

**Regulations Respecting Pay Television Networks (SOR/90-105)**

Enabling Statute: Broadcasting Act

Regulation current to February 26th, 2011

Attention: See coming into force provision and notes, where applicable.

**Pay Television Regulations, 1990**

SOR/90-105

Registration January 31, 1990

**BROADCASTING ACT**

**Pay Television Regulations, 1990**

Whereas, pursuant to subsection 6(2) of the *Broadcasting Act*, a copy of the proposed *Regulations respecting pay television networks*, substantially in the form annexed hereto, was published in the *Canada Gazette* Part I on June 17, 1989, and a reasonable opportunity was thereby afforded to licensees and other interested persons to make representations with respect thereto;

Therefore, the Canadian Radio-television and Telecommunications Commission, on the recommendation of the Executive Committee of the Commission, pursuant to subsection 6(1) of the *Broadcasting Act*, hereby revokes the *Pay Television Regulations*, made on October 2, 1984<sup>\*</sup>, and makes the annexed *Regulations respecting pay television networks*, in substitution therefor.

Hull, Quebec, January 25, 1990

\* SOR/84-797, 1984 *Canada Gazette* Part II, p. 3923

REGULATIONS RESPECTING PAY TELEVISION NETWORKS

**SHORT TITLE**

1. These Regulations may be cited as the *Pay Television Regulations, 1990*.

**INTERPRETATION**

2. (1) In these Regulations,

"Act" means the *Broadcasting Act*; (*Loi*)

"Canadian program" means a program

(a) in respect of which a Canadian film or video production certificate referred to in section 125.4 of the *Income Tax Act* has been issued by the Minister of Canadian Heritage, or

(b) that qualifies as a Canadian program in accordance with the criteria established by the Commission in Appendices I and II to Public Notice CRTC 2000-42 dated March 17, 2000, entitled *Certification for Canadian Programs — A Revised Approach* and published in the *Canada Gazette*, Part I, on May 20, 2000; (*émission canadienne*)

"commercial message" means an advertisement intended to sell or promote goods, services, natural resources or activities, and includes an advertisement that mentions or displays in a list of prizes the name of a person selling or promoting those goods, services, natural resources or activities, but does not include any

(a) public service announcement,

- (b) advertisement for a program distributed by a licensee,
- (c) identification of a pay television programming undertaking,
- (d) production credit, or
- (e) advertisement that

- (i) is contained in the live feed of programming that is of the category set out in column I of subitem 6(6) of Schedule I and that is acquired by a licensee,
- (ii) is broadcast during the same period, and originates in the same stadium, arena or other venue, as the event itself, and
- (iii) is distributed by the licensee without compensation; (*message publicitaire*)

“exempt distribution undertaking” means a distribution undertaking whose operator is, by order of the Commission made under subsection 9(4) of the Act, exempt from any or all of the requirements of Part II of the Act; (*entreprise de distribution exemptée*)

“filler programming” means programming, in no case longer than 30 minutes in duration, the purpose of which is to fill in the time between the presentation of the major programs distributed by the licensee, and includes material that promotes the programs or services provided by the licensee; (*matériel d'intermède*)

“key figure” means a figure formed by a combination of alphanumeric characters set out in Column II of an item of Schedule I that corresponds to the description of the program set out in Column I of that item; (*chiffre clé*)

“licensee” means a person who is licensed by the Commission pursuant to paragraph 9(1)(b) of the Act to carry on a pay television programming undertaking or a pay television network; (*titulaire*)

“pay-per-view program” means a scheduled program that is provided by a licensee for distribution by a distribution undertaking on a pay-per-view basis; (*émission à la carte*)

“produced” does not include

- (a) the furnishing, on a commercial basis, of facilities, or technical personnel associated with facilities, necessary for the production or post-production processing of a program, or
- (b) editing or formatting or other similar measures necessary to enable proper and effective distribution of programming by a licensee; (*produit*)

“production credit” means an oral or written announcement, included as an integral part of a program supplied to a licensee, that is inserted by the producer at the beginning or end of the program and that

- (a) where it appears at the beginning of the program, identifies a person who has contributed financially or in kind to the production of the program, without an indication of any product or service provided by that person, or
- (b) where it appears at the end of the program, identifies a person who has contributed financially or in kind to the production of the program, with or without an indication of any product or service provided by that person; (*mention de contribution à la production*)

