

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2017-003]

**ORDER OF THE BOARD DEALING WITH REQUESTS
REGARDING RESPONSES CONSIDERED INCOMPLETE OR UNSATISFACTORY**

**Proceeding: 70.2-2008-01, 70.2-2012-01 and 70.2-2016-01 Licences SODRAC v. CBC
[Redetermination (2008-2012); Determination (2012-2017)]; 70.2-2011-03 SODRAC v.
CBC: Interactive kiosks**

January 4, 2017

I. GENERAL COMMENTS

A. REASONABLE EFFORTS

[1] The principle that the burden imposed on the party answering the interrogatories must be reasonable and that the goal sought is to obtain a reasonable quantity of information also applies to the determination of whether responses are incomplete or unsatisfactory. The Board's order to provide information is necessarily subject to this principle and logically cannot impose an excessive burden on one party in its execution. A burden that requires more than reasonable efforts to provide the information is excessive.

B. GOOD FAITH

[2] The presumption of good faith also applies to this procedural step. Therefore, the representations of a party alleging that it has made reasonable efforts to obtain the information requested by another party must be presumed to be true.

[3] In this case, the Parties have been cooperative and have made significant efforts to provide the required information. In light of CBC/SRC's representations (letter of November 17, 2016; letter of December 6, 2016), the Board recognizes that CBC/SRC is unable to execute the obligation initially ordered by the Board to match up the information provided under Category C with the questions in that category. The Board therefore dismisses SODRAC's motion on this matter.

C. PROHIBITION AGAINST FILING EVIDENCE

[4] SODRAC is seeking to have CBC/SRC prohibited from filing and invoking information covered by the interrogatories but not "discovered" until after the interrogatory phase ending on January 13, 2017, according to the current schedule of proceedings in force. This relates to the admissibility of evidence, and it will be up to the Board to decide the issue when it arises, in light

of the above-mentioned criteria. The Board therefore dismisses SODRAC's motion on this point, namely the requests relating to Q21 (problem No. 2), Q23, Q24 and the four Narratives in Category A.

D. EXHIBITS PROVIDED WITH THE MOTIONS

[5] The Board hereby notifies the Parties that the exhibits attached to these motions do not *ipso facto* form part of the record of evidence on the merits. The Parties will be responsible for filing their exhibits in due course and in the appropriate manner.

E. SODRAC'S MOTIONS

[6] SODRAC filed three motions dated December 2, 2016, regarding responses considered incomplete or unsatisfactory in three files: Redetermination 2008-2012, Determination 2012-2017, and Interactive kiosks. They will be addressed by the Board in that order.

[7] Some questions regarding the 2012-2017 period are relevant to the 2008-2012 period, which explains why they are included in the motion dealing with the latter period.

Redetermination 2008-2012

[8] SODRAC made a series of requests for additional information. The Board takes note of CBC/SRC's undertakings to provide—where available—the additional information no later than January 13, 2017, in its responses to the motion. These undertakings relate to the following questions: Q8, Q19 and Q20. In the event of default on its undertakings, CBC/SRC will be deemed to have been ordered to provide the information.

[9] As for the requests regarding responses considered incomplete or unsatisfactory to questions Q11 to Q15, Q17, Q18, Q21 (problem No. 1), Q22, Q25, Q26, Q27, Q29, Q30, Q32 to Q49, and Q51 to Q59, the Board dismisses them for the reasons mentioned in CBC/SRC's letter dated December 6, 2016, paragraphs 5 and 6 to 10, and its responses to SODRAC's motion subject to the following exception: CBC/SRC must produce—where available—no later than January 13, 2017, the information from Category C, starting in 2006, in accordance with the Board's ruling dated August 17, 2016 (*CB-CDA 2016-078* at pp 2-3), but only with respect to the copies for television and for the Internet with audiovisual content.

