



**Canadian
Association of
Broadcasters**

**L'Association
canadienne des
radiodiffuseurs**

June 3, 2005

SENT BY EMAIL

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. Rhéaume:

Re: Broadcasting Public Notice CRTC 2005-40, Item 1 (Application No. 2004-1420-2 by Rogers Cable Communications Inc.) and Item 6 (Application No. 2004-1283-3 by Archambault Group Inc.), to amend the licences of their video-on-demand programming undertakings

1. The Canadian Association of Broadcasters (CAB) – the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private television and radio stations, networks and specialty, pay and pay-per-view television services – is pleased to submit this intervention concerning the above-noted applications.
2. In these applications, Rogers Cable Communications Inc. (Rogers) and Archambault Group Inc. (Archambault) request amendments to the licences of their respective video-on-demand (VOD) undertakings that would authorize them to distribute programming containing commercial messages on an on-demand basis at no charge to subscribers, provided that such programming was previously aired by conventional television stations. Approval of the proposed amendments would have the effect of allowing Rogers and Archambault to distribute programming previously broadcast by Canadian programming services, without a requirement to remove the commercial messages contained in that programming.
3. The CAB is prepared to support these applications, on the condition that (i) any distribution is in accordance with the terms of an agreement entered into with the operator of the Canadian programming service which carried the original program, and (ii) that any programming that contains commercial messages is sourced from Canadian programming services only.

4. The CAB has received assurances that both applicants are in agreement with these conditions and will confirm their agreement in their replies to the interventions filed in response to the applications.
5. Accordingly, the CAB recommends that the following language be adopted as a condition of each applicant's licence:

The licensee shall not distribute any programming containing commercial messages except where the message is already included in a program previously aired by a Canadian programming service, and where the distribution is in accordance with the terms of a written agreement entered into with the operator of the Canadian programming service which carried the original program, and where the program is subsequently offered on an on-demand basis at no charge to the public.

6. The CAB notes that approval of these applications would represent a departure from the original licensing framework for VOD services by allowing the distribution of programming that contains commercial messages. Also, there may be cases where the originating programming service does not hold the VOD rights to that programming and, therefore, would have to negotiate separately with the appropriate rights holder prior to giving consent for distribution of its programming on an on-demand basis. Moreover, depending on how long the programming is carried on the VOD service, the commercial messages it contains may fall outside the original timeframe for the advertising campaign and, hence, be of little value to advertisers. Finally, advertisers may be unwilling to pay a premium for commercial messages carried in VOD programming in any event, as viewing to VOD is not captured by ratings agencies and therefore – like viewing to distant signals – cannot be monetized.
7. As an increasing range of programming is offered to viewers on an on-demand basis, it will be incumbent on the Commission to ensure that VOD services continue to play a complementary role to conventional, specialty and pay services, which were licensed on a competitive basis, and to ensure that program rights holders retain control over how, where and when their programming is distributed.
8. Accordingly, the CAB believes that these issues should be examined more fully by the Commission in the context of the next licence renewal proceedings for these VOD programming services.
9. Finally, the CAB notes that its proposed condition of licence contemplates the distribution of programming supplied by both conventional and specialty services. Operators of both types of service may have an interest in supplying programming to Rogers and/or Archambault for distribution on an on-demand basis, provided that such distribution is in accordance with the terms of a mutually satisfactory agreement.

10. The CAB appreciates the opportunity to participate in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Keeble'.

David Keeble
Senior Vice-President
Policy and Regulatory Affairs

c.c. Rogers Cable Communications Inc.
Archambault Group Inc.

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