

COPYRIGHT BOARD OF CANADA

IN THE MATTER OF

CMRRA Proposed Audiovisual Services Tariff, 2025-2027

NOTICE OF GROUNDS FOR OBJECTION

OF

ETHNIC CHANNELS GROUP LIMITED, KNOWLEDGE NETWORK CORPORATION, L'OFFICE DES
TÉLÉCOMMUNICATIONS ÉDUCATIVES DE LANGUE FRANÇAISE DE L'ONTARIO, TLN MEDIA GROUP INC.,
AND WORLD FISHING NETWORK ULC (THE "INDEPENDENT BROADCASTERS")

Joel R. Fortune
Barrister & Solicitor
Joel R. Fortune Professional Corporation
122 Guigues Avenue
Ottawa, Ontario K1N 5H7

jfortune@fortunelaw.ca

Ariel Thomas
Barrister & Solicitor
Ariel Thomas Professional Corporation
2500-120 Adelaide St. W
Toronto, ON M5H 1T1

law@arielthomas.ca

December 15, 2023

Introduction

This Notice of Grounds for Objection is submitted on behalf of Ethnic Channels Group Limited, Knowledge Network Corporation, l'Office des télécommunications éducatives de langue française de l'Ontario, TLN Media Group Inc., and World Fishing Network ULC (the "Independent Broadcasters"), all of whom are Objectors to CMRRA's proposed Audiovisual Services Tariff for the years 2025-2027 (the "Proposed Tariff"). The Independent Broadcasters object to the extent that they operate online audiovisual services.

The Independent Broadcasters object to the Proposed Tariff in its entirety. Although the Independent Broadcasters specifically note the following grounds, they reserve the right to raise additional grounds as the Board's consideration of the Proposed Tariff progresses.

1. Any grounds for objecting to any royalty or levy rates in the proposed tariff

The Independent Broadcasters object to the proposed royalties and the methods for calculating those royalties in section 5 of the Proposed Tariff. This proposed rates do not reflect the value of the reproduction rights in music embedded in audiovisual programs.

The Independent Broadcasters also object to the proposed "greater of" minima set out in section 5 of the Proposed Tariff. The "greater of" structure and the specific proposed amounts to be paid as minimum royalties are prejudicial to smaller organizations such as the Independent Broadcasters.

Further, while section 3 of the Proposed Tariff only entitles audiovisual services to reproduce works in CMRRA's repertoire, there does not appear to be any repertoire adjustment to the royalties payable in sections 2 or 5 of the Proposed Tariff. Audiovisual services must only pay royalties in respect of the works they would be permitted to copy under the Proposed Tariff.

The Independent Broadcasters disagree with CMRRA's assertion in its Notice of Grounds that the correct ratio between the value of reproduction and performance rights in the same works is 1:1. For example, the Board found in its 2010 *Commercial Radio* decision that the appropriate ratio between reproduction and performance rights was 1:3.2.

2. Any grounds for objecting to any terms or conditions in the proposed tariff

The Independent Broadcasters object to the reporting requirements outlined in sections 6 to 9 of the Proposed Tariff. The requirements, in particular the level of detail requested, would be unduly burdensome for smaller audiovisual services such as those operated by the Independent Broadcasters.

The Independent Broadcasters object to the breach and termination provisions outlined in section 12 of the Proposed Tariff. As a tariff is not a licence, these provisions should not be included in the Proposed Tariff.

Without limiting their general objection, the Independent Broadcasters object to the proposed requirement in subsection 11(3) that an audiovisual service that is found in an audit to have understated the royalties payable in a month by more than 10 per cent must pay the cost of the audit. This provision is potentially onerous for small independent organizations. Further, the provision provides programming undertakings with no input into the choice of auditor or costs of the audit, which makes it unfair to require that programming undertaking to pay for the audit.

The Independent Broadcasters also object to the confidentiality provisions in section 13 of the Proposed Tariff, in particular, and without limiting their general objection, paragraphs 13(2)(b), (c) and (f).

Paragraphs 13(2)(b) appears to allow CMRRA to share confidential information received pursuant to the tariff with any other collective seeking to collect royalties or to enforce any tariff. These provisions are overbroad. Confidential information provided pursuant to the Proposed Tariff, once certified, pertains only to CMRRA and should not be shared with other collectives, who are permitted to receive specific information pursuant to their own tariffs or licence agreements.

Paragraph 13(2)(e) of the Proposed Tariff is similarly overbroad and unnecessary. It would permit CMRRA to share audiovisual services' confidential information with "any person who knows or is presumed to know the information". Sharing the information with a person who already knows it is unnecessary. Sharing the information with a person who is presumed to know the information is either unnecessary (if the person does know the information) or overbroad. There is no limitation in the Proposed Tariff on CMRRA's ability to presume another person's knowledge. The Board should not approve this provision.

Additional Information

The Independent Broadcasters submit that the final tariff should include provisions that would allow audiovisual services who are licensees pursuant to the tariff to audit CMRRA's assessment of their use of CMRRA's repertoire.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of December, 2023.

Joel R. Fortune
Barrister & Solicitor
Joel R. Fortune Professional Corporation
122 Guigues Avenue
Ottawa, Ontario K1N 5H7

jfortune@fortunelaw.ca

Ariel Thomas
Barrister & Solicitor
Ariel Thomas Professional Corporation
2500-120 Adelaide St. W
Toronto, ON M5H 1T1

law@arielthomas.ca