Licence and Poetic Licence:  
A Critical Examination of the Complicated Relationship Between the CRTC and Specialty Channels  

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Abstract: Specialty channels in Canada earn revenues from cable carriage that are rarely commensurate with their audience size. These revenues are potentially so lucrative that prospective operators often make unrealistic promises to the CRTC regarding the channels’ original and Canadian content. In exchange for these promises, the Commission limits competition among specialty channels. Once a licence is obtained, however, specialty channels quickly attempt to extricate themselves from their burdensome promises in order to maximize profits and establish stronger advertising revenues. In some cases, specialty channels attempt to redefine themselves in ways that depart significantly from their original promises. Specialty channels can improve their chances of securing changes to their licences through strategically timed applications. In a misguided attempt to promote Canadian programming and curb the dominance of American broadcasters, the CRTC is not allowing specialty channels to properly prepare for a future that may not include lucrative revenues from cable subscription fees.  

Résumé: Les chaînes thématiques au Canada, grâce à leur présence sur le câble, gagnent des revenus qui dépassent souvent la grandeur véritable de leurs auditoires. Ces revenus peuvent être si élevés que les requérants sont tentés de faire des promesses souvent irréalisables auprès du CRTC sur leur contenu original et canadien. En échange de ces promesses, le Conseil limite leur concurrence. Cependant, les chaînes thématiques, après qu’elles ont obtenu leurs licences, essaient rapidement de se soustraire à leurs promesses onéreuses afin de maximiser leurs profits et d’obtenir des revenus publicitaires plus élevés. Dans certains cas, les chaînes thématiques se redéfinissent en s’éloignant de manière significative de leurs promesses originelles. À ce titre, en choisissant le bon moment pour faire leur demande, les chaînes thématiques ont de bonnes chances

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Specialty channels are an extremely important part of the broadcasting system in Canada. These so-called narrowcasters have earned huge revenues for themselves and the cable companies that carry their signals. The growth of specialty channels in this country has been remarkable. What started out as a disastrous experiment with pay-TV in the early 1980s has evolved into a billion-dollar industry today. Specialty channels are the fastest growing part of the Canadian broadcasting system. These channels have forced conventional broadcasters to change the way they operate as audiences have become increasingly fragmented in the face of the increased choices that viewers now have.

The way in which specialty channels rose to such prominence in this country provides a fascinating example of how the Canadian Radio-television and Telecommunications Commission (CRTC) uses regulation in an ill-fated attempt to promote Canadian content. This paper will attempt to demonstrate that specialty channels in Canada operate in an unrealistic regulatory environment, given the market size and economies of scale. The CRTC takes an approach toward regulating specialty channels that forces them to mature in a way that may differ from how they would evolve if left to their own devices. In order to obtain licences from the CRTC, the operators of specialty channels accept conditions that compel them to adopt programming policies that they likely believe to be unrealistic from a commercial standpoint. But rather than risk being denied a licence, successful applicants for specialty channels make it clear to the CRTC that they are more than willing to operate under these restraints. It appears that specialty channel applicants that are successful with the CRTC tell the regulator what it wants to hear in order to win a licence. Once that licence is obtained, almost all specialty channel operators attempt to change the conditions of the licence to allow the channel to function more successfully. Canadian broadcasting policy is preoccupied with the potential for American domination and has tirelessly attempted to devise ways of preventing continental integration and encouraging original production. At times, the CRTC has been successful in creating an atmosphere that permits nascent broadcasters such as TSN and MuchMusic to develop audiences and programming without having to compete with American counterparts. The CRTC provides this protection to Canadian broadcasters in exchange for a commitment to producing homegrown programming.

But there are limits to what the CRTC can do to promote Canadian culture when it uses the very American broadcasters and programming that threaten Canadian culture as the means of protection. The Commission’s policy on commercial substitution, which allows conventional broadcasters to impose their com-
mercials on the cable signal of American broadcasters, encourages Canadian broadcasters to mirror the schedules of American networks, resulting in a dearth of Canadian content during prime time hours. The tiering scheme used by cable systems to deliver specialty channels relies on American broadcasters to drive it.

In this milieu, which uses American broadcasters and programming to subsidize their Canadian counterparts, the best the CRTC can realistically hope for is to allow Canadian broadcasters to achieve financial stability as hybrids offering a staple of American programming while making a perfunctory effort toward satisfying Canadian content regulations (Babe, 1990; Caron & Taylor, 1985; Hardin, 1985; Raboy, 1990).

As the failure of this system becomes evident to the CRTC, it periodically attempts to subtly shift direction. Such a system becomes easy for broadcasters to attempt to manipulate, especially in the case of specialty channels, which appear to outgrow the protections provided by the regulator. The continual shifting of policy provides little incentive for those who appear before the Commission to be candid about their motives and objectives. It is easier to simply tell the CRTC what it wants to hear and wait for the landscape to change—or attempt to change it themselves in the future.

The successes of broadcasters such as TSN and MuchMusic notwithstanding, the Commission allows its obsessive fear of American domination to obscure the potential areas where it can be successful and the limitations of regulation and policy.

There is a lack of a consistent vision within broadcasting policy. In some cases, competition in the Canadian broadcasting system is encouraged, but in other instances, it is stifled. When granting licences, the CRTC should focus its efforts on determining the most suitable owner, rather than extracting exaggerated promises of Canadian content. The Commission should allow new entrants the opportunity to mature but allow freer competition when circumstances warrant.

**Historical Perspective**

Specialty channels evolved as a result of cable delivery. After some initial reluctance, by the mid-1970s, the CRTC became convinced that cable was the most effective way to deliver television signals and control the broadcasting system, attempting to keep it distinguishable from its American counterpart (Babe, 1990; Caron & Taylor, 1985). The CRTC allowed the cable industry to operate as a monopoly but attempted to use its regulatory powers to ensure that Canadian channels were carried alongside American ones and that cable companies would not become involved in the production of content (Caron & Taylor, 1985).

