

2015 02 13

To: Mr. John Traversy  
Secretary General  
Canadian Radio-television and  
Telecommunications Commission  
Ottawa, Ontario  
K1A 0N2

Subject: **Part 1 Application by PIAC-CAC Regarding CraveTV – Procedural Request**

Dear Mr. Traversy,

1. We are in receipt of an application from PIAC-CAC, dated 6 February 2015 and posted to the Commission's website on 10 February 2015, regarding our recently launched CraveTV service. The complaint is frivolous and vexatious and has no reasonable prospect of success. Moreover, the Commission simply does not have the jurisdiction to rule that CraveTV, an already exempt digital media service, must be made available on an unauthenticated basis. PIAC-CAC ought to be well aware that the Commission does not have the authority to force Bell Media to pursue a particular business model in making its copyrighted programming available. As such, the complaint is an abuse of process and fairness dictates that the Commission should dismiss it without further process pursuant to section 7 of the *CRTC Rules of Practice and Procedure*, or at a minimum, return the complaint to PIAC-CAC and close the file pursuant to section 8 of the *Rules*.

2. PIAC-CAC's complaint has failed to apply the *Broadcasting Act*, the *Telecommunications Act*, or validly enacted Commission regulations. Instead, they are effectively asking the Commission to substitute their business judgment for Bell Media's as to how to distribute an innovative and popular new service in which we have invested hundreds of millions of dollars, and to which our employees have devoted their significant creativity and expertise.

3. PIAC-CAC themselves appear to understand that the Commission cannot force a copyright holder to adopt the business model that one lobby group might prefer. They have effectively admitted that there is no legal basis for the complaint<sup>1</sup>, but nevertheless invite the Commission to make an arbitrary and one-off finding against us for adopting an authenticated business model that is, and has for many years been, widely adopted across the industry.<sup>2</sup> It would be unfair and prejudicial for the Commission to even entertain this type of complaint.

---

<sup>1</sup> See for just one example paragraphs 97 to 99.

<sup>2</sup> See paragraphs 90 and 122. In its own terms, the essence of the Complaint is "that there is no compelling reason, in policy, to approve the tied sale of online access to video content with subscription to BDU services... [and that t]o do so is to fail to adapt to technological change, and to fail to respond to the evolving demands of the public." There is obviously no legal basis to suggest that a Canadian company requires the approval of PIAC-CAC or the Commission to adopt a business model that complies with existing rules.

4. In any event, the Commission would not have jurisdiction to enforce any rule that purported to do what PIAC-CAC is seeking. The Supreme Court of Canada has stated clearly that the Commission does not have jurisdiction just because one can find a "link, however tenuous, between a proposed regulation and a policy objective in s. 3 of the Act... Were the only constraint on the CRTC's powers under s. 10(1) to be found in whether the enacted regulation goes towards a policy objective in s. 3(1), the only limit to the CRTC's regulatory power would be its own discretionary determination of the wisdom of its proposed regulation in light of any policy objective in s. 3(1). This would be akin to unfettered discretion."<sup>3</sup>

5. Rather, it is necessary for any regulation to be grounded specifically in the powers granted to the Commission in section 10(1)(a)-(j) or 9(1)(a)-(h) of the *Broadcasting Act*. None of these powers even remotely contemplates the Commission dictating that a service must adopt an unauthenticated distribution model. Moreover, the Commission has already exempted the online CraveTV service from Part II of the *Broadcasting Act* on the grounds that applying the regulations to it would not materially contribute to the policy objectives in section 3(1).

6. We request that the Commission rely on its *Rules* and its inherent control of its own procedure to expeditiously dismiss the complaint. Should the Commission decide not to dismiss the complaint at this time, we request that the deadline for filing an answer be extended to 30 days following the Commission's decision on this request. The extension is necessary to provide us adequate time to respond to the exceptionally broad range of specious and irrelevant factual, legal, policy, jurisdictional, and fairness issues that have been raised.

7. Please do not hesitate to contact me should you require any additional information.

Yours truly,

[ Original signed by M. Bibic ]

**Mirko Bibic**

Executive Vice President and Chief Legal & Regulatory Officer

c.c.: PIAC  
CAC  
Vaxination Informatique

\*\*\* End of Document \*\*\*

---

<sup>3</sup> Reference re *Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, [2012] 3 SCR 489, 2012 SCC 68.