

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2024-034]

NOTICE OF THE BOARD

**Proceedings: Re:Sound Tariff 4 – Satellite Radio Services (2019-2021)
SOCAN Tariff 22.E – Canadian Broadcasting Corporation (2014, 2015, 2016,
2017, 2018)**

May 13, 2024

I. HEARINGS

[1] I will hold oral hearings in relation of the following proposed tariffs: Re:Sound Tariff 4 – Satellite Radio Services (2019-2021) and SOCAN 22.E – Canadian Broadcasting Corporation (2014, 2015, 2016, 2017, 2018) (the “Proposed Tariffs”).

[2] Each hearing will be on the following two issues: i) whether all issues in relation to the Proposed Tariffs are moot and ii) if so, whether the Board should consider the Proposed Tariffs nevertheless. The hearings will not be on the substantive consideration of the Proposed Tariffs.

[3] Any of the collective societies or objectors to the Proposed Tariffs may participate, and make representations separately or jointly.

[4] Each participating party will have at most 1 hour to make oral submissions, and may file a factum of no more than 20 pages in length no later than 7 days prior to the date fixed for the hearing.

II. CONTENTS OF SUBMISSIONS

[5] In response to Notices 2023-061 and 2023-062, Re:Sound, SOCAN and the CBC have filed submissions primarily focussing on the issue of whether their respective matters are moot.

Existing Jurisprudence

[6] The main purpose of the hearings is to have a more complete record on which I can base my decisions in respect of mootness. It will allow parties to supplement their written submissions.

[7] As such, in their submissions, parties are asked to refer to the Supreme Court’s mootness framework established in *Borowski v. Canada*, [1989] 1 SCR 342. In particular, parties should

address i) how their respective matters meet the requirement in *Borowski* for a “live controversy” for a matter not to be moot and ii) any relevant facts and the application to those facts of the criteria established in *Borowski* for the exercise of discretion a matter to be heard, even if it is moot.

[8] Parties are also asked to identify any cases, including from administrative tribunals with a similar fact matrix where the court or tribunal has had to determine whether to exercise discretion to hear a moot matter, and address whether or not the Board should follow any identified cases.

Effects beyond setting royalty rate for tariff period

[9] Furthermore, parties are to address the following specific questions:

1. Whether the continuation of rights provision applies to a user in relation to whom the approved tariff does not apply by virtue of s. 74?
2. Whether statutory remedies (e.g., s. 38.1(4)) may be sought against a user in relation to an approved tariff that does not apply to them by virtue of s. 74?
3. Whether continuation of rights and/or statutory remedies should be characterized as “some practical effect on the rights of the parties notwithstanding that it will not have the effect of determining the controversy which gave rise to the action.” (*Borowski*)?
4. If parties desire such effects, can they be—to some extent—replicated in their private agreements (e.g., liquidated damages, agreement renewal provisions)?

III. CONFIRMATION AND SCHEDULING

[10] If possible, the hearings will start at 9:30 a.m. EDT on two consecutive days.

[11] Any party that intends on making representations must confirm by **Friday, May 24, 2024**. With such a confirmation, parties are to indicate their availability on June 11, 12, and 13, the language in which they intend to participate, and their preference for an in-person or remote hearing.

Luc Martineau
Chair, Copyright Board