



Broadcasting Decision CRTC 2015-146

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Al Jazeera Network
Across Canada

Application 2013-1375-9, received 17 October 2013

Al Jazeera Arabic - Changes to conditions for distribution

*The Commission **approves in part** an application to delete the conditions for distribution of Al Jazeera Arabic (AJA), a non-Canadian Arabic-language news and public affairs programming service authorized for distribution in Canada.*

Rather than eliminating the conditions altogether, the Commission will shift the responsibility to Al Jazeera Network for retaining an audio-visual recording of AJA's programming and ensuring that AJA does not broadcast abusive comment.

If Al Jazeera Network fails to provide the recording as well as a French- or English-language transcript of the program in question, on the Commission's request, or is found to have broadcast abusive comment, the Commission may delete AJA from the List of non-Canadian programming services authorized for distribution. This would mean that AJA could not be distributed by Canadian broadcasting distribution undertakings.

The Commission considers that this approach could increase the diversity of news sources and points of view available to Canadians while ensuring that AJA does not broadcast abusive content.

This approach also reflects the more open-entry approach to non-Canadian news services that the Commission adopted in Broadcasting Public Notice 2008-100, where it cited the importance of a diversity of sources and points of view in news services available to Canadians.

As a result of this decision, Arabic-speaking Canadians are more likely to have access to AJA's programming, which is currently available in 50 countries, including the United States, the United Kingdom, France, Australia and Israel.

Application

1. Al Jazeera Network filed an application to delete conditions for distribution of Al Jazeera Arabic (AJA), a non-Canadian Arabic-language news and public affairs programming service authorized for distribution in Canada.

2. Currently, any licensed broadcasting distribution undertaking (BDU) wishing to distribute AJA must apply for a condition of licence that:
 - (a) requires the BDU to retain and provide a clear and intelligible audio-visual recording of each AJA program distributed on its undertaking for a period of
 - (i) four weeks after the date of distribution of the program; or
 - (ii) eight weeks after the date of distribution of the program, if the Commission receives a complaint about abusive comment from a person regarding the program or for any other reason wishes to investigate abusive programming and so notifies the licensee before the end of the period referred to in paragraph (i); and
 - (b) requires the BDU not to distribute, as part of the AJA programming service, any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability;
 - (c) permits the BDU to alter or delete the service in the course of its distribution solely for the purpose of complying with requirement (b) set out above.
3. In support of its proposal to delete the conditions, Al Jazeera Network submitted that no Canadian BDU has agreed to accept the conditions of distribution due to the responsibility and added cost of monitoring AJA's programming 24 hours per day, 7 days per week, to ensure that the service does not breach Canadian broadcasting standards. Al Jazeera Network asserted that these conditions have resulted in an "effective denial" of the original request, which has had the unintended consequence of denying Arabic-speaking Canadians access to AJA's programming and prevented it from developing a larger presence in Canada.
4. Al Jazeera Network stated that AJA offers viewers a "voice of the streets" that is different from other organizations reporting on the events happening in the Middle East and around the world. It asserted that AJA's programming is not filtered by government agencies and does not provide a monolithic viewpoint on the issues and events it covers. Al Jazeera Network also stated that all Al Jazeera services operate under an internal Code of Ethics designed to ensure that each channel offers balanced and unbiased programming and maintains the highest standards of journalism.
5. Al Jazeera Network further submitted that AJA is available in more than 50 countries, including several democracies such as the United States, the United Kingdom, France, Australia and Israel. According to Al Jazeera Network, these countries place no restrictions on AJA's distribution and have not had credible complaints relating to AJA's journalistic principles or its news and information programming. Furthermore, Al Jazeera Network stated that, in its view, the broad carriage that AJA has received

worldwide, as well as the unblemished track record that Al Jazeera English has in Canada and the interest Canadians have shown in accessing AJA's content online (its website receives close to five million views each month from Canada), provides clear evidence that the concerns that gave rise to the adoption of the distribution condition in Broadcasting Public Notice 2004-51 have proven to be unfounded.

6. Al Jazeera Network submitted that the Commission's decision to establish the conditions of distribution has proven to be unfair and inconsistent with the principles of freedom of expression and journalistic independence embodied in section 2(b) of the *Canadian Charter of Rights and Freedoms* and section 2(3) of the *Broadcasting Act* (the Act). It also stated that a number of non-Canadian news services have been authorized since 2008 without the distribution conditions applied to AJA in 2004. This has occurred following the Commission's adoption of a more open-entry approach when authorizing non-Canadian news services for distribution in Canada, as stated in Broadcasting Public Notice 2008-100.