The success of Home Box Office in the United States during the 1970s signalled a change to the broadcasting landscape that could not be ignored by the CRTC. HBO was the first specialty channel, broadcasting movies and sports via satellite and through American cable companies. This broadcaster, along with other American channels, could be viewed in Canada with a backyard dish receiver that was beyond the reach of CRTC regulation. For the regulator, there was a fear that unless Canadian alternatives to HBO were developed, viewers
would flock to these American specialty channels on satellite, thereby diminishing the CRTC’s control of the broadcasting system. The Canadian cable industry saw a potential opportunity by introducing a pay-TV service and attempting to replicate the success of HBO (Fraser, 1999).

The CRTC appeared to give contradictory messages about the implementation of pay-television during the 1970s. A policy statement issued in 1975 was opposed to granting pay-television licences, but a year later the Commission reversed its direction, calling for proposals only to eventually reject them all for failing to meet extremely ambitious criteria for acceptance (Babe, 1990; Caron & Taylor, 1985; Hardin, 1985; Raboy, 1990). This inconsistent approach may have led broadcasters to the conclusion that it was to their advantage to pay lip service rather than being candid when applying to the CRTC for licences.

Canada’s first experiment with pay-TV, in 1982, was a complete disaster, with one of the six licencees forced to cease operations just four and a half months after its debut. The two movie channels licensed by the Commission, FirstChoice and SuperChannel, engaged in fierce competition and racked up more than $40 million in debt during their first year and a half on the air (Hardin, 1985). FirstChoice avoided bankruptcy only through a financial bailout, which was actually brokered by the CRTC (Raboy, 1990).

The CRTC was determined not to create a similar fiasco when it granted another set of pay-TV licences in 1984. The Commission shifted its policy regarding these new services, not allowing them to compete against each other (Vipond, 2000). The regulator also accepted certain realities concerning the size of the Canadian market. The first pay-TV operators had priced their services unrealistically high in anticipation that viewers would flock to them, but this did not happen. TSN and MuchMusic, the best known of the services granted licences in 1984, would operate frugally, and expectations were more realistic. TSN and MuchMusic were also permitted, within limits, to sell advertising (Killingsworth, 1999, p. 28).

TSN’s first president, Gordon Craig, did not feel the CRTC’s policy regarding specialty channels operating as a pay-TV service was viable in the long term. Craig’s intention from the time the channel’s owners applied for a licence was to eventually work TSN from pay-TV to basic carriage. “The key is to get the licence, let’s go get the licence and then we’ll find a way to make it work within the broadcasting industry” (Craig cited in Killingsworth, 1999, p. 23). This is an excellent example of a broadcaster doing what is necessary to win a licence from the CRTC and then attempting to secure more favourable conditions afterwards.

After three years of operations, TSN and MuchMusic were permitted to move off pay-TV and be carried by cable systems as a discretionary service. The specialty channels would not be part of basic cable; instead, they could be purchased as part of a tier of channels that included popular American channels the CRTC allowed cable companies to carry. This turned out to be a lucrative arrangement for both the specialty channels and the cable operators, because the pricing of the discretionary tier was unregulated. In order to meet Canadian channel require-
ments on the discretionary tier, channels such as TSN and MuchMusic were offered generous wholesale fees that could not be justified by their audiences. This arrangement ensured the profitability of specialty channels such as TSN and MuchMusic (Fraser, 1999).

With guaranteed revenues from the cable companies, future entrants into the specialty channel industry such as YTV and WTN were assured of profitability that was not necessarily commensurate with their audience size. Advertising revenue for many specialty channels under this system would make up only a small share of total earnings. Conventional broadcasters still rely on advertising revenues for virtually all of their revenue.

Cable subscription revenues in 2003 totalled more than $829 million, and revenues from satellite carriage are increasing rapidly, reaching more than $417 million, for a grand total of more than $1.2 billion in carriage revenues. Total advertising revenues are just under half that amount (CRTC, 2003). Audience numbers are impressive too, with specialty channels attracting over 30% of viewers in 2003, almost double the figure from 1996 (Powell, 2005).

Specialty channels compete not only for audiences, but also for carriage, as newer entrants hope to emulate TSN and MuchMusic, which earned positions on the first tier and later migrated to basic cable, where cable subscription revenues are highest. But the CRTC, which created this system, does not allow all specialty channels to develop naturally. The Commission prevents some specialty channels from expanding their audience base in cases when it would come at the expense of another established specialty operator or conventional broadcaster, but it allows competition in other instances. This lack of a clear policy may encourage specialty broadcasters to conceal their true motives when appearing before the CRTC.

**Specialty channels and the CRTC: Three approaches to obtaining more favourable conditions**

**Methodology**

A series of five case studies was conducted to better understand the interactions between specialty channels and the CRTC and to develop some generalizations regarding the reasons some broadcasters are more successful than others in securing changes to the conditions under which they operate. Five specialty channels were selected for study: YTV, Headline Sports, Showcase, Bravo!, and WTN. These broadcasters were selected for several reasons. The channels represent a composite of all specialty channels. Some of them are among the most successful and others have struggled, while some have performed adequately. These five channels were also selected because each one of them has the potential to infringe either on the services offered by conventional broadcasters or other specialty channels. To conduct these case studies, all licensing decisions regarding programming or programming expenditures were examined using CRTC documents. After carefully examining CRTC decisions relating to programming for these five channels, it is possible to make some generalizations regarding the likelihood of
success for specialty channels in requesting changes to conditions of performance.

There appear to be three ways a specialty channel can approach the CRTC when it wants to secure a change to its licence. The broadcasters can wait until renewal time, request a change midway through their term, or take a more pragmatic approach, making requests over a long period of time with the hope of gaining gradual improvements to the conditions of their licence. These three approaches are outlined below.

