

Copyright Board
Canada



Commission du droit d'auteur
Canada

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Citation *CBRA Media Monitoring Tariffs (2023-2025)*, 2022 CB 2
Member Nathalie Théberge
Proposed Tariffs Considered CBRA Commercial Media Monitoring Tariff, 2023-2025
CBRA Non-Commercial Media Monitoring Tariff, 2023-2025

Approval of Proposed Tariffs
As
CBRA Commercial Monitoring Tariff (2023-2025)
&
CBRA Non-Commercial Media Monitoring Tariff (2023-2025)

REASONS FOR DECISION

I. OVERVIEW

[1] This decision relates to two tariffs proposed by the Canadian Broadcasters Rights Agency (the “CBRA”): *CBRA Commercial Media Monitoring Tariff, 2023-2025* and *CBRA Non-Commercial Media Monitoring Tariff, 2023-2025* (jointly, the “Proposed Tariffs”).

[2] The Proposed Tariffs authorize the fixation of signals and the reproduction of programs¹, with one of the Proposed Tariffs targeting commercial users, and the other non-commercial users, which in this context are provincial governments and federal agencies.

[3] The Proposed Tariffs were filed on October 15th, 2021, published on the Board’s website on November 3, 2021, and no objections were filed.

[4] After due consideration, and for the reasons presented below, I find the Proposed Tariffs to be fair and equitable and as such, I approve them without changes.

¹ Per the *Broadcasting Act*, “programs” includes what we normally call at the Board “musical or audiovisual works.”

II. CONTEXT

[5] The Proposed Tariffs are aimed at media monitors. Such an entity

systematically monitors sources of information with a view to providing its clients with information that interests them. Monitors provide excerpts, transcripts and other forms of information concerning radio and television programs, mostly news, information and public affairs. In order to do so, monitors reproduce programs and fix the communication signals that carry them.²

[6] The Board last approved tariffs for media monitoring on July 31, 2021.³ The CBRA filed the Proposed Tariffs on October 15, 2021 and they were published on the Board's website on November 3, 2021. No objections were filed. On February 2, 2022, the Board issued Notice 2022-004, informing CBRA that the Board would not conduct a hearing and that it would issue a decision before January 1, 2023.

[7] The Board has approved tariffs for media monitoring from the year 2000. Royalty rates in past tariffs are expressed as a percentage of gross income for commercial users, and as a percentage of costs for non-commercial users. For any given year, the percentage rate for the two tariffs has been the same. The Proposed Tariffs follow the same approach as past approved tariffs.

[8] The following table gives the history of the Media Monitoring Tariffs.

Table 1: Media Monitoring Rates

Begin	End	Rate
2000*	2005	9%
2006	2006	9%
2007	2008	10%
2009	2010	10%
2011	2016	14%
2017	2019	14%
2020	2022	14%
2023**	2025	14%

* The non-commercial media-monitoring tariff was not proposed for 2000; rather it started in 2001.

** The rates for 2023-2025 are as proposed by CBRA.

² CBRA – *Commercial and Non-Commercial Media Monitoring Tariffs(2000-2005)*, (29 March 2005) Copyright Board Decision (reasons) at p 3.

³ CBRA – *Media Monitoring Tariffs (2020-2022)*, 2021 CB 6, online: <<https://decisions.cb-cda.gc.ca/cb-cda/decisions/en/item/500748/index.do>>; CBRA – *Commercial Media Monitoring Tariff (2020-2022) & CBRA – Non-Commercial Media Monitoring Tariff (2020-2022)*, 2021 CB 6-T, online: <<https://decisions.cb-cda.gc.ca/cb-cda/certified-homologues/en/item/500749/index.do>>.

III. ANALYSIS

[9] In reviewing the evidence, I considered whether the previously approved tariffs provided appropriate proxies for the Proposed Tariffs. My conclusion is that they do.

[10] In recent decisions, the Board has held that it can be appropriate to use the last-approved tariff as a proxy of what is fair.⁴ However, it also has held that changes in the relevant market can be one potential indicator when it may not be appropriate to use the last-approved tariff as a proxy—or at least not without an adjustment.⁵

[11] The last Board decision on media monitoring was issued on July 31, 2021. The Board approved a rate of 14% of gross revenue for the commercial tariff and 14% of costs for the non-commercial tariff. The Proposed Tariffs contain the same royalty rates and terms as these last approved tariffs.

[12] Since that time, CBRA has filed only two agreements, pursuant to section 76(2) of the Act.⁶ Both of these agreements are with commercial media monitors that are not Canadian companies for a period ending December 31, 2022. The first is with CARMA, a media monitor based in London, UK. The second is with Fullintel, a media monitor based in Concord, MA (USA). Both of these agreements also set a rate of 14% of revenue.

[13] These rates have not changed since the issuance of the last Board decision, which leads me to believe that no market changes relevant to the consideration of the proposed Commercial Media Monitoring Tariff have occurred. As such, I conclude that this last-approved tariff is an appropriate proxy for this tariff currently under consideration.

[14] Non-commercial media monitors have historically operated in a market with peculiar features: most non-commercial monitors license their rights through side agreements. These agreements are idiosyncratic and contain broader grants-of-rights than the tariff, in exchange for higher royalties. The Board has recognized in past decisions that the tariff operates as a benchmark for these agreements.⁷ No such agreements with non-commercial monitors have been filed in the period following the publication of the last approved tariff. Here again, in the absence of information showing changes in this market, I conclude that the last-approved tariff is an appropriate proxy for the tariff currently under consideration.

⁴ See *e.g.*, *SOCAN Tariff 9 – Sports Events (2018-2023)*, 2021 CB 6.

⁵ *Ibid* at para 22.

⁶ *Copyright Act*, RSC 1985 c C-42 [the Act].

⁷ See *CBRA – Media Monitoring Tariffs (2020-2022)*, *supra* note 3 at para 16; *CBRA – Tariffs for Commercial and Non-Commercial Media Monitors (2017-2019)*, CB-CDA 2018-159 (reasons) at para 12; *CBRA – Tariffs for Commercial and Non-Commercial Media Monitors (2011-2016)* (08 August 2014) Copyright Board Decision (reasons) at para 24.

[15] Finally, I examined whether a COVID-19-oriented adjustment would be required to either of the Proposed Tariffs. The royalty rates for the commercial and non-commercial tariffs are expressed as a percentage of revenues and costs, respectively. This makes the royalty rates “self-adjusting” to some extent. Furthermore, the Proposed Tariffs do not fix a minimum fee—thus avoiding potentially unfair situations where a user is relatively inactive but must still pay the full minimum fee. Lastly, the effective period of the Proposed Tariffs is 2023–2025, for which the Board has no evidence of the effect of COVID-19. For these reasons, I conclude that a COVID-19-oriented adjustment is not required.

IV. CONCLUSION

[16] In the absence of relevant changes in the market and considering that the Proposed Tariffs have the same rates, terms and conditions as the previously approved tariffs for the same uses, I find that the Proposed Tariffs are fair and equitable and approved them as-is, without any adjustments under the titles *CBRA Commercial Media Monitoring Tariff (2023-2025)* and *CBRA Non-Commercial Media Monitoring Tariff (2023-2025)*.