



CFTPA

Representing television, film
and interactive production in Canada

ACPFT

Porte-parole de l'industrie de la production télévisuelle,
cinématographique et interactive au Canada

www.cftpa.ca

June 25, 2010

Via CRTC comments/interventions form

Mr. Robert A. Morin
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario K1A 0N2

Dear Mr. Morin:

Re: Broadcasting Notice of Consultation CRTC 2010-301, Item #1 – Application by CTV Limited to amend the broadcasting licence of the English-language specialty programming undertaking known as MuchMusic (Application No. 2010-0503-3)

1. The Canadian Film and Television Production Association (the “CFTPA” or the “Association”), which will soon officially change its name to the Canadian Media Production Association (CMPA), welcomes the opportunity to provide these **comments** with respect to the above-referenced Notice of Consultation.
2. The CFTPA represents the interests of screen-based media companies engaged in the production and distribution of English-language television programs, feature films, and new media content in all regions of Canada. Our almost 400 member companies are significant employers of Canadian creative talent and assume the financial and creative risk of developing original content for Canadian and international audiences.

The Application

3. CTV Limited (“CTV” or the “Applicant”) has filed an application (the “Application”) seeking amendments to a number of MuchMusic’s conditions of licence (COLs), including a change to the COL related to its nature of service. Specifically, CTV proposes to amend MuchMusic’s licence as detailed below.

Conditions of licence #1(a) and #5

4. The Applicant proposes to amend COLs #1(a) and #5, which currently read as follows:
 - 1.(a) The licensee shall provide a national, English-language specialty programming service consisting only of music or music-related programming, except as provided by condition of licence No. 5.
 5. Notwithstanding condition of licence No. 1, the licensee shall devote no more than 5% of the broadcast week to programming from Category 2(a) and 2(b) combined, except as individually authorized in writing by the Commission for extended coverage of live events.

5. The above COLs would be replaced with the following:

The licensee shall provide a national, English-language specialty programming service with a focus on music, music-related and lifestyle programming for young adults. The target audience for the service shall be Canadians between the ages of 18 and 34, with a core demographic of Canadians between the ages of 18 and 24. A minimum of 75% of the programming broadcast by the service shall be music-related.

6. CTV argues that the inclusion of lifestyle programming in its nature of service will better position MuchMusic to adapt to the business realities of audience fragmentation and changing technologies.

Condition of licence #1(b)

7. CTV proposes to amend COL #1(b) by adding the following programming categories to the categories MuchMusic is authorized to broadcast: 1 (News); 3 (Reporting and actualities); 4 (Religion); 5(a) (Formal education and pre-school); 5(b) (Informal education/recreation); 6(a) (Professional sports); 6(b) (Amateur sports); 7(b) (Ongoing comedy series – sitcoms); 7(f) (Programs of comedy sketches, improvisation, unscripted works, stand-up comedy); 7(g) (Other drama); 9 (Variety); 10 (Game shows); and 15 (Filler programming).
8. The Applicant states that this proposed amendment is consistent with the policy changes set out in *Broadcasting Public Notice CRTC 2008-100* (“PN 2008-100”), dated October 30, 2008, which introduced new regulatory frameworks for broadcasting distribution undertakings and discretionary programming services.

Condition of licence #2

9. CTV argues that music videos no longer distinguish MuchMusic since they are readily available through other sources. Furthermore, it notes that the supply of music videos that the service can access has been greatly reduced in recent years.
10. Accordingly, the Applicant proposes to replace COL #2, which currently reads as follows:

A minimum of 50% of MuchMusic's broadcast week shall be devoted to the exhibition of programming featuring music video clips – Category 8(b).

with the following:

A minimum of 25% of MuchMusic's broadcast week shall be devoted to the exhibition of programming featuring music video clips – Category 8(b) and music video programs – Category 8(c).

Condition of licence #3

11. CTV proposes to amend COL #3 by increasing the maximum amount of music-related programming from Categories 7(a) (Ongoing dramatic series) and 7(e) Animated television programs and films that MuchMusic can broadcast from 15% of the broadcast week to 20% of the broadcast month.
12. The Applicant argues that this proposed change will better reflect the preferences of its target audience.