**Incremental**

In December 1987, the CRTC granted a licence for a national specialty service aimed at children and youth. YTV would be a satellite-to-cable service that could be distributed by cable operators as part of the basic service or as part of an optional package. One interesting departure from past practice by the CRTC in granting this new licence was the shorter three-year term granted to YTV, compared to the five-year terms granted TSN and MuchMusic. The CRTC wanted to ensure that YTV did not change the nature of its service, but the Commission was especially concerned with Rogers Communications’ partial ownership of the new specialty channel. This was the first time a cable company had been permitted to own part of a broadcaster, a reversal of past policy that ensured a separation between content and carriage, and the CRTC wanted to closely monitor the effectiveness of the new arrangement (CRTC, 1987b).

In the decision granting YTV a licence, the CRTC indicated it would pay close attention to how the fledgling broadcaster would “adhere strictly and at all times with the orientation of its programming service” (CRTC, 1987b, p. 1). The CRTC was especially concerned with how YTV would meet its obligations during prime time. This was one of the key conditions placed on YTV’s licence. During prime time hours, any drama programming had to have a “major protagonist that is a child, youth under the age of 18 years, puppet character or creature of the animal kingdom” (CRTC, 1987b, p. 12). The CRTC emphasized this particular condition in its decision. The regulator clearly expected YTV to stay true to its mandate to provide programming that would “have a high degree of intrinsic value for children and youth” (CRTC, 1987b, p. 4).

YTV went to air in September of 1988. Within two months of its debut, YTV applied to the CRTC for an amendment of its licence. The specialty channel wanted to expand the definition of a protagonist with regards to prime time drama programming between 6:00 p.m. and midnight to include protagonists from several different genres, such as superheroes from comic books, legendary heroes, folk heroes, historical heroes, characters from fairy tales or myths, and characters from books on school board approved reading lists. The specialty channel argued that allowing the licence amendment “would permit the presentation in the evening broadcast period of clearly child and youth oriented protagonists which were inadvertently and unnecessarily excluded in the current condition” (CRTC, 1988, p. 1). Other broadcasters believed that YTV was simply trying to broaden its programming reach and become more of a general-interest service.
The CRTC agreed with those who were skeptical of YTV’s motives and denied the application: “The Commission is of the view that the proposed amendment would significantly broaden YTV’s programming orientation and potentially cause undue harm to other specialty services, pay television services as well as conventional broadcasters” (CRTC, 1988, p. 2). The regulator also pointed out that the specialty channel had only been in operation for two months before asking for an amendment to its licence. Moreover, the conditions of YTV’s licence had been determined and very clearly defined after a lengthy application process, which the specialty channel was well aware of and involved in every step of the way. “The categories specified in the condition were specifically chosen to ensure that YTV’s programming would fulfill its mandate as a specialty service and maintain a youth orientation during the evening broadcast period” (CRTC, 1988, p. 2). But YTV would try again and would eventually be successful in modifying the conditions of its licence.

In 1991, YTV applied to the CRTC for several licence amendments to allow it to cover amateur sports on occasion and broadcast more than one hour per night of drama programming produced in the United States. The specialty channel contended that it should be able to show an American-produced comedy series and a cartoon on a night when a drama series was also being shown. As was the case in 1988, various broadcasters opposed the proposed licence amendments on the grounds that YTV was making another attempt to become more of a general-interest service. “In response, YTV stated that, rather than attempting to attract a wider audience or to compete with other broadcasters, the proposals aim to improve service to its target audience” (CRTC, 1991, p. 2). The CRTC was not convinced and denied the application, but it invited YTV to try again when its licence came up for renewal the following year.1

YTV certainly did propose several amendments to its licence at its renewal hearing in 1992. The specialty channel wanted the CRTC to revisit the protagonist restrictions during drama programming in prime time. This time, the specialty channel was partially successful. The CRTC allowed YTV to show drama programming between 6:00 p.m. and midnight that had protagonists that were comic book characters, folk heroes or superheroes, or classical or historical heroes. Despite the same objections from other broadcasters as during previous applications, the CRTC granted YTV these changes to its licence. The regulator did not seem as concerned about the possibility of YTV attempting to expand its potential audience beyond the children and youth market as it had been in 1988. In its decision, the CRTC acknowledged that YTV had stayed true to its mandate of providing children’s programming during its first three years of operation. The Commission also noted “YTV’s assurances at the hearing that it will continue to ensure that its programming remains focused exclusively on its defined audience,” (CRTC, 1992, p. 4). YTV also stated that it had no intention of trying to become a general-interest service.

Although YTV was able to persuade the CRTC to modify its licence at renewal time, this victory should be seen within a larger process whereby the
station laid the groundwork for this change by initiating its request well in advance of a renewal hearing. But YTV did not get everything it asked for. The CRTC did not allow YTV to raise the age of protagonists to 21 from 18 as requested. YTV also asked the Commission to take another look at the one-hour-per-night restriction of American-produced drama programs. The CRTC believed it was necessary to keep this restriction in place to prevent the specialty channel from airing required Canadian drama programming during less-desirable time slots. But the Commission did acknowledge that the motivation behind YTV’s request to change this licence condition was to provide greater flexibility in scheduling during holiday periods. So the CRTC struck a compromise, allowing YTV to air what it called “non-regularly-scheduled ‘specials’” that would not count against its calculation of U.S. drama (CRTC, 1992, p. 5). It was taking time, but YTV was gradually chipping away at the unfavourable conditions contained in its original licence. Nonetheless, it was a very gradual and incremental process—one that was not yet complete.When its licence came up for renewal in 2000, YTV again requested changes to the programming obligations it was required to fulfill. In this case, the CRTC gave YTV much of what it wanted, despite the fact that CHUM Broadcasting argued that removing the protagonist restriction for drama programming after 9:00 p.m. would allow YTV to basically air any popular program that showcases young adults. CHUM believed that lifting programming restrictions might allow YTV to become more of a direct competitor that could “change YTV into what would essentially amount to a youth-oriented conventional station” (CRTC, 2000c, p. 4). But CHUM was the only broadcaster mentioned by name that opposed YTV’s requests. In previous decisions, many different broadcasters had appeared in opposition to the specialty channel’s attempts to change its licence. With reduced opposition, the CRTC was apparently more easily persuaded. The regulator also altered the condition that YTV be restricted to no more than one hour of American drama between 6:00 p.m. and midnight so that the channel could now devote no more than an average of one hour per night during a particular week to drama programs from any single country other than Canada.

