

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2024-017]

ORDER OF THE BOARD

Proceeding: Re:Sound Tariff 1.A – Commercial Radio (2009-2022)

February 27, 2024

1. In this order

“confidential information” and “highly confidential information” mean documents or information that a supplier reasonably believes are so sensitive that their disclosure to persons other than those authorized pursuant to this order would reasonably be expected to result in injury to the supplier or to the person who supplied the documents or information to the supplier;

“confidentiality agreement” means the agreement set out in Appendix A to this order;

“external counsel” means, unless otherwise indicated, external counsel for a participant to this proceeding;

“internal counsel” means, unless otherwise indicated, internal counsel for a participant to this proceeding;

“recipient” means a participant to this proceeding who receives documents or information from a supplier; and

“supplier” means any person or entity, whether or not a participant to this proceeding, who supplies documents or information to a recipient as part of the proceeding.

2. The purpose of this order is to facilitate the use of confidential and highly confidential information in Re:Sound Tariff 1.A – Commercial Radio (2009-2022) before the Copyright Board of Canada (the Board).

3. This order applies to documents and information that a supplier designates as confidential information or highly confidential information.

4. Counsel to a recipient shall execute and deliver the confidentiality agreement to counsel to a supplier.

5. Documents and information subject to this order shall be supplied by a supplier to external counsel for a recipient. In the absence of external counsel and if permitted by this order, they may be supplied to internal counsel of a recipient, and shall be disclosed only to any other person authorized pursuant to this order.

6. Subject to paragraphs 8 and 10, confidential information designated as such by a supplier and received by external counsel to a recipient shall not be disclosed to anyone except:

- (a) external counsel's staff, internal counsel and staff of internal counsel's legal department;
- (b) persons retained by the recipient as an external expert or consultant (other than a director or employee of a participant) for the purposes of this proceeding, and that person's staff;
- (c) not more than ten representatives, designated by the recipient, who are directors or employees of the recipient and, if possible, members of the recipient's executive management team; and
- (d) other persons expressly designated by the supplier by way of written authorization identifying the specific document(s) or information to which the authorization applies.

7. Subject to paragraphs 8 and 10, highly confidential information designated as such by a supplier and received by external counsel to a recipient shall not be disclosed to anyone except:

- (a) external counsel's staff;
- (b) persons retained by the recipient as an external expert or consultant (other than a director or employee of a participant) for the purposes of this proceeding, and that person's staff; and
- (c) other persons expressly designated by the supplier by way of written authorization identifying the specific document(s) or information to which the authorization applies.

8. No document or information that is subject to this order may be disclosed to a person unless permitted by this order and unless and until the confidentiality agreement executed by that person has been delivered to external counsel to the supplier. Notwithstanding the foregoing, staff of the recipient's external counsel are not required to execute and deliver a confidentiality agreement, so long as the recipient's external counsel has done so.

9. Nothing in this order prevents suppliers or recipients from disclosing confidential or highly confidential information to Members and staff of the Copyright Board, provided such disclosure complies with this order.

10. The executed confidentiality agreement referred to in paragraph 8 must be delivered to external counsel to a supplier three clear working days before any document or information

subject to this order is disclosed. The supplier may, within that time, object to the disclosure of documents or information to the person who has signed the agreement. The supplier may waive the objection period by informing the recipient. If an objection is made, no documents or information subject to this order shall be disclosed to the person until the Board has ruled on the objection and, thereafter, only if permitted by the Board's ruling.

11. Pursuant to Practice Notice PN 2019-001 rev.1 on Format of Electronic Documents, a party may designate information as confidential or highly confidential by highlighting the confidential information in yellow and the highly confidential information in blue. All highlighted text should be clearly legible. Where an entire page is either confidential or highly confidential, a yellow or blue page colour, as the case may be, should be applied to that page only.

12. Statements of Case and written representations submitted to the Board that refer to confidential information or highly confidential information shall clearly identify in footnotes a reference to the document from which the confidential or highly confidential information is derived and the name of the supplier of the document or information.