Condition of licence #4

13. CTV proposes to replace COL #4, which currently reads as follows:

The licensee shall not distribute more than six hours of music-related Theatrical feature films aired on TV – Category 7(d) in each broadcast week.

with the following:

The licensee shall devote not more than 10% of the broadcast month to music-related and lifestyle programming from Category 7(d) – Theatrical feature films aired on TV.

14. CTV argues that the proposed changes to this COL will help it better meet audience demand.

Condition of licence #6

15. The Applicant proposes to replace COL #6, which currently reads as follows:

The licensee shall devote to the distribution of Canadian programs not less than

(a) 60% of the broadcast week and

(b) 50% of the time from 6:00 p.m. to midnight (Eastern time) during each broadcast week.

with the following:

The licensee shall devote to the distribution of Canadian programs not less than 55% of the broadcast year.

Conditions of licence #9(a) and #9(b)

16. CTV proposes to delete COLs #9(a) and #9(b) requiring that MuchMusic broadcast French-language music videos. The Applicant argues that a requirement to broadcast French-language music videos on an English-language service is outdated given the existence of French-language music services such as MusiquePlus and MusiMax.

Conditions of licence #10(a) and #10(b)

17. Consistent with its request to reduce the exhibition level of music videos by half, CTV is seeking to reduce by 50% its financial contributions to MuchFACT (formerly VideoFACT), which helps fund the development and production of Canadian music videos. The Applicant notes that since its contributions to MuchFACT come out of its overall Canadian programming expenditure requirement of 33% of previous-year gross revenues and it is not proposing a change to the overall CPE level, there will be no negative impact on spending on Canadian programming.

Definition of “broadcast day”

18. Finally, CTV’s ninth licence amendment request for MuchMusic as part of its Application seeks to amend the definition of MuchMusic’s “broadcast day” to mean the period of up to 18 consecutive hours, beginning each day not earlier than six o’clock in the morning and ending not later than one o’clock in the morning the following day, as selected by the licensee.

The CFTPA’s Comments

General comments

19. Despite CTV’s assertion that its Application consists of “minor amendments” to MuchMusic’s licence, there can be no doubt that seeking no less than 9 separate licence amendments – taken as a whole – effectively amounts to a rewriting of MuchMusic’s licence. The Applicant’s arguments as to why its Application should be considered on an expedited basis before the upcoming group licence renewal process are, in the CFTPA’s view, less than compelling.
20. The Association submits that, as a general principle, the kind of wholesale changes to MuchMusic’s COLs sought by CTV should only be considered at licence renewal time whereby the requested licence amendments would be part of a broader discussion about the specialty service’s proposed contributions to Canadian programming and independent production. That discussion would also include an analysis of MuchMusic’s performance over the past licence term in meeting its regulatory obligations and conditions of licence, the

programming and regulatory flexibility granted in *Broadcasting Regulatory Policy CRTC 2010-167*, and the continued appropriateness of its Canadian programming requirements and other conditions of licence.

