



**Canadian  
Association of  
Broadcasters**

**L'Association  
canadienne des  
radiodiffuseurs**

September 14, 2007

Mr. Claude Majeau  
Secretary General  
Copyright Board of Canada  
800 – 56 Sparks Street  
Ottawa, ON K1A 0C9

By email: [Majeau.Claude@cb-cda.gc.ca](mailto:Majeau.Claude@cb-cda.gc.ca)

Dear Mr. Majeau:

**Re: SOCAN, NRCC, CSI, AVLA-SOPROQ  
Commercial Radio Tariff Proposals 2008**

1. The Canadian Association of Broadcasters (CAB) is the national voice of Canada's private broadcasters, representing the vast majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. The goal of the CAB is to represent and advance the interests of Canada's private broadcasters in the social, cultural and economic fabric of the country.
2. This letter constitutes the CAB's request for the consolidation of the impending Copyright Board proceedings pertaining to tariffs payable by commercial radio broadcasters. These proceedings concern the renewal of SOCAN Tariff 1.A (Commercial Radio) (2008), NRCC Tariff 1.A (Commercial Radio) (2008), and CSI Commercial Radio Tariff (2008-2012), and the proposed AVLA/SOPROQ Tariff for the Reproduction of Sound Recordings by Commercial Radio Stations (2008-2011).
3. As the Board and the parties represented in the above tariff proposals are aware, there are strong precedents for consolidation. In those instances, the Board has significantly reduced the costs and procedural burdens associated with separate proceedings, and promoted coherence among its various approved tariffs. It is the CAB's position that consolidation of proceedings to consider the above closely related tariff proposals will increase efficiency, ensure consistency, and best enable the Copyright Board to fulfill its obligations to operate in the public interest and to maintain the crucial balance between copyright owners and users.

4. The streamlining arising from consolidation would assist the Board in managing its own processes and decision-making at a time when it is experiencing a heavy workload. The CAB submits that consolidation in this case would not place an excessive burden on the participants; to the contrary, parties on both sides should become accustomed to this approach to proceedings before the Board, where achievable, and benefit from important efficiencies.
5. In the course of the proceedings, the CAB will advocate for consolidation of some or all of the above tariffs to create further efficiencies for all parties involved, including the Board itself.
6. As discussed below, the arguments in support of consolidation far outweigh those against it. The CAB has categorized its arguments under the headings of efficiency and consistency; other considerations, precedents and options are addressed thereafter. Finally, a proposed scheduling framework is presented for the Board's consideration.

#### **A. Efficiency**

7. Consolidation of the commercial radio tariffs is administratively efficient, saving time and resources for the parties involved, and also for the Board itself. Financial resources should be concentrated on the tariffs themselves, rather than on unnecessarily complex proceedings to determine them.

#### **Saving Time**

8. Consolidating potentially four proceedings into one will substantially reduce the amount of time spent before the Board. Consolidation will eliminate much of the inevitable duplication that would occur in four individual proceedings, particularly given that they are so closely connected in terms of the facts and evidence. The Board would be in a position to render fewer than four decisions, and consider the feasibility of a rationalized tariff structure.

#### **Saving Cost**

9. Copyright Board proceedings are costly to all concerned, requiring legal and administrative hours spent in the months leading up to and during hearings. Consolidation may prove particularly helpful to the Board in reducing the total hearing time and ensuring a single, consistent evidentiary record relevant to the proposed tariffs.

#### **Procedural Streamlining**

10. A consolidated hearing can be expected to significantly reduce duplication in the administration of the interrogatory process, and in the preparation of evidence, analysis and argument before the Board.
11. The overlapping issues and facts involved in all four tariffs (addressed below) make a single interrogatory process appropriate, fair and feasible. In many cases, evidence would be led and witnesses would be called once, as all evidence or witness testimony relating to a specific tariff proposal would form part of the same record of proceedings. These circumstances would afford more opportunities for collaboration among the parties on the preparation of interrogatories and cases.

## **B. Consistency**

### **Common Users and Activities**

12. Each of the proposed tariffs is based on performances or reproductions of the same music – whether legally defined as musical works or sound recordings – by the same users, commercial radio broadcasters. While there are distinct rights at issue, they all relate to the same broadcast of recorded musical works. From the standpoint of the broadcaster, advertiser and the public, there is one commodity and one commercially valued activity.
13. Consolidation may also help ensure that the cost to radio broadcasters for the use of copyrights is proportionate to the value added by the use of music, and that the rights are assigned appropriate values in accordance with the *Copyright Act*. Moreover, it will assist the Board in its consideration of the comprehensive impact of all four tariffs on radio broadcasters, which is an important element of the Board’s mandate to set fair and equitable rates.

