



Canadian Independent Music Association

June 21, 2010

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

Dear Mr. Morin,

RE: Broadcasting Notice of Consultation 2010-301

1. We are pleased to submit these comments with respect to the CTV application to alter the terms of license of MuchMusic:

“Application by CTVglobemedia Inc., on behalf of its subsidiary 4358350 Canada Inc., to amend the broadcasting licence for the English-language specialty television service known as MuchMusic by amending its nature of service and certain conditions of licence.”

CIMA, the Canadian Independent Music Association (formerly CIRPA) represents over 160 Canadian sound recording and music companies and professionals from across Canada. As such, we have a particular interest in this matter, which will directly affect the businesses of many of our member companies, especially those who produce sound recordings.

Our Board is unanimously opposed to this application. We feel that it is entirely inappropriate that this matter is being put before the Commission at the present time. MuchMusic is due to renew its license in 2013. That would be a more appropriate occasion to review this matter, to examine the evidence presented by CTV and any new evidence that various parties who are affected by this both directly and indirectly, might wish to present to the Commission. Currently, we are in the midst of a discussion of the new Copyright Bill (C-32) and, along with various other content creator groups, will be submitting comments on a digital strategy for Canada, as requested by the Department of Industry this spring. This request from CTV concerns more than just record producers and video production companies. Artists of all kinds, both musical and cinematographic, as well as their marketing partners, their distribution networks and their fans, all depend on a supply of high quality video material to enhance their businesses and their access to Canadian artistic works. These concerned parties ought to have their opportunity to give a comprehensive response to this request from CTV, and the timelines certainly do not allow for that nor does this limited form of response.

2. Notwithstanding the latter, we are prepared herein to present evidence that suggests that the economic burdens faced by MuchMusic and CTV are not so severe as to warrant such drastic



Canadian Independent Music Association

measures as they are proposing and that certainly more investigation of the financial situation at MuchMusic is needed. Indeed, given the economic circumstances of the past two years, the financial performance of MuchMusic seems more than acceptable, and its owners might look to expanding the business over the next few years as the advertising environment improves, rather than anticipating an ongoing and precipitous decline.

3. Before discussing the economics, we should turn to the principle of the issue. In their submission, CTV has attempted to link their “contributions” to MuchFact (VideoFact) to their program supply and their programming options and strategy. That is to say, they imply some connection between the benefit they are asked to provide to the system overall, and the number of videos they are programming on their channel. If the latter declines, they suggest, so should the number of dollars they contribute to the system. We object strenuously to what we feel is a totally inappropriate characterization of the contribution that the station is asked to make to video production. MuchMusic enjoys a monopoly position with respect to its genre of programming. For this exclusivity, they are asked to contribute to funding the production of videos for the public good, not for their programming supply and catalogue.
4. Music videos are produced for the benefit of all Canadians whether or not they watch MuchMusic. These videos are available on recording company and artist websites, are used in marketing and promotion and are often the “calling card” presented by artists who are seeking live engagements to add to their recorded music incomes. Without them, particularly in this environment where the live performance is increasingly important to the business, the artist is at a significant disadvantage.
5. But to return to the general benefit to Canadians, we suggest that video programming puts the live performance of the artist within reach of the general population, and it doesn’t really matter how they access that performance, whether on TV, via the Internet or as part of a DVD they have purchased. In that way, audiences from the farthest reaches of Canada can enjoy the same entertainment as those who live in the major cities, with quality production and no waiting in long lines.
6. Live performance is increasingly a part of the “business plan” of the Canadian musical artist. To book a live performance whether in Canada or abroad, the artist needs a complete arsenal of marketing and promotional tools. Of course, this often starts with a recording. But that’s not enough in a highly competitive environment. To keep our musicians in the game, we must supply them with more than just records and an email address. The video is an indispensable tool to competing for lucrative live performance spots both in Canada and in foreign markets.
7. In supporting their arguments they make the case that fewer videos are available to program. This is clearly not the case. Currently, some 350 videos are financed by MuchFact annually, almost one new video per day! This prodigious volume may require some deft programming, but there is clearly no



Canadian Independent Music Association

lack of interesting, high quality work being produced by some of Canada's leading musical artists. The fact that such a large number of videos exist, and are (very likely) not all being used, needs to be examined more fully to determine the reasons MuchMusic programmers feel that these productions somehow don't qualify for exhibition on their channel. This should be done at a full hearing.

