

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2024-002]

NOTICE OF THE BOARD

Matter: 71-2020-01 - SiriusXM v. CMRRA

January 18, 2024

I. BACKGROUND

[1] SiriusXM filed on July 29, 2020, an application under section 71 of the *Copyright Act* (“the Act”) to fix the royalty rates and related terms and conditions in respect of its use of CMRRA’s repertoire of musical works for the purpose of carrying out its satellite radio and internet music services from April 1, 2020 to March 31, 2025.

[2] SiriusXM also requested an interim licence pursuant to section 66.51 of the Act authorizing SiriusXM to use CMRRA’s repertoire in the provision of its services until a final decision is rendered in respect of the section 71 application.

[3] On May 31, 2021, the parties informed the Board that they were actively engaged in discussions regarding a possible negotiated resolution of this matter and requested that the proceeding be paused.

[4] This was done in Notice CB-CDA 2021-029.

[5] In February 2022, negotiations appeared to have stalled but resumed after informal meetings with staff in April and May 2022.

[6] On December 18, 2023, the parties asked to resume the proceeding and for a case management conference, which will be held on **January 24, 2024**.

II. CASE MANAGEMENT CONFERENCE AGENDA

[7] The conference agenda has two parts, the interim licence request and the section 71 application.

Interim Licence

[8] We refer the parties back to Notice CB-CDA 2021-025 with questions by the Board on whether an interim licence is appropriate in this matter.

[9] Parties should be prepared to discuss with the case manager potential alternatives (for ex., a joint draft interim licence) or next steps in this regard.

Application

[10] In its application, SiriusXM contends that the rates for all its uses (satellite and online) should be lower than the negotiated rates in the last agreement for the following reasons:

1. The vast majority of SiriusXM's activities do not involve substantial copies (relying on *Sirius Canada Inc. v. CMRRA/SODRAC Inc.*, 2010 FCA 348 (CanLII));
2. The effect of the 2012 enacted copyright exceptions;
3. The nature of the copies as per *Canadian Broadcasting Corp. v. SODRAC 2003 Inc.*, 2015 SCC 57;
4. The CSI decoupling requires a downward repertoire adjustment (to the last CSI rate) and CMRRA will need to show it has the required repertoire representation authorizations. (To this end, SiriusXM requests interrogatories and a repertoire study)

[11] To ensure that the proceeding respects the principles of proportionality, expeditiousness and informality, parties should be prepared to discuss with the case manager the list of issues (the above list may not be exhaustive or may change) and the most efficient way to deal with each of them. For example:

- Does item #1 (non-substantial copies) require evidence regarding technology used from April 1, 2020 to March 31, 2025, and if so, what kind of evidence would be necessary?
- Regarding items #2 (exceptions) and #3 (incidental copies), what "price" proxies may be suitable (for example would recent commercial radio tariffs and online music services proceedings targeting reproductions be appropriate starting points, subject to SiriusXM- and CMRRA-specific adjustments)?
- Regarding item #4 (repertoire-use study), what repertoire-use adjustment proxies are available; alternatively, is a rate, which does not require an adjustment for repertoire-use such as a rate based on revenues, an option?

III. ADDITIONAL ITEMS

[12] Should the parties have any additional items they wish to add to the agenda, they should inform the Board by **Monday, January 22, 2024**.

Luc Martineau
Case Manager