“program” means a broadcast presentation of sound and visual matter that is designed to inform or entertain and that falls into a category set out in item 6, column I, of Schedule I, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text; (*émission*)

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

"related", in respect of a person, means an associate of the person within the meaning of subsection 6(1). (*liée*)

(2) [Revoked, SOR/93-356, s. 1]

SOR/93-356, s. 1; SOR/94-224, s. 1; SOR/96-163, s. 1; SOR/96-520, s. 1; SOR/99-455, s. 1; SOR/2000-344, s. 2; SOR/2009-235, s. 2; SOR/2009-294, s. 2.

### **PROGRAMMING CONTENT**

**3.** (1) Paragraphs (2)(e) and (f) do not apply in respect of a licensee of an ethnic pay television network.

(2) No licensee shall distribute programming

(a) that contains anything in contravention of the law;

(b) that contains 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;

(c) that contains any false or misleading news;

(d) that contains any commercial message;

(e) other than filler programming, except as otherwise provided in a condition of its licence, that is produced by the licensee after the date of publication in the *Canada Gazette* of the initial decision of the Commission granting a licence to the licensee; or

(f) other than filler programming, except as otherwise provided in a condition of its licence, that is produced by a person related to the licensee after the later of

(i) the date of publication in the *Canada Gazette* of the initial decision of the Commission granting a licence to the licensee, and

(ii) the day on which the person became related to the licensee.

(3) For the purpose of paragraph (2)(b), sexual orientation does not include the orientation towards any sexual act or activity that would constitute an offence under the *Criminal Code*.

SOR/91-588, s. 1; SOR/96-163, s. 2.

### **LOGS AND RECORDS**

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

(a) keep, in a form acceptable to the Commission, a program log or a machine-readable record of its programming;

(b) retain the log or record for a period of one year after the day on which the programming was distributed; and

(c) cause to be entered in the log or record each day the following information:

(i) the date,

(ii) an identification of the licensee or the service provided by the licensee, and

(iii) in relation to each program distributed,

(A) its title and any additional information that is to be included by the appropriate subitem of Schedule I,

(B) subject to subsection (3), the key figure describing the program,

(C) the time at which the program begins and ends,

(D) in the case of the licensee of an ethnic pay television network, the code set out in column I of an item of Part C or D of Schedule II indicating the type or group of the program, as applicable,

(E) where applicable, the code set out in column I of an item of Part B of Schedule II indicating that the program is closed captioned,

(F) where applicable, the code set out in column I of an item of Part A of Schedule II indicating the language of the program, and

(G) where required by a condition of licence, a brief description of the content of the program.

(2) Except as otherwise provided under a condition of its licence, a licensee shall furnish to the Commission, within 30 days after the end of each month, a program log or machine-readable record of its programming for the month, with a certificate by or on behalf of the licensee attesting to the accuracy of the contents of the log or record.

(3) Where more than one subitem of an item of Schedule I applies to a program, a licensee may, in respect of that program, cause to be entered in its program log or machine-readable record

(a) the key figures indicating the subitems that apply to each segment of the program, in the order in which the segments are distributed; and

(b) the starting time and duration of each segment of the program.

(4) 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 date of the distribution; or

(b) where the Commission receives a complaint from any person regarding any programming or for any other reason wishes to investigate the programming and so notifies the licensee before the expiration of the period referred to in paragraph (a), for a period of eight weeks after the date of the distribution.

(5) Where, before the expiration of the applicable period referred to in subsection (4), the Commission requests from a licensee a clear and intelligible audio-visual recording of the licensee's programming, the licensee shall furnish the recording to the Commission forthwith.

SOR/95-220, s. 1; SOR/2000-236, s. 1; SOR/2006-10, s. 1; SOR/2006-112, s. 1.

#### **REQUESTS FOR INFORMATION**

**5.** (1) On or before November 30 of each year, a licensee shall file with the Commission a statement of accounts, on the annual return form issued by the Commission, for the year ending on the previous August 31.

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

(a) any inquiry regarding the licensee's programming or ownership or any other matter within the Commission's jurisdiction that relates to the licensee's undertaking; and

(b) any inquiry respecting the licensee's adherence to industry standards, practices or codes or any other self-regulatory mechanism of the industry.

