

[CB-CDA 2015-085]

NOTICE OF THE BOARD

The decision of the Supreme Court of Canada in *Canadian Broadcasting Corporation v. SODRAC 2003 Inc.*, 2015 SCC 57 issued on November 26, 2015, enunciated that the following principles needed to be taken into account by the Board when fixing licence fees:

1. Technological neutrality; and,
2. Balance between user and right-holder rights, with relevant factors to include the risks taken by the user, the extent of the investment made by the user in the new technology, and the nature of the copyright protected work's use in the new technology.

The Board sees two options on how to deal with the matter:

Option 1: The Board could explain in its current, pending decision that the parties have agreed (should this be the case) not to deal with these principles in the current proceeding. The decision would also state that the next time the Board examine tariffs in respect of online music services, it would invite parties' submissions on whether the SCC's principles apply to the matter and if so, how.

Option 2: The Board could now invite parties' submissions on whether the SCC's principles apply to the current proceeding and if so, how. Depending on the parties' submissions, this approach could involve a new evidence-gathering process (including interrogatories). This would have a significant impact on the date of release of the decision.

The Board favors option 1, which would allow for faster resolution of the current matter.

Parties are asked to file submissions on their views on these issues no later than **Friday, January 8, 2016**. Parties will be allowed to reply to each other no later than **Friday, January 15, 2016**.