

---

## APPENDIX

### CBSC Decision 06/07-1408 CablePulse 24 re *CityNews* report (“Attempted Burglary”)

---

#### The Complaint

The CBSC received the following complaint via e-mail on August 10, 2007:

Dear CBSC,

I am appealing to you for assistance with a grievance I have with a local broadcaster. My concerns include their violation of my intellectual property rights and their violation of their own code of ethics.

The program in question was a news broadcast which aired on Wednesday, July 25th, 2007, on CP24 at about 18:08. The story recounted a mid-day break-in at my home in Toronto. I was working from home at the time and confronted the burglar. In his flight, he misstepped off my second-floor deck and fell, breaking his leg. While waiting for the police and ambulance to arrive, I took photographs of the suspect which I later posted on my photography website, hosted on the Flickr website (<http://www.flickr.com/photos/uwajedi/>). Two of those photos were broadcast on CP24 without my permission and without crediting me as the source of those photos.

The photographs in question can be found here:

No.1 -- <http://www.flickr.com/photos/uwajedi/897102844/> -- as seen in their broadcast: [http://farm2.static.flickr.com/1211/1072403003\\_4f3103c26f\\_b.jpg](http://farm2.static.flickr.com/1211/1072403003_4f3103c26f_b.jpg)

No.2 -- <http://www.flickr.com/photos/uwajedi/896242613/> -- as seen in their broadcast: [http://farm2.static.flickr.com/1429/1072395151\\_da894b2e3b\\_b.jpg](http://farm2.static.flickr.com/1429/1072395151_da894b2e3b_b.jpg)

I contacted the director of news programming for Citytv/CP24, Ms. [T. C.], with my complaint. Her response did not deal with the situation satisfactorily. (Our correspondence has been included at the bottom of this letter.)

My original complaint to [the Director of News Programming] concerned their use of my photography without my permission and without giving me credit for my work. [The Director of News Programming] replied that I gave her employees verbal permission to use my photographs, a claim I maintain is untrue. There had been some discussion with her staff that day on the possible use of my photography but we never reached an agreement. The conversation was interrupted when I received a phone call after which -- about a minute later -- the Citytv employees has [sic] left my property, effectively terminating any further discussion. [The Director of News Programming] also argues that by freely providing her cameraman with my business card and Flickr profile information -- which is included on the card -- is indicative that they had my permission to use my photography for their broadcast. A business card is nothing more than a business card. It was given out should they want to contact me at a later date to discuss possible use of my photography, not to signify that we had an agreement already.

However, this issue of permission appears to be a non-issue after [the Director of News Programming] informed me in her reply that, in her words, "Canadian copyright law recognizes that third party materials like photos may be used for the purposes of news reporting." I researched this claim and found the full clause of the *Copyright Act* to which she was referring. (<http://www.cb-cda.gc.ca/info/act-e.html#29.2>)

From the *Copyright Act*:

29.2 Fair dealing for the purpose of news reporting does not infringe copyright if the following are mentioned:

- (a) the source; and
- (b) if given in the source, the name of the
  - (i) author, in the case of a work,
  - (ii) performer, in the case of a performer's performance,
  - (iii) maker, in the case of a sound recording, or
  - (iv) broadcaster, in the case of a communication signal.

In their broadcast, they did not mention me or my website as the source of the photographs in question, and therefore I maintain that my copyrights have been violated by Citytv/CP24. Furthermore, the broadcaster has also violated their industry's *Code of Ethics* as proscribed by the RTNDA (<http://www.rtna.org/ethics/coe.shtml>) and endorsed by you, the CBSC (<http://www.cbcs.ca/english/codes/cabethics/ethics.htm>). The *RTNDA Code of Ethics* states, "Professional electronic journalists should clearly disclose the origin of information and label all material provided by outsiders."

The format of the CP24 channel repeats news stories throughout the day. It is a safe assumption that my uncredited photography was repeatedly broadcast on CP24 numerous times over the next several hours. The related website [www.citynews.ca](http://www.citynews.ca) also streams the CP24 live broadcast on the web. As well, I have a contact in the Flickr community who confirms my images were broadcast on the evening news on the main Citytv station. This complaint warrants an accounting by the broadcaster of the number of times these infractions occurred, and where they occurred beyond the sole incident that I personally observed.

In retribution, I seek only to reinstate what is my right. The broadcaster should, on air, make a retraction and a statement attributing credit for my intellectual property back to me, to appear on every channel and in every media where they broadcast my uncredited work with exposure to an expected viewership comparable to that which viewed the original broadcast(s) of my uncredited photos. Also, I deserve a personal apology from the broadcaster for their violations of my copyright.

I appreciate any assistance or mediation your office can offer me in finding a satisfactory resolution. Though I have tried to be as detailed as possible, if you should require any further information please do not hesitate to contact me.

As mentioned above, the complainant provided the correspondence he had had with the station prior to filing his CBSC complaint. He had sent the following e-mail to the broadcaster on July 31:

I am writing to you regarding your news broadcast on Wednesday, July 25th, 2007, during which your organization violated my intellectual property rights.

The story in question concerned a mid-day break-in at my home in Toronto's Beaches that same day while I was at home. In his flight, the would-be burglar fell from my second-storey deck and broke his leg. He was soon apprehended by the police. One of your cameramen responded to the scene though I refused to give him an interview. Later, he returned accompanied with an interviewer, Mr. [D.], and again, I refused to provide them with content for your broadcast.

The story that was broadcast on CityTV and CP24 (and presumably streamed on CP24.com, as well) included my photographs of the suspect as he lay on the ground below. The material was stolen from my Flickr site without my permission and without crediting me, for commercial use and your sole financial gain.