Interventions

7. The Commission received interventions in support and in opposition to the application by individuals and organizations. The public record for this application can be found on the Commission's website at www.crtc.gc.ca or by using the application number provided above.
8. Most supporting interveners expressed their wish to have AJA made available in Canada in general and did not address the conditions of distribution.
9. Supporting interveners who addressed the conditions submitted that the conditions were discriminatory in that they have not been imposed on other services and serve to limit Canadians' access to a diversity of programming. Others argued that the conditions were inconsistent with the principles of freedom of expression and journalistic independence.
10. Opposing interveners presented examples of statements broadcast by AJA, which they alleged were anti-Semitic and homophobic. They submitted that AJA must be held responsible for comments made during AJA's coverage of events and by those parties interviewed by its journalists. Given the continued appearance of such comments on AJA, they considered that the current conditions must remain.

Applicant's reply

11. In its reply, Al Jazeera Network submitted that none of the statements cited by opposing interveners were made by AJA employees. It stated that AJA hosts, correspondents, reporters and journalists operate under a strict code of ethics that does not permit them to offer personal opinions or pick sides on controversial topics.
12. According to Al Jazeera Network, the comments were made by individuals who have a prominent role in their communities and were being interviewed or covered precisely because of their ability to influence opinion in the Middle East. According

to the applicant, the only way to properly address these views is to report them and expose them to the public.

Commission's analysis and decisions

13. Ensuring a diversity of sources of programming figures heavily among the objectives of Canadian broadcasting policy, as laid out in the Act. In particular, section 3(1)(i) of the Act states that the Canadian broadcasting system should provide programming that is “varied and comprehensive” and “drawn from local, regional, national, and international sources.” Programming must also “provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern.”
14. In order to achieve these objectives and given the importance that the Commission has historically placed on news services in the Canadian broadcasting system, the Commission has over the years authorized a wide variety of non-Canadian news services in both English and French for distribution in Canada. In Broadcasting Public Notice 2004-51, the Commission added AJA to the lists of eligible satellite services for distribution on a digital basis,¹ thereby authorizing it for distribution by Canadian BDUs. In doing so, it cited all of the above-quoted policy objectives and considered that they would be served by adding AJA to the lists.
15. More than 500 interveners in that proceeding argued that AJA had a pattern of broadcasting hate propaganda, in contravention of Canadian laws and broadcasting standards. The Commission therefore considered it appropriate to require any BDU wishing to distribute AJA to apply for a condition of licence that would require it to retain an audio-visual recording of AJA programming and ensure that abusive comment was not broadcast. The condition of licence would permit the BDU to alter or curtail the programming of AJA solely for the purpose of ensuring that no abusive comment is broadcast.
16. The Commission considers that a prohibition on the broadcast of certain content is a restriction on the freedom of expression of broadcasters. However, the right to freedom of expression is not absolute, but rather subject to such reasonable limits, prescribed by law, as can be demonstrably justified in a free and democratic society. The Commission has consistently considered prohibitions on the broadcast of abusive comment to be justified by the need to ensure that programming distributed in Canada reflects the circumstances and aspirations of Canadians, including equal rights and the multicultural and multiracial nature of Canadian society.
17. Since authorizing the distribution of AJA in Canada, the Commission has adopted a more open-entry approach to non-Canadian news services, again citing the importance of a diversity of sources and points of view in news services available to Canadians. In Broadcasting Public Notice 2008-100, the Commission stated that

¹ This is now referred to as the *List of non-Canadian programming services authorized for distribution* and is available on the Commission's website.

absent clear evidence that a non-Canadian news service will violate Canadian regulations, the Commission will be predisposed to authorize non-Canadian news services for distribution in Canada.

