

American nets complain to CRTC of unfair treatment by cable

OTTAWA - Not usually a participant in the Canadian broadcast licensing process, the big three U.S. TV networks have increasingly been making their presence known in recent Canadian Radio-television and Telecommunications Commission (CRTC) decisions from British Columbia to Nova Scotia.

Since June 13 and in five subsequent decisions involving the reception and distribution of U.S. signals via satellite from the Canadian Satellite Communications Inc. (Cancom) network, the CRTC has received interventions from ABC, NBC and CBS, objecting to the unauthorized and unpaid Canadian use of copyrighted programs by distributed by or licensed to the U.S. networks and their affiliated stations.

The interventions, obtained from the CRTC by Cinema Canada, and filed on behalf of the U.S. networks by Ottawa lawyer Ross Gray, accuse both Cancom and CRTC licensees of violating the Canadian Copyright Act, the 1937 Inter-American Radiocommunications Convention, and the CRTC's own 1983 decision licensing Cancom to distribute the U.S. signals in scrambled form via satellite to "core" and "extra-cable" markets.

In each of the six recent CRTC decisions, the Commission "acknowledges" the interventions submitted by CBS, NBC, and ABC and "notes that the concerns raised by the intervenors have already been addressed," referring to the March 8, 1983 Cancom decision.

That decision, however, makes only one mention of "the issue of potential copyright infringement and the associated issue of 'broadcaster consent,'" leaving it up to the parties involved "to

make such contractual or other arrangements as may be necessary."

But as the recent U.S. network interventions point out, neither Cancom nor Canadian cable systems have made any contractual or other arrangement with any U.S. network or network-affiliate station.

"We're being dealt with unfairly," CBS general attorney Harry Olsson told Cinema Canada. "Canada has an ancient copyright law which offers no protection against retransmission of broadcast works. It's unfair to us because in corporate terms our business rests largely on protection of intellectual works."

Olsson points out as well that unauthorized retransmission of copyrighted material is unfair to the copyright owner; unfair to conventional Canadian broadcasters who have purchased, often at great expense, rights to broadcast U.S. programs in Canada; and thirdly that such practices are most unfair to Canadian artists forced to compete against unlicensed, no-cost programming.

"Surely," said Olsson, "it is not the policy of the Canadian government to inundate Canada with American programming at the expense of domestic product.

"If I were a Canadian author," Olsson told Cinema Canada, "I'd have real difficulty with Canadian copyright law. This is hardly way to make Canadian culture grow. A foreigner must be excused for wondering about the policies which treat foreign programs as good for Canada when they are free for the taking, but had for Canada when they must be paid for."

Olsson admits that until Canadian copyright law is changed -

which could take another year - there is nothing the U.S. networks can do but "complain very bitterly." In addition to citing violations of communications and copyright conventions, Olsson noted that the issue had been the subject of representation "at the highest political level."

The issue of Canadian violation of U.S. copyrighted programming, which some estimates claim amounts to \$10 million per year, was one of the main topics of discussion between U.S. president Reagan and Prime Minister Mulroney at last March's Shamrock Summit in Quebec City. The Canadian government referred the question to the Parliamentary Committee on Communications and Culture which held hearings on the matter in Montreal in June.

For its part, Cancom, as per company president Pierre Morissette, "has always acted in the same way as off-air cable operators." If Morissette admits that Cancom has no arrangements with the U.S. networks, he notes that the networks never attempted to get into contact with Cancom either. "To my knowledge, there has never been any precise discussion" of the issue, "and it's the same situation with the cable industry."

Morissette notes that, according to Canadian law, Cancom is a retransmitter, "and for all practical purposes retransmission is in conformity with the law."

If for the Americans, "copyright is the heart of the matter" as CBS attorney Olsson puts it, for the Canadians, and the Cancom network in particular, the issue is Canadian federal broadcasting policy as it pertains to the extension of Canadian television services.

Originally licensed in 1981 solely to distribute Canadian TV and radio signals to cable subscription television and low-power TV broadcasters in remote and underserved communities, Cancom did not add distribution of the four U.S. signals until two years later.

In its decision, the CRTC argued that underserved communities would not be satisfied with a package of strictly Canadian services "but would demand a greater variety of television programming." Importing U.S. signals would act as the drawing-card, though, according to the CRTC "foremost priority should be given the Canadian services."

For Cancom president Morissette, "we follow the rules set by the CRTC. We provide a service to the Canadian population that has no other access to American signals. We're in conformity with the federal policy of the extension of services, and I'm quite at ease with that.

"Our point of view is that there should be no retransmission charge. For one reason: extension of services. Given the costs involved, to add more would make its very difficult for subscribers. And it would be going against federal policy."

The ironies of the situation are plentiful. The American PBS network, for example, which depends on public subscription for its funding, is the one American network that's totally pleased with its signal being carried throughout Canada via Cancom.

As PBS representatives recently testified before the Parliamentary Committee on Communications and Culture, Canadian distribution of its signals widens its viewer-base and more money flows in from PBS viewers in Canada.

NBC, for its part, was sued last year in the Supreme Court of Ontario for defamation in an BBC program "broadcast throughout Canada without NBC's permission or consent." As Howard Monderer, NBC vice-president, law, told the Parliamentary Committee, "NBC has been placed in the untenable position of having to defend itself against a non-Canadian, in Canada, for broadcasts it never intended to be viewed in Canada."

The Parliamentary Committee is expected to make its recommendations on copyright revision known this month.

"We're eager to know how all this will be cleared up," says Cancom's Morissette. Says CBS's Olsson, "Our strongest argument is one of elemental fairness."

SGC issues first annual report since foundation

MONTREAL - The government of Quebec's film funding agency, the Société Générale du Cinéma du Québec, has made public the first annual report since its establishment in 1983.

Along with a message from SGC president Nicole Boisvert, the annual report gives a summary of the activities and finances of the SGC for the fiscal year that ended Mar. 31.

The annual report includes a list of projects and monies allocated to the different programs undertaken by the SGC. These include the Development Assistance program, the Production Assistance program, the Broadcast Assistance program, as well as assistance to film promotion and maintenance.

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