Flickr -- a subsidiary of Rogers Media, of which you will also be a part pending CRTC approval -- is not a stock photo site. All of my photography is copyrighted, with all rights reserved by me.

As the director of news programming for CityTV and CP24, I am appealing first to you in finding a resolution in this unfortunate situation. If this matter is beyond the scope of your position, I would appreciate if you would forward my concerns to the appropriate person or department.

Your prompt reply concerning this matter would be greatly appreciated.

#### The station responded on August 2:

As the director of news programming for Citytv and CP24 I will respond to your letter dated Tuesday July 31st, 2007. I have reviewed the material that was broadcast. As well, I have spoken to the reporter and cameraperson, who were on scene following the residential robbery. Both employees have provided a detailed account of the day's events. They clearly recall the conversations with you, and while you declined an on-camera interview, you freely provided your business card, Flickr profile information and you verbally gave permission for the use of the photograph.

You have suggested in your letter below that our story was broadcast for "financial gain". This statement is completely false. Our shows contain material and information that we believe in very strongly; stories that are very important to Torontonians. Canadian copyright law recognizes that third party materials like photos may be used for the purposes of news reporting. It was in that context that we used this photo.

Once again you did provide verbal permission and the accusations that you are making on FLICKR suggesting that Citytv News are "the real thieves" are false and inappropriate.

I hope that I have addressed your concerns.

#### **Broadcaster's Response**

Following the filing of the official complaint with the CBSC, the CP24 responded to the complainant again on September 6:

Your recent correspondence with the Canadian Broadcast Standards Council (CBSC File C06/07-1408) has been directed to our newsroom and as the director of news programming I will address your concerns.

As you know, I have previously reviewed this situation when your concerns, in email form, were sent to the newsroom on July 31st. After a brief investigation, I personally responded within two days. I have once again, spoken to the cameraperson and reporter on scene following that day's robbery. As well, I have reviewed the day's broadcasts on CP24, our 24-hour news channel and the CityNews shows on CityTV.

While your photos were not used in [the reporter]'s story on that evening's newscast, two photos were broadcast on CP24. The photos were included in a shortened version of this news event because the producer was informed that you had granted verbal permission for their use. To reiterate, you freely provided your business card and Flickr profile information. And while I agree that a business card does not indicate permission, the fact that you granted verbal permission with three CityNews personnel (reporter, cameraperson and intern) present, indicates quite clearly that you allowed these photos to be used in the broadcast.

With all due respect, we are not "thieves" as you have suggested on the internet. CityNews is very proud of our relationship with the viewing audience. We respond quickly to story suggestions and complaints. We encourage viewers to interact with us and participate in the news gathering process. We believed that you freely participated in that process and we're sorry that you misunderstood, but we do not believe that an on-air retraction is warranted.

If you would like to discuss this matter further, you can call me directly at, [(###) ###-####] ext [#####].

## Additional Correspondence

The complainant filed his Ruling Request on September 13 with the following letter:

Dear CBSC,

In response to my complaint -- CBSC File C06/07-1408 -- I received an email from Citytv on Thursday, September 6, 2007. I have reviewed the response and I am not satisfied that the matter has been resolved. Following are the main points that are leading me to submit a ruling request.

**\*\* Violations \*\***

The two main charges in my initial complaint involved violations of my copyrights and violations of their industry's code of ethics.

The broadcaster responded to the copyright violations claiming that I had provided them with verbal permission to use my photography in their broadcast. I emphatically deny having provided such permission. However, the issue of permission was abandoned when it was explained to me by the broadcaster that the *Copyright Act* allows them the defence of fair dealing in the use of my work when used for the purposes of news reporting -- on the condition that I be granted credit for my work. I did not receive that credit.

My complaint also concerned Citytv's use of material from an outside source (my

photographs) that, according to the *RTNDA Code of Ethics*, must be labeled as such with disclosure of the origin of the outsider material. Once again, this is a professional obligation that they did not fulfill. When the broadcaster withheld my right to credit, they also violated their industry's code of ethics. On that charge, the broadcaster avoided making any comment, and effectively ignored a large bulk of my concerns.

**\*\* Inaccuracies \*\***

In their response, Citytv's director of news programming, [T. C.], focused solely on her assurance that I provided her employees with verbal permission. She says that three of her employees were witness to my granting permission. However, I only met two Citytv employees on the day in question: the cameraman who arrived early at the scene; about an hour later, the cameraman returned with an on-air personality, Mr. [D.], to request -- again, and in vain -- an on-camera interview. There was never a third person present, presumably the intern the broadcaster claims was also there. (In my first contact with [the Director of News Programming], which I included in my original complaint, she recounts how she consulted her two employees for a full account of the day's events. Where does this claim of a third employee stem from, and why?)

**\*\* Accounting of Occurrences \*\***

Finally, I had asked in my original complaint for the broadcaster to take account of the number of times the infractions in question took place. The broadcaster did not fulfill that request. In fact, the broadcaster will only admit to the sole occurrence to which I was a witness, despite my having a witness who saw my photos on the Citytv evening broadcast. (The broadcaster claims my photos were not used in that broadcast.)

They do, however, admit that my photos were used in the "shortened" version of the news event that was broadcast on CP24. This baffles me since a shortening normally suggests a reduction in material, and not the inclusion of new material. The broadcaster also did not provide an accounting of the frequency of infractions in the CP24 broadcast cycle, nor of the live video stream that appears on their website -- [www.citynews.ca](http://www.citynews.ca) -- which I requested.

Citytv concluded their response with the assertion that I "freely participated" in the process of news gathering (note: I refused to provide them with an on-air interview multiple times) and they're sorry that I "misunderstood." In the end, it appears to me that the broadcaster is not acting in good faith.

I would be very grateful if you could review the matter on our behalf.