18. Subsequently, in Broadcasting Decision 2009-725, the Commission authorized Al Jazeera English for distribution in Canada without conditions. The Commission examined Al Jazeera English as a separate service from AJA and concluded that there was nothing on the record demonstrating that Al Jazeera English would violate the Commission's regulations.
19. In assessing whether a non-Canadian news service will violate Canadian regulations, the Commission applies the same standards it uses to evaluate the regulatory compliance of Canadian television services. In the case of the regulations against abusive comment,² the Commission considers on-air comments to violate the regulations when:
 - (a) the comments are abusive,
 - (b) the abusive comments, taken in context, tend or are likely to expose an individual, or a group or class of individuals, to hatred or contempt,
 - (c) the comments are based on an individual's race, national or ethnic origin, colour, religion, sex, sexual orientation, age, or mental or physical disability.
20. Accordingly, the Commission must assess the context in which comments are made to determine if they violate the prohibition on abusive comment. Factors considered in evaluating the context of comments include, but are not limited to:
 - the type or tone of the surrounding program or discussion;
 - the presence or absence of opposing views;
 - the presence or absence of claimed scientific or authoritative backing for the comments or for any opposing views presented in the program;
 - the presence or absence of causal links or stereotypes between a protected group and a negative quality.
21. When it authorized AJA for distribution in Canada in Broadcasting Public Notice 2004-51, the Commission noted that the examples of alleged abusive comments that interveners provided consisted primarily of statements "provided in isolation with almost no context to evaluate them," from programs that interveners did not always identify. The Commission therefore considered that they represented too slim an evidentiary base to characterize AJA's entire programming.

² See section 5(1)(b) of the *Television Broadcasting Regulations, 1987*.

22. The Commission considers that the examples of alleged abusive comment submitted by interveners in the current proceeding are generally similar to those received in the 2004 proceeding in that they have been provided in isolation, from largely unidentified programs, and out of any context that would allow them to be evaluated. In the absence of tapes of the programming or other information that provides context, it is difficult to decide definitively if AJA broadcasts abusive comment.
23. However, given that Al Jazeera Network is the applicant in this proceeding, the burden is on it to make the case that the conditions are no longer necessary. The Commission considers that Al Jazeera Network has failed to adequately address the statements cited by interveners or situate them in a context in a way that would enable the Commission to make determinations regarding whether the statements, taken in context, constituted abusive comment. In this regard, the Commission notes that the prohibition on abusive comment relates to all material broadcast by a service, not just those made by the service's employees and journalists.
24. Al Jazeera Network has argued that other jurisdictions have not placed restrictions on the distribution of AJA. The Commission, however, considers that Canadian broadcast standards should be upheld even if the standards are different in other countries and has taken action on non-Canadian services other than AJA to ensure that they meet Canadian standards.

Conclusion

25. The Commission considers that the distribution of AJA would increase the diversity of news sources and points of view available to Canadians. However, the Commission is concerned that Al Jazeera Network has not adequately addressed concerns expressed by interveners about its programming content and is of the view that broadcasts on AJA must meet Canadian broadcast standards. In light of these concerns, the Commission will shift the responsibility from BDUs to Al Jazeera Network itself to maintain audio-visual recordings and ensure that AJA does not broadcast abusive comment. It is of the view that this approach would be consistent with the more open-entry approach to non-Canadian news services adopted in Public Notice 2008-100 while permitting the Commission to monitor and assess whether AJA broadcasts abusive comment.
26. Accordingly, the Commission will no longer require BDUs wishing to distribute AJA to request conditions of licence requiring them to maintain recordings of AJA programming or to be responsible for ensuring that AJA does not broadcast abusive comment. It will remove the note in this regard from the *List of non-Canadian programming services authorized for distribution* (the List).

27. Instead, the Commission determines that, as a condition of its inclusion on the List, once a Canadian BDU chooses to distribute AJA, Al Jazeera Network is required:
- (a) to retain and provide a clear and intelligible audio-visual recording of each AJA program distributed on its undertaking for a period of four weeks after the date of distribution of the program;
 - (b) not to distribute, as part of the AJA programming service, any abusive comment or abusive pictorial representation that, when taken in context, tends to or is likely to expose an individual or group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, age or mental or physical disability.
28. Upon receipt of a complaint, the Commission will request Al Jazeera Network to submit audio-visual recordings and a verbatim transcript of the program in question. The transcript must be in English or in French, depending on the language in which the complaint was submitted. If Al Jazeera Network fails to provide the recordings and transcripts, or is found to have broadcast abusive comment, the Commission may delete AJA from the List. This would mean that AJA could not be distributed by Canadian BDUs.
29. The Commission reminds Al Jazeera Network that it is responsible for all programming that AJA broadcasts, including programming that contains statements made by third parties. However, as set out above, the Commission considers any statements that may be abusive in the context that they are broadcast.
30. The Commission also reminds Al Jazeera Network that the signal feed of AJA distributed in Canada must be the original feed of the service and not a feed specifically modified for Canada.

Related documents

- *Addition of Al Jazeera English to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Regulatory Policy CRTC 2009-725, 26 November 2009
- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory Policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Requests to add Al Jazeera to the lists of eligible satellite services for distribution on a digital basis*, Broadcasting Public Notice CRTC 2004-51, 15 July 2004

Secretary General