21. By taking this approach with the current Application, the Commission would be following the general approach it took in a number of recent decisions whereby it concluded that the upcoming licence renewal process is the most appropriate forum to address issues raised in applications seeking significant licence amendments, such as the current Application filed by CTV.
22. For example, in denying an application last year by Slice seeking significant amendments to its licence, the Commission noted that at licence renewal it “will examine Slice’s conditions of licence in the context of the Canwest ownership group and other comparable specialty services, and more broadly address the question of appropriate Canadian content and Canadian programming expenditures requirements for specialty services.”¹
23. Similarly, in a decision last year denying significant licence amendments proposed by Rogers Broadcasting for Outdoor Life Network², the CRTC used the following tests in considering the proposed licence amendments:
 - whether the nature of service was sufficient to ensure the service would remain non-competitive and true to its genre;
 - ensuring the diversity of voices in the Canadian broadcasting system would be maintained or enhanced; and
 - **whether the conditions of licence would continue to be applied according to their original intent if the requested amendments were approved.** *[emphasis added]*
24. Having analyzed these, the Commission determined that certain Outdoor Life Network licence requirements would be best examined at the upcoming group licence renewal hearing, when they can be considered in the context of Rogers’ ownership group and other lifestyle specialty services.
25. The Association also questions the urgency for the significant changes that CTV is seeking in its Application. While it is true that MuchMusic has seen its revenues and profitability decline in recent years, it is still a very healthy specialty service. With a P.B.I.T. (profit before interest and taxes) margin of 17.1% in 2009, the Applicant’s characterization that an expedited process is required appears somewhat overstated.
26. In this regard, the CFTPA notes that despite being in a more difficult financial position, the Commission denied the application cited above by Slice, noting that “the financial situation of Slice does not warrant immediate review by the Commission.”³
27. Notwithstanding these general comments, the CFTPA is not opposed to some of the requested changes, provided there are *quid pro quo* commitments made to Canadian programming and independent production, as explained below. In general, we believe that any changes to conditions of licence should have a neutral impact on Canadian programming in the system.

¹ *Broadcasting Decision CRTC 2009-566*, Slice – Licence amendment, September 9, 2009, at paragraph 16.

² *Broadcasting Decision CRTC 2009-569*, Outdoor Life Network – Licence amendments, September 10, 2009.

³ *Broadcasting Decision CRTC 2009-566*, Slice – Licence amendment, September 9, 2009, at paragraph 10.

The proposed changes to conditions of licence #1(a), #2, and #5

28. The CFTPA acknowledges the challenges faced by MuchMusic with respect to the airing of music videos given the rapidly evolving communications environment and changing consumer media consumption behaviour. In the U.S., for example, MTV has removed the words “music television” from its logo, reflecting its move towards more lifestyle and reality programming in recent years.
29. As such, the Association does not oppose CTV’s request to reduce the amount of music video programming it must exhibit and replace it with music, music-related, or lifestyle programming for youth, provided that it makes a commitment to acquire and commission Canadian programming of these types and not just foreign programming acquired from MTV or other sources. Moreover, any expanded programming flexibility should come with increased obligations with respect to Canadian programming and independent production.
30. We note, for example, that MuchMusic currently has no requirements with respect to independent production and a review of specialty TV Canadian programming expenditure data reveals that it spends very little to nothing on such programming in meeting its Canadian content obligations. In contrast, a number of lifestyle-based analog specialty TV services have specific independent production requirements. For example, Slice, Food Network Canada, and HGTV Canada are required to ensure that a significant level of their Canadian programming is independently produced.
31. Accordingly, should MuchMusic wish to broadcast more lifestyle programming it must also make a commitment to acquire a significant level of such programming from independent producers. The CFTPA recommends, therefore, that if the Commission approves this particular licence amendment request, MuchMusic be required, by condition of licence, to acquire or commission from independent producers a minimum of 75% of its Canadian programming in categories other than news, sports, and music video clips and programs.

The proposed change to condition of licence #1(b)

32. The CFTPA does not oppose CTV’s request to add additional programming categories to the list of categories from which MuchMusic may draw programming, provided it is consistent with the policy announced in PN 2008-100 with respect to limits and adherence to natures of service, as CTV proposes.
33. However, the Association has serious reservations regarding whether MuchMusic will adhere to its nature of service for the additional programming categories given that it appears to already be in non-compliance with its current nature of service definition. A review of the programs broadcast by MuchMusic found on its website shows a number of shows that have very little, if anything, to do with music or music-related programming. We have attached a list of all TV shows listed on MuchMusic’s website as of June 22, 2010 for the Commission’s reference (see Appendix).
34. The CFTPA applauded the Commission for initiating a review of whether the CBC’s rebranding and relaunch of CBC Country Canada (originally licensed as Land and Sea) into bold caused it to be in non-compliance with its nature of service condition of licence, and for subsequently launching a proceeding to look into the matter. Unfortunately, the bold example is not an isolated one within the Canadian broadcasting system. A scan of the programming schedules of other specialty services, including MuchMusic, raises significant questions as to whether they, too, are non-compliant with their nature of service definitions.
35. While it is not appropriate to address in detail apparent abuses of nature of service definitions in the context of this Application, it is relevant to call, once again, for proactive monitoring of licensees’ compliance with their conditions of licence throughout their licence terms, not just at

licence renewal time. This is exactly what the Commission did in the bold case, and the CFTPA encourages the Commission to take the same approach when assessing the current Application.

