



Welcome to the “new” CAB Update!

On behalf of the members of the CAB Board of Directors, it is my pleasure to welcome you to this latest issue of the CAB Update.

While the CAB underwent significant restructuring and redefined its mandate in 2010, we never stopped working on behalf of our members, private broadcasters in every region of Canada. As you can see from the topics covered in this issue of the Update, the CAB is still very active, advocating on your behalf on copyright issues, working to improve the CBSC, coordinating and advocating on behalf of industry on accessibility issues and promoting the interests of small market television services, and more. I’m also pleased to report the CAB recently constituted the “new” CEO Radio Council.

Going forward, we will use the CAB Update to keep you informed of our various initiatives, as well as our achievements on your behalf. As we do so, we hope to hear from you. My Board colleagues and I encourage you to provide feedback on the issues raised here.

I know I speak for everyone on the Board when I say that we are excited about our work, and we look forward to working closely with you to defend and promote the interests of Canada’s private broadcasters.

On behalf of your CAB Board, I also wish to extend my warmest wishes for peace and joy this holiday season and a new year of good health, happiness, and prosperity.

Best Regards,

Rick Arnish
CAB Board Chair

CAB Copyright Reform Update

Bill C-11 Implementation

Bill C-11, The Copyright Modernization Act, was passed by Parliament in June 2012, and will be proclaimed into force in multiple stages. The first stage came into force on November 7, 2012. There are two main issues for the CAB flowing out of the coming into force of this Bill: (1) taking action to ensure changes to the reproduction right mean a reduction in the radio reproduction tariffs, and (2) ensuring that a Ministerial Statement is issued in respect of the WIPO implementation provisions to prevent an effective doubling of the Re:Sound Commercial Radio Tariff 1.A.

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Reproduction Right Reduction

On the reproduction right side, the CAB is working with Mark Hayes, Van Loon Simmons, and the new CEO Radio Council to prepare both litigation and negotiation strategies. The changes to the Copyright Act brought about as a result of the new provisions contained in Bill C-11 are significant, and in our view warrant a complete overhaul of the reproduction right regime.

On November 7, once the Copyright Act was amended to include reproduction right exceptions, the CAB filed an Application with the Copyright Board asking for relief from reproduction right payments for commercial radio broadcasters. The Application seeks to reduce reproduction right liability by 90% right away and, once we've had an opportunity to fully make a case before the Board, seeks complete elimination of the reproduction right tariffs.

If successful, this Application will significantly reduce or eliminate the reproduction right tariffs you pay to the collectives CMRRA, SODRAC, AVLA, SOPROQ and Artistl. Together, these tariffs are worth approximately \$25 million annually for the entire industry. Until we get a favourable decision from the Board, broadcasters are required to keep making these payments. CAB radio members have been asked to preserve their rights by including a notation in all upcoming and future payments under the CSI, AVLA/SOPROQ or Artistl tariffs indicating that the payments are being made under protest.

Now that the CAB has filed its Application for relief, the Copyright Board has to set out a process to deal with (a) the Interim Application and (b) the Final Application. The Interim Application is intended to proceed relatively quickly (i.e. expect to have a decision within months) and provide broadcasters with temporary relief, pending outcome of the Final Application. The Final Application will take at least a year to proceed to a hearing, then likely at least a year to result in a decision, and then possibly up to a couple of years of appeals.

WIPO Ministerial Statement

On the WIPO implementation issue, changes to Bill C-11 that grant rights to US performers and record labels will have the effect of doubling Re:Sound Commercial Radio Tariff 1.A unless the Minister of Industry issues a statement to prevent that from happening. One of the reasons the Government amended the Copyright Act was so that Canada could satisfy its international obligations and formally ratify the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) which were signed 15 years ago. In order to be able to ratify these treaties and officially become a WPPT country, the amendments to the Copyright Act had to address certain rights relating to performers and record labels. The CAB has advocated for a Ministerial Statement to be issued at the same time as WPPT ratification. While clear timelines have not been made available, we can expect this overall process to take at least 3 to 6 months.

On November 5, 2012, the Minister of Industry, The Honourable Christian Paradis, sent a letter to the CAB and a coalition of parties with similar interest indicating that the Government intends to issue a Ministerial Statement that will "limit the scope and duration of the right of remuneration for rights holders in WPPT countries that do not reciprocate". Assuming that this occurs as intended, this would satisfy the CAB and coalition request, and prevent the anticipated increase in Re:Sound's eligible repertoire that applies to the tariffs paid by many current Re:Sound licensees including broadcasters. We will continue to push for this outcome, and will keep you updated.

