Copyright Board Canada

Commission du droit d'auteur Canada

CB-CDA 2025-031

Order of the Board

Proceeding: SOCAN Tariff 2.D – Canadian Broadcasting Television (2015-2025)

April 23, 2025

I. Overview

[1] We have reviewed the following: SOCAN's Notices of Grounds for Proposed Tariff, CBC's Notices of Grounds for Objection and their Joint Statement of Issues (JSI).

[2] In order to streamline the process, we establish a two-step approach for moving this proceeding forward. Through the Parties' submissions, it was made clear that the core issue at play is the determination of the rate. In their JSI, the Parties put forward three proposed pricing methodologies. We intend to:

1. Seek Parties' submissions on the Board's current, preferred pricing methodology and decide on the preferred approach;

2. Seek submissions on the rate once the methodology is selected.

II. Background

[3] The Proposed Tariffs set out the royalties applicable to the Canadian Broadcasting Corporation-Société Radio-Canada (CBC-SRC).

[4] This tariff was last approved with an annual royalty rate of $6,922,586 for the years 2013 and 2014, the same rate as certified for 2012. In 1991, the Board first approved a tariff based on SOCAN's revenues under Tariff 2.A (commercial television), prorated on the basis of CBC's viewership share and converted into a fixed dollar amount per year.

[5] This corresponds to the second pricing methodology found in the JSI. The tariff, set as a fixed amount, was subsequently approved by the Board in the years 1992, 2002-2008, 2009-2012, and 2013-2014. The fixed amount increased over the years but was always the subject of an agreement between CBC and SOCAN.

[6] The Proposed Tariffs depart from the last-approved tariff as follows:

- For 2015-2022, the yearly fixed royalty is proposed to be increased for inflation;
- For 2023-2025, the royalty structure is modified to a combination of 1.9% of gross revenues and a monthly fee, based on the adjusted yearly fixed amount. SOCAN considers that this dual structure (percentage of revenues + fixed amount) reflects CBC's dual income stream (parliamentary appropriations and advertising) (the “two-revenue-stream rate structure”).

[7] CBC opposes both modifications. Essentially, CBC argues that the proposed tariffs depart from the last-approved tariff without valid reasons. Specifically, it argues that no inflation adjustment should be made as the basis of the calculation is viewership, not revenues. Further, CBC puts forward that since the vast majority of its income comes from parliamentary appropriations, not commercial sources, a percentage royalty is not relevant. Various adjustments should be applied to the initial royalty rate, including for repertoire, chain of title, exceptions and user’s rights, a declining-industry adjustment, and a public interest discount.

[8] CBC argues that the television sector is in decline, that its public-interest mandate should be taken into account, and that any tariff must account for these considerations.

III. Issues

[9] The JSI identified three possible valuation methodologies:

1. The **inflation adjustment approach**, which applies an inflation adjustment to the previously approved royalty ($6,922,586 per year) (**M1**);
2. The **first principles approach**, which involves applying the methodology from the Board’s decision in *SOCAN - Various Tariffs, 1991*[1] (**M2**);
3. The **historical approach**, which begins with royalties payable under Tariff 2.D (Television – Canadian Broadcasting Corporation), 2013-2014 and applies various adjustments to bring that amount forward in time for each year in the tariff period (**M3**).

[10] Each valuation methodology entails sub-issues.

[11] For example, if **M1** is selected, the next issue is what methodology for calculating inflation should be used.

[12] If **M2** is selected, should the royalty rate be an average rate for the entire relevant period or should the royalty rate for each year be distinct? Should CBC’s viewership shares be adjusted for the years that it broadcasts the Olympics?

[13] If **M3** is selected, is Tariff 2.D 2013-2014 an appropriate proxy, benchmark, or starting point under this approach? How should the starting point royalties be adjusted

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[1] *SOCAN – Various Tariffs*, 1991, (reasons) (July 31, 1991).

to account for changes in CBC's viewership share and changes in Tariff 2.A revenue during the tariff period?

[14] The Parties also identified the issues related to the adjustments claimed by CBC, namely:

1. Should the Board apply a repertoire share adjustment?
2. Should the Board apply a chain-of-title adjustment?
3. Should the Board apply any exceptions/user's-rights adjustments?
4. Should the Board apply a declining-industry discount?
5. Should the Board apply a public-interest discount?

[15] There are additional issues concerning certain terms and conditions, such as reporting, adjustment, interest, termination, and audit requirements.

IV. Preliminary analysis

[16] The Board's preliminary view is that **M2** would be preferred for setting the price because it follows the methodology used by the Board in the past. It relies on SOCAN's commercial-television revenues, prorated by CBC's viewership share (publicly available). As such, its benefits would include:

1. Addressing the two revenue-streams issue

[17] The CBC obtains revenues from two sources: parliamentary appropriations and advertising revenues. SOCAN's proposed tariff sets a flat fee for parliamentary appropriations and a percentage rate for advertising revenues. The audience share model offers an alternative. As stated in the Board's 1991 decision:

> CBC's advertising revenues ought not to be used in determining the amount of royalties, since these revenues may vary for reasons that have nothing to do with its audience share: recently, these revenues have increased while CBC's audience share declined. For this reason, it is not necessary to determine which of the amounts put forward by the parties really represents the advertising income of the CBC.[2]

[18] Therefore, setting a flat fee as a function of the royalties paid by commercial television and relative to CBC's audience share may address the two-revenue-streams issue.

