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Communications  
Canada

# *Distribution Undertakings and the Broadcasting Act*

*Information on changes  
in Canada's broadcasting  
legislation for S/MATVs and  
rebroadcasting systems*

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# ***NEW BROADCASTING LEGISLATION***

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New legislation dealing with broadcasting came into effect when Bill C-40 was proclaimed in force on June 4, 1991.

The information on the new legislation in this booklet will help you determine if and how you are affected by the new legislation dealing with broadcasting. It provides general guidance on:

- \* how to get information on the Canadian Radio-television and Telecommunications Commission (CRTC) S/MATV exemption criteria (CRTC Public Notice 1989-47);
- \* which signals are available for legitimate retransmission and who to contact to receive them;
- \* how to apply for a broadcasting licence from the CRTC and a broadcasting certificate from Communications Canada;
- \* what the offences and penalties are for the unauthorized decoding and retransmission of scrambled signals;
- \* where and how to contact Communications Canada or the CRTC for more information on the changes to the law and on how to become an authorized distribution undertaking.

Additional information on the reception and retransmission of illegally decoded signals is contained in Communications Canada's information booklet entitled *Decoding the Law on Decoding*, available from Communications Canada and CRTC offices across the country.

## ***Changes in the law***

The new Canadian *Broadcasting Act* was proclaimed into law on June 4, 1991. At the same time, the *Radiocommunication Act* was amended to deal with the unauthorized decoding and retransmission of scrambled satellite TV signals by broadcasting undertakings.

The new *Broadcasting Act's* definition of distribution undertakings (see Glossary) includes undertakings such as Satellite Master Antenna Television and Master Antenna Television systems (S/MATVs) and rebroadcasting systems.

The new Act clearly applies to all broadcasting undertakings, *whether or not they are carried on for profit or whether or not they are carried on as part of any other activity*, such as a condominium or hotel operation. As a result, it is recommended that operators of unlicensed broadcasting undertakings apply for a broadcasting licence from the CRTC and a broadcasting certificate from Communications Canada.

S/MATVs do not require a broadcasting licence from the CRTC or a broadcasting certificate from Communications Canada if they operate in accordance with the CRTC's and Communications Canada's exemption criteria.

In addition, under the amended *Radiocommunication Act*, unauthorized decoding of scrambled TV signals and reception and/or retransmission of illegally decoded signals carries a risk of significant penalties.

If you are engaged in any of these activities, you should read this booklet carefully. It is intended to give you an overview of the new legislation. If you have specific questions on how the law applies to you, it would probably be helpful to consult a lawyer.

## **BROADCASTING UNDERTAKINGS**

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The new *Broadcasting Act* defines a broadcasting undertaking to include a distribution undertaking, a programming undertaking and a network. Thus, cable systems, S/MATV systems and community rebroadcasting systems are all broadcasting undertakings, because they are distribution undertakings.

Section 32 of the new *Broadcasting Act* prohibits anyone from carrying on a broadcasting undertaking without a licence, unless the undertaking, for example a S/MATV, has been exempted from having to obtain a licence.

In addition, sub-section 4(3) of the *Broadcasting Act* states: "*For greater certainty, this Act applies in respect of broadcasting undertakings whether or not they are carried on for profit or as part of, or in connection with, any other undertaking or activity.*" This means that undertakings that carry on broadcasting activities on a co-operative basis or as a complementary part of another enterprise or activity, such as a condominium or hotel operation, are subject to the Act.

### ***If You Operate a S/MATV System***

However, the CRTC exempts S/MATVs from the requirement to hold a licence provided they adhere to the Commission's exemption criteria. These criteria state, among other things, that the signals carried on a S/MATV system should be the same as those authorized for carriage on the licensed cable system in the area where the S/MATV system is located. The criteria are outlined in CRTC Public Notice 1989-47, entitled *Master Antenna Television Systems Exemption*, which is available from the CRTC.

If you are operating your S/MATV system in accordance with the exemption criteria, you do not require a licence.

If you are not operating in accordance with the exemption criteria, and if you do not have a broadcasting licence, you could face significant penalties under the *Broadcasting Act*, since the Act now clearly applies to S/MATV systems. You could also face penalties under the *Radiocommunication Act* for failing to obtain a broadcasting certificate -- a technical certificate issued by Communications Canada. The penalties are summarized on the next page.