These seemingly subtle changes to YTV’s licence would have consequences. The only American drama program on the network’s schedule at its start-up in September of 1988 was *Bonanza*. YTV had upgraded its lineup by 1993, airing reruns of *Little House on the Prairie* during prime time hours. This show, although set in the nineteenth century, was a more recently produced show than *Bonanza*. The decision to air *Little House on the Prairie* reflected the change permitted by the CRTC to allow historical heroes as protagonists in American drama programming. In the 1995 fall lineup, YTV abandoned American drama programming altogether, opting instead to air reruns of the Canadian program *Neon Rider*. YTV added additional Canadian dramas in 1997, airing *Catwalk* and *Jake and the Kid* during prime time hours, Monday through Friday. But all three of these programs would not have been allowed under YTV’s original licence conditions, even if they were Canadian content.
In 1997, YTV also began airing the American drama *Buffy the Vampire Slayer*, a new first season run program on the WB network. This was a considerable achievement for a specialty channel, considering that *Buffy the Vampire Slayer* was a prime time program airing on an American network—albeit a fledgling network, small in comparison to the big three of ABC, NBC, and CBS. YTV would not have been able to air *Buffy the Vampire Slayer* without the changes it had won from the CRTC years earlier. It is also possible that YTV made a conscious effort to air Canadian dramas during prime time in an effort to conceal the subtle changes that were making it more of a threat to mainstream broadcasters.

In its 2000 schedule, YTV appeared to take the same approach. It aired a program called *Live Through This*, produced in partnership with MTV, that would qualify as Canadian content. But it also aired first-run episodes of a short-lived FOX program called *Opposite Sex*. YTV was certainly not pushing the limits in terms of the quantity of its American drama programming. But it appeared to be attempting to compete—at least on the periphery—with conventional broadcasters.

This approach proved profitable. YTV had always been financially successful, but its pre-tax profits doubled between 1997 and 2001, from $12 million in 1997 to well over $24 million just four years later. This dramatic increase in profit occurred even though its cable subscription revenues remained flat. The specialty channel’s program expenditures increased dramatically during this four-year period, almost doubling. That expense was more than offset by a corresponding increase in national advertising revenue, resulting in the huge increase in profits, as shown in Table 1. By 1999, YTV was the second-most-successful specialty channel in terms of audience share and advertising revenue (Geddes, 1999).

There appears to be a correlation between programming expenditures and advertising revenues that applies even to specialty channels. And YTV is not afraid to spend money on its programming. Perhaps sparked by the success of programs such as *Buffy the Vampire Slayer*, YTV has continued to air first-run American network programming. YTV’s lineup in the 2002 season featured another WB sitcom, *What I Like About You*. It would appear that CHUM’s fears had some merit. This specialty channel has clearly come a long way from airing Bonanza reruns.

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<th>1997</th>
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<tr>
<td>Operating income</td>
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Mid-term licence request

An incremental approach is not always necessary for a specialty channel to secure significant changes to its licence conditions. The owners of Headline Sports used a different method to deal with the CRTC when it came to altering the terms and conditions of its licence. In 1996, the CRTC licensed Sportscope Television Network, which would later become Headline Sports and is known today as The Score. This channel would be distributed as a satellite-to-cable service offered on a higher tier.

The purpose of Headline Sports would be to provide highlights of sports events, along with text displays of scores and schedules, 24 hours a day (CRTC, 1996b). It was very clear in the original licence that Headline Sports would not be permitted to provide live event coverage and that its programming would have to be 100% Canadian. Little mention was made in the decision by the CRTC about what kind of operators the owners might be. Since this specialty channel would be operating on a higher tier of the cable system and unlikely to garner large subscription revenues, the CRTC perhaps lacked interest in the application, especially given the fact that the Commission was conducting public hearings and considering licensing up to 40 new specialty channels simultaneously (CRTC, 1996d).

Headline Sports was granted a seven-year licence term in 1996 and went to air the following year (CRTC, 1996b). Within two years, the specialty channel requested significant amendments to its licence. Headline Sports now wanted to be able to cover live sporting events up to a maximum of 15% of its quarterly schedule. The broadcaster also requested that its Canadian-programming obligations be decreased from 100% to 80% over the year and to 60% during the prime time hours between 6:00 p.m. and midnight. The specialty channel maintained that by airing live event coverage, Headline Sports would improve its profile and attract a larger audience, making it more competitive: The applicant considered that this change would improve Headline Sports’ financial health (CRTC, 2000b). Headline Sports also insisted that it had no intention of departing from its format of providing sports highlights. The specialty channel would display scores on a ticker at the bottom of the screen during live events and would break away to a studio host for highlights every fifteen minutes.

Headline Sports had the support of many sporting organizations when it went to the CRTC. Amateur bodies such as the Canadian Interuniversity Athletic Union (CIAU), later known as Canadian Interuniversity Sport (CIS), believed they would benefit by receiving coverage on the network. The operators of TSN, CTV Sportsnet, and the Friends of Canadian Broadcasting all opposed Headline Sports’ proposed licence amendments, arguing that, if approved, they would “fundamentally change the nature of the service that Headline Sports provides” (CRTC, 2000b, p. 3).