### **Common Beneficiaries**

14. There is substantial overlap in the ultimate beneficiaries of these tariffs. Music publishers are represented by SOCAN, CMRRA and SODRAC, while producers of sound recordings are represented by NRCC, AVLA and SOPROQ. There is also overlap in the representation of composers and authors, who are represented by both SOCAN and SODRAC, and indirectly by CMRRA. It should further be noted that NRCC is an umbrella collective, representing five smaller collectives including both AVLA and SOPROQ.
15. In addition, while composer, author, publisher and producer groups are legally distinct, there is considerable overlap in practice, where a single individual or entity engages in more than one of these creative activities and holds more than one right.
16. While the Board does not govern which collectives will represent which group, and for which tariff proposal, its authority to consolidate proceedings and tariffs gives it a considerable measure of control over the rationalization of collective administration.

### **Rights – Overlap and Relationship**

17. There is substantial overlap in the rights that are at issue in these proceedings. The SOCAN and NRCC tariffs seek to collect for the performance right, while the CSI and AVLA/SOPROQ tariffs seek to collect for the reproduction right. The Board has previously set the value of the right exercised by NRCC in part as a function of that of SOCAN,<sup>1</sup> and similarly has set the reproduction right in part as a function of the value of the performance right,<sup>2</sup> and has set the communication right in part as a function of the value of the reproduction right.<sup>3</sup> It would assist the Board to hear the evidence and arguments regarding both rights at the same time to ensure it can fully consider the relationship of one to the other, and to ensure that it achieves the ratio it seeks to impose.

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<sup>1</sup> SOCAN/NRCC Tariff 1.A Commercial Radio (2003-2007) decision at p. 27.

<sup>2</sup> CSI Commercial Radio (2001-2004) decision at p. 13-14.

<sup>3</sup> Tariff No. 24 -Ringtones (2003-2005) decision, at para. 88 and paras. 93-99.

### **Coherent Record**

18. Given that all four proceedings pertain to the use of music by commercial radio stations, there will be significant factual overlap particularly with regards to industry data, including the broadcasting operation activities of radio stations, the types of technologies used, the extent and nature of music use, and the financial and economic landscape. While the interpretation given to this information may differ in the context of each tariff, the consideration of the appropriate royalties payable for performing, neighbouring and reproduction rights will be grounded in many of the same facts.
19. In addition to overlap of factual information, there will also be substantial overlap of analysis, particularly in terms of the relative importance of music to a radio station's bottom line, and the relationship between Canadian radio stations and the music industry.
20. The Board is accustomed to hearing conflicting economic evidence during tariff proceedings. However, the possibility of hearing multiple potentially different economic opinions on what is essentially the same activity carried out by the same user of a single commodity gives rise to undue complications. Were the Board to consolidate the tariff proceedings, the parties involved would be required to streamline their economic arguments and provide the Board with a more concise and cohesive economic framework from which it can create its own analysis.

### **Common Witnesses**

21. A number of the same witnesses have been called, and can be expected to be called again, to testify with respect to the individual SOCAN, NRCC, and CSI tariffs. Where the proceedings are held individually, scheduling repeat witnesses is inconvenient and costly. The same witness may be required by the same or different parties for multiple proceedings. Consolidation would reduce the inconvenience caused by duplication and enable a particular witness to be called once.
22. Moreover, where the same witness is called in multiple proceedings, there is the potential for confusion to arise over the application of evidence to different issues, creating unnecessary complications for the witness and the proceedings. If an individual testifies once, the risk of inconsistent findings of fact will be substantially reduced, thereby enhancing the clarity and coherence of the arguments.

### **Common Revenue Base**

23. Each of the tariffs is proposed to be set as a percentage of advertising revenues (SOCAN and NRCC) or gross income (CSI and AVLA-SOPROQ). There is, therefore, essentially a single pool of resources from which to pay all four proposed tariffs. While the CAB may raise issues with respect to these rate bases, consolidation would allow the Board to evaluate the relative impact of all four proposed tariffs on the common revenue source from which payments are proposed to be made.

### **Harmonized Tariff Provisions**

24. Finally, consolidation provides an opportunity for the Board to consider the harmonization of definitions and administrative provisions. Such harmonization would streamline and facilitate the overall administration of the tariff or tariffs, once certified.

### **C. Other Considerations**

#### **Timing of Tariffs**

25. The Board has noted issues in the past with regard to the relative progression of the tariffs, where, for example, the various stages in the consideration of SOCAN Tariff 22 had been underway for 10 years before the CSI Online Music Services tariff proposal came to the fore. In the current case, the SOCAN, NRCC and CSI tariffs predate the newly proposed AVLA/SOPROQ tariff. Given that the new tariff proposal does not represent a newly established right, and that AVLA and SOPROQ have been involved in tariff proceedings before under the umbrella of NRCC, it is the CAB's position that they are on the same footing as the other collectives and do not require a separate hearing.