SOR/2006-108, s. 1.

#### **TRANSFER OF OWNERSHIP OR CONTROL**

**6.** (1) For the purposes of this section,

"associate", when used to indicate a relationship with any 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 respect of which the person serves as a trustee or in a similar capacity,

(c) the spouse or common-law partner of the person,

(c.1) a child of the person or of their spouse or common-law partner, including a child adopted in fact by the person or by the spouse or common-law partner,

(c.2) the spouse or common-law partner of a child referred to in paragraph (c.1),

(d) a relative of the person, or of the spouse or common-law partner referred to in paragraph (c), if that relative has the same residence as the person,

(e) a corporation of which the person alone, or a person together with one or more associates as described in this definition, has, directly or indirectly, control of 50 per cent or more of the voting interests,

(f) a corporation of which an associate, as described in this definition, of the person has, directly or indirectly, control of 50 per cent or more of the voting interests, and  
(g) a person, with whom 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 where that person controls less than one per cent of all issued voting shares of a corporation whose shares are publicly traded on a stock exchange; (*liens*)

"common-law partner", in respect of a person, means an individual who is cohabiting with the person in a conjugal relationship, having so cohabited 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 all times 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, a partnership, a joint venture, an association, a corporation, a trust, an estate, a trustee, an executor and an 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, a trust, an association or a joint venture, means an ownership interest in the assets of it that entitles the owner to receive a share of the profits of it, to receive a share of the assets of it on dissolution and to participate directly in the management of it or to vote on the election of the persons 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 the management of it or to vote on the election of the persons 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 is attached one or more votes 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 any security that is convertible into such a share at all times at the option of the holder. (*action avec droit de vote*)

(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, a contract, an understanding or an 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.

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

(a) a person controls, directly or indirectly, other than by way of security only, a majority of the voting interests of the licensee;

(b) a person has the ability to cause the licensee or its board of directors to undertake 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 such effective control and sets out that determination in a decision or public notice.

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

(a) a change by whatever means of the effective control of its undertaking;

(b) a person alone

(i) who controls less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interests,

(ii) who controls less than 30 per cent of the voting interests of a person who has, directly or indirectly, effective control of the licensee, having control of 30 per cent or more of those interests,

(iii) who owns less than 50 per cent of the issued common shares of the licensee, owning 50 per cent or more of those shares but not having, directly or indirectly, effective control of the licensee, or

(iv) who owns less than 50 per cent of the issued common shares of a person who has, directly or indirectly, effective control of the licensee, owning 50 per cent 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) who control less than 30 per cent of the voting interests of the licensee, having control of 30 per cent or more of those interests,

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

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

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

(d) [Repealed, SOR/2002-32, s. 1]

(5) A licensee shall notify the Commission, within 30 days thereafter, of the occurrence of any act, agreement or transaction that, directly or indirectly, resulted in

(a) a person alone

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

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

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

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

(b) a person together with an associate

(i) who control less than 20 per cent of the voting interests of the licensee, having control of 20 per cent or more but less than 30 per cent of those interests,

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

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

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

(6) A notification referred to in subsection (5) shall set out the following information:

(a) the name of the person or the names of the person and the associate;

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

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

SOR/93-356, s. 2; SOR/96-327, s. 1; SOR/2001-357, s. 3; SOR/2002-32, s. 1; SOR/2006-108, s. 2.

### **UNDUE PREFERENCE OR DISADVANTAGE**

**6.1** (1) No licensee shall give an undue preference to any person, including itself, or subject any person to an undue disadvantage.

(2) For the purposes of subsection (1), a licensee shall be considered to have given itself an undue preference if the licensee distributes a pay-per-view program for which the licensee has acquired exclusive or other preferential rights.

SOR/99-455, s. 2; SOR/2001-75, s. 1.

### **OBLIGATION DURING DISPUTE**

**7.** During any dispute between a licensee and the licensee of a distribution undertaking or the operator of an exempt distribution undertaking concerning the carriage or terms of carriage of programming originated by the licensee or concerning any right or obligation under the Act, the licensee shall continue to provide the distributor or operator with its programming services, on the same terms and conditions as it did before the dispute, if the services are required to be distributed

(a) under section 18 of the *Broadcasting Distribution Regulations*;

(b) by the Commission under paragraph 9(1)(h) of the Act; or

(c) by order of the Commission made under subsection 9(4) of the Act.