36. As a final point related to this particular licence amendment request, the CFTPA notes that the Applicant has made no commitments to the production and exhibition of Canadian programming (let alone original, first-run Canadian programming) in the additional program categories it is seeking approval to broadcast. If the Commission approves the requested licence amendment, we would expect that it will result in the broadcast of a level of Canadian programming in these categories.

The proposed changes to condition of licence #3 and #4

37. Further to its comments above related to the proposed change to condition of licence 1(b), the CFTPA encourages the Commission to review program logs for MuchMusic to assess whether the programs currently or recently aired by MuchMusic in categories 7(a) (Ongoing dramatic series), 7(e) Animated television programs and films, and 7(d) (Theatrical feature films aired on TV) are consistent with its nature of service definition prior to allowing it to broadcast more programming from these categories.
38. Moreover, the Commission should seek commitments from MuchMusic that it will broadcast more Canadian programming and not just foreign programming from these categories if these proposed licence amendments are approved.

The proposed change to condition of licence #6

39. The CFTPA opposes CTV's request to change MuchMusic's required Canadian content exhibition levels. In our view, the Applicant's arguments as to why such a change is necessary are not at all convincing and, therefore, should be denied.
40. The proposed removal of Canadian content requirements in "prime-time" is especially difficult to accept. Such a move would allow MuchMusic to relegate all Canadian programming to daytime programming slots when fewer people are watching, and load its evening programming schedule with U.S. and other foreign content. As the Commission has noted in the past, this is neither in the public interest nor in keeping with fundamental principles of the *Broadcasting Act*.
41. If approved, this proposed licence amendment will have a negative impact on Canadian programming in the broadcasting system with no offsetting or *quid pro quo* commitments with respect to other regulatory obligations. At a minimum, and as a general principle, we believe that any changes to conditions of licence should have a neutral impact on the system. As an objective, overall changes should strengthen the Canadian broadcasting system as a whole.

The proposed changes to conditions of licence #9(a), #9(b), #10(a), and #10(b)

42. Consistent with its comments above related to the proposed changes to COLs #1(a), #2, and #5, should the Commission approve the requested changes under our proposed conditions then the CFTPA does not oppose CTV's requested changes to #9(a), #9(b), #10(a), and #10(b). Therefore, we have no comments on these elements of the Application.

The proposed change to the definition of "broadcast day"

43. The Association does not oppose CTV's requested change to the definition of "broadcast day" contained in MuchMusic's current licence and, therefore, has no comments on this specific request.

Conclusion

44. In summary, the CFTPA recognizes the challenges faced by MuchMusic with respect to music videos and changing consumer media consumption behaviour. However, taken together, the 9 proposed licence amendments would alter MuchMusic's licence significantly and, therefore, would best be addressed as part of an overall review at licence renewal in the context of, among other things, the service's proposed contributions to Canadian programming and independent production.
45. That having been said, the CFTPA does not oppose CTV's request to change certain of MuchMusic's conditions of licence, as outlined above, should Canadian and independent programming commitments be required.
46. The CFTPA opposes, however, CTV's request to amend MuchMusic's condition of licence #6, which would reduce Canadian content on the service and relegate Canadian programming to non-prime-time hours. This proposed licence amendment would have a negative impact on Canadian programming in the broadcasting system with no offsetting or *quid pro quo* commitments with respect to other regulatory obligations.
47. Should the Commission determine that it will address the various proposed amendments at this time, the CFTPA believes a review of MuchMusic's compliance with regard to its existing conditions of licence is a necessary element in its assessment of the Applicant's proposed changes.
48. The CFTPA appreciates the opportunity to comment on the Application. A copy of this intervention has been sent to the Applicant.