## ***If You Operate a Community Rebroadcasting System***

### **The Nipawin Case**

During the 1970s and 1980s, several community groups began building transmitters and/or cable television systems. These groups sought to bring to their communities distant services that were not available "off-air." Often many of these services were delivered by satellite from the United States. Some of these groups did not obtain the authorizations necessary under the *Radio Act* (now the *Radiocommunication Act*) and/or the *Broadcasting Act*. This was the case in Nipawin, Saskatchewan, where a not-for-profit community group operated television transmitters beaming American satellite-delivered services.

Following complaints, the community group was charged for not having the licences or authorization required under the *Radio Act* and the *Broadcasting Act*. The case eventually went to the Supreme Court of Canada, which unanimously ruled on January 22, 1991 that both laws apply to not-for-profit as well as to profit-making enterprises.

Until the Supreme Court ruling, rendered under the old *Broadcasting Act*, some had argued that it was unclear whether or not the old Act applied to non-profit organizations.

### **The *Broadcasting Act***

The new *Broadcasting Act*, however, eliminates any uncertainty and supersedes the Supreme Court ruling. Sub-section 4(3) of the Act says: "*For greater certainty, this Act applies in respect of broadcasting undertakings whether or not they are carried on for profit or as part of, or in connection with, any other undertaking or activity.*" This means that undertakings that carry on broadcasting activities on a co-operative or non-profit basis, or that carry on these activities to complement another enterprise or activity, are subject to the Act.

If you operate a community rebroadcasting system and you do not have a broadcasting licence issued by the CRTC or a broadcasting certificate issued by Communications Canada you should apply to obtain these authorizations, whether your service is a profit-making enterprise or not.

If you fail to do so, you could face charges or civil action under the *Broadcasting Act* for not having a broadcasting licence from the CRTC. In addition, you could face charges under the *Radiocommunication Act* if you are operating your equipment without a broadcasting certificate. The penalties for not having the required authorizations are summarized in the box below.

### **Operating a Non-Exempt Broadcasting Undertaking Without Authorization**

You could face criminal charges under the Broadcasting Act for not having a broadcasting licence from the CRTC. Conviction brings a maximum fine of \$25,000 per day for individuals and \$200,000 per day for corporations.

You could also face charges under the Radiocommunication Act if you are operating your equipment without a broadcasting certificate, which is issued by Communications Canada. Conviction under this Act brings a maximum fine of \$5,000 per day or imprisonment for up to one year for individuals and a maximum fine of \$25,000 per day for corporations.

S/MATV systems that operate in accordance with the CRTC's S/MATV exemption criteria (CRTC Public Notice 1989-47) are exempt from having to obtain a broadcasting licence.

### ***The Radiocommunication Act and Decoding Signals***

The changes to the *Radiocommunication Act* make the retransmission of satellite signals that have been decoded without authorization a very costly offence. If you are a S/MATV or community rebroadcasting system operator, you could face a fine of up to \$20,000 per day and/or a prison term of up to one year for retransmitting scrambled signals that have been decoded illegally (that is, without authorization). Individual members of a corporation, such as directors, could face the same charges. If the S/MATV or rebroadcasting system is a corporation, it could face an additional corporate penalty of up to \$200,000 per day.

In addition, the *Radiocommunication Act* makes it a criminal offence to decode scrambled signals without authorization and to receive illegally decoded signals even when these signals are not retransmitted. If you are engaged in this activity, you could face charges.

The specific infractions and penalties related to unauthorized decoding under the *Radiocommunication Act* are summarized in the shaded box on page 10.

### ***Private Right of Action***

The new law also establishes a civil -- or private -- right of action.

This right of action permits anyone with a proprietary interest in scrambled programming, or anyone who holds a CRTC broadcasting licence or is a manufacturer, supplier or seller of legitimate decoders to seek legal recourse through a civil court action for any financial loss suffered as a result of unauthorized reception.

Complainants can sue individual home dish owners as well as commercial enterprises for damages, obtain injunctions against persons or companies engaged in the illegal activity, or seek any other remedy that a court sees fit to impose. The maximum amount a private individual who is decoding signals strictly for personal use can be sued for is \$1,000, but there is no limit to the damages that can be awarded when a corporation or company is sued.