SOR/2009-235, s. 3.

### **TRANSMISSION OF PROGRAMMING SERVICE**

**8.** 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 and satellite uplink centre that is within the area for which the licensee is licensed; and

(b) bear the costs of the transmission.

SOR/2009-235, s. 3.

## **SCHEDULE I**

*(Sections 2 and 4)*

## **KEY FIGURES**

Column I	Column II								
Item	Program Description	1st	2nd	3rd	4th	5th	6th	7th	8th
1.	<i>Origin</i>								
	(1) Canada	1							
	(2) United States (other than Disney Channel)	2							
	(3) United Kingdom	3							
	(4) France	4							
	(5) Disney Channel	6							
	(6) Other	7							
2.	<i>Investments</i>								
	(1) None from licensee or related person		0						
	(2) Some from licensee or related person		1						
3.	<i>Exhibition</i>								
	(1) Original exhibition of a program for which 150 per cent credit is given pursuant to a condition of licence			1					
	(2) Original exhibition of a program for which 150 per cent credit is not given pursuant to a condition of licence			2					
	(3) Repeat exhibition of a program referred to in subitem (1)			5					
	(4) Repeat exhibition of a program referred to in subitem (2)			6					
4.	<i>Production source</i>								
	(1) In-house (licensee)				1				
	(2) Affiliated production company				2				
	(3) TV station (include call sign)				3				
	(4) Over-the-air television network (include network identifier)				4				
	(5) Canadian independent producer (include Commission "C" number or the number assigned by the Department of Canadian Heritage)				5				
	(6) Co-venture (include Commission "S.R." number)				6				
	(7) Canadian programs from a government and productions of the National Film Board (include the source)				7				
	(8) Programs from any source that are not accredited as Canadian programs (include indication of lip synchronisation credit and Commission "D" number where appropriate)				8				
5.	<i>Target audience</i>								
	(1) Children (up to 11 years)					6			
	(2) Youth (12 to 17 years)					7			
	(3) Families					8			
	(4) Specific identifiable target group not referred to in subitem (1), (2) or (3)					9			
	(5) General audience					5			
6.	<i>Categories</i>								
	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 pre-school						0	5	A
	(b) Informal education/Recreation and leisure						0	5	B
	Sports:								
	(6) (a) Professional sports						0	6	A



Column I	Column II							
Item Program Description	Alphanumeric Characters							
	1st	2nd	3rd	4th	5th	6th	7th	8th
(b) Amateur sports						0	6	B
Music and Entertainment:								
(7) Drama and comedy (include the appropriate Commission drama credit where applicable)								
(a) Ongoing dramatic series						0	7	A
(b) Ongoing comedy series (sitcoms)						0	7	B
(c) Specials, mini-series and 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 and 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	0
(10) Game shows						1	0	0
(11) General entertainment and human interest						1	1	0
Other:								
(12) Interstitials						1	2	0
(13) Public service announcements						1	3	0
(14) Not applicable								
(15) Filler programming						1	5	0

SOR/2000-236, ss. 2, 3.

SCHEDULE II  
(Section 4)

**CODES**

**PART A**

**CODE INDICATING PROGRAM LANGUAGE**

Column I	Column II
Item Code	Description
1. (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 where the language of the programs differs from the official language for which the station is principally licensed)

**PART B**

**CODE INDICATING CLOSED CAPTION PROGRAMMING**

Column I	Column II
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Item Code	Description
1. CC [to be inserted following key figure]	Program contains closed captioning for the hearing impaired, which has been exhibited during the complete length of the program

### PART C

#### CODE INDICATING PROGRAM TYPE

Column I	Column II
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, the mother tongue or common language of which in its country of origin is English or French
3. Type C	A program in English or in French that is directed toward a distinct ethnic group, the mother tongue of which 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 ethnic program, as defined in the <i>Television Broadcasting Regulations, 1987</i>

### PART D

#### CODE INDICATING GROUP

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

SOR/2000-236, ss. 4, 5.

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