All of which is respectfully submitted.

Yours truly,

[Original signed by Norm Bolen]

Norm Bolen
President and CEO

c.c.: David Spodek, CTV (via email: david.spodek@ctv.ca)

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APPENDIX:
List of MuchMusic Shows



Search here...

Entire Site



50 Cent: The Power And The Money
 Watch as contestants try to win \$100 000 of 50 Cent's own money to invest into their idea
 (more info)



A Shot At Love
 We've got seasons 1 & 2 of A Shot At Love With Tila Tequila on demand! You can watch all the drama unfold whenever you want
 (more info)



Buffy The Vampire Slayer
 A one-hour series that continues the adventures of a 16-year-old high school student as she fights to rid her world of supernatural evil.
 (more info)



Daddy's Girls
 We saw Rev. Run's daughters Vanessa and Angela grow up in Run's House and now they are ready to step into their own place!
 (more info)



Degrassi: The Next Generation
 The bell rings, signalling a new high school and university year for Degrassi: The Next Generation, which continues to explore new and provocative territory for adolescents and young adults grappling with "first" experiences.
 Mondays @ 8pm ET
 (more info)



disBAND
 Watch Wednesdays @ 8pm ET and vote if you agree or disagree with the judges decisions
 (more info)



Dogg After Dark
 Watch the full show on demand now!
 (more info)



Live In The Lot
 Billy Talent stopped by the MuchMusic parking lot and put on an amazing concert! Watch the full thing on demand!
 (more info)



Live@Much
 Justin Bieber was the latest artist to drop by MuchMusic. Watch all of his



MMVA '10 Show
 Play Video +



MMVA '10: Red Carpet
 Play Video +



MMVA '10 Sneak Peek
 Play Video +



The Hard Times of RJ Berger (Ep. 103)
 Play Video +



First Spin: Parkway Drive - Deep Blue
 Play Video +



The Secret Life of The American Teenager (Ep. 503) "Get Out Of Town"
 Play Video +

Watch More »



Adam Lambert
 If I Had You
 Play Video +



Katy Perry feat. Snoop Dogg
 California Gurls
 Play Video +



Rihanna
 Te Amo
 Play Video +



Lady GaGa
 Alejandro
 Play Video +



VV Brown
 Shark In The Water (Louis La Roche Remix)
 Play Video +

Metric



performances & view photos now!
(more info)

Love Court

Hosted by Elise Estrada with comedian judges Dini Dimakos, Eddie Della Siepe, Andrew Johnston & Darrin Rose
(more info)



Much Adrenaline

Strap yourself in - we're takin' you for a spin through the dirt, snow, water and on the pavement to bring you an action-packed hour of extreme sports and music.
(more info)



MuchLoud

MuchLoud is here to service you with music that hits you so hard that your face falls off. Saturday Nights @ 1:30am ET
(more info)



MuchMegaHits

Today's hottest videos from the biggest artists on MuchMusic - Weekdays @ 7am ET
(more info)



MuchMusic Countdown

Find out what videos are topping our charts this week!
(more info)



MuchOnDemand

Hosted by Sarah Taylor, Tim Deegan and Devon Sollendieck weekdays @ 5pm ET.
(more info)



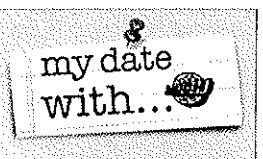
MuchVibe

Delivering the best in hit urban videos and news of the week on MuchMusic - Monday Nights @ 1am ET
(more info)



Music Is My Life

Watch as we profile teens who've been influenced or have made it through tough times with the help of music.
(more info)



My Date With...