13. Anyone who intends to use, during this proceeding, documents or information subject to this order, or any summary, aggregations or reproduction, in whole or in part, of such documents or information, shall attempt to agree with the supplier on a manner in which the document or information may be put into the public record or, alternatively, on a form that, though it may require confidential treatment, will minimize the risks and difficulties associated with dealing with the document or information. Any confidentiality claim relating to documents or information intended to be used during the proceeding, including documents or information subject to this order, shall be dealt with pursuant to the Board's Rules of Practice and Procedure.

14. Where information subject to this order can be conveniently aggregated with similar information provided by others, it shall not be a breach of this order for the recipient to aggregate the information, on the conditions that all those who supplied the disaggregated information consent to the aggregated information being provided to the others and that the aggregated result is shared with all the suppliers who provided the disaggregated information. Unless all those who supplied the disaggregated information consent, the aggregated information shall be treated as highly confidential information if any of the disaggregated information was designated as such and otherwise shall be treated as confidential information.

15. All documents and information that are subject to this order shall be destroyed within 30 days following completion of this proceeding, including any applications for judicial review and any appeals therefrom, except where required by statute or regulation to be retained, or where retained pursuant to paragraph 22.

16. Any authorization provided pursuant to paragraph 7(c) may be withdrawn by the supplier, either in its entirety or in relation only to specific highly confidential information, by written notice to the person designated in that authorization. That person shall destroy the documents and information that are subject to the notice within 10 days following receipt of the notice.

17. Notwithstanding paragraphs 15 or 16, external and internal counsel to a recipient may retain in counsel's files documents and information subject to this order, and any materials derived therefrom, after the proceeding is completed. Experts or consultants retained by a recipient may, to the extent necessary to satisfy any professional record keeping obligations, retain in their confidential files documents and information subject to this order, and any materials derived therefrom, after the proceeding is completed.

18. Furthermore, experts or consultants retained by a recipient may, to the extent necessary to satisfy any professional recording keeping obligations, retain in their confidential files part or all of the information subject to this order.

19. Documents and information subject to this order shall be used by those to whom they are disclosed pursuant to this order only for the purposes of this proceeding, and for no other purpose.

20. A person may retain in that person's confidential files any material prepared by or for that person which does not replicate documents or information subject to this order but which, if itself disclosed, could lead indirectly to the disclosure of information subject to this order.

21. All information that is exempt from destruction by operation of clause 15 or 16 shall be subject to this order until it is destroyed.

22. This order does not restrict in any way the use by a supplier of documents or information that it has designated as confidential information or highly confidential information.

23. This order may be modified at the direction of the Board or the consent of the participants. Consequently, anyone who is of the view that this order is inappropriate for dealing with any documents or information subject to this order, or that a supplier's designation of certain documents or information as confidential information or highly confidential information under this order is inappropriate, shall attempt to resolve the issue with the other participants to the proceeding, failing which they may apply for further direction from the Board.

Lara Taylor
Secretary Gener

APPENDIX “A”

COPYRIGHT BOARD

CONFIDENTIALITY AGREEMENT

Proceeding: Re:Sound Tariff 1.A – Commercial Radio (2009-2022)

IN CONSIDERATION of being provided with documents and information in connection with this proceeding over which claims for confidentiality have been advanced, I, _____, of the City of _____, in the Province of _____, agree to maintain the confidentiality of such documents and information. I shall not disclose such documents and information to anyone other than a person authorized pursuant to the Copyright Board’s Order CB-CDA 2024-017 of February 27, 024, (the “Order”), nor shall I use them for any purpose other than in connection with this proceeding.

I have read the Order, a copy of which is attached hereto, and agree to be bound by it. I acknowledge that any breach of this agreement shall be considered to be a breach of the Order. I also acknowledge and agree that the person who supplied the document or information may not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this agreement are not performed in accordance with its specific terms or otherwise breached. Accordingly, I agree that the person shall be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce its terms and provisions, in addition to any other remedy to which the person may be entitled at law or in equity.

I shall comply with the provisions of the Order with respect to the retention and destruction of all documents and information that are subject to the Order.

I hereby submit to the jurisdiction of the Copyright Board of Canada and the Federal Court of Canada, for the purposes of this agreement and the Order and any necessary enforcement or injunction proceedings.

Signed before a witness this ____ day of _____, _____.

(Print Name)

(Signature)

(Name of Firm)

(Recipient Category)

(Print Name – Witness)

(Signature – Witness)