## ***LEGITIMIZING YOUR OPERATION***

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You can, of course, avoid these penalties. It is not as hard as you might think to transform your S/MATV or rebroadcasting operation into a legitimate undertaking and still provide your viewers with a comprehensive and appealing broadcasting service.

### ***Authorization Procedures***

The authorizations required for non-exempt broadcasting undertakings are a broadcasting licence and a broadcasting certificate. A broadcasting licence is issued by the CRTC under the *Broadcasting Act* and a broadcasting certificate is issued by Communications Canada under the *Radiocommunication Act*.

The regional offices of the CRTC and the district offices of Communications Canada will handle inquiries about obtaining a broadcasting licence and a broadcasting certificate. The locations and telephone numbers of these offices are listed at the back of this booklet.

Obtaining the necessary authorization is not necessarily a complicated, costly process. The CRTC and Communications Canada have simplified application procedures for small cable and low-power over-the-air facilities. You can ask the CRTC and/or Communications Canada to help you determine how to proceed.



If you are a S/MATV operator, the CRTC will be happy to explain its exemption criteria to you so you may comply with them.

For non-exempt broadcasting undertakings serving small communities, abbreviated licence applications are available from the CRTC and abbreviated application forms for broadcasting certificates are available from Communications Canada. There is no application fee for either document.

The CRTC's role is to conduct a public process that allows interested parties to voice their opinion/comments on licence applications. The *Broadcasting Act* requires that the CRTC hold a public hearing to issue a new licence; however, unless there are issues raised by the application that require discussion at the hearing, the applicant is not required to appear.

The CRTC will not issue a broadcasting licence without certification from Communications Canada that the application for a broadcasting certificate satisfies the requirements of the *Radiocommunication Act*.

After a completed application is received, it can take six months or more for a licence to be issued. This is not because it is complicated, but because of the requirements of the public process.

Licences can be issued for up to seven years and there is an annual licence fee that varies depending on the undertaking. For example, the annual licence fee for a small undertaking is \$25.00.

Once a licence has been issued, the undertaking need only respect applicable regulatory requirements. In the case of distribution systems, the regulations are less stringent for undertakings serving communities in isolated or remote locations.

## ***Programming***

It was once difficult for some S/MATV and other distribution systems to obtain legitimate programming. The CRTC, however, encourages Canadian programming services to sell to distribution systems on the same terms, whether S/MATV operations, rebroadcasters, or cable operations.

Furthermore, paragraph 10(1)(h) of the new *Broadcasting Act* states that the CRTC "*may make regulations . . . for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings.*" This means that the CRTC now has the power to mediate disputes between programmers and distribution systems.

Programming services of course, are more than willing to negotiate affiliation agreements with undertakings that operate in accordance with the CRTC's S/MATV exemption criteria or the *Broadcasting Act* and the *Radiocommunication Act*.

In other words, programming *is* available to your system.

The CRTC publishes a list of eligible satellite programming services -- Canadian and American -- that it has authorized for carriage on cable and S/MATV systems. To obtain the latest copy of the list of authorized services, call the CRTC office nearest you.

Some programming services, both scrambled and unscrambled, require contractual affiliation agreements to carry their services on distribution systems. A list of the Canadian services that require affiliation agreements is published in this booklet along with their telephone numbers on pages 8 and 9. You should contact them to find out how you can be authorized to distribute their services legitimately.

American specialty services also require contractual agreements and you should contact those services that appear on the CRTC's authorized list as well. Or contact Cancom, Specialty Program Source or First Choice, which represent many of the American services.

## ***HOW TO ARRANGE AFFILIATION*** \_\_\_\_\_

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The following list of the satellite programming services available to Canadian distribution undertakings will allow you to get in touch with these companies' services immediately. Call and ask to speak to an affiliate representative. Explain that you operate a distribution system and that you would like to distribute their service(s) legitimately to your viewers. The representatives will be more than willing to discuss the details with you.

Although most of the services on this list are available nationally, some of the services may not be available in all parts of the country. Therefore, tell the representatives the location of your system and ask if this affects the availability of their services.