8. We have examined the arguments that have been put forward by CTV regarding the loss of the 18-24 audience and the need to reformat the station, thereby halving their commitment to video programming and calculating the exhibition of the latter over a less well-defined time period (rather than weekly prime time) and acquiring new genres of programming to put in the place left by the lost videos.
9. There is a great deal of emphasis placed on the migration of the audience to online alternatives, particularly the 18-24 audience. Who is the beneficiary of this migration, and how is the "new" audience incorporated in the overall business plans of media companies? In the case of MuchMusic, they have a number of web sites which are creating alternative viewing options for the audience they claim to have lost. In their submission, they talk about an unduplicated reach of 700,000 on their main web site¹. How is this audience cannibalizing the TV audience and more importantly, how is this audience monetized within the CTV system of advertising sales? As an unregulated programming alternative, this is not addressed in their submission. Obviously this needs to be examined in some detail, as it is one thing to claim a net loss of audience due to internet induced fragmentation, but quite a different argument if the complainant is partially responsible for the losses by supporting and promoting the alternative.
10. The audience argument has some weight but only if we narrow our focus to the 18-24 year olds. But as media professionals have known for years, the aging of the population has meant a number of things including the upward adjustment of advertising demographics to reflect this change. At the same time, "older" viewers have habits in this decade that are similar to the younger demographics of a previous era. It is interesting that both of these phenomena are ignored in the CTV submission, despite the fact that their overall audience has actually risen over the past year or so, and they are enjoying the best audience numbers in years² particularly in the 18-34 year old demographic (and may even have seen a rise in the 18-24 year old target). It would seem that the increase in audience is an important opportunity for CTV to develop their business rather than to overhaul it completely,

¹ P. 9 of the Application – we should note here that no information is given on the value that CTV derives from programming that is re-used on their various music websites, including MuchMusic, MTV and others. These assets do not report income to the CRTC but obviously make good use of the ongoing production and catalogue generated by MuchMusic's contribution to these stations. We would also make the same point here that these outlets very likely cannibalize the TV stations, therefore making MuchMusic TV a "victim" to some extent of its success online.

² BBM reports that the audience increased from 5.5 million (weekly reach) to 7.2 million. 18-34 increased from 1.88 million to 2.04 million, and 18-24 also increased from 876,000 to 998,000 – BBM adopted a new and more accurate measurement system in 2009 the Personal meter for TV.



Canadian Independent Music Association

at great cost to the system. We might ask, what consideration has CTV given to developing an advertising business plan based on an older demographic or a broader one, such as 18-34 or 25-49?

11. Turning to the financial reports submitted by CTV, we have similar concerns to those of the CRTC analysts. We would like to have further information on how the MuchMusic operation is linked financially to other music channels and to what degree such financial synergies mean that programming on these channels has become centralized and standardized. If this has been done largely due to financial imperatives rather than programming issues, it risks detracting from the stated goals of maintaining diversity in the system.
12. We accept that in 2009 revenues from advertising were likely to decline. This was the case for most advertiser-based media due to the world wide recession. We expect that there will be a recovery from that decline as markets improve. In fact, this recovery is already being reported in some quarters.³
13. We are concerned that within the CTV family of stations, administrative and other overhead expenses are moved around the synergized system seemingly at will, so the real costs of running MuchMusic are much more obscure than might be the case, and so therefore are the profits. This should be examined in more detail.
14. One item that was overlooked in the 2009 accounts is the extraordinary increase in depreciation, calculated for that year at \$2,225,322 compared to \$492,228 in the previous year. Had the depreciation been the same as 2008, the PBIT for 2009 might have been as high as 18-19% adding an additional \$1.7 million to the bottom line.
15. Is a 14.4% PBIT good or bad? Most Canadian companies would feel that it was extraordinary. It seems that only in Canadian media companies do we find operators' complaining that a 14.4% return (after depreciation) is a poor performance. Certainly, as the advertising market improves so will the bottom line at MuchMusic and with depreciation under control, and other costs standardized, we are likely to see 20% PBIT's in future.

When we compare the full slate of 28 CTV cable stations, MuchMusic ranks 9th in PBIT for 2009. As the table below shows, it does extremely well, as does MuchMoreMusic, among the nearly 30 properties owned and operated by CTV that produced almost \$200,000,000 PBIT in 2009.

