



A Message from the Chair

A Time of Renewal

It is a pleasure and an honour for me to extend my greetings as the newly appointed Chair of the Board of the Canadian Association of Broadcasters.

If you reviewed the topics in the At a Glance box, you may have noticed that there's a theme of "renewal" in this issue of the CAB Update. In addition to introducing the CAB's new Board of Directors, we also look at the CRTC's new 3-Year Plan, the Commission's plan for emergency alerting broadcasts, new developments on the copyright front, and a change of leadership at the head of the CAB Technical Coordinating Committee.

Our industry is in a constant state of renewal, as we adapt to changes in technology, audience tastes, and government regulations. In this era of rapid transformation, one thing you can count on is that the Canadian Association of Broadcasters is hard at work, for our members and our industry.

Finally, I would like to thank Mr. Wayne Stacey, who is stepping down as Chair of the CAB Technical Coordinating Committee (TCC), for everything he has done for this Association and our members. Canada's private broadcasters have benefited greatly from Wayne's encyclopaedic knowledge of the technical side of broadcasting as well as his leadership skills as the head of the TCC. I know that colleagues throughout the industry join me in wishing Wayne all the best as he begins a new chapter in life.

Kevin Goldstein
Chair, Board of Directors
Canadian Association of Broadcasters

At a Glance...

Meet Your New Board of Directors	2
Emergency Alerting	3
CRTC "Let's Talk" TV Hearing	3
CRTC Unveils New 3-Year Plan	3
Copyright Update	4
Wayne Stacey Passes the Torch at the CAB Technical Coordinating Committee (TCC)	7

Meet Your New Board of Directors

At the 2013 Annual General Meeting held on February 18, 2014, the CAB named its Board of Directors for 2013-14. The Association thanks the dedicated individuals who recently left the Board; their service and their leadership on behalf of our industry is greatly appreciated. The CAB welcomes the new Board members and wishes them every success in the months ahead.

Chair, Board of Directors

Kevin Goldstein
Vice-President, Legal and Regulatory Affairs
Bell Media Inc.

Vice-Chair, Board of Directors

Susan Wheeler
Vice-President, Regulatory Affairs
Rogers Media Inc.

Secretary

Sylvie Courtemanche
Vice President and Associate General Counsel
Government Relations and Compliance
Corus Entertainment Inc.

Treasurer

Glenda Spenrath
Vice-President, Operations & Regulatory Affairs
Newcap Radio

Directors

Rick Arnish
President and General Manager
Jim Pattison Broadcast Group

Nathalie Dorval
Vice-présidente, Affaires réglementaire et droits d'auteur
Cogeco Inc.

Cynthia Rathwell
Vice-President, Regulatory Affairs
Shaw Communications Inc.

Emergency Alerting:

Wayne Stacey highlights weaknesses in CRTC's Plan

According to Wayne Stacey, outgoing Chair of the CAB Technical Coordinating Committee, the CRTC's plan to require Canadian OTA broadcasters and BDUs to deliver qualifying emergency alerting messages to the public by the end of this year "has quite a number of associated practical problems."

In a report prepared for the CAB, Wayne states that many of the challenging issues were recognized early on by broadcasters and BDUs, including those who served on the government/industry Common Look and Feel Working Group (CLFWG). However, "since the CRTC chose not to participate in the CLFWG's work..." the result is "proposed regulations which, in a number of crucial respects, will be impossible to follow."

In his in-depth report, Wayne looks at such subjects as the scope of mandatory requirements for universal coverage, geographic coding issues, jurisdictional issues, challenges facing rebroadcasters and BDUs, and more.

To read the full report, [click here](#).

CRTC "Let's Talk" TV Hearing

On April 24, 2014, the CRTC announced the third phase of its *Let's Talk TV: A Conversation with Canadians* proceeding. The Commission has indicated that it intends to review all aspects of the regulatory framework for the television industry, including how channels are offered by broadcasting distribution undertakings to consumers, genre exclusivity, carriage rights, simultaneous substitution, Canadian programming expenditure and exhibition requirements and whether more foreign channels should be authorized for distribution in Canada. It is clear that the outcome of this proceeding will have a profound impact on the Canadian television industry going forward. Consequently, we encourage all CAB members to actively participate in the public process. Submissions are due June 25, 2014 and a public hearing will begin in Gatineau, Quebec on September 8, 2014.

CRTC Unveils New 3-Year Plan

The CRTC recently released its new three-year plan, for the period of 2014 to 2017. In the document, the Commission's priorities are said to include "modernizing the regulatory framework for the Canadian broadcasting system, improving access to advanced and competitive communication services" and "strengthening the security and safety of Canadians through the communication system" among others. These priorities are addressed through three pillars "Create, Connect, Protect."

The plan includes a status report on the CRTC's activities for 2013-14. It then looks ahead to the next three years, outlining where it will focus its attention. Subjects include the ongoing Public Consultation on Television and work on the Commercial Radio Policy, as well as a review of the Ethnic Radio Licensing Policy, a decision related to the Tangible Benefits Policy, an assessment of the effectiveness of the Community Television Policy, and much more.