Lucky fans get whisked away on a dream date with their fave artist
(more info)



On Set

Much takes you behind the scenes of some of your favourite music videos
(more info)



Paris Hilton's My New BFF

Paris Hilton has searched America and Britain for her new BFF, but has she truly found her BFF? Find out by watching all 3 seasons



Stadium Love
Play Video +



Kylie Minogue
All The Lovers
Play Video +



Stars
Fixed
Play Video +



Robyn
Dancing On My Own
Play Video +



Beyonce
Why Don't You Love Me
Play Video +

Watch More »



(more info)
Pretty Little Liars
 Pretty Little Liars revolves around four 16-year-old girlfriends who have lost touch with one another until each begins to receive mysterious messages suggesting that Alison is watching them and knows their most private details they are desperate to keep hidden
 (more info)



Punk'd
 Punking celebrities since 2003 - Weekdays @ 1pm ET
 (more info)



Rap City
 Hitlin' you with the freshest videos you want to see every week. From the old school to the new school, RapCity represents Hip-Hop culture from Canada and around the World.
 (more info)



Screwed Over
 Love your friends? Pull some pranks on them! Watch these friends screw over each other
 (more info)



So You Think You Can Dance
 So You Think You Can Dance will showcase dancers as they compete to impress an expert panel of judges during a cross-country audition process.
 (more info)



Starmaker
 14 artists move to Los Angeles with the dream of becoming Bad Boy Records newest star! Watch the full show now!
 (more info)



Styl'D
 STYL'D follows the real lives of five junior assistants as they toil for three glamorous, high-end celebrity stylists.
 (more info)



The College Humor Show
 "The CollegeHumor Show" is a new scripted comedy series written by and starring the actual staff of CollegeHumor.com. When they're not creating some of today's most popular Internet comedy, the staffers are turning their workplace into a chaotic, not entirely mature, play land -- with a functioning ball pit.
 (more info)



The Hard Times of RJ Berger
 The Hard Times of RJ Berger orbits the hilariously-hellish lives of a deeply unpopular 15 year-old and his scheming, sex-obsessed best friend, Miles Jenner.
 (more info)



The Ledge
 The best in alternative rock and pop-ready to jump to the mainstream. The Wedge's kinder gentler sibling. Go ahead. Jump.
 (more info)



The Secret Life Of The American Teenager
 Watch new episodes Monday @ 7pm ET & watch previous episodes on demand!
 (more info)



The Vampire Diaries

Think you know vampires? You don't. Neither does Elena Gilbert, but she's about to, as two very different brothers; both vampires - will soon be at war for her soul. [\(more info\)](#)



The Wedge

When it's time to kick back on Friday night and just breathe for awhile, The Wedge is there as your faithful companion - Friday Nights @ 1am ET [\(more info\)](#)



Top 10's

We put together playlists of your favourite themes. [\(more info\)](#)



UR11

Pick ur fave 10 vids while tweeting about the hottest artists of the day! Tune in at 11pm ET every weeknight, and watch the results..the top ten vids, plus the "WILD CARD" video of the Most Tweeted Artist or Video of the day. [\(more info\)](#)



Video On Trial

It's all about dish, dirt and deconstruction as top pop culture experts analyze today's hottest music videos with candid commentary, scathing reviews and tongue-in-cheek profiling. Jurors include Trevor Boris, Dini Dimakos, Ron Sparks, Debra DiGiovanni, Boomer Phillips, Darrin Rose, Eddie Della Siepe & more! [\(more info\)](#)



When I Was 17

When I Was 17 will show how artists' lives are different from the average viewers'... and how they are the same. [\(more info\)](#)



Fresh Off Her MMVA Performance Katy Perry Will Be Live@Much Tonight @ 7pm ET!



RJ Tries To Get Closer To Jenny By Joining The School Musical In The Latest Episode - Watch It Now!



Tune In Tonight @ 8pm ET For A New Episode of Pretty Little Liars + Watch Episodes On Demand!



Watch A New Episode Of The Secret Life Of The American Teenager On Demand!

MuchMusic is Canada's No. 1 destination for music videos, live performances and interviews with today's hottest celebrities; plus music downloads, ringtones, artist profiles, concert listings & music countdown.

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Hot Spots: Watch full episodes [on MuchMedia](#) latest MTV News Check out hot celeb pics from the red carpet