



**[CB-CDA 2024-023]**

## **NOTICE OF THE BOARD**

**Matters: Commercial Television Tariffs (2014-2024) and CBC Television Tariffs (2015-2025)**

March 28, 2024

### **I. CONTEXT**

[1] On February 4, 2021, in Notice CB-CDA 2021-008 and on December 21, 2021, in Notice CB-CDA 2021-059, the Board informed the parties that it would hold a hearing for the consideration of all of the following proposed tariffs (the “Proposed Tariffs”):

- **CMRRA**
  - Tariff No. 5 – Commercial Television Stations (2015, 2016, 2017, 2018, 2019)
  - Tariff No. 6 – Television Services of the Canadian Broadcasting Corporation (2016, 2017, 2018, 2019)
  
- **SOCAN**
  - Tariff No. 2.A – Commercial Television Stations (2014, 2015, 2016, 2017, 2018, 2019–2020, 2021, 2022–2024)
  - Tariff No. 2.D – Canadian Broadcasting Corporation (2015, 2016, 2017, 2018, 2019, 2020–2022, 2023–2025)
  - Tariff No. 17 – Transmission of Pay, Specialty and Other Television Services by Distribution Undertakings (2014, 2015, 2016, 2017, 2018, 2019–2020, 2021, 2022–2024)
  
- **SODRAC**
  - Tariff No. 8 – Reproduction of Musical Works by Commercial Television Stations (2017, 2018, 2019)
  
- **SOCAN/SODRAC**
  - Tariff No. 2.A.R – Commercial Television Stations (2020-2021, 2022–2024)

[2] At the time those notices were issued, the related proceedings had either been initiated but suspended (i.e., tariff periods before 2019—see CB-CDA 2018-088 and CB-CDA 2018-089) or had not yet been initiated (i.e., tariff periods from 2019—see CB-CDA 2021-008).

[3] On May 3, 2022, in Order CB-CDA 2022-024, the Board asked the parties to file Notices of grounds and Notices of grounds for objections in relation to the Proposed Tariffs.

[4] The parties were also asked to file submissions on which of the above Proposed Tariffs the Board should consider together.

[5] In particular,

- whether the Board should consider the Proposed Tariffs that cover uses by the CBC together with the Proposed Tariffs that cover uses by Commercial Television;
- whether the Board should consider the Proposed Tariffs with an effective period from 2019 onwards with all earlier Proposed Tariffs; and
- whether the Board should consider Proposed Tariffs applying to reproductions together with the Proposed Tariffs covering performances to the public (including communication to the public by telecommunication).

[6] The submissions were to also identify potential common issues, including the effect of exceptions on the pricing of reproductions.

[7] Notices of grounds were filed in the course of summer 2022.

[8] In August 2022, the parties filed a joint submission in favour of the consolidation of the Proposed Tariffs and identifying “potential common issues.”

## II. CASE MANAGEMENT CONFERENCES

[9] A case management conference will be held on **April 4, 2024**, to obtain the parties’ input in order to determine the best procedural approaches going forward, notably how to proceed with the examination of the tariff periods that are covered by agreements, have no objectors, prolong the status quo, or raise secondary issues. An agenda is provided in Annex A. Parties shall inform the Board no later than **Wednesday, April 3, 2024**, if they wish to add any items to the agenda.

[10] The Board notes for example that SOCAN is not asking for a change in royalties before the 2022 tariff-year in SOCAN Tariffs 2.A and 17. It is therefore unclear whether it is best to combine the examination of pre-2022 and 2022-onward tariff periods.

[11] Specifically, the claim for change in value made both by SOCAN and users in relation to the performance right is not common to all tariff periods. This claim raises the question of the appropriate valuation model or proxy for the performance rights in the context of the targeted audiovisual programming offerings.

[12] The other anticipated main issues are : (i) the collective societies’ repertoires and their use in the audiovisual programming context; (ii) the valuation of post-synchronization copies, which raises multiple questions, such as whether the use of a ratio is possible (given the Supreme Court’s

framework in *Canadian Broadcasting Corp. v. SODRAC 2003 Inc.*, 2015 SCC 57 “CBC v. SODRAC”) or applicability or valuation of exceptions; and iii) CBC-specific issues.

[13] The Board is of the preliminary view that the Proposed Tariffs be treated separately with respect to various tariff families and periods. Specifically, the Board proposes to consider SOCAN 2.A and SOCAN 17 for the years 2014-2021 separately from the other proposed tariffs. This approach would permit approving these proposed tariffs more rapidly.

[14] Finally, the Board will seek the parties’ views on whether it would be appropriate to join proposed tariffs SOCAN 2.A, 17 and 2.A.R. for the 2025-2027 period since they appear to be consistent with the proposed 2022-2024 corresponding tariffs.

René Côté  
Case Manager

## ANNEX A – AGENDA

**Matters: Commercial Television Tariffs (2014-2024) and CBC Television Tariffs (2015-2025)**

**Case Manager: René Côté**

### **Participants**

#### Collectives

**SOCAN :** Matthew Estabrooks, Adam Jacobs

**CMRRA:** Casey Chisick, Eric Mayzel

#### Objectors

**BDUs:** Jay Kerr-Wilson, Kiera Boyd

**CAB:** Gabriel Van Loon, Kathleen Simmons, Jonathan O’Hara

**CBC:** Michael Shortt, Paolina Tosheva

**Stingray:** Gabriel Van Loon, Kathleen Simmons

1. Welcome words
2. Tour de table
  - a. Introduction Case Manager
  - b. Introduction Board Staff
  - c. Party Introduction
3. Procedural Issues
  - a. “Disputed” vs. “less-disputed” tariff proposals (joint request, status quo, secondary issues)
    - i. Value in treating them together or separately (faster track)
    - ii. Proceeding format for “less-disputed” tariff proposals
      - Format for submissions re.: COVID and terms and conditions
    - iii. Parties’ views on the proposed approach

- b. Discuss consideration of the “disputed” tariff proposals
    - i. Anticipated main issues (value of music, repertoire-use study/chain of title audit, valuation of reproductions, CBC rate structure, etc.)
    - ii. Next steps
  - c. Whether to join SOCAN 2.A, 17 and 2.A.R. for the 2025-2027 period
4. Concluding remarks