



[CB-CDA 2022-042]

## **RULING OF THE BOARD**

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

July 22, 2022

### **I. SUMMARY**

[1] On July 19<sup>th</sup>, 2022, the CBC wrote to the Board, seeking direction on whether the Notice of Grounds filed by the CMRRA pursuant to Order CB-CDA 2022-24 (the Order) is binding on the CMRRA and, if it is, requesting relief for the CBC from filing its Notice of Grounds for Objection.

[2] The request is denied.

### **II. CONTEXT**

[3] On July 4, 2022, the CMRRA filed a Notice of Grounds, in which it supports seeking royalties for CBC's broadcast-incidental copies (BICs). These grounds include the use of the "ratio approach", by which royalties for reproduction are set as a ratio of SOCAN's performance royalties for similar activities.

### **III. CBC'S SUBMISSIONS**

[4] The CBC submits that both the Supreme Court of Canada, in *CBC v SODRAC*, 2015 SCC 57, as well as the Board in its own decisions, have held that the "ratio approach" may not be used to set royalties anymore.

[5] Consequently, if the CMRRA is bound by the grounds set out in its Notice of Grounds, then CBC asks to be relieved from the obligation to file a Notice of Objections so that it may instead bring a proceeding analogous to a motion to strike.

[6] If—on the other hand—the CMRRA is not bound by the grounds in its Notice of Grounds, and is allowed to raise additional arguments, then CBC requests that the Board orders the CMRRA to include those additional arguments in a revised Notice of Grounds, that the CMRRA be given 2 weeks to do so, and that the CBC have 3 weeks after that to file its Notice of Grounds of Objection.

## **IV. RULING**

### **A. NOT NECESSARY TO DETERMINE BINDING NATURE OF NOTICE OF GROUNDS**

[7] The Order provided the context in which notices of grounds were being sought:

At this time, the Board requires further information from the parties in order to set its docket, including determining the type of hearing required and next steps in its consideration of the Proposed Tariffs.

[8] If and when the CMRRA decides to raise arguments not raised in its Notice of Grounds, it will be the context in which these new arguments are made (including whether they are even permitted by the Board) and their importance to the proceeding that will help inform the appropriate procedural consequence. For this reason, it is not necessary, at this early stage, to establish the exact procedural parameters for a situation that has not yet arisen.

[9] I also note that, at times, the Board itself has raised issues, often by putting questions to the parties, for example to clarify the source for the royalty rate and rate structure. As is always the case, the Board will strive to ensure procedural fairness in either of these situations.

### **B. CBC NOT RELIEVED FROM FILING NOTICE OF GROUNDS FOR OBJECTION**

[10] The CBC is not relieved from the obligation to file a Notice of Objections.

[11] However, for greater certainty, the CBC is permitted, in its own Notice of Grounds for Objection, to raise issues of adequacy, legal or otherwise, of CMRRA's grounds. This is in line with the spirit of the Board's (currently) proposed *Copyright Board Rules of Practice and Procedure*, which provide that a notice of grounds for objection is to "set out the grounds for why the Board should not approve the proposed tariff despite any alteration of royalties or levies or fixation of terms or conditions."

[12] Furthermore, if the CBC wishes to raise the possibility of a preliminary hearing in its response to Order 3 of Order CB-CDA 2022-024, which requires Parties to make submissions on which proposed tariffs identified in the Order should be heard together, it may do so.

### **C. RESPONSE FROM THE CMRRA NOT REQUIRED**

[13] The CMRRA requested the opportunity to file a written response to CBC's letter.

[14] Given the outcome of this Ruling, a response from the CMRRA is not required.

Nathalie Theberge,  
Case Manager