For a full copy of the CRTC's Three-Year Plan, [click here](#).

CAB Copyright News

Copyright Hearing: Board Agrees with CAB

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

The Copyright Board released its decision in Re:Sound Tariff 8 Non-Interactive and Semi-Interactive Webcasts on May 16, 2014 (following a hearing on the matter that took place in September/October 2012). The tariff is applicable to non-interactive (i.e., b-streams) and semi-interactive (i.e., Pandora type services) webcasts offered by commercial and non-commercial webcasters.

Simulcast was originally targeted by this Tariff and Re:Sound argued at the hearing for rates of \$2.30 to \$4.00 per 1000 plays. The CAB took the position that simulcasting should not be subject to this tariff because it is a purely ancillary business to over-the-air broadcasting. In a win for the CAB, the Board conclusively determined that this webcasting Tariff is not the appropriate place to license simulcasting or podcasting. Instead, the Board noted that “the Internet simulcast of a radio station’s over-the-air signal is a textbook example of an ancillary use that should be dealt with at the same time as the main use”. The Board further noted that audience data may already take into account simulcast listenership and therefore simulcast may not need to attract additional royalties. Given its designation as an ancillary use, the Board deferred any decision on simulcast until the next time it considers the Commercial Radio tariff.

With respect to non-interactive webcasting, the CAB took the position that the Re:Sound rates should be the same as the SOCAN Tariff 22F (Webcasting) rates of 5.3% of revenue. The rates certified by the Board are 10.2¢ per 1000 plays for commercial webcasters, 13.1¢ per 1000 plays for CBC, and \$25 per year for small non-commercial webcasters. This is substantially lower than what Re:Sound requested, which was between \$2.30 and \$4.00 per 1000 plays. The Objector’s proposal was for a percentage of revenue tariff, as opposed to a per play tariff. The impact of this per play model will of course vary. Higher revenue services could end up paying substantially less than 5.3% of revenue depending on how many people actually play the stream, but for some streams with very low revenue a per play model may be prohibitively expensive. The CAB will monitor the evolving situation to assess the impact on various services.

CMRRA Tariff No. 5 Commercial Television Stations (2015)

The Canadian Musical Reproduction Rights Agency (CMRRA) has filed a new tariff proposal for commercial television stations. This tariff proposes to license technical and operational copies made by television stations in the course of their broadcasting activities. This proposed tariff would be the TV and Specialty Pay equivalent of the CSI Commercial Radio Tariff, which has been in place since 2002. CMRRA has proposed a rate of 0.66% of gross income (or 0.28% for low use stations) and claims this tariff could be worth up to \$50 million per year for the commercial television industry. This is the first time CMRRA has sought a tariff for television stations.

The CAB will be objecting to the tariff in accordance with the Copyright Board process and will begin to prepare for a challenge. It is expected that this tariff will proceed to a hearing, though timelines are unknown at this time. CAB Television members may be contacted in the next several months to participate in information gathering and evidence-building exercises that will help the CAB prepare its case against CMRRA.

The tariff can be viewed at http://www.cb-cda.gc.ca/tariffs-tarifs/proposed-proposes/2014/Supplement_23_may_2014_1.pdf.

Commercial Radio

(SOCAN 2012-2013; Re:Sound 2012-2014; CSI 2012-2013; AVLA/SOPROQ 2012-2017; ArtistI 2012-2014)

On November 7, 2012, the CAB filed an Application with the Copyright Board for relief from reproduction right liability that resulted in the Board setting up a hearing relating to all the radio tariffs held from October 8 to 23, 2013. Closing arguments were made before the Board on March 3 and 4, 2014.

The CAB advanced an aggressive case for a substantial reduction in reproduction royalties on the basis of the changes in the law. The CAB argued that the new law carves out exceptions for many types of copies made by radio broadcasters and the tariffs should reflect these changes and enable broadcasters to stop paying or at least pay less. CAB also refuted arguments from the Collectives' to (i) change the rate base so the tariffs would be paid as a percentage of total revenues for all stations within a corporate group as opposed to the current method of paying as a percentage of individual station revenues, and (ii) levy a new royalty for the public performance of radio in commercial spaces.

The hearing was complex and involved contributions from legal counsel, economic experts, and a range of other experts, including industry experts on behalf of the CAB. While it is very hard to predict the outcome of the Board's decision, commentary from the Board members throughout the hearing indicated a willingness to consider reductions based on the changes in the law. The Board also seemed reluctant to fully accept the proposals relating to the change in rate base and the new public performance royalty.

The cost of this very important hearing was close to \$1,230,000. Funds from the CBRA Retransmission Royalties collected by the CAB on behalf of Radio Broadcasters were used to fund almost half of these costs. An additional \$15,000 was collected from non-members. The remaining \$615,000 has been assessed to all of the CAB Radio Members and invoiced by the CAB.