[2] *Ibid*

2. Taking into account CBC's public interest mandate

[19] The 1991 decision stated that "The Board recognizes the special mandate of the CBC as initiator, promoter and leader in the implementation of Canadian programming in both official languages."[3] The proposed **M2** structure already takes this into account, without the need for further adjustments.

[20] Of note, the *Copyright Act* (para. 70(2)(b)) requires the Board to take into account some of the CBC's obligations under the *Broadcasting Act* .

3. Accounting for any industry-decline (the rate is a percentage of what is paid under SOCAN 2.A and should reflect any such decline)

[21] In *Pay Audio Tariff (2007–2016*), 2021 CB 5, the Board decreased the royalties it otherwise found to be fair and equitable to account for the declining pay-audio industry and the increased competition from the streaming services. CBC makes the same argument in the conventional television space. Beginning in the 1990s, with the fragmentation of the television audience (many more channels), and continuing in the 2010s, with the audiovisual streaming services, the conventional television services offered by CBC may have become part of a declining industry. Relying on audience shares takes into account that change in two ways: first, any decline in CBC television relative to the rest of conventional television, and second, the decline in all conventional television services relative to the streaming services. The former is accounted for directly in the audience share, and the latter is accounted for by the royalties paid by commercial television stations, which themselves are based on their revenues. Any industry-decline would be noticeable through fewer revenues.

4. Adjusting for inflation (via SOCAN 2.A)

[22] The rate of the SOCAN commercial television tariff (2.A) is set at 1.9% of commercial television station revenues. Other things being equal, when prices in the economy generally fluctuate, so do revenues. As such, we consider that Tarif SOCAN 2.A adjusts automatically for inflation and anything using this rate as a proxy would as well.

5. Automatically adjusting for repertoire and exception-related issues (via SOCAN 2.A)

[23] *SOCAN Tariff 2.A – Commercial Television Stations (2014-2024)* was approved on the basis of a jointly-submitted text, which was mainly based on *SOCAN Tariff 2.A – Commercial Television Stations (2009-2013)*, which itself was based on an agreement between the Canadian Association of Broadcasters and SOCAN. We believe that such

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[3] *Ibid.*

a negotiated agreement would account for exceptions and repertoire as they pertain to commercial television.[4] Since SOCAN 2.A is based on agreed rates, it constitutes a proxy that may not require repertoire and exceptions related adjustments.

6. Relying on publicly available data

[24] For the years 2014 to 2025, CBC viewership data is publicly available via the CRTC and CBC, making CBC's viewership share relative to commercial television easily assessable.

[25] Some adjustments may, however, be required:

1. To potentially account for Olympics viewership, which generally do not include music (except during the opening and closing ceremonies) but yet unusually increases CBC's viewership;
2. To potentially account for specific music content used by CBC (and not used by commercial television stations) that is not represented by SOCAN.

V. What about M1 and M3?

A. M1

[26] On its face, **M1** is a simple adjustment (aside from any discussion on the preferred inflation adjustment methodology): inflation x $6,922,586 per year.

[27] However, it is not as straightforward as it appears. CBC's tariff under Tariff 2.D was originally calculated as a function of CBC's audience share and the royalties paid by commercial broadcasters under Tariff 2.A. The latter is a percentage of revenues, which–as such–self-adjusts for inflation.

[28] **M1** is therefore likely inaccurate. Any adjustment made would need to be based on viewership, not solely inflation.

B. M3

[29] This approach starts with a fixed price that is adjusted to account for (a) repertoire share, (b) chain of title, (c) exceptions/user's rights, (d) a declining-industry, and (e) the public interest.

[30] This approach adds steps to **M2** that are typically resource-consuming: the need for a repertoire-use study and chain of title audit; challenging application and quantification of exceptions.

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[4] See for example *Application to fix royalties for a licence and its related terms and conditions (SODRAC v. CBC, 2012-2018 [Determination])* 2021 CB 1 (January 27, 2021) at para 40.

VI. Order

[31] Parties should engage with each other to find a joint position on the best methodology (among **M1**, **M2** or **M3**) for setting a royalty rate that is fair and equitable to both Parties.

[32] Parties shall notify the Board immediately if a joint approach cannot be agreed upon, or not later than **Wednesday, May 21, 2025**. Parties shall then file submissions on the Board’s preliminary analysis four weeks from the date of their notice to the Board, or **Wednesday, June 18, 2025**, at the latest.

René Côté, Member
Katherine Braun, Member
Hon. Luc Martineau, Member