#### **Objectors that do not Overlap**

26. While there is significant overlap in the parties likely to be involved in each of these four tariff proposals, it is to be expected that certain collectives will be interested principally in one or two, and may oppose a combined proceeding. The CAB strongly submits that any time and resources saved by those few independent objectors in the event of non-consolidation is far outweighed by the benefit to the Board in achieving a single common record for its consideration and by the overall efficiencies outlined above.

27. More broadly, the CAB notes that the multiplicity of collectives and distinct tariff proposals at issue here is a function of the rightsholders' own choices concerning how to organize themselves and administer their rights. In the CAB's view this structural fragmentation should not stand in the way of a consolidated proceeding, for the reasons outlined above.

### **D. Precedents**

28. The Board has a record of consolidating proceedings and tariffs where feasible.

- a. 1989-90 and 1992 distant signal retransmission hearings – various different competing collectives, representing by Canadian and US rights holders, made their case to the Board as to their respective shares of the overall royalty pool generated by the retransmission regime. The Board was able to effectively and efficiently deal separately with the issues raised.
- b. 2001 SOCAN and NRCC Tariff 17 pay audio service tariff proposals – the Board held single hearing for tariff proposals made by different collectives representing different rights holders in respect of different protected works, where SOCAN targeted broadcasting distribution undertakings and NRCC targeted pay audio services.
- c. 2003 SOCAN Tariff 2.A (commercial Television) and Tariff 17.A (non-broadcast Television) – consolidated proceeding dealing with different users of the same repertoire was held on the basis that the shared relationship to television was sufficient to warrant bringing them together.
- d. 2003 CMRRA and SODRAC – these collectives voluntarily consolidated their operations for the purposes of enhancing the ease and efficiency with which their

tariffs could be administered. They have continued to do so in the context of commercial radio and online music services.

- e. 2005 SOCAN 1.A and NRCC 1.A – the tariffs were successfully consolidated despite the fact that they were proposed by different collectives representing different rights holders. The commonality of revenue base and applicability to commercial radio was sufficient to warrant consolidation.
  - f. 2007 SOCAN Tariff 25, NRCC Tariff 4, and CSI Multi-Channel Subscription Radio Services – the Board granted the application of Sirius Satellite Radio to combine proceedings for the reproduction and communication rights implicated by the activities of satellite radio operators. This was largely due to overlap in users, facts and evidence, and the necessity for the Board to reach decisions that are informed by the overall picture of the users’ business models and the relative importance of the rights involved.
  - g. 2006 CSI Online Music Services, 2007 SOCAN Tariff 22 – the Board declined to consolidate these two proceedings. In each separate proceeding, however, the non-party collective (having successfully opposed consolidation) was granted and exercised a considerable level of involvement (attendance at the hearing, access to documents, submissions on at least one occasion). The collectives thereby obtained the advantage of non-consolidation, together with key benefits that are meant to flow from consolidation. The CAB submits that consolidation of interrelated proceedings is the fairest and most effective approach for the parties and the Board itself, particularly where, as with the radio tariff proposals for 2008, there so many opportunities to achieve efficiencies and coherence.
29. The following commentary by the Copyright Board in past decisions also supports consolidation of proceedings to consider the commercial radio tariff proposals for 2008 forward.
- a. CSI Commercial Radio (2005-6) and SODRAC 3B (2006-10)<sup>4</sup> – The Board noted that the rate base (advertising revenues) should be harmonized to lighten the reporting burden faced by radio stations, but noted that this issue should be discussed in a forum where all the collectives and objectors can come together. The Board indicated that it will seek full standardization of reporting requirements and other administrative provisions dealing with confidentiality, audits and notices as soon as the SOCAN/NRCC Commercial Radio term (2003-2007) ends.
  - b. CSI Commercial Radio (2007)<sup>5</sup> – The Board reiterated its desire to harmonize rate bases for royalties paid by commercial radio stations. Again, it noted that this issue

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<sup>4</sup> Statement Of Royalties to be Collected By CMRRA/SODRAC Inc. for the Reproduction of Musical Works, in Canada, By Commercial Radio Stations (2005 And 2006); Statement Of Royalties To Be Collected By SODRAC For The Reproduction Of Musical Works, In Canada, By Community Radio Stations (2006-2010).