[10] The Board dismisses the request relating to Q16 because it is too vague. The request describes Q16 as belonging to Category C, while Q16 in fact belongs to Category A. This request relating to Q16 contradicts SODRAC's statement on page 1 of its motion, at paragraph (a), to the effect that SODRAC is generally satisfied with the responses to the interrogatories for Categories A and B.

Determination 2012-2017

[11] SODRAC alleges two problems of a general nature. The first, involving the right reserved by CBC/SRC to supplement the information from Category A, has been addressed by the Board on page 1 of this ruling.

[12] The second problem involves the lack of responses to questions 1, 8 and 10(c) (in part) of Category B and the impact of this on SODRAC's ability to (i) raise any incomplete responses and (ii) finalize its technical file by January 13, 2017. The Board understands that CBC/SRC

[13] undertook in its letter of December 6, 2016, at paragraph 19, to provide all of the information no later than January 13, 2017. This is consistent with the current schedule of proceedings and does not warrant that it be amended as requested by SODRAC.

[14] The Board also takes note of CBC/SRC's other undertakings to provide the specific information also requested—where available—in accordance with the current deadlines, no later than January 13, 2017.

[15] If it fails to deliver on the above-mentioned undertakings, CBC/SRC will be deemed to have been ordered to provide the information.

[16] Finally, beyond the issues of a general nature and for anything that does not concern the above-mentioned undertakings, the Board rejects the requests for specific information for the reasons listed in the letter from CBC/SRC dated December 6, 2016, and its responses to SODRAC's motion. However, CBC/SRC must respond to the following specific request from SODRAC, including the information on all copies made for subsequent uses:

Please answer the ten questions for Television Live performance Copies which we believe CBC/SRC does make. This may include multitrack audio recordings performed on a Digital Audio Workstation used for subsequent post production uses as well as original footage and final edited television programs which include live musical performances. This may include multitrack audio recordings performed on a Digital Audio Workstation used for subsequent post production uses as well as original footage and final edited television programs which include live musical performances.

Interactive Kiosks

[17] The Board takes note of CBC/SRC's undertakings to provide—where available—the missing information, no later than January 13, 2017, in its responses to the motion. These undertakings relate to the following questions: Q2, Q4, Q7 and Q8. In the event of default on its undertakings, CBC/SRC will be deemed to have been ordered to provide the information.

II. CBC/SRC'S REQUESTS

[18] The Board takes note of SODRAC's undertakings to provide the requested information where available (Q9, Q52, Q53, Q61). SODRAC must provide the information no later than January 13, 2017, according to the current schedule of proceedings.

[19] For anything unrelated to the above-mentioned undertakings, the Board dismisses CBC/SRC's motion for the reasons provided by SODRAC in its response within the motion, with respect to the following interrogatories: Q2, Q17, Q22, Q47, Q51, Q52, Q53, Q59 and Q70.

[20]

[21] Regarding Q29, SODRAC must provide all documents identified in the request, or, where applicable, confirm that no such documents exist, no later than January 13, 2017.

[22] Regarding Q34, SODRAC must provide the document identified at point (3) and the information identified at point (4) of the request, no later than January 13, 2017. The Board dismisses the remainder of this request for the reasons provided by SODRAC within the motion.

[23] Regarding Q44, SODRAC is not required to provide the information for Fiscal Year 2011. The information for Fiscal Year 2016 must be provided as soon as possible.

[24] Regarding Q65 and Q66, CBC/SRC may seek additional clarifications from SODRAC with respect to the responses provided, if necessary.

[25] Regarding Q94, SODRAC's primary objection is dismissed. SODRAC must provide, if they exist, documents dealing specifically with CBC/SRC. If this specific information does not exist, SODRAC must provide the general documents identified in the interrogatory. In any case, the documents will be limited to the period of 2012-2017, SODRAC shall make inquiries to CSI and provide the information no later than January 13, 2017.

Gilles McDougall
Secretary General