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## Who to Call for Affiliation

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### Wholesalers/Agents

#### Cancom

British Columbia, Alberta, Yukon and  
Northwest Territories:

**(403) 438-2690**

Saskatchewan and Manitoba:

**(306) 934-2955**

Ontario: **(416) 272-4960**

Quebec: **(514) 866-4204**

Maritimes: **(902) 425-3472**

*Services available from Cancom to  
distribution undertakings*

CHCH-TV Hamilton, Ontario

CHAN-TV Vancouver, B.C.

CITV-TV Edmonton, Alberta

CFTM-TV Montreal, Quebec

WXYZ-TV (ABC) Detroit

WJBK-TV (CBS) Detroit

WDIV-TV (NBC) Detroit

WTVS-TV (PBS) Detroit

WTBS-TV Atlanta

WPIX-TV New York

WWOR-TV New York

WGN-TV Chicago

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**First Choice** (east of Ontario-  
Manitoba border)

**(416) 364-9115 or 1-800-263-8965**

*Services available from First Choice to  
distribution undertakings*

First Choice Pay-TV

The Nashville Network

WWOR-TV New York

WSBK-TV Boston

#### Specialty Program Source

**1-800-461-3255**

*Services available from Specialty  
Program Source to distribution  
undertakings*

CHCH-TV Hamilton, Ontario

CHAN-TV Vancouver, B.C.

CITV-TV Edmonton, Alberta

CFTM-TV Montreal, Quebec

WJBK-TV (CBS) Detroit

WXYZ-TV (ABC) Detroit

WDIV-TV (NBC) Detroit

WTVS-TV (PBS) Detroit

WPIX-TV New York

WSBK-TV Boston

WTBS-TV Atlanta

WWOR-TV New York

WGN-TV Chicago

Country Music Television

The Nashville Network

Arts & Entertainment

CNN/CNN Headline News

Black Entertainment TV

The Weather Channel

The Learning Channel

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## ***Who to Call for Affiliation***

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### ***Programming Services***

**Canal Famille**

1-800-361-1830

**Family Channel**

(416) 867-8866

**MuchMusic**

(416) 591-7555

**MusiquePlus**

1-514-529-3210

**Newsworld**Call the Cancom number in your  
region**Réseau des sports (RDS)**

(514) 599-2236

**Superchannel** (west of Ontario-  
Manitoba border)

(403) 437-7744

**Super Écran**

1-800-361-1830

**The Sports Network (TSN)**

(416) 391-8232

**TV-5**

(514) 522-5322

**Vision-TV**

(416) 368-3194

**YTV**(416) 588-1143

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## **Radiocommunication Act** **Offences and Penalties**

- \* **For manufacturing, importing, distributing, leasing, offering for sale, selling, installing, modifying, possessing or operating an illegal decoder** A fine of up to \$5,000 per day or a prison term of up to one year, or both, for each offence, for an individual. For a corporation, a fine of up to \$25,000 per day.
- \* **For decoding a scrambled signal without permission** A fine of up to \$10,000 per day or a prison term of up to six months, or both, for an individual. For a corporation, a fine of up to \$25,000 per day.
- \* **For receiving a scrambled signal that has been decoded without permission** A fine of up to \$10,000 per day or a prison term of up to six months, or both, for an individual. For a corporation, a fine of up to \$25,000 per day.
- \* **For retransmitting a scrambled signal that has been decoded without permission** A fine of up to \$20,000 per day or a prison term of up to one year, or both, for an individual. For a corporation, a fine of up to \$200,000 per day.

A person, or a corporation, can be charged for any one of these offences, or for any combination of them, if applicable. Charges can be laid, and penalties applied, for each illegal activity occurring on more than one occasion.

Individual members of a corporation (company), such as directors, could also face these penalties, even if they do not actually engage in the illegal activity. They need only *allow* the illegal activity to go on.

These offences apply **only** to signals that are scrambled, including network feeds. They do **not** apply to unscrambled signals.

### ***Private Right of Action***

Any person or commercial enterprise engaging in the above activity will also be liable to civil suits from equipment manufacturers, broadcasting licensees, program distributors or their authorized agents, or distributors and dealers of legitimate equipment. The maximum damages that can be awarded against an individual is \$1,000. There is no limit to the damages that can be awarded against a corporation.