<sup>5</sup> Statement Of Royalties To Be Collected By CMRRA/SODRAC Inc. For The Reproduction Of Musical Works, In Canada, By Commercial Radio Stations For The Year 2007, at para. 5.

needs its own hearing. It was suggested that it could be addressed when the Board deals with these three collectives' (SOCAN, NRCC, and CSI) tariffs in 2008.

- c. SOCAN multiple tariffs (19 March 2004)<sup>6</sup> – Here the joint proceeding was the result of complaints from users about the unfairness of having to pay royalties under several distinct tariffs for music use in the same premises. The Board noted that harmonization of minima is necessary when dealing with similar uses of music. It stopped short of fully satisfying the complaints, however, as it stated that the parties failed to supply data on the “excessive burden imposed on users by the need to pay fees for several different types of licenses.” This suggests that the Board is open to these arguments where such data can be provided. The CAB proposes to provide evidence on this point regarding the radio tariff proposals for 2008 forward.

### **E. Options**

30. The above arguments are generally applicable to any consolidation scenario involving any combination of the proposed commercial radio tariff proceedings. A brief overview of the specific options for consolidation is set out below.

#### **SOCAN & NRCC**

31. These have already been merged, not just procedurally, but also substantively in the form of a consolidated tariff for 2003-2007. The fact that they are distinct collectives representing different beneficiaries is outweighed by their common application to commercial radio broadcasters in the context of the public performance right. Despite the Board's certification of a single tariff for 2003-2007, SOCAN and NRCC have filed separate proposals for 2008. For all of the reasons that led to the consolidation of the SOCAN and NRCC proceedings and tariffs, the CAB strongly supports the same approach for the coming years.

#### **CSI & AVLA/SOPROQ**

32. Similarly, the CSI and AVLA/SOPROQ proceedings should be combined to consider the reproduction right in a coherent and global manner. Consolidation of these proceedings will enable the Board to gain a complete understanding of the nature and scope of the reproduction right as it currently applies to commercial radio stations, in order to appropriately assess its value.

#### **SOCAN & NRCC & CSI & AVLA/SOPROQ**

33. Consolidation of all four proposed tariff proceedings would ensure maximum efficiency and cost savings for all parties involved by reducing the amount of time spent in hearings before the Board, and eliminating the need for repeat filing of factual and evidentiary information. This situation would also provide a comprehensive assessment of the four tariffs as they relate to each other, and clearly demonstrate the overall impact of the tariffs on radio broadcasters. For the foregoing reasons, the CAB submits that consolidation of all four proceedings is the optimal approach.

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<sup>6</sup> Statement Of Royalties To Be Collected By SOCAN For The Public Performance Or The Communication To The Public By Telecommunication, In Canada, Of Musical Or Dramatico-musical Works [Tariffs 1.A, 1.B, 2.B, 2.C, 3, 4.B.2, 5.A, 6, 7, 8, 10, 11, 12, 13, 14, 15, 18, 20 and 21], at p. 21.

34. The CAB proposes the scheduling framework attached as Appendix A to this submission. The framework would establish a single interrogatory process, single filing deadlines for the collectives and CAB respectively, and a single hearing.

**F. Conclusion**

35. The CAB appreciates the Board's consideration of this request, and looks forward to commenting on any submissions that may be made by the collectives.

Sincerely,

***Original signed by***

Margot Patterson  
General Counsel and Vice President, Legal Affairs

- cc. Gilles Daigle (SOCAN)  
Paul Spurgeon (SOCAN)  
Sundeep Chauhan (NRCC)  
Colette Matteau (CSI)  
Glen Bloom (AVLA-SOPROQ)  
Steven Seiferling (AVLA-SOPROQ)  
Richard Pfohl (AVLA)  
Lynette Bouchard (SOPROQ)

## Proposed Schedule of Proceedings

**SOCAN 1.A (2008)**  
**NRCC 1.A (2008)**  
**CSI Commercial Radio (2008-2012)**  
**AVLA-SOPROQ Commercial Radio (2008-2011)**

Friday, October 12, 2007	Filing of interrogatories
Friday, October 26, 2007	Filing of objections to interrogatories
Friday, November 9, 2007	Filing of responses to objections to interrogatories
To be determined	Board's ruling on objections to interrogatories
February 1, 2008	Filing of responses to interrogatories
February 15, 2008	Filing of motions re. unsatisfactory responses
February 22, 2008	Filing of replies to motions
To be determined	Board's ruling on motions
March 14, 2008	Filing of complete/satisfactory responses to interrogatories
April 4, 2008	Filing of collectives' cases
May 30, 2008	Filing of CAB's case
June 13, 2008	Filing of collectives' reply
To be determined	Prehearing conference
End of June	Hearing