



A Terms of Trade Primer - Part 4 (License Term)

July 12, 2011 by Bob Tarantino

This is the fourth installment in our series about the new Terms of Trade applicable to the English-language Canadian private broadcasting industry ([Part 1](#), [Part 2](#), [Part 3](#)). This installment focuses on Section 5 (License Term) of the [Terms of Trade Agreement](#). This is the fourth of an anticipated nine posts which will be posted over the course of the next week and which will cover the Terms of Trade in detail. Once all nine posts have been published, the archived posts will be available at [this link](#).

What do the Terms of Trade say about... the duration of broadcast licenses?

Broadcast licenses can have a maximum duration of five years.

The term of a broadcast license must commence no later than the earlier of (i) delivery of the program (or last episode of a series) and (ii) first broadcast of the program (or episode of a series).

Broadcast licenses cannot provide for an automatic extension of term if a broadcaster picks up (one or more) additional season(s) of a series. This is an important point: many broadcast license have previously provided that the term of the license automatically extends if the broadcaster picks up a subsequent season of a series. So, for example, the Season 1 license would be for a five year term, but if the broadcaster picked up Season 2 for a five year term, then the Season 1 license would extend and terminate only once the Season 2 license had terminated - so the Season 1 license would effectively become a 6 year license (or longer, depending on when the Season 2 license actually started). By prohibiting such arrangements (and the Terms of Trade says such arrangements can exist "in no circumstances"), the potential value of early seasons of successful shows is reserved to the producer... subject to the next point.

Broadcasters are entitled to a right of first negotiation and a right of last refusal to acquire broadcast rights beyond the original five year term (through the payment of a "fair market value licensee fee"). Any subsequent license term can have a maximum duration of five years, and the broadcaster "may" acquire the rights "as of the earlier of" (i) 6 months prior to the expiry of the 3rd year of the initial term or (ii) 3 months after the signing of the license agreement for the second season. Those timeframes would also apply to any subsequent sets of negotiations for extended terms. The use of the word "may" in Section 5(c) of the Terms of Trade is presumably intended to convey that these timeframes are the earliest at which the broadcaster can sign a contract for an extension of the term - in other words, they have to wait until either the third year of the term or, if the production in question is a series, three months after signing the contract for a subsequent season - only once one of those milestones has passed can the broadcaster seek to go back and try to acquire an extension of the license term.

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