

Copyright Board
Canada



Commission du droit d'auteur
Canada

Date	2025-12-05
Order of the Board	CB-CDA 2025-120
Proceeding	SOCAN 2.D – Canadian Broadcasting Television (2015-2025)
Case Manager	René Côté

I. Background

[1] On November 25, 2025, SOCAN wrote to the Board to request clarification from the Board regarding the scope of permissible economic analysis that the Parties can address in Phase 1, as outlined in Order CB-CDA 2025-078. SOCAN would like confirmation that the Board will consider modifications to the methodologies at issue in Phase 1.

[2] CBC strongly objects to this manner of proceeding. It argues that SOCAN has received ample “clarification” about the issues that can be raised in Phase 1 of this proceeding, and Board Order CB-CDA 2025-078 was issued specifically to address any remaining questions which SOCAN might have had about that process. CBC further submits that the scope of expert evidence was expressly considered as part of this clarification¹. It is unreasonable for SOCAN to claim that it requires any further clarification at this time. CBC also argues that is impermissible and unfair, since the selection and definition of models which are to be considered in Phase 1 is *res judicata*, and the Board is *functus* as to that issue.

II. Considerations

[3] In Order CB-CDA 2025-031 (“the Methodologies Order”), the Board enumerated three methodologies that were identified in the Joint Statement of Issues: the inflation-adjustment approach (M1); the first-principles approach (M2); and the historical approach (M3). The Board also indicated that each approach entails sub-issues.

¹ See Order CB-CDA 2025-078 at paras 5.3-5.4, 8.3-8.5

[4] Order CB-CDA 2025-078 provided that: “[7]2. Phase 1 will deal with the choice of pricing model among the three models put forward by the Parties (M1, M2, and M3).”

[5] I do not agree that the Board is *functus* in terms of model selection. The *functus* principle applies to final decisions, which dispose of proceedings, but not to interim decisions, which do not dispose of proceedings themselves. A final decision will occur when the tariff is approved. Phase 1 itself will not yield a final decision².

[6] I am willing to contemplate allowing SOCAN to submit expert opinion not directly or fully related to M1, M2, or M3. Indeed, amending one’s own case or pleadings may be allowed if the other party does not suffer a prejudice.

[7] In this regard, CBC will be able to seek leave to cross-examine the expert and provide response submissions on SOCAN’s model(s). The situation has not changed as SOCAN has not provided anything at this point and is not required to provide its submissions before January 8, 2026. Equally, CBC’s submissions are to be filed at the same time, which means it will not have seen SOCAN’s submissions, whatever the latter’s preferred model is.

[8] I however agree with CBC: a case needs to proceed and cannot endlessly explore all models available. Another request of this nature will most certainly be deemed unacceptable. Additionally, I will not entertain changing the current deadlines, barring extraordinary circumstances.

[9] In terms of the actual request, it is not clear what SOCAN proposes to do exactly. Does SOCAN propose to modify one of the three methodologies, leaving the others intact, as well as the sub-issues which relate to them? Does SOCAN propose to retain the three methodologies as enunciated in the Methodologies Order, but add or otherwise modify the sub-issues? Does SOCAN propose to add another methodology to the list, in effect a M4 that will relate to paragraph 66.501(a) of the [Copyright Act](#)? If so, what will the expert’s opinion cover?

III. Order

[10] SOCAN shall confirm which methodology (modified M1, M2, and M3, or new M4) it will be pursuing and on what the expert would give their opinion, no later than **December 12, 2025**.

² See Order CB-CDA 2025-078 at subparagraph 7.1