The CRTC did not appear concerned that permitting live event coverage on the specialty channel would allow it to compete with other sports broadcasters such as TSN and CTV Sportsnet. It noted that the licence amendment would only permit Headline Sports to broadcast about 25 hours per week of live event cov-
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average, leaving 85% of its schedule unchanged. “The Commission considers that the introduction of this limited amount of live sports programming will not make Headline Sports directly competitive with TSN or SportsNet, particularly if it is done in a way that preserves Headline Sports’ current orientation” (CRTC, 2000b, p. 4).

The CRTC allowed the licence amendment, and this change to the network’s licence clearly changed the way the channel operated. Headline Sports purchased the Canadian rights to Major League Baseball at a cost of $20 million (Fraser, 2002). The specialty channel also acquired the rights to World Wrestling Federation programming, including the popular show Smackdown. The two-hour program airs continuously on The Score every Thursday night from 8:00 p.m. to 2:00 a.m. to accommodate different time zones. The specialty channel has also broadcast some university sports, including a weekly football game from Ontario. The shift from a strict highlights service to one that occasionally broadcasts live events and American programs has not been successful financially. The Score incurred $57 million in losses during the first six years of its existence, in large part due to its ill-advised purchase of the rights to air Major League Baseball.

Since extricating itself from that disastrous deal in 2002, The Score’s fortunes have improved, with the network turning a miniscule profit for the first time in 2003 (CRTC, 2002a; Houston, 2004; Libin, 2000). Securing more favourable licensing terms does not necessarily result in increased profits. In the case of Headline Sports, the channel acquired programming that was too expensive given its fairly limited audience reach. Headline Sports likely would have become profitable much earlier had it stayed truer to its original premise as a scores and highlights service with low overhead. The network suffered losses in each year of operation until 2003, despite an increase in cable subscription revenues and a large increase in advertising revenues, as shown in Table 2.

Table 2: Headline Sports/The Score financial data, 1998-2001

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<td>Advertising revenue</td>
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<tr>
<td>Operating income/loss</td>
<td>-$978,000</td>
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Showcase is another example of a specialty channel that was successful in changing the conditions of its licence in the middle of a term. This specialty channel received its first licence in 1994 and went to air in 1995 as a satellite-to-cable service that could be carried on either a discretionary tier or as part of the basic package. According to the conditions of its licence, Showcase was required to air 95% drama programming and 95% of all programming was to be produced outside of the United States.
The specialty channel was owned by Alliance Communication, with the CBC taking a minority share. This arrangement would provide Showcase with access to CBC programming at reduced licence fees in exchange for equity in the channel. “The applicant describes Showcase as a ‘service based on the notion of a second window’ that will reprise the best of Canadian drama” (CRTC, 1994a, p. 3). Showcase would show reruns of Canadian programs such as Wodeck, Street Legal, and King of Kensington. The specialty channel also pledged to show only Canadian programming during prime time hours between 7:00 p.m. and 10:00 p.m.

In 1997, Showcase made a request to the CRTC that its condition of licence be amended to increase the amount of American programming it could show. The regulator granted the request, reducing the channel’s obligation to air 95% programming from outside the United States to 90%. There was little opposition from the broadcasting community, and the CRTC did not appear terribly concerned that allowing the broadcaster to air more American programs would alter the nature of the service. “This programming will still remain a very small portion of Showcase’s overall schedule” (CRTC, 1997a, p. 2).

But the CRTC rejected another request made by Showcase that would have allowed it to air three hours of Canadian programming during the prime time hours of 7:00 p.m. and 11:00 p.m. instead of during the block between 7:00 p.m. and 10:00 p.m. This move was opposed by several conventional and specialty broadcasters. In denying the request, the CRTC stated that it agreed with the concerns of these broadcasters, who believed such a change to the licence would allow Showcase to air an hour of American programming during the peak hours between 7:00 p.m. and 10:00 p.m.: “The proposed amendments would be a substantial departure from the fundamental basis on which the Showcase service was licenced” (CRTC, 1997a, p. 2).

Showcase did not ask the CRTC to reconsider this decision when its licence came up for renewal in 2001. The channel’s only significant request to the Commission was to allow it to air programming that originated from other specialty channels owned by Alliance Atlantis Communications, such as HGTV Canada, Food Network Canada, and History Television. That request was denied by the CRTC. This decision was not surprising, considering that Alliance stated in its original licence application that it would not use any first-run programming from any company affiliate. Showcase may have had a better chance of success if it had raised this issue earlier.

**Licence changes at renewal time**
Specialty channels that apply for changes to their licences at renewal time appear to be less successful with the CRTC, unless they lay the groundwork beforehand as YTV did. Bravo! received its original licence in 1994 and went to air in 1995 as a satellite-to-cable service that would be carried on a discretionary tier and possibly as part of the basic package. In that first licence decision, the CHUM ownership group envisioned this specialty channel providing a wide variety of programming, such as drama, documentary, dance, music, opera, and cinema, as well as discussion shows from Canada and other parts of the world.
The CRTC appeared impressed with the potential of this new specialty channel: “The Commission is convinced that Bravo! will add a significant measure of diversity to the programming choices available to Canadians through its plans for a wide variety of programs having a general focus on the programming arts” (CRTC, 1994b, p. 2). CHUM also planned to develop synergies between Bravo! and its American counterpart through a programming-exchange agreement. In granting the licence, the CRTC made it clear that it believed Bravo! would attract a distinct audience without affecting other broadcasters. The regulator granted Bravo! a five-year licence term. When Bravo! came to the CRTC for its licence renewal in 2000, it requested a change in the way its Canadian content requirements were calculated. The specialty channel had agreed to air 60% Canadian programming from 6:00 a.m. to midnight in its original licence. Bravo! indicated it would be willing to retain this condition, but it offered an alternative proposal that would require it to air 50% Canadian programming during a 24-hour period. The channel believed this would reflect the fact that it served five different time zones across the country.

