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Member Adriane Porcin
Proposed Tariffs Considered CBRA Commercial Media Monitoring Tariff, 2020-2022
CBRA Non-Commercial Media Monitoring Tariff, 2020-2022

Approval of Proposed Tariffs

As

CBRA Commercial Media Monitoring Tariff (2020-2022)

&

CBRA Non-Commercial Media Monitoring Tariff (2020-2022)

REASONS FOR DECISION

I. INTRODUCTION

[1] The Canadian Broadcasters Rights Agency (the CBRA) administers royalties for the use of programs and signals owned by privately-owned Canadian commercial radio and television broadcasters in Canada.

[2] Media monitoring is the production of excerpts, monitoring notes, summary notes or transcripts, from radio or television broadcasts. The CBRA filed two tariff proposals for media monitoring by commercial and non-commercial media monitors for the years 2020-2022.

[3] For the following reasons, we find that both tariffs – as proposed – are fair and equitable and as a result we approve them as *CBRA Commercial Media Monitoring Tariff (2020-2022)* and *CBRA Non-Commercial Media Monitoring Tariff (2020-2022)*.

II. OVERVIEW

[4] The CBRA filed the Commercial Proposed Tariff and the Non-commercial Proposed Tariff on March 28, 2019. Both proposed tariffs were published in the Canada Gazette on June 8, 2019¹.

¹ CBRA Commercial Media Monitoring Tariff (2020-2022) (08 June 2019) C Gaz Supplement, Vol 153, No 23, 3

[5] No objections were filed with respect to either tariff.

[6] Pursuant to section 76 of the *Copyright Act*,² the CBRA filed with the Board nine licence agreements for 2019-2021 that it had negotiated individually with several commercial and non-commercial users. It also answered a series of questions from the Board.³

III. ANALYSIS

[7] Under section 66.501 of the Act, the Board is required to fix royalty rates and any related terms and conditions that are fair and equitable. The analysis here also takes the considerations enumerated in paragraphs 66.501 (a), (b), and (d) into account.

[8] As part of our analysis, we consider whether the COVID-19 pandemic has had an impact on the market that would warrant a change to the proposed rate. The CBRA submitted that while it experienced some temporary administrative delays in payments it experienced no other adverse effects. Our analysis of the data it submitted shows no substantial difference in payments from tariff payers, supporting CBRA's submissions.

[9] Although both proposed tariffs address the reproduction of works and the fixation and reproduction of communication signals by media monitors, they cover different markets and their respective terms are addressed separately.

A. COMMERCIAL MEDIA MONITORING PROPOSED TARIFF (2020-2022)

[10] The Board's function is to set fair and equitable rates⁴. As a result, previously approved tariffs are deemed to be fair and equitable during the period for which they were approved.

[11] In substance, the terms of the Proposed Commercial Tariff replicate the terms of the *Commercial Media Monitoring Tariff (2017-2019)*⁵. They can be presumed to be fair and equitable for 2020-2022, barring market changes.

[12] Evidence suggests that there are no changes to the industry that would warrant a change to the rate. First, the two agreements with commercial monitors contain the same rate and similar terms as the Commercial Proposed Tariff.⁶ Second, the CBRA submits that the number of commercial monitors has remained stable between 2014 and 2019.⁷ Had the market changed, we would expect to see a change in the number of monitors or changes to the agreements.

(the Commercial Proposed Tariff); CBRA Non-Commercial Media Monitoring Tariff (2020-2022) (08 June 2019) C Gaz Supplement, Vol 153, No 23, 14 (the Non-Commercial Proposed Tariff).

² RSC 1985 c C-42 (the Act).

³ *Commercial and Non-commercial Media Monitoring (2020-2022)* (19 August 2020) CB-CDA 2020-048 (order); Response from CBRA to Secretary General (Copyright Board) (15 September 2020) To questions to CBRA from the Copyright Board in Order CB-CDA 2020-048 [Response from CBRA].

⁴ *Re:Sound v Canadian Association of Broadcasters*, 2017 FCA 138 at para 4 (Stratas J.A.) [Re:Sound v CAB].

⁵ *CBRA Commercial Media Monitoring Tariff (2017-2019)*, C Gaz Sup, Vol 152, No 29 at p 3 (Copyright Board Tariff).

⁶ Response from CBRA, *supra* note 3 at p 2.

⁷ Response from CBRA, *supra* note 3 at p 5.

[13] Market evidence in this file includes the amount paid by each payer for recent years. These amounts are also consistent with a market that has been stable between 2014 and 2019, and no evidence suggests they constitute an inadequate benchmark. Instead, the market's apparent stability supports a finding that the proposed rates remain fair and equitable for 2020-2022.

B. NON-COMMERCIAL MEDIA MONITORING PROPOSED TARIFF (2020-2022)

[14] In a similar fashion, the terms of the Non-Commercial Proposed Tariff replicate the terms of the *Non-Commercial Media Monitoring Tariff (2017-2019)*⁸, which are deemed fair and equitable for 2017-2019 and can be presumed to be fair and equitable for 2020-2022, barring market changes.

[15] Most non-commercial monitors licence their rights through separate agreements with the CBRA. These agreements have not substantially changed.

[16] Market evidence for this tariff is primarily agreements with monitors filed by the CBRA. These agreements generally provide for a more substantial grant of rights than does the proposed tariff in exchange for a higher fee payable to the CBRA. No evidence suggests they constitute an inadequate benchmark. The tariff continues to play a benchmark role for the industry.

[17] The existence of agreements that "exceed" the proposed tariff supports a finding that the proposed rates are fair and equitable for 2020-2022.

IV. CONCLUSION

[18] For the reasons described above, we are satisfied that the royalty rates and related terms and conditions of the proposed tariffs are fair and equitable, and we approve them as *CBRA Commercial Media Monitoring Tariff (2020-2022)* and *CBRA Non-Commercial Media Monitoring Tariff (2020-2022)*.

⁸ *CBRA Non-Commercial Media Monitoring Tariff (2017-2019)*, C Gaz Sup, Vol 152, No 29 at p 14 (Copyright Board Tariff).