



February 21, 2018

[*CB-CDA 2018-023*]

**File: Non-Commercial Radio [Artisti: 2016-2018; CMRRA: 2003-2010; CSI: 2011-2018;
Re:Sound: 1998-2021]**

NOTICE OF THE BOARD

On December 21, 2017, the Board issued Notice 2017-170 in which it indicated that it intended to consider in a single proceeding the proposed tariffs applicable to the public performance and reproduction of musical works and sound recordings by non-commercial radio stations, excluding CBC, by over-the-air and transmissions via the internet, such as simulcasting, and commence such proceeding forthwith.

In that notice, the Board sought comments on the proposed consolidation from the Collectives involved and those who had objected to the various proposed tariffs. The Board also requested that those who intended to participate in the proceeding confirm their participation; otherwise, they would be deemed to have withdrawn.

Re:Sound, CSI, CMRRA, the National Campus and Community Radio Association (NCRA), the *Alliance des radios communautaires du Canada* (ARC) and the *Association des radiodiffuseurs communautaires du Québec* (ARCQ) informed the Board that they intended to participate and agreed with the proposed consolidation.

Furthermore, Re:Sound, with the consent of CSI, CMRRA, Artisti, NCRA, ARC, and ARCQ requested a three-month period to negotiate a resolution to all or some of the issues in dispute.

Artisti did not formally confirm its intention to participate in the proceeding although it consented to Re:Sound's request. The Board hereby requests that Artisti confirm its intention to participate in the proceeding by no later the **Wednesday, February 28, 2018**.

In addition, Re:Sound expressed the view that the Board should not consider its proposed Tariff 1.B (Non-Commercial Radio other than the CBC) for the years 1998 to 2021 for the following reason:

Pursuant to section 68.1(1)(b) of the Act, community systems (i.e. non-commercial radio stations) are required to pay Re:Sound annual royalties of \$ 100, notwithstanding the tariffs approved by the Board under subsection 68(3) [...]. Therefore, any tariff certified by the Board applicable [to] non-commercial radio stations would be superseded by section 68.1(1)(b) of the Act, making the exercise of valuing the rights in question an unnecessary waste of resources.

Re:Sound explains that despite the fact that the Act provides for the royalties to be paid by community systems, it continues to file proposed tariffs in respect of Tariff 1.B to preserve its rights in the event of a change to the relevant provision of the *Copyright Act* (the “Act”) and the \$100-rate provided therein. However, since the Act already provides for this rate, it argues that the proceeding in respect of Tariff 1.B would be useless, and that it should, instead, simply be adjourned *sine die*.

The request to suspend the proceeding is granted. Parties shall report back to the Board by no later than **Friday, May 11, 2018**.

If the parties have not reached an agreement by that date, the Board intends to commence the proceedings immediately. To that end, Parties shall file with the Board, by no later than **Friday, March 2, 2018**, a joint proposed schedule of proceedings that will take effect at the end of the three-month settlement period and that could lead to an oral or paper hearing.

With respect to Tariff 1.B, the Board dismisses Re:Sound’s proposal to adjourn *sine die* its consideration. The Board is of the view that this is not an appropriate way to deal with the issue in this matter, since Re:Sound’s proposal for adjournment does not establish the conditions under which the suspension would end. Furthermore, Re:Sound’s request is based on the highly unlikely event that the Act would be retroactively amended. Under this unlikely situation, Re:Sound could apply to the Board to vary any decision reached on the basis of the present state of the law.

The Board is of the preliminary view that it is preferable, in order to bring closure to the matter, to certify a tariff that would provide for an annual royalty of \$100 to be paid by non-commercial radio stations other than CBC radio, for the 1998 to 2021 period, along with a provision that these stations would be subject to minimal reporting requirements.

Re:Sound shall comment on the Board’s preliminary view by no later than **Wednesday, February 28, 2018**.

CSI, CMRRA, Artisti, NCRA, ARC and ARCQ may respond thereto by no later than **Friday, March 2, 2018**.

Re:Sound may reply by no later than **Wednesday, March 7, 2018**.



Gilles McDougall
Secretary General