The Canadian Film and Television Production Association expressed concerns over the proposal, while the Directors Guild of Canada objected outright, arguing that the specialty channel’s financial success—Bravo! registered a profit of more than $6 million in 2000—made such a change to its licence unnecessary. The CRTC, citing these concerns and a belief that Canadian programming aired during overnight hours would not reach significant audiences, rejected the proposed licence change. The Commission had the added luxury of pointing to Bravo!’s ambivalence towards its own proposal, since it indicated it would be willing to continue operating under the original conditions of the licence (CRTC, 2001c). If Bravo! had raised the possibility of changing its licence in mid-term, such a proposal may have appeared critical to the specialty channel’s future success. By waiting until licence renewal time and including the caveat of being willing to maintain the status quo, Bravo! may have appeared to simply be making the request since it was appearing before the CRTC anyway and had nothing to lose in trying to improve the conditions under which it was operating.

WTN, the Women’s Television Network, now known as W, found itself in a similar situation when its original licence came up for renewal. Originally called Lifestyle Television, the channel was approved by the CRTC in 1994 and signed on in 1995. It was permitted a spot on the basic tier unless it consented to be carried as a discretionary service. The satellite-to-cable service would provide programming directed toward a female audience, with an emphasis on information programming. “The Commission is satisfied that Lifestyle Television represents a genre of programming not currently available to Canadian viewers” (CRTC, 1994c, p. 1). Although the CRTC acknowledged that there were programs on other stations that would appeal to women, a specialty channel devoted to a female audience would provide opportunities for women to work in television as commentators and would portray women in a more positive light.
In the original licence, WTN promised to provide 70% Canadian content during the year and a minimum 60% during evening hours. The key obligation that WTN agreed to was to air at least 25% of foreign programming from countries other than the United States. This regulation was in force during the broadcast day and specifically between 6:00 p.m. and midnight. The CRTC noted that the owners of the service, Moffat Communications Ltd., wanted to use programming from countries such as Britain, Mexico, and Australia that had been previously ignored by other broadcasters rather than relying on American programming (CRTC, 1994c).

When WTN’s licence came up for renewal in 2001, it asked the CRTC to allow it to carry additional American programming, claiming that more programming aimed at the female audience was now available from the United States. At the same time, competition to secure the rights for programming produced outside of the United States had increased. The channel also noted that throughout its first five years of operations, it had gone well beyond its Canadian programming obligations. WTN claimed that it had no intention of using its quota of foreign programming exclusively on American shows (CRTC, 2001a).

Not surprisingly, WTN’s request received opposition from the broadcasting community. The Directors Guild of Canada pointed to the channel’s profitability as an indication that a change to the licence was unwarranted. Global and CHUM believed the restrictions on American programming were necessary to prevent WTN from becoming something other than a distinct specialty service. “CHUM also expressed concern that the main thrust of WTN’s programming has shifted to Hollywood movies and U.S. situation comedies” (CRTC, 2001a, p. 2). The CRTC denied WTN’s request to have its American programming quota lifted, even though it recognized that the specialty channel went well beyond the programming requirements contained in its licence.

But the CRTC did have some concerns about the direction it believed the network was taking: “There is a recent trend to broadcasting less material from foreign sources other than the U.S.” (CRTC, 2001a, p. 2). The regulator also pointed out that airing programming that originated outside the United States “was key to the licensing of WTN in 1994” and concluded that the specialty channel had “not presented a compelling argument for the deletion of the limits” (CRTC, 2001a, p. 2). The CRTC believed that by forcing WTN to continue to abide by the restrictions on American programming already in place, the Commission would maintain the balance it perceived to exist within the Canadian broadcasting system. This “balance” did not seem important when granting changes to Headline Sports’ licence that allowed it to compete with other broadcasters.

There is evidence to support the CRTC’s concern that WTN was using more American programming at the expense of other foreign sources. Between 1997 and 2001, WTN increased its program expenditures significantly from over $10.3 million in 1997 to almost $17 million in 2001. The network also experienced a dramatic increase in advertising revenue during the same time period. In 1997, WTN’s advertising revenues only accounted for about 15% of its total revenues;
by 2001, this proportion had grown to over 35%, and the network saw its operating income more than double over the same period, as shown in Table 3. An incremental approach might have been more effective in WTN’s case. Simply stating that circumstances had changed at the time of the licence renewal hearing does not appear to persuade the CRTC. Had WTN made an earlier request and continued to pursue the matter, there is a chance it might have had more success with the CRTC.

### Table 3: WTN's financial data 1997-2001

<table>
<thead>
<tr>
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<th>1997</th>
<th>2001</th>
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<tr>
<td>Cable subscription revenue</td>
<td>$18.0 million</td>
<td>$20.9 million</td>
</tr>
<tr>
<td>Advertising revenue</td>
<td>$3.6 million</td>
<td>$11.0 million</td>
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<tr>
<td>Programming expenditures</td>
<td>$10.3 million</td>
<td>$16.8 million</td>
</tr>
<tr>
<td>Operating income</td>
<td>$3.5 million</td>
<td>$9.0 million</td>
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It appears that the CRTC is interfering with the normal development of specialty channels, which is to seek out larger audiences after maturation. WTN would seem to be following the path taken by its American counterpart, Lifetime. The American specialty channel is also geared toward a female audience. Lifetime went on the air in 1982. It started out very modestly as a four-hour-a-day service that focused primarily on health and fitness. By the year 2000, it had developed into one of the most successful specialty channels in the United States, earning more than $500 million in revenue and reaching more than 75 million homes.