CSI Online Music Services and SOCAN Tariff 22.A

There was a hearing relating to CSI and SOCAN's interests in online webcasting and streaming held in November 2013. Closing Arguments took place on May 12 and 13, 2014. The CAB participated in a limited capacity to deal with some audio streaming components of the proposed tariffs. The vast majority of CAB members are not affected by these tariffs so the CAB worked with Pandora to share resources and save costs. The CAB built on arguments made in the 2012 Re:Sound 8A and 8.B (Internet – Audio Simulcast and Audio Webcast) proceeding, namely that the existing rates for webcasting should be maintained. The costs for this hearing are expected to total \$28,000 and will be covered by the CBRA Retransmission Royalties collected by the CAB on behalf of Radio Broadcasters.

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

The CAB is engaged in advanced settlement discussions with SOCAN with respect to its Internet Tariff 22 that applies to TV and S&P 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.

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

SOCAN had proposed an increase in the rate for Tariffs 2.A and 17, from the current 1.9% to 2.1% for 2013. The CAB objected to this proposal. A hearing was scheduled for March 2014, but the CAB and SOCAN have reached a settlement to continue with status quo rates until the end of 2013. The practical effect of this is no change to TV and S&P tariff payments and no retroactive uncertainty. SOCAN's proposed increase remains on the table for 2014, which may proceed to a hearing sometime in 2015 or 2016.

CAB Copyright Reform Update

Bill C-11 Implementation

Bill C-11, The Copyright Modernization Act, was passed by Parliament in June 2012, and is being proclaimed (i.e., coming into force) in multiple stages. The first stage came into force on November 7, 2012. The second stage is underway and is expected to be completed before the end of the summer.

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 with respect to the WIPO implementation provisions to prevent an effective doubling of the Re:Sound Commercial Radio Tariff 1.A.

Reproduction Right Reduction

The CAB took the first steps to realize a reduction in the 2013 Commercial Radio proceeding (see above).

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. The Ministerial Statement was pre-published in the Canada Gazette on March 1, 2014 and included language that would preserve the status quo for over-the-air broadcasters and additional language that would preclude payment of royalties by any service (including online streaming/webcasting by broadcasters) for sound recordings published before 1972. The CAB understands, from ongoing discussions with government officials, that the Ministerial Statement is on track to be published before the end of the summer, prior to or commensurate with the coming into force of the relevant parts of the legislation. This will have the effect of preventing the increase to the Re:Sound tariff.

We know that the instruments of ratification have been deposited with WIPO, which means the remaining parts of Bill C-11 will come into force following the requisite 3-month period, or by early August. We will continue to actively monitor the progress and engage with officials where necessary, and will keep you updated.

Corporate Governance

CAB By-law Amendments

Following the coming into force of the Canada Not-for-Profit Corporations Act in October 2011, all not-for-profit corporations are required to file Articles of Continuance and update their by-laws in order to comply with the new legislation. Articles must be filed with the Industry Canada before October 2014, and by-laws must be amended within a year of continuance.

The CAB Board of Directors has voted to approve Articles of Continuance, which will allow the CAB to continue to operate under the Canada Not-for-Profit Corporations Act. Please note that a special general meeting of the members will be held June 27, 2014 (formal notice to follow), to allow the membership to vote on the Articles of Continuance. By-law amendments will take place in the fall/winter. CAB is working with Van Loon Simmons and Fasken Martineau to ensure the most efficient and effective amendment process possible. The vast majority of amendments will be technical in nature, and complete updates will be provided to the membership throughout the amendment process.

Wayne Stacey Passes the Torch as Chair of the Technical Coordinating Committee (TCC)

Wayne A. Stacey, long-time broadcasting consultant who has worked with the CAB for more than 35 years, has decided to retire from his role as Chair of the CAB Technical Coordinating Committee (TCC).

The principal mandate of the CAB Technical Coordinating Committee (TCC) is to assist private broadcasters in technical and engineering dealings with government departments and agencies, research organizations, international standard-setting bodies and other like-minded associations such as the Radio Advisory Board of Canada (RABC).

The Committee also provides CAB members and its Executive Council with timely information concerning technological and regulatory developments, as well as business opportunities created by new technologies.

In carrying out its functions, the TCC also maintains ongoing liaison with Canada's regional broadcast engineering associations (CCBE and WABE). All TCC activities are coordinated through the Main Committee and /or the Radio/TV subcommittees, depending upon the issue.

Committee decisions are achieved through negotiation and consensus. The TV Subcommittee is chaired by Bruce Cowan of Corus Entertainment Inc, while Wally Lennox of Bell Media chairs the radio group.

Wayne Stacey has made an invaluable contribution to the work of this important committee, through his leadership but also thanks to his experience and knowledge of the technical side of the industry.

Wayne stepped down officially from his role as Chair on May 31. His successor is Kirk Nesbitt, an engineer with over 30 years of experience in broadcasting, serving most recently as Vice President, Corporate & Radio Engineering at Rogers Broadcasting. Kirk's technical expertise comprises all facets of broadcast engineering including facility design; audio, RF, and automation systems; and computer networking technologies. Throughout his career, Kirk has been an active participant in industry organizations and committee work.

The CAB welcomes Kirk to his new role, and wishes him every success.

The CAB is inviting all of its members who wish to have a representative on the Technical Coordinating Committee to please forward the name of the representative to Kirk Nesbitt at aknesbitt@rogers.com.