

Copyright Board  
Canada



Commission du droit d'auteur  
Canada

[CB-CDA 2022-038]

## **RULING OF THE BOARD**

**File: Television Retransmission [Redetermination (2014-2018)]**

June 29, 2022

[1] On July 22, 2021, in its decision *Bell Canada v. Copyright Collective of Canada*, 2021 FCA 148, the Federal Court of Appeal (the FCA) granted, in part, an application for judicial review of the *Tariff for the Retransmission of Distant Television Signals, 2014-2018* (the Tariff).

[2] The FCA's judgment stated that

[t]he Board's decision is set aside only to the extent of its use of the wrong pricing data in its proxy price calculation and of the wrong profit margin. The matter is therefore remitted to the Board for redetermination of the rates in accordance with these reasons.

[3] On March 24, 2022, the Supreme Court of Canada dismissed the application for leave to appeal from the judgment of the FCA.

[4] The Board is now ready to proceed with its reconsideration of the two issues identified by the FCA—the proxy price and the profit margin adjustment—and the consequential redetermination of the royalty rates.

[5] The Board will proceed as follows:

1. By necessity, a Panel composed of Members different from those that made the initial decision will undertake the redetermination.
2. The Panel will reconsider the above two issues, in accordance with the reasons of the FCA.
3. The parties to this proceeding (the Parties) will not be allowed to file new evidence in respect of the two issues under reconsideration.
4. The Parties will be given an opportunity to identify essential portions of the existing record.
5. If appropriate, the Board will inform the Parties of its preliminary conclusions on the two issues, in order to permit the Parties to submit their calculations of the effect of these preliminary conclusions on the royalty rates.
6. The Board will complete its redetermination, approve a new version of the Tariff, and issue its reasons.

[6] Accordingly, the Board issues the following Notice and Ruling:

## **I. NOTICE: IDENTIFICATION OF PORTIONS OF EXISTING RECORD**

[7] Parties are invited to identify portions of the existing record that they wish to draw to the Panel’s attention. If they do so, Parties should be as precise as possible (e.g. using pinpoints), and specify in relation to which of the two issues the identified portion relates.

[8] Any such submission must be done by no later than **July 29, 2022**.

## **II. RULING: ONLY SUBMISSION OF CALCULATIONS WILL BE PERMITTED**

### **A. REQUEST TO FILE NEW EVIDENCE**

[9] On May 13, 2022, Bell Canada, CCSA, Cogeco Communications, Rogers Communications, Shaw Communications, TELUS Communications, and Quebecor Media (the “BDUs”) wrote to the Board, asking that it permit the filing of new evidence.

[10] The BDUs submit that the Board must provide parties with this opportunity in order for the reconsideration to result in the establishment of a fair and equitable royalty rate. They argue that

[a]llowing the parties to file new evidence is also necessary given the Board’s duty of procedural fairness in light of the significance of the reconsideration to the parties; any modification to the profit margin adjustment established in the Board’s decision will result in millions of dollars in retroactive payments.

[11] The Collectives, consisting of the Copyright Collective of Canada, the Canadian Retransmission Collective, the Canadian Broadcasters Rights Agency, the Canadian Retransmission Rights Association, the Direct Response Television Collective Inc., FWS Joint Sports Claimants Inc., the Major League Baseball Collective, Border Broadcasters Inc., and the Society of Composers, Authors and Music Publishers of Canada, writing on May 17, 2022, submitted that no further evidence is necessary or permissible for the redetermination. They note that the FCA did not order a hearing *de novo*, but remitted the case to the Board “to amend [the Tariff] in conformity with these reasons in an expeditious way.”

[12] The BDUs and the Collectives made additional unsolicited submissions on June 2, 2022 and June 8, 2022, respectively, in which they reiterated their positions.

### **B. RULING—EVIDENCE ON ISSUES IN RECONSIDERATION**

[13] For the following reasons, we decline to permit Parties to submit new evidence on these issues.

[14] First, permitting the filing of new evidence is not necessary to carry out the FCA's judgment. The errors the FCA identified relate to the Board's evaluation of the existing record, not a failure to consider a more complete record.

[15] Second, Parties have already had ample opportunity to present their cases and file evidence. Indeed, the record in this proceeding is very extensive. Finally, we agree with the Parties that this redetermination should proceed promptly; permitting the filing of new evidence would detract from this goal.

[16] Given our conclusion, it is not necessary for the Board to determine whether it has the jurisdiction to allow the filing of new evidence in this context.

### **C. RULING—CALCULATIONS**

[17] There remains the issue of whether Parties may submit their calculations regarding any effects of the reconsideration of the two issues on the royalty rates. The Collectives filed such a calculation with the FCA, but the BDUs did not—the FCA acknowledged this.

[18] We conclude that such submissions are permitted within the scope of the FCA's judgment, and allowing these is appropriate to ensure that any differences in royalty rates be accurately determined.

[19] Therefore, as identified in step 5 of its intended process, above, the Board will—if appropriate—communicate with Parties at a later date, to provide them with the Panel's preliminary conclusions, and ask them to submit their calculations.

Lara Taylor  
Secretary General