But Lifetime did not achieve its success overnight. The network shifted its focus over the years, abandoning talk shows for originally produced movies. These movies were hugely successful, earning high ratings for a cable outlet. Like WTN, Lifestyle substantially increased its programming budget, and its decision to invest in producing original movies and purchasing the rights to top syndicated shows that appealed to the female demographic proved to be a good one. Lifestyle was worth an estimated $1 billion when it was sold in 1994 (Hundley, 2002).

The CRTC may criticize WTN for moving toward films and American entertainment, but the Canadian network appears simply to be following the natural evolution of its American cousin, while navigating its way through myriad regulations. According to Heather Hundley in her examination of Lifetime, “By designing programming intended for a particular demographic profile of individuals, an audience is ultimately assembled. As a result of technology, audiences are fragmented, and, theoretically, better served” (Hundley, 2002, p. 8).

The CRTC does not appear interested in seeing specialty channels re-create audiences. It appears much more interested in preserving the audiences other broadcasters already have. Despite its success, Lifetime is hardly a threat to conventional American broadcasters on its own. An argument could be made that spe-
cialty channels collectively pose a threat to conventional broadcasters, but that issue is beyond the scope of this discussion. Conventional broadcasters have certainly been affected by the success of specialty channels, but the networks have responded to the changing environment. Many specialty channels “are owned by the old networks, who have moved into this area in self-defence” (Vipond, 2000, p. 122).

Depending on how the data is interpreted, it can be argued that “Canada is the most fragmented television market in the world,” second only to the United States in numbers of channels available per household (Jeffrey, 1994, p. 9). If the cable system is being used to contain American cultural influence, it would seem that extreme fragmentation would be undesirable. Fragmentation does have a major impact on audiences. It can provide increased choice, more commercialization, and decreased attention spans through the use of the remote control. Fragmentation also results in smaller audiences for particular programs (Jeffrey, 1994). Even the most popular specialty channel in Canada, TSN, garners just 4% of the national audience (Geddes, 1999). Although Russell Neuman’s comments concern the impact of specialty services on the American broadcasting system, his thoughts are applicable to Canada and the future of the mass audience here: “Cultural industries will battle for a share of the audience, cross over into one another's traditional territory, and some will go under” (Jeffrey, 1994, p. 10).

Kimberly Neuendorf, Leo Jeffries, and David Atkin take another approach, arguing that competitors actually support one another in a sense: “Fans of one channel do generally tend to seek redundant programming” (Neuendorf, Jeffries, & Atkin, 2000, p. 193). This concept of a channel repertoire is complicated but particularly applicable to specialty television. Viewers of HGTV, for example, may seek out programming on the Food Network, depending on their channel repertoire. Audiences may have a wide variety of choices but may actually desire redundancy in programming (Neuendorf and Atkin, 2000).

The CRTC’s policies do not foster competition, despite the fact that competition might eliminate some of the clutter on the television dial, as Neuman suggests. At the very least, it might allow specialty channels to be more responsive to their viewers and lead to a stronger broadcasting system. Instead, the CRTC has put in place a system that ensures the survival of virtually all of the specialty channels, regardless of the audiences they attract. Not one of the specialty channels in Canada would be profitable without the revenue they receive from cable subscriptions. Only with the licensing of digital services has the CRTC strayed from its policy of preventing true competition; in this case alone, it has allowed stations to survive based on the audiences they attract instead of the cable subscription revenue they can obtain.

**Conclusions**

In a study of this kind, there is always the risk of oversimplifying one’s argument. There are many factors that go into the original licensing process, as well as any request for a later amendment to those conditions. It would be impossible to consider all of the pertinent issues that go into the licensing process. But there is evi-
dence to suggest that many applicants for specialty channel licences are aware of the pitfalls that come with certain CRTC programming regulations well in advance of going on the air.

It can also be demonstrated that broadcasters that want the regulator to amend their licences can achieve their goals provided the application is made at the most opportune time. In many instances, it can be suggested that broadcasters are already preparing for the amendment process before they have even been granted licences. The cases of Headline Sports and Showcase suggest that the best time for requesting a licence change is in the middle of the term. The broadcaster has the ability to be more prepared than the regulator or competitors who might oppose any proposed changes. By applying for changes in the middle of a term, the specialty channel controls the terms of discussion, avoiding having its request considered alongside all the other factors that come up during a licence renewal. During the middle of a licence term, the broadcaster’s request may be viewed in greater isolation by the Commission, which may lack the perspective it has when evaluating the broadcaster’s overall record during renewal time. Requests made to change conditions at renewal time may be viewed more in terms of punishment and reward and as part of the broadcaster’s overall record. In addition, it may be difficult for competitors to fully research and present effective counterarguments to the CRTC in opposition to a mid-term request. What little public input is provided at a broadcaster’s licence renewal hearing is unlikely to be duplicated when the CRTC considers changes in the middle of a term.

The least favourable time to secure any significant release of obligation for a specialty channel would actually appear to be when the licence comes up for renewal. WTN and Bravo! were unable to obtain changes to their licences at this point, when opposition from other broadcasters was at its strongest. Competitors have the time to conduct research and make persuasive counterarguments in the case of licence renewal. YTV, on the other hand, ended up using an incremental approach, securing gradual changes to its licence over a long period of time. But a large part of YTV’s success with the CRTC came from its persistence and requests that it made in the middle of its term, giving a sense of necessity to the requests, and this success took considerable time and patience to achieve.

In its decisions concerning specialty channels, the CRTC has lacked consistency, and this may have contributed to operators being less than honest in revealing their motives when applying for licences. In the cases of WTN and Bravo!, the regulator decided against granting the licence amendments requested. However, in the Headline Sports example, the CRTC allowed a fundamental change to the service, over the objection of competitors. It is only speculation, but a possible motive and explanation for the inconsistency of the Commission’s decisions may be a desire to undo mistakes. In the cases of YTV and WTN, there was no urgency to grant sweeping changes to their licences, given the channels’ profitability. With Headline Sports, the CRTC may have had concerns over the specialty channel’s long-term viability and may not have wanted to be seen as the cause for the channel’s failure. Furthermore, facing less scrutiny during a mid-
term hearing made it easier for the Commission to succumb to pressure from the broadcaster for changes to the licence.