³ Viacom, whose cable channels include BET, MTV Comedy Central and Nickelodeon, said Thursday that domestic ad sales grew 1 percent from the same quarter a year ago. Worldwide advertising rose 3 percent. The figures came a day after Comcast Corp. reported a jump in ad revenue at its cable channels, including E! Entertainment Television, Style Network and the Golf Channel. Viacom said its first-quarter profit came to \$245 million, or 40 cents per share. That rose from \$177 million, or 29 cents per share, in the same quarter a year ago. (AP – April 27, 2010)



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Canadian Independent Music Association

Top 10 CTV Cable Stations Ranked by 2009 PBIT

Rank (2009)	Station	2009
1	The Sports Network (TSN)	40,263,902
2	The Discovery Channel	25,376,231
3	Space (formerly Space: The Imagination Station)	21,269,405
4	Bravo	20,954,692
5	Le Réseau des Sports (RDS)	17,072,913
6	Business News Network (BNN) (previously ROBTV)	12,199,726
7	The Comedy Network	12,388,459
8	Discovery HD (formerly Discovery HD Theatre)	8,564,086
9	MuchMusic	7,030,316
10	MuchMoreMusic	6,668,719

16. In their formal application to the CRTC regarding the takeover of the MuchMusic station and other CHUM properties, the following statement was made:

“Given that both MuchMusic and MTV have already been approved by the Commission to exist under the same ownership, the common ownership of these two specialty services by CTVglobemedia would once again be a natural fit. These channels are in fact complementary and have distinct natures of service.

CTVglobemedia will continue to adhere to the specific licensed genres of these Specialty Services, with no major changes in programming orientation, thereby ensuring their continued distinctiveness.” (p. 10 Application to Effect a Change in Ownership and Control of CHUM Limited – Appendix 1A)

17. The decision awarding control of the Craig assets to CHUM in November of 2004 (2004-502) makes the expectation of the Commission clear in terms of the programming orientation of the services they acquired. Not even a full license term into this ownership and under the stewardship of CTV, this is the second request for changes to the programming orientation of the Much Music service.⁴

CHUM stated that, if the transaction were approved, there would be no major changes in the programming orientation of the conventional television stations it is acquiring, except in connection with the new programming proposed as part of its tangible benefits package, which is discussed below. CHUM also indicated that it would maintain the overall programming orientation of the Category 1 and Category 2 services.⁵

⁴ In Broadcast Decision 2008-305, CTV was granted permission to add to the list of program categories from which it may draw programming and amend the condition of licence relating to Canadian content obligations.

⁵ Broadcast Decision 2004-502, Para 12, November, 2004



Canadian Independent Music Association

In our view, the current application to alter the programming approach of MuchMusic to create more space for lifestyle programming does just what CTV promised to the Commission they would not do, that is, duplicate the approach of the MTV service (which was acquired under the same conditions by CHUM from Craig Media only 2 years prior to the CTV hearing cited above). Furthermore when examined by the Commissioners, the representatives of CTV (including the current CEO) made the following remarks on the matter of the overlap in programming between apparently similar services like MuchMusic and MTV:

"I mean, if what we say is they're going to be completely different, they should be completely different, and we shouldn't have any wiggle room on that, and so that's why we came forward with this this morning. (LISTNUM 1 \I 1616)

"It was always our intention to make it completely different, but sometimes out of abundance of caution you give yourself a bit of room." (LISTNUM 1 \I 1617)

"I think it is the opposite. I think for this to work they have to be different. If they are the same, what is the point of having both of them?" (LISTNUM 1 \I 11011)

18. Our concern is that MuchMusic will now become a second MTV or something much closer to MTV than foretold above, and that the much lauded diversity that was a major point on which CTV had based its rationale for the takeover of CHUM will fall victim to unproven future financial circumstances about which we can now only speculate.
19. In their submission to acquire the assets of CHUM in 2006, CTV also notes that it is willing to take the risks necessary to present cutting edge programming to Canadians and has the means to do so:

"Moreover, a well-resourced Canadian company is best positioned to facilitate high quality Canadian content and to take the kinds of risks with content that smaller players simply cannot afford." (p.18)

This argument that a larger and financially more robust organization was in the best position to guarantee the inclusion of programming that was more risky and less main stream seems not to apply to MuchMusic, which in the very circumstances where risk tolerance is needed, is to be reprogrammed.

20. In conclusion, we are not satisfied that this matter can be properly adjudicated through an exchange of letters and emails. Indeed, there is sufficient evidence to suggest that CTV has not produced a convincing argument that the only alternative available to them is to slash drastically and without further review, a benefit to Canadian musicians and artists, on which they depend to such a degree. In addition to the obvious damage this will cause, we are also concerned that the commitments made to the Commission with respect to maintaining diversity and the CHUM model, could be so



CIMA

Canadian Independent Music Association

easily set aside in such a short period of time. What are we then to make of other commitments that CTV might make in this or similar circumstances?

If the Commission wishes, it can refuse this application at this stage, with justification. However, if the Commission wishes to further examine this application, we feel that it would be best done at a license renewal hearing, one which we and our partners would be pleased to attend.

Yours sincerely,

Duncan McKie
President
CIMA