## HOW TO REACH US

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Call us at Communications Canada or the CRTC if you still have any questions.

### Communications Canada Offices

#### Head Office

Ottawa (613) 990-4900

#### Atlantic Region

Regional Office - Moncton  
(506) 851-6525

Charlottetown District  
Office  
(902) 566-7007

Halifax District Office  
(902) 426-2956

Saint John District Office  
(506) 636-4900

St. John's District Office  
(709) 772-5351

#### Quebec Region

Regional Office - Montreal  
(514) 283-2307

Chicoutimi District Office  
(418) 549-5781

Montreal District Office  
(514) 283-2112

Quebec District Office  
(418) 648-3715

Sherbrooke District Office  
(819) 564-5540

### Ontario Region

Regional Office - Toronto  
(416) 973-6157

Belleville District Office  
(613) 969-3629

Hamilton District Office  
(416) 572-2301

Kitchener District Office  
(519) 571-6610

London District Office  
(519) 645-4336

Ontario North District  
Office  
(705) 254-7411

Ottawa District Office  
(613) 998-3693

Toronto District Office  
(416) 973-6270

### Central Region

Regional Office -  
Winnipeg  
(204) 983-4391

Calgary District Office  
(403) 292-4207

Edmonton District Office  
(403) 495-2470

Grande Prairie District  
Office  
(403) 532-3533

Manitoba District Office  
(204) 983-5590

Regina District Office  
(306) 780-5007

Saskatoon District Office  
(306) 975-4893

Yellowknife District Office  
(403) 920-6603

### Pacific Region

Regional Office -  
Vancouver  
(604) 666-5702

Kootenays District Office  
(604) 426-8908

Lower Mainland District  
(604) 666-5468

Northern B.C. District  
(604) 561-5291

Okanagan District Office  
(604) 861-6037

Vancouver Island District  
Office  
(604) 363-3803

Yukon District Office  
(403) 667-5103

### CRTC Offices

Ottawa/Hull  
(819) 997-0313  
Halifax (902) 426-7997  
Montreal (514) 283-6607  
Winnipeg (204) 983-6306  
Vancouver (604) 666-2111

## **GLOSSARY**

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### ***Broadcasting***

*"Broadcasting" means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place.*

Broadcasting Act

### ***Broadcasting undertaking***

*"Broadcasting undertaking" includes a distribution undertaking, a programming undertaking and a network.* Broadcasting Act

### ***Distribution undertaking***

*"Distribution undertaking" means an undertaking for the reception of broadcasting and the retransmission thereof by radio waves or other means of telecommunication to more than one permanent or temporary residence or dwelling unit or to another such undertaking.* Broadcasting Act (Thus, cable systems, S/MATV systems and community rebroadcasting systems are all broadcasting undertakings, because they are distribution undertakings.)

### ***Encrypted***

*"Encrypted" means treated electronically or otherwise for the purpose of preventing intelligible reception.* Radiocommunication Act (Programming that is scrambled is encrypted programming.)

### ***Lawful distributor (includes authorized agents)***

*"Lawful distributor", in relation to an encrypted subscription programming signal or encrypted network feed, means a person who has the lawful right in Canada to transmit it and authorize its decoding.* Radiocommunication Act (A lawful distributor could be a programming service itself, or it could be a cable or S/MATV system, a community rebroadcasting system, or a direct-to-home (DTH) sales agent that has been authorized by a programming service to retransmit the service or sell subscriptions to it.)

### ***Network feed***

*"Network feed" means any radiocommunication that is transmitted*

- (a) by a network operation to its affiliates,*
- (b) to a network operation for retransmission by it to its affiliates, or*
- (c) by a lawful distributor to a programming undertaking.*

Radiocommunication Act

***Programming undertaking***

*"Programming undertaking" means an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus. Broadcasting Act*

***Public***

*"Public" includes persons who occupy apartments, hotel rooms or dwelling units situated in multi-unit buildings. Radiocommunication Act*

***Subscription programming signal***

*"Subscription programming signal" means radiocommunication that is intended for reception either directly or indirectly by the public in Canada or elsewhere on payment of a subscription fee or other charge. Radiocommunication Act*



