RULING OF THE BOARD DEALING WITH OBJECTIONS TO INTERROGATORIES

Files: 70.2-2008-01, 70.2-2012-01 and 70.2-2016-01 Licences SODRAC v. CBC [Redetermination (2008-2012); Determination (2012-2017)]; 70.2-2011-03 SODRAC v. CBC: Interactive kiosks

I. Introduction

In its ruling dated August 17, 2016, the Board dealt with, among other things, a certain number of objections by CBC to interrogatories by SODRAC.

Among the issues addressed, the Board ruled on interrogatories Q117, Q193 and Q304, which referred to three appendices that incorporate structured questionnaires concerning the use of copies of music produced in the context of CBC radio, television and Internet broadcasts.

The Board’s decision was as follows:

Q117, Q193, Q304: although CBC is correct in saying that this is not an appropriate question in the framework of an exchange of information, the Board believes that this information could prove useful, as CBC also appears to recognize in its objection. CBC must thus provide the requested information. That said, CBC is right to point out that these questions underlie methodological issues. Therefore, the parties must reach an agreement to resolve these issues. If the two parties cannot reach an agreement, they should request the Board’s intervention. In any case, the parties must inform the Board of the methodological framework they plan to use with respect to these questions.

In accordance with the instructions provided, the parties informed the Board of certain agreements and disagreements concerning the applicable methodological framework (letter from Lise Bertrand dated September 13, 2016, and table entitled Methodology for Questionnaires in SODRAC v CBC 2012-2017 Arbitration).

In general, the parties disagree on the scope of the ruling dated August 17, 2016, concerning Appendices A, B, and C: SODRAC believes that the content of the questionnaire was sanctioned by the Board, such that the questions cannot be amended or deleted for methodological reasons; CBC believes that the methodology includes the questions themselves.
The parties also disagree on whether certain interrogatories set out in Appendices A, B and C duplicate other interrogatories sanctioned by the Board.

Moreover, CBC believes that certain questions set out in Appendices A, B and C are speculative and irrelevant and that the related information would be difficult to compile.


II. General Comments

The Board agrees with CBC’s position that the methodology includes the questions themselves.1

After reviewing the questionnaires, the Board would like to make a number of amendments that could improve the data collection process.

III. A1/B1/C1

A1/B1/C1 essentially requires information to be provided on the types of copies used by CBC and the number of copies produced by each service of CBC over different periods of time (last month, last six months, last year).

CBC made the following points:

These questions concerning the number and types of copies made are covered by the “category B” questions at page 6 of the Board’s ruling on objections. It would be redundant and unnecessary to repeat those questions here. This question will be deleted from the questionnaire.

Admittedly, the category B questions may overlap A1/B1/C1 somewhat, but they do not generate the exact same information being sought by A1/B1/C1.

For example, under category B, Q83/Q170/Q266(g) require information be provided on the number of a certain type of copies made, but unlike A1/B1/C1, this information does not indicate (i) the specific service of CBC the figures are linked to and (ii) the frequency of production of copies.

The Board believes that A1/B1/C1 is not redundant with the category B questions and consequently orders that it be maintained. It is also important that the information be provided in the context of the methodological structure concerned.

However, the last sentence of A1/B1/C1 – “If no records exist, please give your best estimate and explain the basis of your estimate.” – would lead to a speculative and useless answer. The Board therefore orders that this sentence be deleted.

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1 Copyright Board of Canada, Access Copyright - Provincial and Territorial Governments Tariffs (2005-2014) file, Ruling dated December 17, 2010.
IV. A3/B3/C3

A3/B3/C3 is a Likert-type questionnaire which asks CBC to indicate the usefulness of the copies made in the context of its operations on a scale of 1 to 10.

It is generally accepted that a Likert scale which includes five possible answers is reasonable.\(^2\) This tends to reduce the risk of bias.\(^3\)

The Board orders that the scale be reduced from 10 to 5.

V. A4/B4/C4

A4/B4/C4 is intended to obtain information on the order or sequence of the copies identified in A1/B1/C1:

What is the order or sequence in which the copies identified in response to Q. A.1 are made? Is the order or sequence technologically determined or could it be different? If so, what factors determined the order?

CBC believes that A4/B4/C4 will be covered in the context of a different interrogatory and must therefore be deleted:

The subject matter of these questions will be addressed by CBC’s narrative description of its technology. This question is therefore redundant and will be deleted.

The specific information requested in A4/B4/C4 is relevant, for example, in support of an approach based on game theory and the Shapley algorithm, as applicable to copies.\(^4\) Moreover, this information is not specifically covered in other interrogatories, and as mentioned above, it is important that it be provided in the context of the methodological structure concerned. The Board therefore orders that A4/B4/C4 be maintained.

VI. A6/B6/C6

A6/B6/C6 requires the following information to be provided:

In relation to each type of copy identified in response to Q. A.1, what would the impact be on the operations of the radio service if this type of copy were not available, possible, or allowed? Specifically:

a) What other types of copies would then be dropped or otherwise not made?
b) What would be the alternatives, if any, to this type of copy?

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\(^2\) [http://www.socialresearchmethods.net/kb/scallik.php](http://www.socialresearchmethods.net/kb/scallik.php)

\(^3\) [https://en.wikipedia.org/wiki/Likert_scale](https://en.wikipedia.org/wiki/Likert_scale); see also Nadler, Joel et al. “Stuck in the Middle: The Use and Interpretation of Mid-Points in Items on Questionnaires.” (2015) 142:2 Journal of General Psychology at pp. 71-89.

\(^4\) See [Commercial Radio Tariff (SOCAN: 2011-2013; Re:Sound: 2012-2014; CSI: 2012-2013; AVLA/SOPROQ: 2012-2017; ArtistI: 2012-2014)](https://en.wikipedia.org/wiki/Likert_scale) (21 April 2016) Copyright Board Decision at para 81: “… The Shapley value is the average of the incremental values computed for all possible sequences of participants and the relative values calculated by Drs. Boyer and Cremieux are simply the relative Shapley values for each type of copy.”
c) Although some processes and Costs related to this type of copy would not be incurred, what other processes and Costs would be incurred that are not incurred when this type of copy is made?

d) What other impacts might be anticipated?

CBC is of the opinion that the information requested is redundant and that, consequently, A6/B6/C6 should be deleted:

The subject matter of these questions will be addressed by CBC’s narrative description of its technology, or under the category C financial/planning documents.

The specific information requested in A6/B6/C6 is relevant, for example, for the purpose of an analysis to determine the value of copies for users⁵ or the availability of alternative solutions to use.⁶ Moreover, this information is not specifically covered in other interrogatories, and as indicated above, it is important that it be provided in the context of the methodological structure concerned. The Board therefore orders that A6/B6/C6 be maintained.

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