Copyright Hearings

Re:Sound 8.A and 8.B (Internet – Audio Simulcast and Audio Webcast)

The hearing relating to proposed tariff Re:Sound 8.A (Simulcasting and Webcasting) and Re:Sound 8.B (Semi-Interactive Webcasting) took place from Monday, September 24th, 2012, to Friday, October 5th, 2012, with closing arguments on November 6th, 2012. The CAB appeared as an objector to these tariffs, along with other objectors including Pandora, CBC, the National Campus and Community Radio Association (NCRA), and a group of Internet service providers including Bell, Rogers, Shaw and Quebecor.

Re:Sound asked the Board to certify tariffs at high rates, seeking the greater of (i) 12% to 25% of revenues and (ii) varying penny rates per play of sound recordings on simulcasts and webcasts.

The CAB asked the Board to certify rates for simulcasting that are based on SOCAN Tariff 22.B (commercial radio websites) and rates for webcasting that are based on SOCAN Tariff 22.F (audio webcasting). The CAB put forward industry experts to bring evidence relating to the state of the simulcasting and webcasting businesses of broadcasters that supports our request for a replication of the existing rates.

This new tariff will apply to any broadcaster that is currently simulcasting or webcasting. Decisions from the Copyright Board typically take one to two years and we will keep our members updated through the CAB Updates.

Re:Sound 9 (TV & Specialty and Pay)

On March 28th, 2008, Re:Sound asked for a TV and Specialty and Pay tariff for record labels and performers similar to SOCAN Tariffs 2.A and 17 (which benefit authors and composers). The CAB successfully challenged Re:Sound's entitlement to collect such a tariff before both the Copyright Board and the Federal Court of Appeal. This case was appealed to the Supreme Court of Canada in a hearing held on December 6th and 7th, 2011.

On July 12th, 2012, the Supreme Court of Canada issued its decision relating to Re:Sound's proposed tariff for the use of sound recordings on TV, finding in favour of the CAB. This significant victory prevents the layering on of a new tariff that could have cost broadcasters up to \$60M per year. It also blocks Re:Sound from seeking future tariffs relating to the use audiovisual works on the internet.

SOCAN Tariff 2.A/17 (TV & Specialty and Pay)

SOCAN has proposed an increase in the rate for Tariffs 2.A and 17, from the current 1.9% to 2.1% for 2013. The CAB has objected to this proposed increase and will be taking all necessary steps to defend the interests of its TV and Specialty & Pay members in this regard. No proceeding is currently set relating to these tariffs.

SOCAN Tariff 22.B and D (Internet – Radio and TV & Specialty and Pay)

The CAB discussing settlement terms with SOCAN in respect of its Internet Tariff 22 that applies to both TV, specialty and pay, and radio broadcasters. The CAB is engaged in ongoing outreach to a number of broadcasters to clarify certain facts and assumptions in the context of our settlement discussions. Our goal is to obtain tariff terms that are reasonable, reflective of the relatively nascent nature of most broadcasters' online businesses and relatively easy to administer. We expect to have updates on this matter in the coming months.

If you have any questions relating to any of the copyright tariffs that apply to your business, please do not hesitate to contact [Gabriel van Loon](#) and [Kathleen Simmons](#).

CAB CEO Radio Council is up and running

At this year's AGM, the CAB Board of Directors approved the establishment of the CAB CEO Radio Council. The new CEO Council will be advocating on behalf of the commercial radio industry on a variety of matters that are of importance to our members.

The CEO Council members are:

- Paul Ski (Chair), Rogers
- Chris Gordon (Vice-chair), Bell Media
- Rick Arnish, Pattison
- Charles Benoit, Astral
- Elmer Hildebrand, Golden West
- David Murray, Newcap
- Chris Pandoff, Corus

The Council held its inaugural meeting on September 17th. Among its new initiatives, the Council will focus on the marketing of radio as an important vehicle for national advertising agencies. This effort is already underway.

The Council made its inaugural appearance before the CRTC on November 22nd at the CBC/Radio-Canada licence renewal hearings – details below.

The Council is also expecting a comprehensive report on radio spectrum in Canada, and possible opportunities on the digital spectrum.

The Council anticipates meeting quarterly, and we will keep you advised of their activities in further CAB updates.

CAB CEO Radio Council Appearance – CBC Licence Renewal Hearing

The CAB CEO Radio Council made its inaugural appearance before the CRTC on November 22nd at the CBC/Radio-Canada licence renewal hearing, to voice the industry's strong opposition to the CBC's application to carry national advertising on its Radio 2 and Espace musique services.

The Council was represented at the hearing by Paul Ski (Chair), Charles Benoit, Rick Arnish and Chris Pandoff. Also appearing on the panel were Patrick Grierson of Canadian Broadcast Sales and Ken Goldstein of Communications Management Inc. (CMI).

The Council filed two interventions with supporting studies for the hearing, including an extensive financial analysis conducted by CMI. The analysis revealed the serious flaws in the CBC's application, pointing out that inaccurate ratios and a failure to account for a number of markets resulted in revenue projections that are much too low.

The Council also emphasized the vulnerability of secondary markets that would face new commercial competitors should the Commission approve the CBC application.

