

Copyright Board
Canada



Commission du droit d'auteur
Canada

[CB-CDA 2023-010]

RULING OF THE BOARD

File: Online Audiovisual Services – Music (2014-2018)

February 28, 2023

I. RULING: ADDITIONAL YEARS ADDED FOR AUDIOVISUAL AND USER-GENERATED CONTENT SERVICES

[1] Following my consultation of parties in Notice 2023-004, I am adding the following proposed tariffs (the “Additional AV and UGC Proposed Tariffs”) to this proceeding:

- SOCAN Tariff 22.D.1 – Internet - Other Uses of Music - Audiovisual Content, 2019, 2020
- SOCAN Tariff 22.D.1 – Internet - Audiovisual Content, 2021-2023
- SOCAN Tariff 22.D.1 – Online Audiovisual Services, 2024-2026
- SOCAN Tariff 22.D.2 – Internet - Other Uses of Music - User-Generated Content, 2019, 2020
- SOCAN Tariff 22.D.2 – Internet - User-Generated Content, 2021-2023
- SOCAN Tariff 22.D.2 – User-Generated Content Services, 2024-2026
- SODRAC Tariff 7 – Reproduction of Musical Works Embedded in Audiovisual Works by a Service, 2019
- SOCAN-SODRAC Tariff 22.D.1.R – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by a Service, 2020
- SOCAN Tariff 22.D.1.R – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by a Service, 2021-2023, 2024-2026.

[2] All of the objectors that responded to the Notice supported the addition of these proposed tariffs. While some indicated that a flexible schedule may be required, they all confirmed that

they are of the view that any additional complexity introduced by the addition of these proposed tariffs is manageable.

[3] Of the parties that responded to the Notice, only SOCAN and SODRAC raised any significant concerns with respect to the addition of these proposed tariffs. Primarily, these concerns focussed on interrogatories. They submit that the consideration of additional years could require not only the gathering of information for those additional years, but also—given potential changes in technology, business practices, and users—different kinds of information, and from different uses. This, in turn, should be expected to increase the time required for the proceeding.

[4] I accept the proposition that the addition of the above proposed tariffs is likely to increase the time required; primarily for the gathering of information, and the analysis of that information. Nevertheless, given that this approach will permit the Board to

- complete the consideration of an additional 13 proposed tariffs (constituting approximately 25 tariff-years),
- reduce its backlog associated with these particular proposed tariffs, and
- approve tariffs that are more current,

I conclude that the balance of convenience favours adding these proposed tariffs, as opposed to holding a separate hearing for these, sometime in the future.

[5] I am aware that adding these proposed tariffs may require additional time for consideration both for the Parties and the Board. However, I remain committed to maintaining an expeditious approach in this matter, and will consider future requests to deviate from any Schedule with this in mind.

II. ORDER: IDENTIFICATION OF OBJECTORS FOR MUSIC VIDEOS AND REPLY TO APPLE

[6] I am reserving my decision with respect to the addition of the following proposed tariffs (“the Additional Music Video Proposed Tariffs”):

- SOCAN Tariff 22.A – Online Music Services, 2019, 2020, 2021-2023, 2024-2026 [music videos only]
- SODRAC Tariff 6 – Reproduction of Musical Works Embedded in Music Videos for Transmission by a Service, 2019

- SOCAN-SODRAC Tariff 22.A.R – Reproduction of Musical Works Embedded in Music Videos for Transmission by a Service, 2020
- SOCAN Tariff 22.A.R – Reproduction of Musical Works Embedded in Music Videos for Transmission by a Service, 2021-2023
- SOCAN Tariff 22.D.1.R – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by a Service, 2024-2026 [music videos only]

[7] In its response to Notice 2023-004, Apple submitted that proposed tariffs for music videos should not be considered beyond the year 2018, as it would be inefficient and inappropriate to consider these for any period for which the Board has not yet considered, or does not propose to concurrently consider, the online music tariff.

[8] In order to resolve this issue, I will first require all objectors that intend to participate in the consideration of proposed tariffs related to music videos to identify themselves and confirm their participation. Those that do so, as well as SOCAN and SODRAC, may reply to Apple's submission.

[9] All objectors that intend to participate in the consideration of proposed tariffs related to music videos, which are listed at paragraph 6, **shall** confirm that they intend do so, and **shall** provide a description of their activities which they believe could be subject to those proposed tariffs.

[10] SOCAN and SODRAC, as well as any objector that has identified themselves as intending to participate in the consideration of those proposed tariffs **may** reply to Apple's submissions made in its response to Notice 2023-004.

[11] Any response to this Order must be filed with the Board no later than **Tuesday, March 21, 2023**.

III. NOTICE: COMMENTS ON SEPARATE PROCEEDINGS

[12] I am of the preliminary view that the proposed tariffs should be considered in two separate proceedings: one considering the proposed tariffs for music videos, and one considering proposed tariffs for audiovisual and UGC services. This is so whether I conclude that it is appropriate to consider the Additional Music Video Proposed Tariffs in the first proceeding, or not.

[13] **Proceeding 1** would be in respect of the following proposed tariffs:

- SOCAN Tariff 22.A – Internet - Online Music Services (2014, 2015, 2016, 2017, 2018) [music videos only]
- SODRAC Tariff 6 – Online Music Services - Music Videos (2014)
- SODRAC Tariff 6 – Reproduction of Musical Works Embedded in Music Video for Transmission by a Service (2015, 2016, 2017, 2018) [music videos only]

and potentially the Additional Music Video Proposed Tariffs (as identified above in paragraph 6).

[14] **Proceeding 2** would be in in respect of the following proposed tariffs:

- SOCAN Tariff 22.D – Internet - Other Uses of Music - Audiovisual Content (2014, 2015) [excluding allied services]
- SOCAN Tariff 22.D.1 – Internet - Other Uses of Music - Audiovisual Content (2016, 2017, 2018) [excluding allied services]
- SOCAN Tariff 22.D.2 – Internet - Other Uses of Music - User Generated Content (2016, 2017, 2018)
- SODRAC Tariff 7 – Reproduction of Musical Works Embedded in Audiovisual Works for Transmission by a Service (2015, 2016, 2017, 2018)

as well as the Additional AV and UGC Proposed Tariffs (as identified above in paragraph 1).

[15] My view is based on the likelihood that the consideration of the proposed tariffs related to music videos should be less complex, raising fewer novel and data-intensive issues, than the consideration of the proposed tariffs related to AV and UGC services.

[16] I also expect that the two proceedings would each be amenable to different procedural steps. For example, as contemplated in Notice 2023-001, the proceeding considering proposed tariffs relating to music videos may be by way of a written hearing, with few or no interrogatories, while the other proceeding would likely require an oral hearing with more significant interrogatories.

[17] Parties **may** submit their comments on my preliminary view no later than **Tuesday, March 21, 2023**.

IV. NEXT STEPS

[18] After receiving parties' submissions in response to this Order, I intend to rule on whether to include the additional years for music videos, and whether to separate the consideration the proposed tariffs for AV & UGC and Music Videos into separate proceedings.

[19] I will then establish procedural steps and schedule, in consultation with the parties, for each resulting proceeding.

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Case Manager