

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2023-061]

NOTICE OF THE BOARD

Matter : Re:Sound Tariff 4 – Satellite Radio Services (2019-2021)

December 8, 2023

I. CONTEXT

[1] This proceeding would involve the consideration of the Proposed Tariff for the use of Re:Sound's repertoire as part of the offering of multi-channel subscription satellite radio services, for the years 2019-2021.

[2] After negotiations, on August 6, 2020, Re:Sound and SiriusXM Canada (the Parties) submitted to the Board a Joint Request for Approval of the Proposed Tariff, based on the text of what the Parties referred to as the "Settlement Tariff."

[3] As part of the Joint Request for Approval, the Parties filed submissions as required by Board Practice Notice PN 2022-005.

II. PRELIMINARY VIEW

[4] The Board has reviewed the submissions of the Parties, and finds, in a preliminary way, that the Proposed Tariffs have a single user, namely SiriusXM Canada, that the Settlement Tariff covers all the activities and the period of the Proposed Tariff, and that there are no other agreements that apply to the uses covered by the Settlement Tariff.

[5] Since the years covered by the Proposed Tariff are in the past, the Board can be certain the factual setting is fully known at this time, and that no other users are subject to the Proposed Tariffs. This is not always the case for Board proceedings, where proposed tariffs target future activities, and not all users or uses are identifiable at the time of proposed tariff consideration.

[6] The Board notes that, given subsection 67(3) and section 74 of the Copyright Act, the agreement that underpins the Settlement Tariff between the Parties will take precedence over any eventual approved tariff for the years in question. The relationship between the Parties would

therefore not be altered by the Board's consideration of the Proposed Tariff, because the Board-approved Tariff would not apply to the single user.

[7] In the Board's preliminary view, a tariff proceeding in the present case would be without actual practical effect, rendering the ensuing approved tariff moot and its consideration unnecessary.

[8] This appears at odds with the following requirement in the Copyright Act :

Informal and expeditious

66.502 All matters before the Board shall be dealt with as informally and expeditiously as the circumstances and considerations of fairness permit but, in any case, within any period or no later than any day provided for under this Act.

[9] The Board directs the Parties to its recent decision in *SOCAN Tariff 22.B – Commercial Radio and Satellite Radio (2007-2018)*¹ on the issue of mootness.

III. PARTIES' SUBMISSIONS

[10] In an effort to save time and resources, both for the Board and the Parties, and in accordance with section 66.502 of the Act, the Board is now seeking submissions from the Parties to determine whether or not there is value in proceeding with consideration of the Proposed Tariff.

[11] The Parties submissions should address:

1. Whether all the issues in relation to the Proposed Tariff are now moot; and
2. Regardless, whether there is any reason for the Board to consider the Proposed Tariff.

[12] The Parties may file their submissions with the Board no later than **Friday, January 12, 2024**.

Lara Taylor
Secretary General

¹ *SOCAN Tariff 22.B – Commercial Radio and Satellite Radio (2007-2018) and SOCAN Tariff 22.C – Other Audio Websites (2007-2018)*, 2023 CDA 6 at paras [107] to [136].