For the most part, it appears that Canadian specialty channels have a desire to maximize profits rather than simply accepting the strong rate of returns that would be provided by relying on cable subscription revenue alone. The specialty channels have quickly discovered that money invested in programming is recovered almost dollar for dollar in advertising revenue and usually results in greatly increased profits. The decisions these channels make may not always be prudent ones, but they are attempting to deal with market realities the CRTC prefers to ignore. From the examination of the five specialty channels studied, it appears that the CRTC has put mechanisms in place that keep these channels reliant on cable subscription revenues. The Commission has forced licence applicants to willingly agree to obligations they almost certainly know are not financially sensible, even before they go to air. These conditions force the operators of specialty channels to attempt to devise creative ways of convincing the CRTC to ultimately change the rules they agreed to play by in the first place. In many cases, the CRTC licensing process becomes an exercise in subterfuge, with applicants trying to conceal their true agendas. Winning a licence is the key.

The licensing process the CRTC has put in place has consequences. With many applicants merely paying lip-service when trying to obtain a licence, the Commission may not end up with the best licensee in some cases. The regulator has no way of really knowing which applicants are concealing their true motives. The CRTC may overlook many applicants who are actually better suited to operate a specialty channel than the ones who ultimately win a licence.

Although Toronto 1 was licenced as a conventional broadcaster in 2003, it provides an excellent illustration of the problems created by the CRTC’s approach to licensing new entrants. Craig Broadcasting was granted a licence for a new television station. Craig beat out applications from TorStar and Alliance Atlantis, in large part because it promised to invest considerably more money into local programming and production, as well as to air unusually high levels of Canadian content during prime time hours—promises which were unrealistic (DaCruz, 2004; Norris, 2004). By contrast, TorStar’s application called for a considerably less ambitious operation that would utilize synergies with *The Toronto Star* newsroom and would build slowly (Zerbisias, 2004).

Toronto 1 lost over $23 million in its first year of operation, and the Craig family was forced to sell the station and the rest of its television holdings in 2004, leading to accusations of licence trafficking (Reguly, 2004). In the end, CHUM purchased Craig’s television holdings, forming a national network and selling off the Toronto 1 operation to Quebecor (DaCruz, 2004). The CRTC had little choice but to approve these sales to correct a mistake in judgment it had made when granting the original licence.

Another possible consequence of the approach taken by the CRTC is that the natural evolution of specialty channels is being altered. Consider the Headline Sports example. In the United States, ESPN became the most successful specialty
channel of all. It is believed to be worth over $15 billion, and it earns gross revenues in excess of $1.3 billion (Shea, 2000). It has spawned a plethora of spin-offs, including ESPN-2, ESPN News, and ESPN Classic. ESPN-2 aired programming that ESPN used to air but had largely outgrown. ESPN News was strictly a news service, much like Headline Sports was intended to be in Canada. There was specialty competition from FOX Sports, but it tended to concentrate on acquiring regional rights to sporting events. FOX did make an impact on ESPN’s bottom line, but it was not a threat to its survival (The Economist, 1998).

It would seem that the natural evolution of specialty sports broadcasting in Canada would have been for TSN to add a spin-off channel. The owners of TSN did apply for a licence for a channel called TSN-PLUS, which would have provided programming to two distinct parts of the country, split into the East and West (CRTC, 1996c).

If the CRTC had given a licence to an operator such as TSN for a sports news service, it may not have found itself in the position of having to amend its licence less than two years after start-up. An established network such as TSN would have had little motivation to deviate from the original conditions of the licence. But it is possible the owners of Headline Sports wanted to operate a traditional sports network and saw a sports news service as a way of establishing a beachhead toward that goal. A high-overhead sports service with live event coverage may not be viable on the higher-tier of the cable system. That would partially explain Headline Sports/The Score’s financial problems. If the CRTC’s goal was to provide a sports highlights service, it should have taken greater care investigating who is genuinely committed to providing this kind of service. If the CRTC deems such a service to be viable, when it changes the conditions of the licence to suit the grandiose and possibly unrealistic ambitions of a broadcaster, it encourages other broadcasters to make similar requests and conceal their true motives when applying for licences.

This is only a starting point for further study and investigation. The way specialty television and cable companies interact with the CRTC is a fascinating area to explore. It will be interesting to see how the Commission deals with specialty channels in the future. Channels operating on the higher tiers may find it more difficult to turn profits in the future. How the CRTC handles these possible problems will be worth noting. It will also be interesting to observe what the CRTC does with mature specialty channels such as YTV and TSN if they wish to alter their operations in the pursuit of greater profits.

When the CRTC licensed specialty channels for digital carriage only, it eliminated Canadian content regulations, but it also provided no support mechanisms such as guaranteed subscription revenues. In this atmosphere, some operators such as WTSN failed and ceased operations, unable to attract sufficient audiences and advertisers (Canada NewsWire, 2003).

Perhaps the CRTC should reconsider the fundamental reason for its regulation of specialty channels, preserving Canadian culture. Specialty channels do not appear to be achieving that goal. In fact, they seem to work against it in many
ways: “Cable in Canada has served historically to introduce more choice of U.S. programs,” (Jeffrey, 1994, p. 8). With the dividing line between specialty channels and conventional broadcasters becoming increasingly blurred, the need for a consistent and coherent policy has become more imperative than ever.

Note
1. In many cases, broadcasters are granted licences for a specific period of time, but the CRTC is unable to rule on renewal of that licence before the end of the time period, so the CRTC will periodically provide administrative extensions of the licence for a period of time, usually a year.

References


CRTC Documents


