both historical and current, in the development and delivery of law and order." In comparison, *Mystery's* nature of service conditions of licence specify that it be "devoted to mystery and suspense programming", that it "nurture and encourage short form Canadian mysteries" and that it "provide a wide assortment of genre-specific programs including movies, television series, short films and documentaries that will focus exclusively on the delivery of entertaining programming on suspense, espionage and classic mysteries."²
13. Both CourtTV Canada and *Mystery* may draw programming from the following categories: 1, 2(b), 5(b), 7(a) 7(c), 7(d), 7(g), 12, 13, and 14. The only categories that CourtTV Canada may draw programming from that *Mystery* may not are the following information categories: 2(a) Analysis and interpretation, 3 Reporting and actualities, and 5(a) Formal education and pre-school. For its part, *Mystery* may draw programming from additional drama categories, namely 7(b) Ongoing comedy series (sitcoms), 7(e) Animated television programs and films, 7(f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy and 7(g) Other drama. Further, the amount of programming that CourtTV Canada may broadcast from the drama categories 7(a), 7(c), 7(d), and 7(g) is restricted to 15% of the broadcast week. In comparison, the amount of programming that *Mystery* may broadcast from category 1 News is restricted to 15% of the broadcast week, as is the amount of programming that it may broadcast from category 7(f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy.
14. The Commission finds that there are substantial similarities in the definition of CourtTV Canada's nature of service and the definition of *Mystery's* nature of service. Both have broadly-defined natures of service that authorize each licensee to offer programming that focuses on investigation and law and order genres, and most of the program categories from which each licensee may draw programming are the same. However, the current restriction on the amount of drama programming that CourtTV Canada may broadcast mitigates the similarities between CourtTV Canada and *Mystery* and helps to ensure that the Category 2 service is not directly competitive with the Category 1 service. The Commission finds that CourtTV Canada's proposal to

² *13th Street – a new specialty channel*, Decision CRTC 2000-449, 24 November 2000 and 14 December 2000

increase the amount of drama programming that it may broadcast would allow the service to become directly competitive with the existing Category 1 service, Mystery, and, consequently, approval of this application would be contrary to the Commission's licensing policy set out in Public Notice 2000-6.

15. Accordingly, the Commission **denies** the application by Learning and Skills Television of Alberta Limited to amend the broadcasting licence for the national Category 2 specialty programming undertaking known as CourtTV Canada in order to increase the level of drama programming that it may broadcast.

Secretary General

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