While the Commission questioned the panel on possible conditions of licence that would soften the market impact of a commercialized Radio 2 and Espace musique, the Council and its expert witnesses strongly rejected any attempt to alter the mandate of these public radio services – which commercial advertising would most surely accomplish.

The Council will also be filing final reply comments on December 11th, 2012.

Sad News – Passing of Former CAB Chair Alain Gourd

Friends and family were shocked and saddened at the loss of Alain Gourd, former Chair of the CAB Board of Directors and a pillar of the Canadian broadcasting industry for almost 40 years.

Beginning as President and CEO of Radio-Nord Communications in 1973, in 1981 Alain Gourd was named President and CEO of Radiodiffusion Mutuelle Canada. Following this, Alain had a successful career in government, serving in ever more senior roles, as Deputy Minister, Communications; Associate Secretary to the Cabinet; and Deputy Clerk of the Privy Council.

In 1994, he returned to the private sector as President and CEO of Cancom, a position he also held at Bell Satellite Services, from 1998 to 1999. From 1999 to 2001, he was Chairman and CEO of Bell ExpressVu, and President and CEO of BCE Media. Between 2001 and 2004, he was Executive Vice-President Corporate at Bell Globemedia. Until very recently, Alain was head of his own consulting firm, Alain Gourd Communications. Alain was also involved in a long list of associations, corporations and board of directors and was responsible for running the Broadcasting Summit for the last several years.

Alain was most proud of having successfully battled cancer for almost a decade. He became a mentor to a number of individuals within and out of the industry who also suffered from cancer. He was an inspiration to all with his courage and determination and more importantly his good humour.

Alain made a tremendous contribution as member of several committees and boards of the CAB, in particular as Chair of the Television Board in the early 1980s, as well as Chairman of the Board of the CAB in 2003 and 2004. Alain Gourd was inducted into the CAB Hall of Fame in 2006.

Alain passed away at age 66 as a result of a severe bout of pneumonia. He leaves behind a devoted family and numerous friends and relatives, and will be greatly missed.

Canadian Broadcast Standards Council Update:

Andrée Noël is CBSC National Chair

Andrée Noël was appointed National Chair of the Canadian Broadcast Standards Council in January 2012. She was the CRTC's Regional Commissioner for Québec from 1998 to 2007 and subsequently acted as a consultant to various broadcast and telecom operators. She has also sat on the boards of the Local Programming Improvement Fund (LPIF) and of Canal Savoir.

"It has indeed been a pleasure to join the team at the CBSC and to renew my commitment to quality programming in Canada and the public interest," Noël said.

Other CBSC News

The CAB revised its Memorandum of Understanding with the CBSC and it must now issue its panel decisions within four months instead of six months. The CBSC is operating within its budget parameters and we are happy to report that the transitioning under the new National Chair has been seamless.

As part of its restructuring to meet new rules under the revised Canada Not-for-profit Corporations Act the CBSC intends to fine-tune the structure of adjudication panels.

The Council intends to appoint new adjudicators in the near future and would welcome any suggestions for both industry and public representatives. Industry and community representatives are key to the CBSC's success so it is essential that the CBSC have a broad range of adjudicators from every region of Canada. Please forward your ideas to [John MacNab](#) or [Andrée Noël](#).

CRTC Three-Year Plan

On September 12th, the CRTC released its Three-Year Plan, which summarizes the key activities it expects to carry out through the period ending March 31, 2015, to implement its mandate (<http://www.crtc.gc.ca/eng/BACKGRND/plan2012.htm>).

These activities are supported by three pillars: "Create, Connect and Protect", and the CRTC monitors and reports annually on its progress toward achieving expected results.

Acknowledging a rapidly changing communication environment, the Commission said it will publish annually a rolling three-year plan, to allow it to respond to emerging issues.

Of note is the start of a targeted commercial radio policy, which will start in French markets before moving to an English-market review. For more on the commercial radio review read the Vice-Chair of Broadcasting's address to the OAB (<http://www.crtc.gc.ca/eng/com200/2012/s121106.htm>).

SMITS Coalition Keeping Busy

The SMITS (Small Market Independent Television Stations) Coalition, which brings together those television operators operating in Canada's smallest markets, continues to be very active. The SMITS Coalition members are:

- Rick Arnish, Chair
- Sylvie Courtemanche, Corus Entertainment
- Glenda Spenrath, Newcap Radio
- Don Caron, Thunder Bay Electronics
- Marc Simard, Télé Inter-Rives
- Don Shafer, Astral Media Radio
- Pierre Brosseau, RNC Media

The SMITS Coalition meets as needed on various issues that affect the interests of the members of the Coalition. For example, in 2012, the Coalition filed an intervention and appeared at the public hearing that reviewed the Local Programming Improvement Fund. The SMITS Coalition also filed an intervention regarding the licence renewals of Direct-to-Home distribution undertakings.

CAB

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